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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS*, PAGE 1342.

VOLUME 17 NUMBER 10
May 20, 1985 Indexed 17 N.J.R. 1159-1358
(Includes rules filed through April 29, 1985)

* *The New Jersey Register supplements the New Jersey Administrative Code. To complete your research of the latest State Agency rule changes, see the Register Index of Rule Proposals and Adoptions in this issue.*

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RULE PROPOSALS

Interested persons may submit, in writing, information or arguments concerning any of the following proposals until **June 19, 1985**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice.

AGRICULTURE

(a)

DIVISION OF RURAL RESOURCES

State Soil Conservation Committee General Provisions

Proposed Readoption: N.J.A.C. 2:90-1

Authorized By: Arthur R. Brown, Jr., Chairman, State Soil Conservation Committee.

Authority: N.J.S.A. 4:24-3 and 4:24-42.

Proposal Number: PRN 1985-281.

Submit comments by June 19, 1985 to:

Samuel R. Race, Executive Secretary
State Soil Conservation Committee, Room 203
CN 330
Trenton, New Jersey 08625

Pursuant to Executive Order No. 66(1978), N.J.A.C. 2:90-1 expires on June 30, 1985. The re-adoption of the existing rule becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of re-adoption.

The agency proposal follows:

Summary

The Soil Erosion and Sediment Control Act of 1975, as amended, requires that approval of applications for development, where more than 5,000 square feet of soil are disturbed,

must be conditioned upon certification of plan for soil erosion and sediment control by the soil conservation district. The State Soil Conservation Committee is empowered to promulgate technical and administrative standards for such controls and has done so through the promulgation of N.J.A.C. 2:90-1. Since these current standards will expire on June 30, 1985, the Committee proposes to re-adopt these standards to enable the Committee and local districts to continue to carry out their responsibilities under the Act. The subchapter contains technical standards and procedural rules required to carry out these responsibilities, and rules concerning municipal ordinances, fees and enforcement.

Social Impact

The proposed re-adoption will have a favorable impact upon the citizens of New Jersey through the continued control of soil erosion, sedimentation and water quality impairment. Quality of living will be enhanced through the prevention of such damages. Continuing intensive development accelerates the potential for soil erosion and sediment damages which will be controlled by these rules.

Economic Impact

The proposed re-adoption will have a favorable impact upon the public through reduction in losses caused by soil loss and sedimentation damages. Water quantity and quality will be enhanced thereby reducing public costs for correcting such problems. Those persons who engage in land disturbances will be required to prevent offsite damages at their own cost thereby reducing public costs for correcting such damages. Costs for correction of such damages approach twenty times the cost for preventive measures required by these rules, resulting in a positive benefit-cost ratio.

NEW JERSEY REGISTER

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

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The New Jersey Register (ISSN 0300-6069) is published the first and third Monday of each month by Administrative Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 292-6060. Subscriptions, payable in advance, are one year, \$75 (\$150 by First Class Mail); back issues when available, \$8 each. Make checks payable to Administrative Publications.

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

The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by Administrative Publications of the Office of Administrative Law. Subscription rates for this 31-volume, regularly updated set of all State administrative rules are available on request. The Code is sold either in the full set or in one to three volumes depending on the Department coverage desired.

Full text of the proposed re-adoption appears in the New Jersey Administrative Code as N.J.A.C. 2:90-1.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Proposals numbered PRN 1985-276, 277 and 290 are authorized by John P. Renna, Commissioner, Department of Community Affairs.

Uniform Fire Code Fire Safety Code

Proposed Amendments: N.J.A.C. 5:18-1.1, 1.4, 1.5, 1.6 and 2.3 Proposed New Rule: N.J.A.C. 5:18-4

Authority: N.J.S.A. 52:27D-198.

Proposal Number: PRN 1985-290.

A public hearing on this proposal will be held on July 17, 1985 at 10:00 A.M. in Room 114, State House Annex, West State Street, Trenton, New Jersey.

Submit comments by July 22, 1985 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposal contains subchapter 4 of N.J.A.C. 5:18, the Uniform Fire Code, together with several related provisions in subchapters one and two. There is also a provision excluding from the jurisdiction of the Code the transportation of flammable or combustible liquids or hazardous materials or chemicals subject to the regulation and control of the New Jersey Department of Transportation.

The proposed N.J.A.C. 5:18-1.4(d) was originally proposed at 16 N.J.R. 3339(b) (December 17, 1984) but was not adopted because subchapter 4 was not yet in existence and it was therefore inappropriate to declare unenforceable existing State regulations dealing with fire safety since, according to N.J.S.A. 52:27D-213(c), such regulations remain in effect until superseded by appropriate regulations promulgated under the Uniform Fire Safety Act. Now, however, subchapter 4 will supersede those regulations. In order to make the effect clear, a list of affected regulations is added.

Definitions are added for "common areas" and "story above grade". The definition of "maximum permitted occupancy" is amended so that it will refer directly to N.J.A.C. 5:18-4.11(e), thereby reducing the likelihood of confusion among enforcing officials.

Provision is made for compliance prior to the compliance date of one year after the effective date established in

N.J.A.C. 5:18-4.2 whenever an imminent hazard is found to exist. Conflict with the State Uniform Construction Code enforcement system in the area of variances or variations is avoided by a provision making it clear that variations from UCC requirements can only be granted by the Construction Official pursuant to N.J.A.C. 5:23-2.9.

Significant provisions of subchapter 4 include the following:

5:18-4.2—The compliance date is set at one year after the effective date for new requirements and at the effective date for existing requirements incorporated in the subchapter.

5:18-4.3—A building in full compliance with current State Uniform Construction Code requirements is exempted from compliance with more restrictive requirements established by the subchapter.

5:18-4.5—Local modifications making the subchapter more restrictive or inclusive are permitted, provided that no modification makes the subchapter more restrictive than the State Uniform Construction Code. Owner-occupied one- and two-family dwellings are expressly excluded from jurisdiction in the Uniform Fire Safety Act and they may not be included by any local modification.

5:18-4.6—The adoption of the subchapter shall not be construed as releasing anyone from any liability with regard to any pre-existing violation.

5:18-4.7—Automatic fire suppression systems are to be required in the following construction code use groups A-2 (dance halls, night clubs and similar uses) with 50 or more permitted occupants; I-1 (facilities for six or more persons requiring supervision but who are physically able to respond in an emergency without assistance) with more than two stories above grade or more than 20 residents; I-3 (facilities for persons under restraint); H (high hazard buildings); assembly areas in use groups R-1 (hotels, motels, boarding houses), R-2 (multiple dwellings) and A-3 (theaters, auditoriums, libraries, museums, restaurants and similar places of assembly) if over 12,000 square feet. Suppression systems will also be required for kitchen exhaust systems which constitute a hazard and in windowless stories and in basements over 2,500 square feet. Fire suppression or smoke detection equipment is required for certain locations in hotels.

5:18-4.8—Standpipes are to be required in all buildings having occupied space above the sixth story. A pressure of 500 gallons per minute at 65 pounds per square inch is required.

5:18-4.9—Automatic fire alarms are to be required in all buildings in the following use groups which do not have an automatic fire suppression system, a manual fire alarm system and unit detectors near any sleeping areas: I (institutional); R-1 (hotels, etc.); R-2 (multiple dwellings); child day care centers; and E (education) through the twelfth grade.

5:18-4.10—Manual fire alarms are to be required in hotels with 10 or more guest rooms or which may be occupied by 25 or more people, in multiple dwellings over three stories with 10 or more dwelling units or which may be occupied by 25 or more people and in all educational buildings.

5:18-4.11—In all buildings other than one- and two-family homes and certain other small buildings meeting specified requirements, at least two exits are required from every floor which may be occupied by 500 or fewer people, three exits from every floor which may be occupied by 501 to 1,000 people and from exits from every larger floor. The exit capacity must be adequate for the number of occupants. Exit corridors serving more than 30 people must be enclosed to provide an effective smoke barrier, with the exception of buildings

having alternate forms of protection. Maximum lengths are established for dead end corridors. Requirements are established for exitway illumination and emergency lighting. Illuminated exit signs in most buildings required to have more than one exit. Door, handrail and guard requirements are established.

5:18-4.12—With certain exceptions, interior finish of walls and ceilings is required to conform to flame spread ratings determined by standard ASTM E84. Fire retardant coatings must be applied to nonconforming finishes.

5:18-4.13—With certain exceptions, interior exit stairways are required to be enclosed with approved one-hour fire-rated assemblies in buildings of up to six stories and two-hour fire-rated assemblies in taller buildings. Exceptions generally involve stairways connecting not more than two stories or which are in buildings with fire suppression systems throughout.

5:18-4.14—Information signs designating floor level in buildings of three or more stories and forbidding elevator use in case of fire use required.

5:18-4.15—Smoke barriers are required in certain buildings in use group I-2 (institutional use involving people with physical limitations).

5:18-4.16—Requirements are established for amusement buildings which include automatic fire suppression, interior finish standards, exit signs, automatic alarms, voice alarms giving direction to exits, emergency lighting and automatic shutdown of disorienting equipment and air distribution systems.

5:18-4.17—Requirements are established for high rise buildings which include automatic fire suppression in hotel and mercantile buildings, central station and communication systems in business and hotel buildings, heat and smoke detection capability in exhaust and recirculation systems, emergency recall and control systems in elevators and smoke barriers in elevator lobbies.

Social Impact

The proposed new rules are intended to result in substantially increased fire protection for people in buildings which antedate the State Uniform Construction Code. To the extent that the various required protective measures impede the spread of fire and smoke, lives will be saved and damage to property will be limited. Upgraded exit requirements will facilitate both escape and rescue by firefighters.

Economic Impact

The economic impact on owners of many older buildings will be substantial. Some buildings will have to be significantly altered to provide adequate exitways and required enclosures and barriers. Installation of fire suppression systems in buildings where they were not previously required may also be expected to be costly. The Department and the Fire Safety Commission believe, however, that the requirements imposed by this subchapter are necessary if we are to carry out the mandate of the Uniform Fire Safety Act and substantially reduce the incidence of loss of life and property from fire in this State.

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

5:18-1.1 Title; division[s] into subchapters

(a) (No change.)

(b) The Code is divided into four parts:

1.-3. (No change.)

4. Subchapter 4 [(Reserved)] is entitled "**Fire Safety Code**" and may be cited throughout the Code as N.J.A.C. 5:18-4,

and when referred to in subchapter 4 of this chapter, may be referred to as this subchapter.

5:18-1.4 Applicability

(a) (No change.)

(b) The provisions contained in this Code shall not be construed as applying to the transportation of any article or substance shipped under the jurisdiction of and in compliance with the regulations prescribed by the military forces of the United States or the transportation of flammable or combustible liquids or hazardous materials or chemicals subject to the regulation and control of the **New Jersey Department of Transportation** or the United States Department of Transportation or other Federal Agency having jurisdiction.

1.-2. (No change.)

(c) (No change.)

(d) [(Reserved)] **No other regulation pertaining to fire safety adopted by any State agency pursuant to State or Federal law shall have any force or effect, except that a regulation pertaining also to matters other than fire safety shall continue to be effective to the extent that it does not conflict with any provisions of this Code. This Code shall be the sole State minimum requirement pertaining to fire prevention and fire safety.**

1. The following regulations shall, to the extent of any inconsistency with this chapter, be of no further force or effect:

- i. N.J.A.C. 5:10-7.7, 13.3(c), 13.5, 18.2(b) and 25;
 - ii. N.J.A.C. 5:27-5 (except for 5.1(d));
 - iii. N.J.A.C. 8:30-12.2(a) and (m);
 - iv. N.J.A.C. 8:37-12.13(d), 12.19(b) and 12.20;
 - v. N.J.A.C. 8:39-25.2;
 - vi. N.J.A.C. 8:43-3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.11, 3.12, 3.13, 3.15(c)1, 3.22 and 3.23;
 - vii. N.J.A.C. 8:43-3.2(a) and (i);
 - viii. N.J.A.C. 10A:31(b)2, 11, 12, and 13, and 4.5(a);
 - ix. N.J.A.C. 10A:32-4.4(a), (b), (g), (h), (i), (j) and (l);
 - x. N.J.A.C. 10:34-1.19, 3.19(a);
 - xi. N.J.A.C. 10:44-12.4(d) and (f);
 - xii. N.J.A.C. 10:44-12.4, 10:44A-8.1(g)5, 6 and 7;
 - xiii. N.J.A.C. 10:44B-6.1(b), (c), (d);
 - xiv. N.J.A.C. 10:122-5.2(a) and (b), 5.3 (a) 1 and 2, 5.4(a) 1, 2 and 3;
 - xv. N.J.A.C. 10:124-5.2(d) and (e) 5, 6, 7, 8, 9, 10, and 11, 5.3(a) 1, 2, and 3;
 - xvi. N.J.A.C. 10:127-5.1(d), (e), (f) 5, 6, 7, 8, 9, 10, and 11, (i) 2;
 - xvii. N.J.A.C. 10:128-5.3 (d), (e), (f) 6, 7, 8, 9, 10, 11, 12, and (i) 2 and 5.4 (a) 1, 2, and 3;
 - xviii. N.J.A.C. 12:190-5 and 6;
 - xix. N.J.A.C. 12:200-3 and 4.
- (e)-(g) (No change.)

5:18-1.5 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. Where a term is not defined then the definition of that term found within the Uniform Construction Code, N.J.A.C. 5:23-1.4, shall govern:

"**Common Areas**", when used with reference to a covered mall building, shall include all areas not included within any retail establishment and shall also include the required means of egress from all retail establishments. When used with reference to buildings of use groups R-1 and R-2 shall mean all areas accessible to, and which may be utilized by, either the building occupants or the general public and shall include, but

not be limited to, vestibules, hallways, stairways, landings and occupiable rooms and spaces not part of any dwelling unit; and shall also include any area accessible to the owner or manager or any person employed in the maintenance of the building which area is not part of any dwelling unit.

“Maximum permitted occupancy” means the maximum number of persons which can be [accommodated by the means of egress of a building or use establishment in accordance with section 808.0 of the 1984 edition of the Building Subcode of the Uniform Construction Code or the number of occupants established by Table 806 of the 1984 edition of the Building Subcode or any alternative maximum occupancy established by the Fire Official; whichever is lesser] permitted in a building or portion thereof as established in accordance with N.J.A.C. 5:18-4.11(e).

“Story above grade” means any story having its finished floor surface entirely above grade except that a story which is partly or completely below grade (basement) shall be considered as a story above grade when the distance from grade to the finished surface of the floor above the basement is more than six feet for more than 50 percent of the total perimeter or more than 12 feet at any point.

5:18-1.6 Operative date

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

(c) [(Reserved)] **The provisions of this Code found in subchapter 4 shall take effect as provided in N.J.A.C. 5:18-4.2 except that the fire official may require partial or full compliance sooner where an imminent hazard shall have been found to exist.**

5:18-2.3 Variances

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

(e) **Variations to requirements found in the Uniform Construction Code may only be granted by the Construction Official in accordance with N.J.A.C. 5:23-2.9.**

Full text of the proposed new rules follows.

SUBCHAPTER 4. FIRE SAFETY CODE

5:18-4.1 Code adopted

Pursuant to authority of the Uniform Fire Safety Act (P.L. 1983, C.383, N.J.S.A. 52:27D-192 et seq.), the Commissioner hereby adopts this subchapter as the State Fire Safety Code.

5:18-4.2 Compliance date

(a) All buildings subject to requirements established by this subchapter which are not set forth in the regulations previously established by any State agency shall comply with those requirements established by this subchapter by the first anniversary of their effective date.

(b) All buildings subject to requirements previously established including, without limitation, any requirement of the Fire Prevention Code N.J.A.C. 5:18-3.1 et seq.), which are included in this subchapter shall be in compliance with those requirements as of the effective date of this subchapter.

5:18-4.3 Relation to Uniform Construction Code

(a) A building in full compliance with the current fire safety requirements of the New Jersey Uniform Construction Code (N.J.A.C. 5:23), as determined by the construction official with the concurrence of the fire subcode official, shall not be required to conform to more restrictive requirements established by this subchapter.

1. A determination as to whether a New Jersey Uniform Construction Code requirement involves fire safety shall, in a disputed case, be determined by the Bureau of Construction Code Enforcement after consultation with the Bureau of Fire Safety and with the concurrence of the Director, Division of Housing and Development.

2. For purposes of this subsection, “current fire safety requirements” means requirements set forth in the New Jersey Uniform Construction Code in effect at the time of adoption of the requirement as part of this subchapter.

5:18-4.4 Relation to Fire Prevention Code

The requirements established by this subchapter are in addition to, and not in lieu of, requirements established by the State Fire Prevention Code (N.J.A.C. 5:18-3.1 et seq.).

5:18-4.5 Local modifications

Any municipality may, by ordinance, modify this subchapter so as to make it more restrictive or more inclusive; provided, however, that this subchapter may not be modified so as to be more restrictive than the New Jersey Uniform Construction Code (N.J.A.C. 5:23) or so as to include one- or two-family, owner-occupied dwellings.

5:18-4.6 Pre-existing violations

No violation committed, and no liability, penalty, or forfeiture, either civil or criminal, incurred, prior to the repeal or revision of any regulation or any part thereof by the enactment of this subchapter, shall be discharged, released or affected by the repeal or revision of the regulation or part thereof under which such offense, liability, penalty or forfeiture was incurred, and indictments, prosecutions and actions for such offenses, liabilities, penalties or forfeitures committed or incurred, prior to the effective date of this subchapter, shall be commenced or continued and be proceeded with in all respects as if the regulation or part thereof had not been repealed or revised.

5:18-4.7 Fire suppression systems

(a) All buildings of Use Group A-2 shall be equipped throughout with an automatic fire suppression system in accordance with the New Jersey Uniform Construction Code.

1. Exception to (a) above: Buildings of Use Group A-2 having a permitted occupant load of less than 50.

(b) All buildings of Use Group I-1 greater than two stories in height above grade or having an occupant load greater than 20 excluding staff shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

(c) All buildings of Use Group I-3 with an occupant load of six or more shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

1. Exception to (c) above: All buildings of Use Group I-3 not required to be equipped throughout with suppression by these provisions shall be equipped with suppression in all padded cells, boiler rooms, storage and workshop rooms 24 square feet and larger, mechanical equipment and similar rooms.

(d) All buildings or portions thereof of Use Group H shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

(e) In buildings of Use Groups R-1 and R-2, all ballrooms, exhibit areas and accessory spaces of Use Group A-3 which

exceed 12,000 square feet shall be equipped with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

1. The following are exceptions to (e) above:

i. Such assembly uses may be subdivided into fire areas not exceeding 12,000 square feet using permanent 2 hour fire separation walls with 1½ hour opening protectives. Such walls shall be continuous from the floor to the deck above except that the wall may terminate at the ceiling if the ceiling is part of a fire-resistance rated floor/ceiling or roof/ceiling assembly.

ii. A-3 uses which are completely separated both horizontally and vertically from R-1 and R-2 uses by fire separation walls and floor ceiling assemblies having a fire-resistance rating of not less than 2 hours with approved opening protectives having a fire-resistance rating of not less than 1½ hours. Walls shall be continuous from the floor to the deck above except that the walls shall be permitted to terminate at the ceiling if the ceiling is part of a fire-resistance rated assembly.

(f) All kitchen exhaust systems used in conjunction with cooking operations which produce grease laden vapors in sufficient quantity to constitute a hazard shall be equipped with an automatic fire suppression system designed and installed in accordance with the New Jersey State Fire Prevention Code and the New Jersey Uniform Construction Code.

1. Exception to (f) above: Suppression shall not be required for systems serving completely enclosed ovens, steam tables, or auxiliary equipment which does not produce grease-laden vapors.

(g) In all buildings, an automatic fire suppression system shall be installed throughout all stories, including basements, which are not provided on at least one side with a minimum of 20 square feet of opening entirely above the adjoining ground level in each 50 lineal feet or fraction thereof of exterior wall. The system shall be installed in accordance with the New Jersey Uniform Construction Code. When openings in a story are provided on only one side, the opposite wall of such story shall not be more than 75 feet from such openings. If the opposite wall of such story is more than 75 feet from the openings, the story shall be provided with suppression unless openings as specified therein are provided on two sides of the story.

1. The following are exceptions to (g) above:

i. Suppression according to this section shall not be required in basements which do not exceed 2,500 square feet in area or in basements which do not exceed 5,000 square feet in area when subdivided into areas not exceeding 2,500 square feet by walls having a fire resistance rating of not less than two hours with approved opening protectives having a fire resistance rating of not less than 1½ hours. In both cases, such basements shall also be provided with an approved automatic fire alarm system having smoke detectors located in accordance with NFiPA 72E and shall be separated from upper floors by an assembly having a fire resistance rating of not less than two hours.

ii. Openings required by this section shall have a minimum dimension of 22 inches and shall be accessible and unobstructed.

(h) In all buildings of Use Group R-1, not required by N.J.A.C. 5:18-4.17 to have a complete automatic fire suppression system, all storage and workshop rooms 24 square feet and larger and rubbish, laundry and similar rooms shall be equipped with a suppression system or smoke detector system connected to an approved continuously staffed location in the building. Such systems shall be installed in accordance with the New Jersey Uniform Construction Code.

(i) Fire suppression systems required by this code shall be supervised by one of the following methods:

1. Approved central station system in accordance with NFiPA 71;

2. Approved proprietary system in accordance with NFiPA 72D;

3. Approved remote station system of the jurisdiction in accordance with NFiPA 72C;

4. Approved local alarm service which will cause the sounding of an NFiPA 72A;

5. The following are exceptions to (i) above:

i. Underground gate valves with roadway boxes;

ii. Halogenated extinguishing systems;

iii. Carbon dioxide extinguishing systems;

iv. Dry chemical extinguishing systems;

v. Limited area sprinkler systems.

(j) Five suppression systems in Use Group R-1 and Use Group M High-rise buildings shall be supervised as required by N.J.A.C. 5:18-4.17.

5:18-4.8 Standpipe system

(a) All buildings having floors used for human occupancy located more than six stories above grade shall be equipped with standpipes located and installed in accordance with the New Jersey Uniform Construction Code except as follows:

1. Standpipes shall be capable of delivering 500 gpm at 65 psi to the topmost remote standpipe outlet.

2. Hose and hose cabinets shall not be required.

5:18-4.9 Automatic fire alarms

(a) An automatic fire alarm system shall be installed as required in (b) through (e) below in accordance with the New Jersey Uniform Construction Code.

1. In all buildings of Use Group I;

2. In all buildings of Use Group R-1 and R-2 as follows:

i. Single station smoke detectors shall be installed in the immediate vicinity of sleeping areas. When actuated, the detector shall provide an alarm suitable to warn the occupants within the individual unit. An additional smoke detector shall be installed in basements that are accessible from within a dwelling unit and are used solely by the occupants of that unit. In dwelling units with split levels, a smoke detector installed on the upper level shall suffice for the adjacent lower level provided the lower level is less than one full story below the upper level. If there is an intervening door between the adjacent levels, a smoke detector shall be installed in accordance with NFiPA 74. Where more than one detector is required by this provision, the detectors shall be wired in such a manner that the actuation of one alarm will actuate all the alarms in the individual unit.

ii. An automatic fire alarm system shall be installed in all common areas in accordance with the Uniform Construction Code and NFiPA 72E.

(1) Exception to ii above: In buildings of Use Group R-1 less than four stories in height above grade, other than school dormitories for students up to and including the 12th grade and in buildings of Use Group R-2 less than six stories in height above grade, the system shall not be required to be supervised or connected to an emergency power supply.

3. In all buildings used as child day care centers;

4. In all buildings of Use Group E up to and including the 12th grade. The system shall comply with NFiPA 72E and shall consist of one of the following:

i. An approved combination fixed temperature and rate-of-rise detector;

ii. Approved smoke detectors;

iii. An approved automatic fire suppression system equipped with automatic fire alarm devices; or

iv. A combination of the above three types of detecting devices except that an approved fixed temperature detector shall be permitted in approved locations such as boiler rooms and incinerator rooms.

(b) An automatic fire alarm system shall not be required in buildings equipped throughout with an automatic fire suppression system, a manual fire alarm system and single station smoke detectors located in the immediate vicinity of sleeping areas in accordance with NFPA 74.

5:18-4.10 Manual fire alarms

(a) A manual fire alarm system, designed and installed in accordance with the Uniform Construction Code, shall be required in conjunction with an automatic fire alarm system required by N.J.A.C. 5:18-4.9 and as follows:

1. In buildings of Use Group R-1 having an occupant load of 25 or more having 10 or more guest rooms;
2. In buildings more than 3 stories in height having an occupant load of 25 or more or having 10 or more dwelling units; and
3. In all buildings of Use Group E.

5:18-4.11 Means of egress

(a) Every story utilized for human occupancy having an occupant load of 500 or less shall be provided with a minimum of two exits, except as provided in (b) below. Every story having an occupant load of 501 to 1,000 shall have a minimum of three exits. Every story having an occupant load of more than 1,000 shall have a minimum of four exits.

1. When more than one exit is required, an existing fire escape shall be accepted as providing one of the required means of egress. The fire escape shall be constructed and installed in accordance with Formal Technical Opinion No. FTO-3, dated March 1985.

i. All occupants shall have unobstructed access to the fire escape without having to pass through a room subject to locking.

ii. Access to a fire escape shall be through a door, except that window access shall be permitted only when serving a single dwelling unit or guest room in Use Groups R-1, R-2 and I-1 or when serving spaces having a maximum occupant load of 10 in other use groups.

(b) In buildings having only one exit, the single exit condition shall be permitted to continue as follows:

1. In buildings of Use Group R-3;
2. In all buildings, in the story at the level of exit discharge when the occupant load of the story does not exceed 50 and the exit access travel distance does not exceed 75 feet;
3. In the buildings of the use groups and characteristics specified in the following table.

Table 5:18-4.11(b)3
BUILDINGS WITH ONE EXIT (a)

Use Group	Max height above grade	Max. size (b)	Max. exit access travel distance	Min. fire-resistance rating of exit enclosure	Min. fire-resistance rating of opening protection
R-2	2 stories	4 dwelling units per floor	50 ft.	1 hour	1 hour
B and S-2	2 stories	3,000 sq. ft. per floor	75 ft.	1 hour	1 hour

Note (a). Open park structures where vehicles are mechanically parked are permitted to have a minimum of one exit.

Note (b). In community residences for the developmentally disabled, the maximum occupant load, excluding staff, shall be 12.

(c) All rooms and spaces having an occupant load greater than 50 or in which the travel distance exceeds 75 feet shall have a minimum of two egress doorways.

1. The following are exceptions to (c) above:

- i. Storage rooms having a maximum occupant load of 10;
- ii. Classrooms having a maximum occupant load of 75 in buildings equipped throughout with an automatic fire suppression system;
- iii. In buildings of Use Group I-2, any patient sleeping room or suite of rooms greater than 1,000 square feet shall have a minimum of two egress doorways.

(d) When buildings of Use Groups A-2 and A-3 have more than two individual rooms which can be used for separate functions and each room has an occupant load of more than 300, the required egress doors from such rooms shall lead directly outside or to an exit passageway.

1. Such passageways shall be completely enclosed by assemblies having a fire-resistance rating of not less than two hours.

2. Such passageways shall not be used for any other purpose and shall lead directly outside.

(e) The capacity of means of egress in each story shall be sufficient for the occupant load thereof.

1. Capacity per unit: The capacity per unit of egress width shall be computed in accordance with the following table for the specified use groups.

Table 5:18-4.11(e)1
CAPACITY PER UNIT EGRESS WIDTH

Use group	Without fire suppression system Number of occupants		With fire suppression system Number of occupants	
	Stairways	Doors, ramps and Corridors	Stairways	Doors, ramps and Corridors
A	75	100	113	150
B	60	100	90	150
E	75	100	113	150
F	60	100	90	150
H	—	—	60	100
I-1	60	100	90	100
I-2	22	30	35	45
I-3	60	100	90	150
M	60	100	90	150
R	75	100	113	150
S	60	100	90	150

2. Unit of egress width: The unit of egress width for all approved types of means of egress parts and facilities shall be 22 inches with a credit of one half unit for each 12 inches width in addition to one or more 22 inch units. Fractions of a unit of width less than 1/2 inches shall not be credited.

3. Maximum occupant load: The maximum permitted occupant load of a given space shall be limited to the smallest number determined by:

- i. Computing the occupant load at the rate of one occupant per three square feet of available floor area that can be physically occupied by a person, or
- ii. The smallest number of occupants for which exit capacity is provided based on the capacity per unit of egress width of the individual components of the means of egress.

(f) Exit access corridors serving an occupant load greater than 30 and all openings therein shall provide an effective smoke barrier. All transoms, louvers, doors and other openings shall be self-closing or automatic closing upon smoke detection. In buildings of Use Groups R-1 and R-2 openings

in a corridor enclosure, other than doors and other than openings to the exterior, shall be eliminated. Transoms shall be permitted to remain provided they are equipped with one-quarter inch wired glass and are permanently secured in the closed position.

1. The following are exceptions to (f) above:

i. Exit access corridors in buildings of Use Groups A-4, B, E, F, M and S when such buildings are equipped throughout with an automatic fire suppression system which is supervised through a central station system in accordance with NFIPA 71, a proprietary system in accordance with NFIPA 72D or a remote station system in accordance with NFIPA 72C.

ii. Exit access corridors in buildings of Use Group I-2 which conform to the New Jersey Uniform Construction Code.

(g) Corridors which serve more than one exit shall provide direct connection to such exits. The length of a dead end corridor shall not exceed 35 feet.

1. The following are exceptions to (g) above:

i. The maximum length of a dead end corridor shall be 50 feet in buildings equipped throughout with an automatic fire alarm system installed in accordance with the New Jersey Uniform Construction Code.

ii. The maximum length of a dead end corridor shall be 70 feet in buildings equipped throughout with an automatic fire suppression system.

(h) All means of egress shall be provided with artificial illumination and emergency lighting as follows:

1. All means of egress in other than buildings of Use Group R-3 shall be equipped with artificial lighting facilities to provide the intensity of illumination herein prescribed continuously during the time that conditions of occupancy of the building require that the exits be available. Lighting shall also be provided to illuminate the exit discharge in all buildings other than Use Groups F, H and S. In buildings of Use Group R-2, means of egress lighting, except that lighting within a dwelling unit, shall be wired on a circuit independent of circuits within any dwelling unit. The disconnecting means and overcurrent protection device shall not be located within a dwelling unit or such that access must be obtained by going through a dwelling unit.

2. The intensity of floor lighting shall be not less than one foot candle.

3. In buildings of Use Groups A and E for the exhibition of motion pictures or other projections by means of directed light, the illumination of aisles may be reduced during such period of projection to not less than 0.2 foot candle.

i. The lighting of exits, aisles and auditoriums shall be controlled from a location inaccessible to unauthorized persons. Supplementary control shall also be provided in the motion picture projection room.

4. Means of egress lighting shall be connected to an emergency electrical system to assure continued illumination for a duration of not less than one hour in case of emergency or primary power loss in the following buildings:

i. In all buildings of Use Groups A, E and I;

ii. In all buildings of Use Group B containing more than 1,000 occupants;

iii. In all buildings of Use Group M when greater than 3,000 square feet in area on any floor, or when having one or more floors above or below grade floor;

iv. In buildings of Use Group R-1 containing more than 25 sleeping rooms;

vi. In all buildings of Use Group R-2 containing more than 50 occupants;

vi. In all windowless buildings or portions thereof containing more than 100 occupants.

(i) In all buildings, rooms or spaces required to have more than one exit or exit access, all required means of egress shall be indicated with approved internally illuminated signs reading "Exit", visible from the exit access and, when necessary, supplemented by directional signs in the exit access indicating the direction and way of egress. All "Exit" signs shall be located at exit doors or exit access areas, so as to be readily visible.

1. Exception to (i) above: Exit signs shall not be required in buildings of Use Groups I-1, R-2 and R-3 having a total occupant load, excluding staff, or 20 or less and used as group homes, shelters for children and adults, teaching family homes, supervised transitional living homes and community residences for the developmentally disabled.

2. "Exit" signs shall have red letters at least six inches high and the minimum width of each stroke shall be three-quarter inch on a white background or in other approved distinguishable colors. If an arrow is provided as part of an "Exit" sign, the construction shall be such that the arrow direction cannot be readily changed. The word "Exit" shall be clearly discernible when the internally illuminated sign is not energized.

3. Each sign shall be illuminated by a source providing not less than five foot candles at the illuminated surface.

i. Exception to 3 above: Approved self-luminous signs which provide evenly illuminated letters shall have a minimum luminance of 0.06 foot lamberts.

4. All "Exit" signs shall be illuminated at all times when the building is occupied. To assure continued illumination for a duration of not less than one hour in case of primary power loss, the "Exit" signs shall be connected to an emergency electrical system.

i. Exception to 4 above: Approved self-luminous signs which provide continuous illumination independent of external power sources need not be connected to an emergency electrical system.

(j) Means of egress door shall conform to the following:

1. All egress doors serving an occupant load greater than 50 shall swing in the direction of exit travel;

2. In buildings of Use Groups R-1 and R-2 all doors opening onto a grade passageway, corridor or exit shall be self-closing or automatic closing by smoke detection. This shall not apply to doors completely within a dwelling unit or guest room;

3. All dwelling unit, guest room or rooming unit entrance doors in buildings of Use Groups R-1, R-2, and I-1 shall not have any glass panels, other than approved wire glass in labeled doors, nor shall they be constructed of hollow core wood or of solid core wood less than one and three-quarter inch in thickness. Approved, labeled doors having a fire resistance rating of not less than 20 minutes shall be permitted. Doors shall fit both plumb and level in frames with uniform maximum clearances of one-eighth inch at the head, jamb and sills with raised thresholds, three-eighths inch at sills without thresholds and one-sixteenth inch between the door face and the edge of the frame stop;

4. Buildings of Use Group I-3 having remote power unlocking capability on more than 10 doors shall be provided with an emergency power source for such locks. Power shall be arranged to automatically operate upon failure of normal power within 10 seconds and for a duration of not less than one hour.

(k) Every required exit stairway having three or more risers and not provided with handrails or in which the existing

handrails are deficient or hazardous shall be provided with handrails for the full length of the run of steps on at least one side. Handrails shall be provided on both sides of stairways having a width of 44 inches or more. Stairways more than 88 inches in required width shall have intermediate handrails dividing the stairway into portions not more than 88 inches wide.

1. Handrails shall be located not less than 30 inches nor more than 34 inches, measured vertically, above the nosing of the treads or above the finished floor of the landing for the horizontal portion of the handrail extension.

2. Handrails shall be firmly fastened and capable of bearing normally imposed loads.

(l) Every open portion of a stair, landing or balcony which is more than 30 inches above the floor or grade below shall be provided with guards designed and installed in accordance with the following provisions:

1. The guards shall be at least 42 inches in height measured vertically above the leading edge of the tread or adjacent walking surface.

i. The following are exceptions to 1 above:

(1) Guards shall be not less than 30 inches in height above the leading edge of the tread along stairs which are not more than 20 feet in height or which reverse direction at an intermediate landing with 12 inches or less measured horizontally between successive flights.

(2) Guards in buildings of Use Group R-3 shall be not less than 36 inches in height.

2. Open guards shall have intermediate rails, balusters or other construction such that a sphere with a diameter of six inches cannot pass through any opening.

i. Exception to 2 above: In buildings of Use Groups F, H or S, the construction shall not permit a sphere with a diameter of 14 inches to pass through any opening.

3. Guards shall be firmly fastened and capable of bearing normally imposed loads.

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 regulated by this section.

ii. Interior trim which does not exceed 10 percent of the aggregate wall and ceiling area of any room or space shall not be regulated by this section.

iii. When an approved automatic fire suppression system is provided, interior finish of Class II or III materials shall be permitted where Class I or II materials, respectively, are required by this provision.

iv. Exposed portions of structural members complying with the requirements for Type 4 construction shall not be regulated by this section.

Table 5:18-4.12(a)
Interior Finish Requirements

Use Group	Exit Enclosures	Exit Access Enclosures	Rooms or Spaces
A†, I	I	II	III
B, E, M, R-1, R-2	I	II	No Minimum

† See 5:19-4.13 (a)2 for amusement buildings.

(b) The classification of interior finishes referred to herein correspond to flame spread ratings determined by ASTM E84 as follows. Class I flame spread, 0-25; Class II flame spread, 26-75; Class III flame spread, 76-200. In all cases, the smoke developed rating determined by ASTM E84 shall not exceed 450.

(c) All existing interior finish materials which to not comply with the requirements of this section shall be removed or shall be treated with an approved fire retardant coating in accordance with the manufacturers instructions to secure compliance with the requirements of this section.

5:18-4.13 Vertical opening protection

(a) All interior exit stairways connecting not more than six floor levels shall be enclosed with approved assemblies having a fire resistance rating of not less than 1 hour with approved opening protectives. All interior exit stairways connecting more than six floor levels shall be enclosed with approved assemblies having a fire resistance rating of not less than two hours with approved opening protectives.

(b) Exit enclosures shall not be required under the following conditions:

1. In buildings of Use Group B as follows:

i. When connecting not more than two floor levels and less than 3,500 square feet per floor;

ii. When connecting not more than three floor levels and the building is equipped throughout with an automatic fire suppression system.

2. In buildings of Use Group E when connecting not more than two floor levels and the building is equipped throughout with an automatic fire suppression system;

3. In buildings of Use Groups F and S as follows:

i. When connecting not more than two floor levels;

ii. When connecting not more than three floor levels and the building is equipped throughout with an automatic fire suppression system.

4. In buildings of Use Group I-1 having an occupant load not exceeding 12, excluding staff, when connecting not more than two floor levels provided the floor levels are separated at the top or bottom of the stairway by not less than one hour fire resistance rated assemblies equipped with doors which are self-closing or automatic closing by smoke detection. Such doors shall be not less than one and three quarter inch solid core wood doors or labeled fire doors having a fire resistance rating of not less than 20 minutes;

5. In buildings of Use Group M as follows:

i. When connecting not more than two floor levels and less than 2,000 square feet per floor;

ii. When connecting not more than two floor levels and the building is equipped throughout with an automatic fire suppression system.

6. In buildings of Use Group R-1 when connecting not more than two floor levels and the building is equipped throughout with an automatic fire suppression system;

7. In buildings of Use Group R-2 as follows:

i. When connecting not more than two floor levels with not more than four dwelling units per floor and the building is equipped throughout with an automatic fire suppression system.

8. In all cases in buildings of Use Group R-3.

(c) All shafts and floor openings shall be enclosed the same as is provided for exits in (a) and (b) above.

1. The following are exceptions to (c) above:

i. An enclosure shall not be required for elevators, supplemental stairways or escalators when adjacent to and not separated from other floor openings which are permitted to be

unenclosed and which connect the same floors served by the elevator, supplemental stairs or escalator.

ii. The exceptions in (b) above shall not apply to building service shafts such as laundry and trash chutes, utility shafts and duct shafts.

5:18-4.14 Information signs

(a) A sign shall be provided at each floor landing in all interior stairways more than three stories in height designating the floor level above the floor of discharge.

(b) All elevator lobby call stations on all floor levels shall be marked with approved signs reading, "Use Stairways in Case of Fire—Do not Use Elevators".

5:18-4.15 Smoke barriers

(a) In buildings of Use Group I-2, every story used for sleeping purposes for more than 30 occupants and stories which are usable but unoccupied shall be divided into not less than two compartments by smoke barrier walls such that each compartment does not exceed 22,500 square feet and no more than 150 feet in length and width.

1. Exception to (a) above: Smoke barriers are not required in interstitial spaces when such spaces are designed and constructed with ceilings that provide resistance to the passage of fire and smoke equivalent to that provided by smoke barriers.

(b) Such barriers shall have a fire resistance rating of not less than one-half hour and shall form an effective membrane continuous from outside wall to outside wall and from floor slab to floor or roof deck above, including continuity through all concealed spaces, such as those found above suspended ceilings, and including interstitial structural and mechanical spaces. Transfer grilles, whether equipped with fusible link-operated dampers or not, shall not be used in these partitions. Wire glass panels not exceeding 1,296 square inches in approved steel frames may be used in smoke barriers.

(c) Doors in smoke barriers shall have a fire resistance rating of not less than 20 minutes when tested in accordance with ASTM E152 without the hose stream and labeled by an approved agency. Double egress corridor doors shall have vision panels of one-quarter inch thick labeled wired glass mounted in approved steel frames. Such panels may also be provided in other doors in smoke barriers. The glass area of the vision panels shall be limited to 1,296 square inches for each door. The doors shall close the openings with only the clearance necessary for proper operation under self-closing or automatic closing and shall be without undercuts, louvers or grilles. Rabbits or astragals are required at the meeting edges of double egress doors, and stops are required on the head and jambs of all doors in smoke barriers. Positive latching devices are not required on double egress corridor doors, and center mullions are prohibited.

1. Exception to (c) above: Protection at the meeting edges of doors and stops at the head and sides of door frames may be omitted in buildings equipped with an approved engineered smoke control system. The engineered smoke control system shall respond automatically, preventing the transfer of smoke across the barrier.

(d) Doors in smoke barriers shall be self-closing or shall be provided with approved door hold-open devices of the fail-safe type which shall release the doors causing them to close upon the actuation of smoke detectors as well as upon the application of a maximum manual pull of 50 pounds against the hold-open device.

(e) An approved damper designed to resist the passage of smoke shall be provided at each point a duct penetrates a smoke barrier. The damper shall close upon detection of

smoke by an approved smoke detector located within the duct.

1. The following are exceptions to (e) above:

i. In lieu of an approved smoke detector located within the duct, ducts which penetrate smoke barriers above smoke barrier doors are permitted to have the approved damper arranged to close upon detection of smoke by the local device designed to detect smoke on either side of the smoke barrier door opening.

ii. Dampers are not required in buildings equipped with an approved engineered smoke control system.

iii. Dampers are not required where the openings in ducts are limited to a single smoke compartment and the ducts are of steel construction.

5:18-4.16 Amusement buildings

(a) All buildings or portions thereof, of Use Group A-3 in which are designed to disorient or amuse the occupant, reduce vision, present barriers or otherwise impede the flow of traffic shall conform to all other applicable provisions of this code and the following:

1. Every such amusement facility shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

2. The interior finish of all walls and ceilings shall in no case be less than a Class II material in accordance with N.J.A.C. 5:18-4.12(b) and (c).

3. Every such amusement facility shall be equipped with exit signs installed in accordance with N.J.A.C. 5:18-4.11(i).

4. Every such amusement facility shall be equipped throughout with an approved automatic fire alarm system installed in accordance with the Uniform Construction Code and in accordance with 5 and 8 below.

5. The automatic alarm system shall activate a prerecorded message which can be clearly heard throughout the entire facility instructing the patrons to proceed to the nearest exit. Any alarm signals used in conjunction with the prerecorded message shall produce a signal which is distinctive from all sounds used in the normal operation of the amusement facility.

6. Every such amusement facility shall be equipped with emergency lighting equipment installed in accordance with the New Jersey Uniform Construction Code. The emergency lighting equipment shall automatically activate when;

i. The fire suppression system is activated;

ii. The fire alarm system is activated; or

iii. Loss of the primary power supply occurs.

7. All audio and visual equipment such as horns, bells, flashing or otherwise distracting stimuli and mechanized displays shall cease operation upon initiation of an alarm by the automatic fire alarm system or upon activation of the automatic fire suppression system.

8. Activation of the automatic alarm system shall automatically shut down the air distribution system.

5:18-4.17 High rise buildings

(a) In addition to all other applicable provisions of this code, high rise buildings shall conform to the provisions of this section.

(b) All high rise buildings of Use Groups M and R-1 shall be equipped throughout with an approved automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

(c) All high rise buildings of Use Groups B and R-1 shall be

equipped with central control station and communication systems as follows:

1. An approved public address communication system consisting of loud speakers on each floor of the building, in each elevator and elevator lobby and in each stair enclosure which shall be capable of being operated from the central control station;

2. A two-way fire department communication system which shall operate between the central control station and every elevator, elevator lobby and entry to enclosed exit stairways;

3. A central control station for fire department operations shall be provided in a location approved by the fire department. It shall contain where applicable the public address system panel; the fire department communications panel; fire detection and alarm system annunciator panels; status indicators and controls for air handling systems; sprinkler valve and water flow detector display panels; and status indicators and a telephone for fire department use with controlled access to the public telephone system.

(d) In all high rise structures, each recirculating air or exhaust system which serves more than one floor shall be equipped with approved smoke and heat detection devices in accordance with the Uniform Construction Code. The devices shall stop the fan(s) automatically and shall be of the manual reset type. Automatic fan shutdown is not required when the system is part of an approved smoke removal or smoke control system.

(e) In all high rise structures served by elevators, access to all floors shall be provided by at least one elevator equipped with emergency controls and all elevators shall be equipped with car recall activated by a smoke detector in each lobby. The recall and control systems shall be installed in accordance with the New Jersey Uniform Construction Code.

(f) In all high rise buildings of Use Group R-1 and R-2, smoke barriers conforming to N.J.A.C. 5:18-4.15(a), (b), (c) and (d) shall be provided around all elevator landings on every floor above the main floor level, with the following exceptions:

1. Such lobbies are not required in buildings provided with an automatic fire suppression system.

2. The smoke barrier shall be permitted to terminate at the ceiling, provided the ceiling membrane provides resistance to the passage of smoke equivalent to that provided by smoke barriers.

For proposals numbered PRN 1985-276 and 277, submit comments by June 19, 1985 to:

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(a)

**Uniform Construction Code
Premanufactured Construction**

**Proposed Amendments: N.J.A.C. 5:23-3.11,
4.22, 4.24 and 4.25**

Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1985-277.

The agency proposal follows:

Summary

The amendment to N.J.A.C. 5:23-4.22 will clarify the distinction between a component insignia and a mobile home add-on insignia.

The amendments to N.J.A.C. 5:23-4.24 will require the plan review of all modular construction except single family detached dwellings and components to be performed by the plan review section of Bureau of Construction Code Enforcement.

The amendments to N.J.A.C. 5:23-4.25 will clarify the distinction between various premanufactured construction such as modular units, manufactured homes and components. The amendments, also, shall indicate the agencies responsible for plan review and approval for various use group classifications. The amendments to N.J.A.C. 5:23-3.11 will reserve the plan review of all premanufactured construction except single family detached dwellings, manufactured (mobile) home add-on units and components.

Social Impact

The amended regulations shall provide the necessary clarification regarding various categories of premanufactured construction, their approval and certification procedures. Since the purpose of the proposed amendments is clarification, enforcement of the rules by the Department and local enforcement agencies is expected to continue unchanged. However, the proposed amendments are expected to streamline and simplify the process by which manufacturers of premanufactured construction receive approval to ship the units which they have sold to New Jersey residents into this State.

Economic Impact

Since the proposed amendments are concerned with clarification of the rules, they are not expected to have an economic impact. The fees will be unchanged, and expenses to the Department for administration of the rule will also continue unchanged.

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

5:23-3.11 Enforcement activities reserved to the State

(a) the Department shall be the sole review agency for the following structures:

1.-6. (No change.)

7. All modular construction except single family detached dwellings, manufactured (mobile) home add-on units and components.

Renumber 7 through 9 as 8 through 10

(No change in text.)

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

5:23-4.22 Premanufactured construction **insignia of certification** fees

(a) [Premanufactured] **Modular construction** insignia of certification fee: [Each] **An inplant** inspection agency requesting the department to issue [an] insignia(s) of certification for [premanufactured] **modular** construction shall pay a fee of \$100.00 for each **such** insignia.

(b) Premanufactured component insignia of certification fee: [Each] **An inplant** inspection agency requesting the department to issue [a] component insignia(s) of certification for premanufactured components shall pay a fee of \$50.00 for each **such** [component] insignia.

(c) **Manufactured (Mobile) Home add-on insignia of certification fee: An inplant inspection agency requesting the de-**

partment to issue insignia(s) of certification for manufactured (mobile) home add-on units shall pay a fee of \$50.00 for each such insignia.

5:23-4.24 Plan review: Department of Community Affairs

(a) Rules concerning establishment are:

1. (No change.)

2. Plan review:

i. (No change.)

ii. (No change.)

iii. **Premanufactured construction: Plan review shall be required for all modular construction other than single family detached dwellings, manufactured (mobile) home add-on units and components.**

(b) (No change.)

5:23-4.25 Premanufactured construction

(a) This chapter governs the design, manufacture, storage, transportation and installation of premanufactured construction [, components, and assemblies] which is sold, leased, or installed, or [are] intended for sale, lease or installation, for use on a site in the State of New Jersey. This chapter applies to premanufactured construction [, components and assemblies] manufactured in facilities within or outside the State; provided, however, that nothing herein shall conflict with any provision of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 and regulations promulgated thereunder. Whenever a provision of this subchapter shall conflict with any Federal standard or requirement under such act or regulations, Federal law shall govern.

(b) Rules concerning [requirement] certification of premanufactured [certification] construction are:

1. Except as otherwise provided in this chapter, no person may sell, lease or install for use on any site in the State of New Jersey any premanufactured construction [, component or assembly] unless such premanufactured construction [component or assembly] is [approved and bears on insignia of certification issued by an inplant inspection agency approved by the Department or, in the case of a manufactured home by the United States Department of Housing and Urban Development] **certified in accordance with the following provisions:** [Premanufactured building elements such as wall panels, trusses and prestressed concrete wall units certified by nationally-recognized laboratories or by a licensed New Jersey professional engineer shall also be acceptable. The insignia of certification issued by an inplant inspection agency shall be attached to the premanufactured construction component or assembly in accordance with this chapter and it shall be subject to subsequent removal from the premanufactured construction, component or assembly in accordance with this chapter.]

i. **Modular construction: complete structure comprising on one or more modules (boxes) built to New Jersey Uniform Construction Code; certified by an approved inplant inspection agency and bearing appropriate department insignia(s) of certification.**

ii. **Manufactured Home (formerly called mobile home): Single family dwelling built to Federal Manufactured Home Construction and Safety Standards and bearing a Federal insignia of certification.**

iii. **Components:**

(1) **Building elements such as bathroom modules and kitchen modules built to New Jersey Uniform Construction Code; certified by an approved inplant inspection agency and bearing appropriate department insignia of certification.**

(2) **Building elements such as trusses, wall panels, prestressed/prefabricated floor or roof panels, pre-engineered structural frames built to New Jersey Uniform Construction Code may be approved by any of the following options:**

(A) **Approval for both design and construction by a nationally recognized laboratory. The local municipal subcode official has the authority to accept such approvals based on the evidence, test and/or documentation presented to him.**

(B) **Approval for both design and construction by a New Jersey licensed professional engineer. The local municipal subcode official has the authority to accept such approvals based on evidence and/or documentation presented to him.**

(C) **Approval for both design and construction by a New Jersey inplant inspection agency. The evidence of such approvals shall be in the form of department insignia of certification attached to the component(s).**

iv. **Manufactured (Mobile) Home Add-On Units: Built to New Jersey Uniform Construction Code; certified by an approved inplant inspection agency and bearing appropriate department insignia of certification.**

2. Premanufactured construction [, components and assemblies of the manufacturer] which [have] has never been occupied and which serves for model or demonstration purposes for the manufacturer does not have to bear an insignia of certification under these regulations, until such time as such premanufactured construction [, components or assemblies are] is offered for sale, lease or occupancy.

3. Premanufactured construction [, components or assemblies] which [are] is intended for prototype, experimental or demonstration purposes in or on a site in the State designated by the department as a test facility may be installed without bearing insignia(s) of certification. Subsequent sale or lease of such premanufactured construction [, components or assemblies] shall be required to be certified and bear insignia(s) of certification **in accordance with the appropriate provisions of this Chapter,**

(c) Rules concerning applicability of local enforcement agency inspections are:

1. All premanufactured construction [, components and assemblies] bearing **appropriate department** insignia(s) of certification [issued pursuant to these regulations] shall be accepted in all municipalities of the State as meeting the requirements of the State Uniform Construction Code.

2. All elements of **the certified** premanufactured construction [, components and assemblies which bear insignia of certification and of structures in which are installed components which bear insignia of certification,] which are not described or included in the approved premanufactured system documentation shall be subject to **review, inspections and approval** by the local [enforcing] **enforcement** agency. [with jurisdiction over the building site.]

3. Premanufactured construction and assemblies in which components have been installed shall comply with the requirements of the State Uniform Construction Code, except that construction of manufactured homes (**mobile homes**) shall comply with all applicable provisions of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 and the regulations promulgated pursuant thereto. [and the manufactured home subcode shall apply to add-ons and to any other manufactured homes or components or assemblies thereof which are not subject to the Federal Manufactured Housing Construction and Safety Standards Act of 1974.]

4. [The plans for each premanufactured structure on file with the Construction Code Enforcing Agency shall be ap-

proved and sealed in accordance with N.J.A.C. 5:23-4] **A complete set of approved plans for the premanufactured construction shall be filed with the local enforcement agency for issuance of construction permit and necessary inspections thereafter. The approval of these plans shall meet the applicable requirements provided elsewhere in this section.**

5. The plans for [foundation and utility systems shall be approved and sealed in accordance with N.J.A.C. 5:23-2] **all the related sitework which shall include any foundation system, basement or crawl space, utility systems etc., shall be filed with the local enforcement agency for the issuance of a construction permit. These plans shall be signed and sealed by a New Jersey licensed professional engineer or registered architect. The local enforcement agency is responsible for the review and approval of these plans and conducting necessary inspections thereafter for approval of the site work. The local enforcement agency is also responsible for the necessary inspection and approval of setup and installation of the certified premanufactured construction.**

(d) Rules concerning general requirements for [approval] **inspection and certification are:**

1. Premanufactured construction [, components and assemblies] shall be [approved if the premanufactured system documentation for such premanufactured construction, components or assemblies and the compliance assurance program relating to its manufacture, transportation and installation have been approved] **inspected and certified** by an approved inplant inspection agency [and the] **if such** premanufactured construction [, components or assemblies have] **has** been manufactured pursuant to an approved premanufactured system documentation and an approved compliance assurance program. **The inplant inspection agency shall make necessary inspections during production of each such construction to insure compliance to the approved documents and the regulations. Approval of premanufactured construction shall be evidenced by insignia(s) of certification which conform to the requirements of these regulations. [and which shall be issued for each premanufactured construction, component and assembly] The number of insignias required for the certification of premanufactured construction shall be governed by the applicable provisions of the regulations provided in this subchapter. Department insignia of certification shall not be required in case of components eligible to be approved by a nationally recognized laboratory or a New Jersey licensed professional engineer.**

(e) Rules concerning approval of premanufactured system documentation are:

1. **Single family detached dwellings, manufactured (mobile) home add-on units and components:** The inplant inspection agency shall approve a set of premanufactured system documentation [as hereinafter defined for purpose of these regulations] if the inplant inspection agency determines that such premanufactured system documentation conforms to all [of the] applicable requirements of the State Uniform Construction Code. **The premanufactured system documentation shall include all the drawings, design calculations, specifications details, shop drawings, etc. The premanufactured system documentation shall require the signature and seal of a professional engineer or architect registered in the state of manufacturer.**

[2.] i. Approval of premanufactured system documentation shall be evidenced by the stamp of approval of the inplant inspection agency, affixed on each sheet of the premanufactured system documentation and signed by a designated employee of the agency. Each stamp shall show the

date of approval of each sheet of the premanufactured system documentation to which it is affixed. Each sheet constituting the approved premanufactured system documentation shall have a separate identification number.

2. **All modular units other than single family detached dwellings, manufactured (mobile) home add-ons units and components described above shall require plan approval by the department(s) in accordance with the applicable regulations. The plans, specifications, details design calculations, etc., shall meet the requirements of subchapter 2 of these regulations.**

(f) Premanufactured system documentation approved pursuant to these regulations may contain alternates or a range of alternates for one or more elements of the premanufactured construction [, components or assemblies] described in the premanufactured system documentations, provided that the approved premanufactured system documentation conforms to all of the applicable requirements of the State Uniform Construction Code.

(g) General requirements for approval of amendments to premanufactured system documentation are:

1. (No change.)

2. Approval of amendments to premanufactured system documentation shall be evidenced by the [signed] stamp of [the agency] **approval of the inplant inspection agency** [with the additional requirement that such stamp shall show both the date of approval and the date after which the premanufactured construction, components or assemblies described in the premanufactured system documentation shall be manufactured pursuant to the premanufactured system documentation as so amended] **affixed on each sheet of the amendments and signed by a designated employee of the agency. Each stamp shall show the date of approval of each sheet of the amendments to which it is affixed. Each sheet constituting the amendments shall have a separate identification number.**

3. Approvals of amendments to premanufactured system documentation may be by oral authorization of an officer or **a designated** employee of the agency, but in such event the approval shall be subsequently evidenced by [affixing] the [signed] stamp of [the agency] **approval affixed [to] on the amended sheets of the premanufactured system documentation and signed by the designated employee of the agency** within ten days after the oral authorization.

(h) An inplant inspection agency shall approve the manufacturer's compliance assurance program for the facility which meets the requirements of this subchapter. This compliance assurance program will be monitored by the inplant inspection agency. [The inplant inspection agency shall inspect each of the manufacturing facilities as required by this chapter.]

(i) Basic requirements for a compliance control program are:

1. An inplant inspection agency shall approve a compliance control program if it determines that:

i. The implementation of the compliance control program will assure that the premanufactured construction [, components or assemblies], when installed at the site, will conform to the approved premanufactured system documentation.

ii. (No change.)

iii. (No change.)

2. The approval of a compliance control program under these regulations does not relieve the manufacturer and the inplant inspection agency of responsibility for assuring that the premanufactured construction [, components and assemblies] manufactured for sale, lease or installation for use on

sites in New Jersey conforms in every [material] respect to the approved premanufactured system documentation **and the regulations.**

3. To facilitate review and approval, the manufacturer's compliance control program shall present an overview of its policies and procedures on the following:

i.-ii. (No change.)

iii. The storage and transportation of premanufactured construction [, components and assemblies] to the site; and
iv. The installation of premanufactured construction [components and assemblies] at the site.

4. For approval, except as modified under this chapter, the compliance control program shall include requirements on the following items:

i. Specific assignments of responsibility to designated divisions or employees of the manufacturer for every significant phase in the production, transportation and installation of the premanufactured construction [components or assemblies];

ii. (No change.)

iii. (No change.)

iv. Procedures to assure that the fabrication or shop drawings for the premanufactured construction [components and assemblies] conform to the approved premanufactured system documentation;

v. Procedures to maintain, file and control all fabrication or shop drawings and all documents constituting the premanufactured [system] construction.

vi. Procedures to maintain complete and reliable records of the manufacture, transportation and installation of the premanufactured construction [, components and assemblies,] each unit of which shall be assigned a manufacturer's serial number to facilitate identification;

vii. (No change.)

viii. Procedures for controlling the storage and transportation of premanufactured construction [components and assemblies] from the manufacturing facilities to the site, identifying specific functions and techniques that are of critical importance;

ix. Procedures for controlling the installation of premanufactured construction [components and assemblies] at the site, identifying specific functions and techniques that are of critical importance;

x. (No change.)

5. If a manufacturer transfers title to an effective control over its premanufactured construction [, components or assemblies] to other, unrelated persons at any point prior to its installation at the site, the manufacturer shall be responsible for furnishing to the persons responsible for transportation and installation adequate information and manuals relating to the transportation and installation of such premanufactured construction [components and assemblies], including the relevant portions from its compliance control program referred to in these regulations, but the manufacturer shall not be responsible for implementation after the transfer of title and effective control.

(j) (No change.)

(k) **All [certified premanufactured] modular construction, applicable premanufactured components and manufactured (mobile) home add-on units shall bear [an] appropriate insignia(s) of certification meeting the requirements of these regulations.** Such insignias of certification shall be furnished by the Department to the inplant inspection agency under the procedures outlined in this section. **The inplant inspection agency shall request insignias for issuance on a form prescribed by the department for such purpose. The agency shall**

enclose its check as a fee for the insignias requested. The fees for department insignias of certification shall be as per requirements provided in these regulations.

1.-3. (No change.)

4. Only one department insignia shall be required for [one and two-] **single** family dwelling [premanufactured] **modular** construction even if the construction is comprised of two or more modules (boxes). However, each module (box) shall be properly identified by the manufacturer's serial number and the inplant inspection agency's insignia. [number]

5. All premanufactured construction other than [one and two] **single** family dwelling **modular construction** shall require [a] department insignia(s) of **certification** as follows:

i. [For one module (box) construction, one premanufactured construction insignia of certification shall be required.] **Each module (box) shall require a separate department insignia of certification for modular construction.**

ii. [For multimodule (multibox) construction, each module (box) shall require a premanufactured component insignia of certification.] **In case of a multimodule (multibox) project, the data plate on each module (box) shall identify the serial numbers of the department insignia of certification of all other modules (boxes) which form part of the entire project.**

iii. For premanufactured building elements such as, but not limited to, wall panels, trusses [or prestressed concrete wall units.] , **prestressed/prefabricated floor or roof panels, pre-engineered structural frames,** each element shall require a **premanufactured component insignia of certification.** For elements inspected and grouped in one lot of not more than 25 elements, one **premanufactured component insignia of certification** shall be required for each lot.

iv. **Components such as bathroom or kitchen modules shall each require a premanufactured component insignia of certification.**

v. **Manufactured (mobile) home add-on units shall each require an appropriate department insignia of certification.**

(l) Rules concerning insignia of **inplant** inspection agencies are:

1. The inplant inspection agency shall attach its [label, seal or other] insignia to each premanufactured construction, component and assembly which is transported to construction site for assembly and installation.

2. The [label, seal or other] insignia of the **inplant** inspection agency shall identify the name [and address] of the inspection agency **and** a serial number. [of the label, type of premanufactured construction, component or assembly and list of codes and standards for which the construction, component or assembly has been evaluated, inspected and found in compliance by the inplant inspection agency.]

3. Each [label, seal or] insignia must be attached in [a clearly visible location] and **such a way that it cannot be removed without destroying it. Such insignia shall be located in a readily accessible and visible location identified in the premanufactured system documentation.**

(m) Each certified premanufactured [unit,] construction [, assembly or component] shall contain a data plate. The data plate shall be furnished by the manufacturer and shall be permanently attached by the manufacturer in a visible location in the utility room or utility area, if feasible, and otherwise in such other area identified in the premanufactured system documentation. The data plate shall contain the following information:

1. (No change.)

2. (No change.)

3. Address of manufacturing facility or facilities where the

premanufactured construction [, principal elements, components and assemblies were] was produced;

4. (No change.)

5. Manufacturer's serial number for [unit,] **the premanufactured construction**; [or assembly]

6. [Manufacturer's serial numbers for premanufactured components] **Serial number of New Jersey insignia of certification for the premanufactured construction. Serial number(s) of New Jersey insignia(s) of certification of other modules (boxes), if applicable, forming part of the entire certified premanufactured project;**

7. [Serial number of New Jersey insignia of certification for unit, construction or assembly:] **Serial number of insignia of inplant inspection agency for the premanufactured construction. Serial numbers of insignias of inplant inspection agency for other modules (boxes) forming part of the entire certified premanufactured project;**

8. [Serial number of New Jersey insignia of certification for premanufactured components:] **Serial or other identifying numbers of each element, if any, of the premanufactured construction separately transported to the construction site for assembly and installation:**

9. [Serial numbers of insignia of inplant inspection agency for unit, construction or assembly:] **Snow loads maximum where applicable;**

10. [Serial numbers of insignia of inplant inspection agency for premanufactured components:] **Wind loads maximum where applicable;**

11. [Serial or other identifying numbers of each element, if any, of the premanufactured construction separately transported to the construction site for assembly and installation:] **Other special environmental factors:**

12. [Snow loads maximum where applicable:] **Applicable codes, including name of code, edition, year of publication and applicable supplement, if any;**

13. [Wind loads maximum where applicable:] **Date of manufacture;**

14. [Other special environmental factors:] **Date the data plate was attached to the premanufactured construction.**

[15. Applicable codes, including name of code, edition, year of publication and applicable supplement, if any:

16. Date of manufacture; and

17. Date the data plate was attached to unit, construction, assembly or component.]

(n) The inplant inspection agency shall entrust the custody of the insignia of certification received from the department only to employees designated in the compliance control program as responsible for the custody and control of the insignia of certification. The manufacturer shall attach the insignia to premanufactured [units,] construction [, assemblies or components] only in the circumstances prescribed in the compliance control program and only with the prior specific authorization from the inplant inspection agency. The manufacturer shall attach the insignia of certification in the manner specified by the department. The inplant inspection agency shall promptly record the attachment of each insignia of certification on the insignia of certification monthly report. The monthly report with all columns filled in by the inplant inspection agency [to the extent of its knowledge,] shall be sent to the department by the tenth day of each month.

(o) Rules concerning modification of premanufactured construction [, and so forth,] after certification are:

1. Approved premanufactured [units,] constructions [, assemblies or components] bearing the insignia of certification shall not be modified in any way at any time after the insignia

of certification has been attached, unless the modification is approved in advance by the inplant inspection agency or municipal enforcing agency on the basis that the premanufactured [unit,] construction [assembly or component,] as so modified, will still conform to the approved premanufactured system documentation. Approvals of any modifications which are consistent with the approved premanufactured system documentation may be by oral authorization by an officer or **designated** employee of the inplant inspection agency or municipal enforcing agency, but in such event each approval shall be subsequently evidenced by a letter from the inplant inspection agency or municipal enforcing agency to the manufacturer within ten days after the oral authorization. Proposed modifications which are inconsistent with the approved premanufactured documentation shall be treated as proposed amendments to the premanufactured system documentation subject to the approval of the department.

2. Modifications of certified premanufactured [units,] construction [, assembly of components] are not prohibited under this chapter if such modifications are made after the issuance of a certificate of occupancy by the municipal enforcing agency. Such modifications shall be subject to the provisions of the State Uniform Construction Code.

3. Nothing in this section shall prevent any manufacturer, on its own motion or at the order of the inplant inspection agency or of the department, from at any time repairing any damage to or remedying any defect found in any premanufactured [unit,] construction. [, assembly of component]

(p) Premanufactured construction [, components or assemblies] which is [are] intended for prototype, experimental or demonstration purposes in or on a site in the State designated by the department as a test facility may be approved by the department, and insignia of certification attached thereto to evidence such certification, upon a determination by the department, on the basis of such evaluations and inspections as may be appropriate, that the premanufactured system documentation for such premanufactured construction [, components or assemblies] conforms to [all of] the applicable requirements of the State Uniform Construction Code, and the premanufactured construction [, components or assemblies] as manufactured and installed, conforms to the approved premanufactured system documentation **and the regulations**. The department may designate any inplant inspection agency to make such determination, to certify such premanufactured construction [, components or assemblies,] and to authorize the attachment thereto of insignia of certification.

(q) Rules concerning inspections and right-of-entry are:

1. The department and inplant inspection agency are authorized to inspect during normal business hours without prior notice any manufacturing facilities of any manufacturer with approved premanufactured system documentation, the transportation systems utilized for the transport of certified premanufactured construction [components or assemblies,] the construction sites on which premanufactured construction [, components or assemblies have been] **has** or [are] **is** intended to be installed, the books and records (wherever maintained) of any manufacturer with approved premanufactured system documentation which relates to the manufacture, sale, lease or installation of premanufactured construction [, components or assemblies] for use on a site in the State, and the facilities and the books and records of any inplant inspection agency which relate to the discharge of its responsibilities under these regulations. Every manufacturer with approved [building] premanufactured system documentation and every approved inplant inspection agency shall be deemed to grant

to all authorized representatives of the department the right of entry on its property at any reasonable time (including without limitation, during all normal business hours) without prior notice, for the purpose of conducting such inspections and examinations as are authorized to the department under these regulations. Persons selling, acquiring or leasing such premanufactured construction [components or assemblies,] and persons engaged in its transportation to and installation at the construction site, shall be deemed to grant to all authorized representatives of the department the same right-of-entry on their property as the manufacturer is required to grant under this chapter.

2. Every manufacturer with approved premanufactured system documentation shall be deemed to grant to all authorized representatives of the inplant inspection agency with which it has an implementing contract the right-of-entry on its property during normal business hours, without prior notice, for the purpose of conducting such inspections and examinations as such inspection agency deems necessary to discharge its responsibilities under these regulations and under its contract with the manufacturer. Persons selling, acquiring or leasing such premanufactured construction [components or assemblies] and persons engaged in its transportation to and installation on the construction site, shall be deemed to grant to the inplant inspection agency with an implementing contract with the manufacturer the same right-of-entry on their property as the manufacturer is required to grant under these regulations.

(r) No provision of the act and these regulations shall apply to premanufactured construction, components or assemblies installed for use on a site in the State prior to January 1, 1977.

(a)

New Jersey State Housing Code

Proposed Readoption: N.J.A.C. 5:28

Authority: N.J.S.A. 2A:42-76.

Proposal Number: PRN 1985-276.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Department of Community Affairs proposes to readopt N.J.A.C. 5:28, which expires January 1, 1986. The New Jersey State Housing Code was adopted by the Department of Community Affairs, pursuant to authority of N.J.S.A. 2A:42-76, in 1981. The previous text of the Code was issued in 1966, but was never codified as a rule. The Department has reviewed the rule and has found it to be necessary, reasonable, and proper for its originally intended purpose.

The New Jersey State Housing Code is not enforced by the Department of Community Affairs. Rather, it is made available to municipalities for adoption by reference, pursuant to N.J.S.A. 40:49-5-1. Adoption of this Code, or another general maintenance code, is a requirement for any municipality seeking to be in compliance with N.J.A.C. 8:51, a State Department of Health regulation concerning local housing code enforcement.

The Code is applicable to all buildings used for dwelling purposes in those jurisdictions that have adopted it. It contains basic, minimal standards of maintenance, water supply,

cooking and sanitary facilities, garbage and rubbish storage, lighting, ventilation, heating, egress and use and occupancy of space. It covers one- and two-family homes, which are not subject to inspection by the Bureau of Housing Inspection, as well as multiple dwellings and hotels, which are.

In 1980, the 1966 Code was revised to eliminate conflicts with N.J.A.C. 5:10 and with the subcodes adopted under N.J.A.C. 5:23. As revised, the Code continues to be an adequate source of standards for a basic local code enforcement program. Municipalities are at liberty to add additional standards by ordinance.

Social Impact

Failure to readopt the Code will prevent municipalities from adopting it by reference in the future and may jeopardize the continuing enforceability of existing ordinances adopting the Code by reference. This will clearly be detrimental to local code enforcement and, consequently, to the preservation of the State's housing stock.

Effective local Code enforcement has been of benefit to tenants and property owners who are concerned about maintenance of property values in their neighborhoods. Readoption of the rules is necessary in order to facilitate local Code enforcement.

Economic Impact

Lack of effective local code enforcement might be economically beneficial to some owners who would prefer not to improve, repair and maintain their buildings adequately but would be detrimental to those other property owners in the community whose property values would be adversely affected by such lack of maintenance. Readoption is expected to continue these impacts.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 5:28.

(b)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Prevailing Wages; Debarment and Suspension from Contracting

Proposed New Rules: N.J.A.C. 5:80-17 Proposed Amendments: N.J.A.C. 5:80-18 (recodified from 5:80-4)

Authorized By: Feather O'Connor, Executive Director/Secretary, New Jersey Housing and Mortgage Finance Agency.

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

Proposal Number: PRN 1985-283.

Submit comments by June 19, 1985 to:

William F. Abele, Esq.

Director of Policy Development

New Jersey Housing and Mortgage Finance Agency

3625 Quakerbridge Road, CN 070

Trenton, New Jersey 08625

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. The regulations within this proposal focus on the construction phase of housing and enable the Agency to assure itself that housing is constructed in a safe, economic and efficient manner.

N.J.A.C. 5:80-17, Prevailing Wages, is a newly proposed regulation outlining the circumstances under which prevailing wage rates must be paid by Housing Sponsors, or contractors and subcontractors engaged by Housing Sponsors.

N.J.A.C. 5:80-18, Debarment and Suspension from NJHMFA Contracting, was previously codified at N.J.A.C. 5:80-4. It is being amended to recodify it as N.J.A.C. 5:80-18. Additionally, the list of causes for debarment is being amended to include persons already debarred by HUD, FHA or any other agency of the United States Government. It is also being amended to include a new section, 5:80-18.12 lists of other agencies, which provides the Agency with the authority to rely on lists issued by HUD, FHA, etc.

Social Impact

The proposed regulations are established to effectuate the general purposes of the Agency including: 1) to stimulate the construction, rehabilitation and improvement of adequate and affordable housing in the State so as to increase the number of housing opportunities for New Jersey residents particularly those of low and moderate income; 2) to enhance the production capacity of the private sector toward meeting the housing needs of residents of New Jersey; 3) to assist in the revitalization of the State's urban areas; and 4) to respond to changing housing demographic and economic circumstances for the development of innovative and flexible financing vehicles. The NJHMFA Regulations will have an impact on all tenants in Agency-financed projects, all Housing Sponsors of Agency financed projects and all Contractors doing business on Agency financed projects.

Economic Impact

Through its sale of tax exempt bonds, the Agency is able to make mortgage loans for new construction of multi-family housing projects or the rehabilitation of existing units upon application by qualified housing sponsors. Since the program's inception over \$1.2 billion in loans have been issued for such housing. The NJHMFA Regulations will enable the Agency to continue to meet its goals to provide low and moderate income housing to the residents of the State of New Jersey.

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

SUBCHAPTER 17. PREVAILING WAGES**5:80-17.1 Authority**

This subchapter is being promulgated pursuant to the authority of N.J.S.A. 55:14K-42.

5:80-17.2 Applicability of prevailing wages

(a) Prevailing wage rates shall be paid in the construction or rehabilitation of Housing Projects by all Housing Sponsors or builders, contractors or subcontractors engaged by Housing Sponsors, except as may be provided under the provisions of N.J.A.C. 5:80-1.4 or N.J.S.A. 55:14K-5y. The Agency

may also require prevailing wage rates to be paid in connection with the operation, repair or improvement of any Housing Project or in conjunction with the construction or rehabilitation of any improvement or development financed by a loan from the Agency.

(b) Prevailing wage rates required to be paid pursuant to (a) above shall be determined in accordance with N.J.S.A. 55:14K-42.

SUBCHAPTER 4. [DEBARMENT AND SUSPENSION FROM NJHFA CONTRACTING] (RESERVED)**SUBCHAPTER 18. DEBARMENT AND SUSPENSION FROM NJHMFA CONTRACTING**

[5:80-4.1] **5:80-18.1** Definitions
(No change in text.)

[5:80-4.2] **5:80-18.2** Causes for debarment of a person(s)

(a) In the public interest, the Agency may debar a person for any of the following causes:

1.-13. (No change.)

14. Debarment by the Department of Housing and Urban Development, Federal Housing Administration or any other instrumentality, agency or department of the United States Government.

5:80-4.3 to 5:80-4.11 recodified as **5:80-18.3 through 5:80-18.11**

(No change in text.)

5:80-18.12 Lists of other agencies

Notwithstanding the failure of the Agency to debar or suspend any person or contractor pursuant to these regulations, whenever the Agency participates in any program financed, issued or guaranteed by any department, agency or instrumentality of the United States Government, it may rely on and distribute lists of persons suspended or debarred by such agency, department or instrumentality and prevent the listed person from participating in that program.

AGENCY NOTE: Any reference to NJHFA or 5:80-4 in the unchanged text of the Subchapter on Debarment and Suspension from NJHMFA contracting is changed to Agency and 5:80-18, respectively.

ENVIRONMENTAL PROTECTION

Proposals numbered PRN 1985-285, 286 and 287 are authorized by Robert E. Hughey, Commissioner, Department of Environmental Protection.

(a)

DIVISION OF WATER RESOURCES**Flood Hazard Area Delineations****Delineated Floodways for Various****Tributaries and Streams in the Hackensack Basin****Proposed Amendment: N.J.A.C. 7:13-7.1**

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.

DEP Docket No. 020-85-04.

Proposal Number: PRN 1985-285.

A public hearing concerning this proposal will be held on June 12, 1985 at 1:00 P.M. at:

Municipal Building
375 Larch Avenue
Borough of Bogota
Bergen County, New Jersey

Submit comments by June 19, 1985 to:

Robert Vincent
Division of Water Resources
CN 029
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment provides for the application of rules and regulations concerning the development and use of land in designated floodways and flood hazard areas to portions of the Saddle River, Hudson River, Hackensack River and its tributaries and Overpeck Creek and its tributaries. Regulations of delineated flood hazard areas are designed to preserve flood carrying capacity and to minimize the threat to the public safety, health and general welfare.

Social Impact

The proposed delineation indicates floodways and flood hazard areas where added flood protection measures will apply within the Hackensack Basin, and along the Saddle River and Hudson River which will affect: Cities of Hackensack, Garfield, Englewood and Jersey City, Townships of South Hackensack, North Bergen and Teaneck, Boroughs of Ridgefield, Carlstadt, Little Ferry, Moonachie, Bogota, River Edge, New Milford, Fairview, Leonia, Palisades Park and Paramus, Town of Secaucus and Village of Ridgefield Park within Bergen and Hudson Counties. The public health, safety, and general welfare should continue to be adequately protected if the amended flood delineation should be adopted by the Department.

Economic Impact

The proposed amendment will have only a minor economic impact. The delineations clearly define the flood hazard areas, thus reductions in property value could result by restricting future development in the floodway and requiring elevated construction in flood fringe areas. However, minor property value diminution would be offset by the savings to governmental bodies and private homeowners due to little or no future need for rehabilitation and rescue expenditures from flood damage in the delineated areas.

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

7:13-7.1 Delineated floodways

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

(h) A list of delineated streams in the Hackensack Basin follows:

The floodway and flood hazard area of Saddle River for the entire reach within south Hackensack Township, Hudson River for the entire reach within North Bergen Township, Penhorn Creek from Secaucus Road upstream 159,000 feet to an I-495 ramp, Cromakill Creek from its mouth upstream to

Route 3, Hackensack River from the confluence of Cromakill Creek upstream 3,500 feet to the confluence of Bellman's Creek and from 400 feet upstream of the New Jersey Turnpike at the South Hackensack-Little Ferry Corporate limit upstream to approximately 1,900 feet upstream of River Edge Road in River Edge Borough, Bellman's Creek from its mouth upstream to the confluence of Wolf Creek, Wolf Creek from its mouth upstream to approximately 30 feet downstream of Elite Court, Losen Slofe from its mouth upstream to Moonachie Road, French's Creek from its mouth upstream to New Bridge Road, Coles Brook from its mouth upstream to Catalpa Avenue, Van Saun Mill Brook from its mouth upstream to approximately 1,100 feet upstream of Continental Avenue, Overpeck Creek from its mouth upstream to approximately 200 feet upstream of East Hudson Avenue, Teaneck Creek from its mouth upstream to approximately 650 feet downstream of Fycke Lane, Metzler Creek for the entire reach within Englewood and Teaneck, Tributary No. 1 to Overpeck Creek from its mouth upstream to Thomson Avenue, and Flat Rock Brook from its mouth upstream to Middlesex Avenue.

AGENCY NOTE: All relevant information and documents are available for inspection during normal working hours at the Office of the Bureau of Flood Plain Management, 1911 Princeton Avenue, Trenton, New Jersey.

In addition, maps of the proposed delineations have been sent to Clerks of the affected municipalities and to the Planning Boards of the affected Counties.

(a)

Flood Hazard Area Delineations Delineated Floodways for Various Streams in the Central Passaic Basin. (Projects G and R)

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

Authority: N.J.S.A. 58:16A-50 et seq. and 13:1D-1 et seq.

DEP Docket No. 019-85-04.

Proposal Number: PRN 1985-287.

A public hearing concerning this proposal will be held on June 4, 1985 at 1:00 P.M. at:

Council Chambers
Wayne Municipal Building
475 Valley Road
Township of Wayne
Passaic County, New Jersey 07470

Submit comments by June 19, 1985 to:

Robert Vincent, Hearing Officer
Division of Water Resources
CN 029
Trenton, N.J. 08625

The agency proposal follows:

Summary

The proposed delineations are based upon studies known as Project G and Project R. These studies were conducted by the

consulting firms of O'Brien and Gere and URS/MSR, respectively, under a contract with the Department of Environmental Protection and the Federal Emergency Management Agency. The major portion of the delineations being proposed have never previously been studied. The floodway and 100-year delineations match those indicated in the respective Federal flood insurance studies.

Regulation of delineated flood hazard areas is designed to preserve flood carrying capacity and to minimize the threat to the public safety, health and general welfare.

Social Impact

The proposed delineation indicates floodways and flood hazard areas where added flood protection measures will apply within the Central Passaic Basin. The affected municipalities are: The Townships of Little Falls and Wayne in Passaic County, Fairfield and North Caldwell in Essex County, Montville and Pequannock in Morris County; the Boroughs of Totowa, Pompton Lakes and Bloomingdale in Passaic County, Lincoln Park, Riverdale and Butler in Morris County and Oakland in Bergen County. The public health, safety, and general welfare shall continue to be adequately protected if the amended flood delineation should be adopted by the Department.

Economic Impact

The proposed amendment will have only a minor economic impact. The delineation clearly defines the flood hazard areas, thus reductions in property value could result by restricting future development in the floodway and requiring elevated construction in flood fringe areas. However, minor property value diminution would be offset by the savings to governmental bodies and private homeowners due to little or no future need for rehabilitation and rescue expenditures from flood damage in the delineated areas.

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

7:13-7.1 Delineated floodways

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

(h) (See related proposal in this issue of the Register).

(i) **A list of delineated streams in the Central Passaic Basin follows:**

The floodway and flood hazard area of the Passaic River from Beatties Dam upstream to the Borough of Fairfield—Township of West Caldwell municipal boundary, Deepavaal Brook from the confluence with the Passaic River upstream to Clinton Road Bridge, Green Brook from the confluence with Deepavaal Brook upstream to Mountain Avenue, Singac Brook from the junction with Passaic River upstream to 6,300 feet upstream of Valley Road, Naachtpunkt Brook from the junction with Singac Brook upstream to Totowa Road, Pompton River from junction with Passaic Rivers upstream to confluence with the Pequannock and Ramapo River, Beaver Dam Brook from the confluence with Pompton River upstream to Lincoln Park, Montville municipal boundary, East Ditch from the confluence with Beaver Dam Brook upstream to Mountain Avenue, West Ditch from the confluence with Beaver Dam Brook to 2,000 feet upstream of Sunset Road, Ramapo River upstream from the Pequannock River-Ramapo-Pompton River junction to the Oakland-Mahwah municipal boundary, Allerman Brook (Pond Run) from the junction with the Ramapo River upstream to Oakland-Franklin Lakes municipal boundary, Acid Brook from the junction with the Ramapo River upstream to railroad tracks, Pequannock River from the Pequannock River-Ramapo-Pompton

River junction to the Butler-Bloomingdale-West Milford municipal boundary, Wanaque River from the Pequannock River to the Pompton Lakes-Wanaque municipal boundary, Stone House Brook from confluence with Pequannock River upstream to 3,100 feet upstream of Route 23, Van Dam Brook from confluence with Pequannock River upstream to 750 feet upstream from Knools Road, Cold Spring Brook from confluence with Pequannock River upstream 1,600 feet upstream of West Shore Road, Oakwood Lake Brook from confluence with Pequannock River upstream to Glen Wild Revenue, Post Brook and Tributaries from the junction with Wanaque River upstream to Lake Ioscoe.

AGENCY NOTE: All relevant information and documents are available for inspection during normal working hours at the Office of the Bureau of Flood Plain Management, 1911 Princeton Avenue, Trenton, New Jersey.

In addition, maps of the proposed delineations have been sent to Clerks of the affected municipalities and to the Planning Boards of the affected counties.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council 1985-86 Game Code

Proposed Amendments: N.J.A.C. 7:25-5

Authorized By: Fish and Game Council, Anthony E. DiGiovanni, Chairman.

Authority: N.J.S.A 13:1B-30 et seq. and 23:1-1 et seq. DEP Docket No: 023-85-04.

Proposal Number: PRN 1985-294.

A public hearing concerning this proposal will be held on:

June 19, 1985 at 8:00 P.M.

Mercer County Community College

West Windsor Campus

1200 Old Trenton Road

Audio Visual Building, Room 110

West Windsor, New Jersey

Submit comments by June 19, 1985 to:

Russell A. Cookingham, Director

Division of Fish, Game and Wildlife

Department of Environmental Protection

CN 400

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed 1985-86 Game Code states when, under what circumstances, in what locations, by what means, and in what amounts and numbers, game birds, game animals and fur-bearing animals may be pursued, taken, killed or possessed.

These regulations have provided a system for the protection, propagation, increase, control, and conservation of game birds, game animals, and fur-bearing animals in this State and for their use and development for public recreation and food supply. They are based on scientific investigation and research. The existing regulations expire July 31, 1985.

The proposed amendments include the following revisions:

1. Season dates are adjusted to correspond with the 1985-86 calendar, including date changes for regular and early small game seasons.
2. Four turkey hunting areas are added with an allocation of 600 additional turkey hunting areas. Procedures for permit applications for the spring gobbler season are changed. (N.J.A.C. 7:25-5.7).
3. Permit allocations for the trapping of beaver and otter are adjusted. (N.J.A.C. 7:25-5.9; 5.10).
4. References to the steel-jaw leghold traps are removed to conform with legislative changes that become effective this fall. The use of the Soft-catch trap in certain areas of the state is permitted. All traps, including those set on private property, must now be tagged. (N.J.A.C. 7:25-5.2).
5. The late squirrel season is extended by two weeks. (N.J.A.C. 7:25-5.5).
6. Season lengths and bag limits for either-sex shotgun and bow and arrow deer seasons in certain deer management zones are adjusted. Quotas in the either-sex and muzzle-loading rifle season permit are adjusted. (N.J.A.C. 7:25-5.24 to 26; N.J.A.C. 7:25-5.29).
7. A permit for hunting canvasback ducks during the special canvasback season is now required. (N.J.A.C. 7:25-5.13).
8. Provision is made for certain handicapped individuals to obtain permits to use modified bows during the bow and arrow deer seasons. (N.J.A.C. 7:25-5.24 to 5.26).
9. Provision is made to allow 14- to 17-year-old hunters to hunt woodchucks with rifles. (N.J.A.C. 7:25-5.23).
10. Grammatical changes are made in the descriptions of the rifled slug and the hand-held bow release for the purpose of clarification. (N.J.A.C. 7:25-5.23; 5.24).
11. Adjustments are made in the list of areas on which pheasant and quail stamps are required. (N.J.A.C. 7:25-5.2; 5.3).

Social Impact

No adverse social impact is anticipated from the amendment of this subchapter. Positive social impact anticipated includes the conservation and the enhancement of the wildlife resource for continued recreational opportunities.

The relatively limited changes proposed for hunting seasons, permit quotas, bag limits, and hunting areas should have minimal adverse social impact.

Additional hunting areas that have been established, including four new turkey hunting areas, should increase hunting opportunity. Adjustments that have been made to deer hunting permit quotas, season lengths, and bag limits should benefit all segments of the public in providing for healthier deer populations, long-term enhanced recreational hunting opportunities, and deer population levels compatible with other land uses.

Allowing the use of Soft-catch traps will minimize adverse impacts to the trapping public from the recent legislative prohibition of steel-jaw leghold traps. Requiring all traps to be tagged will increase efficiency of the division's law enforcement effort.

Extension of the late squirrel season will increase recreational opportunity and provide for harvest of this underutilized species.

Changes in the descriptions of hand-held bow releases and rifled slugs will clarify questions relating to the use of these devices.

Provision for the use of modified bow by certain handicapped persons during the archery deer seasons and allowing 14- to 17- year-old hunters to hunt for woodchuck with rifles

will increase recreational opportunity for these groups of hunters.

Requirement of a permit for hunting canvasback ducks will bring state waterfowl regulations into compliance with federal rules.

Other minor changes in dates and bag limits are designed to offer sportsmen additional recreational opportunity.

Economic Impact

No adverse economic impact is anticipated from the proposed amendments. Rather, continuation of the Game Code should further the conservation and enhancement of the wildlife resource upon which a significant recreational and commercial industry is dependent.

There may be minor economic impact as a result of changes in permit quotas, certain new regulations and some limited adjustments to hunting season dates. The Fish and Game Council does not, however, foresee any specific adverse economic impact arising from the proposed amendments.

Environmental Impact

The proposed amendments to the Game Code should have a positive environmental impact in continuing conservation and enhancement of the State's wildlife resource.

Since the legislative prohibition of steel-jaw leghold traps will be effective no later than October 27, 1985, permitting the use of the Soft-catch trap will provide the tool to continue the proper management of the State's furbearer resources.

Annual revisions to the Game Code ensure the preservation and maintenance of the State's wildlife resources as changes in their populations, distributions and habitats occur.

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

7:25-5.1 General Provisions

(a) (No change.)

(b) Time. The hours listed in this Code are EST or EDT at date[.] **and are based on Trenton time. Time tables for Trenton time are published in the annual Summary of Game Regulations and Trenton time shall be the statewide official time.**

(c) This Code, when adopted and when effective, shall supersede the provisions of [1983-84] **1984-85** Game Code.

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

7:25-5.2 Pheasant—Chinese ringneck (*Phasianus colchicus torquatus*), English or blackneck (*P. c. colchicus*), Mongolian (*P. c. mongolicus*), Japanese green (*Phasianus versicolor*); including mutants and crosses of above

(a) The duration for the male pheasant season is November [10] **9** to December [1] **7**, inclusive and December [10] **16** through January [5] **4**, [1985] **1986** excluding December [12, 13 & 14] **18 and 19** in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

(b) The duration for the male pheasant season for properly licensed persons engaged in falconry is September 1 to December [1] **7** inclusive and December [10] **16** through March 31, [1985] **1986** excluding November [10] **9** and December [12, 13 & 14, 1984] **18 and 19** in those management zones in which a special shotgun deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

(c) (No change.)

(d) The duration of the season for pheasants of either sex in the area described as Warren County north of Route 80, Morris County north of Route 80, Ocean County south of

Route 70 and the counties of Sussex, Passaic, Bergen, Hudson, Essex, Camden, Atlantic and Cape May is November [10] 9 to December [1] 7, inclusive and December [10] 16 through February [9, 1985] 8, 1986 excluding December [12, 13 and 14] 18 and 19 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open. The pheasant season on wildlife management areas shall close on January [5, 1985] 4, 1986.

(e) The hours for hunting pheasants on November [10] 9 will be 8:00 a.m. to 1/2 hour after sunset. All other days on which the hunting for pheasants is legal, the hours shall be sunrise to 1/2 hour after sunset.

(f) (No change.)

(g) The opening of the season on semi-wild preserves shall coincide with the listed statewide opening of November [10] 9.

(h) (No change.)

7:25-5.3 Cottontail rabbit (*Sylvilagus floridanus*), black-tailed jack rabbit (*Lepus californicus*), white-tailed jack rabbit (*Lepus townsendii*), european hare (*Lepus europeus*), chukar partridge (*Alectoris graeca*), and quail (*Colinus virginianus*)

(a) The duration of the season for the hunting of the animals enumerated by this section shall be November [10] 9 through December [1] 7 inclusive, and December [10, 1984] 16, 1985 to February [9, 1985] 8, 1986 excluding December [12, 13 & 14, 1984] 18 and 19, 1985 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

(b) The duration of the season for the hunting of the animals enumerated by this section for properly licensed persons engaged in falconry shall be September 1 to December [1] 7 inclusive and December [10] 16, 1985 through March 31, [1985] 1986 excluding November [9] 8 and December [12, 13 & 14, 1984] 18 and 19, 1985 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

(c) (No change.)

(d) The hunting hours for the animals enumerated in this section are as follows: November [10] 9, 8:00 a.m. to 1/2 hour after sunset. On all other days for which hunting for these animals is legal, the hours shall be sunrise to 1/2 hour after sunset.

(e) (No change.)

7:25-5.4 Ruffed grouse (*Bonasa umbellus*)

(a) The duration of the season for the hunting of grouse in that portion of the state situated north of Rt. 70 from Pt. Pleasant west to Camden shall be October [3] 2 through December [1] 7 inclusive and December [10] 16 to February [9, 1985] 8, 1986, excluding December [12, 13 & 14, 1985] 18 and 19, 1985 in those deer management zones in which a special shotgun deer season is authorized and excluding any extra special deer permit season day that is declared open.

(b) The duration of the season for the hunting of grouse in that portion of the state situated south of Rt. 70 from Pt. Pleasant west to Camden shall be October [20] 19 through December [1, 1984] 7 inclusive and December [10] 16 to February [9, 1985] 8, 1986, excluding December [12, 13 & 14, 1984] 18 and 19, 1985 in those deer management zones in which a special shotgun deer season is authorized and also

excluding any extra special deer permit season day that is declared open.

(c) (No change.)

(d) The hunting hours for ruffed grouse shall be sunrise to 1/2 hour after sunset, with the exception of November [10] 9 when legal hunting hours shall be 8:00 a.m. to 1/2 hour after sunset.

(e) (No change.)

7:25-5.5 Eastern gray squirrel (*Sciurus carolinensis*)

(a) The duration of the season for the hunting of squirrels in that portion of the state situated north of Route 70 from Pt. Pleasant west to Camden shall be October [13] 12 through December [1, 1984] 7 inclusive and December [10] 16 to February [9, 1985] 22, 1986 excluding December [12, 13 & 14, 1984] 18 and 19, 1985 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra special permit season day if declared open and also excluding any extra special permit season day if declared open.

(b) The duration of the season for hunting squirrels in that portion of the state situated south of Rt. 70 from Pt. Pleasant west to Camden shall be October [20] 19 through December [1, 1984] 7 inclusive and December [10] 16 to February [9, 1985] 22, 1986 excluding December [12, 13 & 14, 1984] 18 and 19, 1985 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra special deer season day that is declared open.

(c) The duration of the season for the hunting of squirrels for properly licensed persons engaged in falconry shall be September 1 to December [1] 7 inclusive and December [10] 16 through March 31, [1985] 1986 excluding December [12, 13 & 14, 1984] 18 and 19, 1985 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

(d) (No change.)

(e) Hunting hours for squirrels shall be sunrise to 1/2 hour after sunset, with the exception of November [10] 9 when legal hunting hours shall be 8:00 a.m. to 1/2 hour after sunset.

(f) (No change.)

7:25-5.6 (No change.)

7:25-5.7 Wild turkey (*Meleagris gallapavo*)

(a) The duration of the Spring Wild Turkey Gobbler hunting season shall include four separate hunting periods of five days each. The hunting periods for hunting areas 1-[7] 9 shall be:

1. Monday, April [29] 28—Friday, May [3] 2
2. Monday, May [6] 5—Friday, May [10] 9
3. Monday, May [13] 12—Friday, May [17] 16
4. Monday, May [20] 19—Friday, May [24] 23

The hunting periods for hunting areas 14, 16, 18 and 22 shall be:

1. Monday, April [22] 21—Friday, April [26] 25
2. Monday, April [29] 28—Friday, May [3] 2
3. Monday, May [6] 5—Friday, May [10] 9
4. Monday, May [13] 12—Friday, May [17] 16

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

(f) Method: The taking of one male wild turkey with fire-arm or bow and arrow under a special wild turkey permit will be permitted in nine designated turkey hunting areas by holders of a special wild turkey permit.

1. Special wild turkey permits will be issued on an individual basis to holders of valid [1985] 1986 firearm or archery hunting licenses. Only one application per person may be submitted for the spring wild turkey season.

(g) (No change.)

(h) Applying for a Wild Turkey Hunting Permit

1. Only holders of valid [1985] 1986 firearm or archery hunting licenses, including juvenile licenses may apply by detaching from the hunting license the stub market "Special Spring Turkey", signing as provided on the back, and sending the stub together with [a computer card] an application form which has been properly completed in accordance with instructions. Application [cards] forms may be obtained from:

i.-iii. (No change.)

2. (No change.)

3. Fill in the application form to include: name, address, [1985] 1986 firearm or archery hunting license number, turkey hunting area applied for, hunting period applied for, and any other information requested. Only those applications will be accepted for participation in random selection [by card sorting machine] which are received in the Trenton office during the period of February 14—March 1, [1985] 1986, inclusive. Applications received after March 1 will not be considered. [DO NOT SEND FEE WITH THE APPLICATION. Selection of permittees will be made on the basis of a random selection of computer cards.] Selection of permits will be by random drawing.

4. [Unsuccessful applicants will not be notified. Any permit obtained by fraud will be void.] Unless otherwise indicated a permit fee of \$5.00 in the form of a check or money order, made payable to "Division of Fish, Game and Wildlife" must accompany the completed application form.

5. [Successful applicants will be notified by mail. The computer card and the permit issuance fee of \$5.00 in the form of a check or money order, made payable to "Division of Fish, Game and Wildlife" must be returned by mail before March 23, 1985. The Spring Turkey Hunting Permit will then be issued. Permits not claimed by March 23 will be immediately reallocated in the same random manner as the original selection and be returnable two weeks thereafter.] Unsuccessful applicants will be notified by return of their permit fees. Any permit obtained by fraud will be void.

(i) Applying for the Special Farmer Spring Turkey Permit 1.-2. (No change.)

3. Fill in the application form to include: Name, age, address and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of February 14—March 1, [1985] 1986. There is no fee required and all qualified applicants will receive a special farmer spring turkey permit delivered by mail.

4. (No change.)

(j) (No change.)

(k) Turkey Hunting Area Map (on file at the Office of Administrative Law)

6	150†	600	Sussex, Passaic, Bergen
7	150†	600	Sussex, Morris, Passaic
8	50†	200	Warren, Hunterdon
9	50†	200	Warren, Hunterdon, Morris
14	[100] 50††	[400] 200	Burlington, Ocean
16	100††	400	Burlington, Atlantic
18	50††	200	Atlantic, Cape May, Cumberland
22	[100] 50††	[400] 200	Atlantic, Cape May, Cumberland
	[1000] 1150	[4000] 4600	

† Applied to each of the four hunting periods (A,B,C,D) in areas [1-7] 1-9:

- A. Monday, April [29] 28—Friday, May [3] 2
- B. Monday, May [6] 5—Friday, May [10] 9
- C. Monday, May [13] 12—Friday, May [17] 16
- D. Monday, May [20] 19—Friday, May [24] 23

†† Applied to each of the four hunting periods (A,B,C,D) in areas 14, 16, 18 and 22.

- A. Monday, April [22] 21—Friday, April [26] 25
- B. Monday, April [29] 28—Friday, May [3] 2
- C. Monday, May [6] 5—Friday, May [10] 9
- D. Monday, May [13] 12—Friday, May [17] 16

(l) (No change.)

(m) Location of Turkey Hunting Areas:

1.-7. (No change.)

8. Turkey Hunting Areas #8

That portion of Hunterdon and Warren Counties lying within a continuous line beginning at the Delaware River at Manunkachunk; then east along Rt. 46 to its intersection with Rt. 31; then south along Rt. 31 to its intersection with Rt. 12 at Flemington; then west along Rt. 12 to its intersection with the Delaware River at Frenchtown; then north along the east bank of the Delaware River to the point of beginning at Manunkachunk.

9. Turkey Hunting Area #9

That portion of Hunterdon, Warren and Morris Counties lying within a continuous line beginning at the intersection of Rts. 31 and 46 at Butzville; then east along Rt. 46 to its intersection with Rt. 80; then east along Rt. 80 to its intersection with Rt. 206; then south along Rt. 206 to its intersection with Rt. 287; then south along Rt. 287 to its intersection with Rt. 202; then south and west along Rt. 202 to its intersection with Rt. 31 at Flemington; then north along Rt. 31 to the point of beginning at Butzville.

[8.] 10. (No change in text.)

11. Turkey Hunting Area #16

That portion of Burlington and Atlantic Counties lying within a continuous line beginning at the intersection of Rts. 206 and 70 at Red Lion; then east along Rt. 70 to its intersection with Rt. 72; then southeast along Rt. 72 to its intersection with Rt. 563; then south along Rt. 563 to its intersection with the Mullica River; then east along the north bank of the Mullica River to its intersection with Rt. 542; then west along Rt. 542 to its intersection with Rt. 206; then north along Rt. 206 to the point of beginning.

12. Turkey Hunting Area #18

That portion of Atlantic, Cumberland and Cape May Counties lying within a continuous line beginning at the intersection of Rts. 206 and 542; then east along Rt. 542 to its intersection with the Mullica River; then east along the south bank of the Mullica River to Great Bay; then east along the south shore of Great Bay to the Atlantic Ocean; then south along the Atlantic Ocean to Sea Isle Boulevard (Rt. 625) in Sea Isle City; then west along Sea Isle Boulevard to its intersection with Rt. 9; then north along Rt. 9 to its intersection

[1984] 1986 SPRING TURKEY HUNTING SEASON PERMIT QUOTAS

Turkey Hunting Area Number	Weekly Permit Quota	Season Total	Portions of Counties Involved
1	100†	400	Sussex
2	120†	480	Sussex, Warren
3	80†	320	Sussex, Warren
4	100†	400	Sussex, Warren, Morris
5	100†	400	Sussex

with Rt. 50; then north along Rt. 50 to its intersection with Rt. 557; then north and west along Rt. 557 to its intersection with Rt. 552; then west along Rt. 552 to the 552 spur; then west along Rt. 552 spur to its intersection with Rt. 55; then north along Rt. 55 to its intersection with Lincoln Ave. (Rt. 655) in Vineland; then north along Lincoln Ave. to its intersection with Rt. 54 at Buena Vista; then north along Rt. 54 to the point of beginning.

[9.] 13. (No change in text.)

7:25-5.8 Mink (*Mustela vison*) and muskrat (*Ondatra zibethicus*) nutria (*Myocaster coypus*) trapping only

(a) (No change.)

(b) The duration of the mink, muskrat and nutria trapping season is as follows:

(1) Northern Zone: 6:00 a.m. on November 15, [1984] 1985 through March 15, [1985] 1986, inclusive, except on State Fish and Wildlife Management Areas.

(2) Southern Zone: 6:00 a.m. on December 1, [1984] 1985 through March 15, [1985] 1986, inclusive, except on State Fish and Wildlife Management Areas.

(3) (No change.)

(4) On State Fish and Wildlife Management Areas: 6:00 a.m. on January 1 through March 15, [1985] 1986 inclusive.

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

7:25-5.9 Beaver (*Castor canadensis*) trapping

(a) Beaver may only be taken by means of a trap approved by the Division of Fish, Game and Wildlife. [Steel leghold traps with a jaw spread greater than 8 inches are prohibited.]

(b) The duration of the trapping season for beaver shall be February 1 through February 28, 1985, inclusive.

(c) Special Permit: A special \$5.00 permit obtained from the Division of Fish, Game and Wildlife is required to trap beaver. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holder.) Applications must be received in the Trenton office during the period December 1, [1984] 1985-December 25, [1984] 1985. Applicants may apply for only one beaver trapping permit and must provide their [1984] 1985 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1-[9] 6, Zone 2-[7] 6, Zone 3-[3] 2, Zone 4-[3] 2, Zone 5-[3] 2, Zone 6-[3] 4, Zone 7-[3] 2, Zone 8-3, Zone 9-4, Zone 10-11, Zone 11-[4] 3, Zone 12-[6] 5, Zone 13-1, Zone 14-[4] 2, Zone 15-0. Total [64] 53. Successful applicants must provide their [1985] 1986 Trapping License Number to the Division before permit will be issued.

(d) (No change.)

(e) A "beaver transportation tag" provided by the Division must be affixed to each beaver taken immediately upon removal from trap, and all beaver must be taken to a designated beaver checking station at the times and dates specified on the beaver permit and in any case no later than March [9, 1985] 8, 1986.

(f)-(g) (No change.)

7:25-5.10 River otter (*Lutra canadensis*) Trapping

(a) (No change.)

(b) The duration for the trapping of otter shall be February 1 through February 28, [1985] 1986, inclusive.

(c) Special Permit: A special \$5.00 permit obtained from the Division of Fish, Game and Wildlife is required to trap otter. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders). Beaver permit holders will

be given first opportunity for otter permits in their respective zones. Applications must be received in the Trenton office during the period December 1, [1984] 1985-December 25, [1984] 1985. Only 1 application per person may be submitted for trapping otter and applicants must provide their [1984] 1985 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1-[6] 3, Zone 2-[3] 2, Zone 3-[4] 2, Zone 4-[5] 4, Zone 5-[5] 4, Zone 6-[6] 4, Zone 7-3, Zone 8-[7] 6, Zone 9-3, Zone 10-[7] 6, Zone 11-5, Zone 12-9, Zone 13-[14] 10, Zone 14-[7] 5, Zone 15-[10] 8. Total [94] 74. Successful applicants must provide their [1985] 1986 Trapping License Numbers to the Division before permit will be issued.

(d) (No change.)

(e) The "otter transportation tag" provided by the Division must be affixed to each otter taken immediately upon removal from the trap. All otter pelts and carcasses must be taken to a beaver-otter check station at dates specified on the otter permit, and in any case no later than March [9, 1985] 8, 1986, where a pelt tag will be affixed and the carcass surrendered.

(f)-(i) (No change.)

7:25-5.11 Raccoon (*Procyon lotor*), red fox (*Vulpes fulva*), gray fox (*Urocyon cinereoargenteus*) and Virginia opossum (*Didelphis virginiana*), Striped Skunk (*Mephitis mephitis*), Long-tail weasel (*Mustela frenata*), Short-tail Weasel (*Mustela erminea*), Coyote (*Canis latrans*) trapping only

(a) (No change.)

(b) The duration of the regular raccoon, red fox, gray fox, Virginia opossum, striped skunk, long-tail weasel, short-tail weasel and coyote trapping season shall be 6:00 a.m. on November 15, [1984] 1985 to March 15, [1985] 1986, inclusive, except on State Fish and Wildlife Management Areas.

(c) The duration for trapping on state fish and wildlife management areas shall be after 6:00 a.m. on January 1, through March 15, [1985] 1986, inclusive.

(d)-(h) (No change.)

7:25-5.12 General trapping

(a) [Except for traps set on posted private property by the owner or lessee thereof,] All traps set or used in this state must bear a metal tag with the name and address of the person setting, using and maintaining the traps.

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

(e) [No steel leghold trap having a jaw spread greater than six inches shall be used or set anywhere in this state, except for the trapping of beaver and otter. Jaw spread shall be measured across of a set trap to the outer edges of the jaws. No person shall set or tend a steel trap with teeth on the jaws anywhere in this State.] **The Woodstream TM Soft-catch Trap commonly called cushion hold trap in models known as the Coyote Soft-catch, the Fox Soft-catch and the Muskrat Soft-catch, with attached spring and chain, are permitted for trapping furbearers, except that the Coyote Soft-catch trap may only be used for the trapping of beaver and otter and no person shall use or set any soft-catch trap for the taking of any furbearers within the area described as that portion of Bergen, Passaic, Hudson, Essex, Union, Somerset, Middlesex, Monmouth and Ocean Counties lying within a continuous line beginning at the intersection of Rt. 202 and the New York State line, then south along Rt. 202 to its intersection with Rt. 23, then south along Rt. 23 to its intersection with Rt. 80, then west along Rt. 80 to its intersection with Rt. 287,**

then south along Rt. 287 to its intersection with the north bank of the Raritan River at South Bound Brook, then east along the north bank of the Raritan River to its intersection with Rt. 9, then south along Rt. 9 to its intersection with Rt. 34, then south along Rt. 34 to its intersection with the Garden State Parkway, then south along the Garden State Parkway to its intersection with Rt. 9 then south along Rt. 9 to its intersection with the northbank of Cedar Creek at Lanoka Harbor, then east along the northbank of Cedar Creek, then east across Barnegat Bay and Island Beach to Island Beach State Park and the Atlantic Ocean, then north along the Atlantic Ocean to the tip of the Sandy Hook Peninsula, then south along the Sandy Hook Peninsula to the Sandy Hook Bay, then along the Sandy Hook Bay Shore to the Raritan Bay shore, then north and west along the Raritan Bay shore to the Arthur Kill, then north along the N.J. side of the Arthur Kill to the Kill Van Kull, then east along the N.J. side of the Kill Van Kull to the West New York Bay, then north and east along the N.J. side of the West New York Bay, to Upper New York Bay and the Hudson River, then north along the west bank of the Hudson River to the New York State line, then west along the New York State line to Rt. 202 the point of beginning.

(f)-(j) (No change.)

7:25-5.13 Migratory birds

(a) Should any open season on migratory game birds, including waterfowl, be set by Federal regulation which would include the date of November [10, 1984] **9, 1985**, the starting time on such data will be 8:00 a.m. to coincide with the opening of the small game season on that date. However, this shall not preclude the hunting of migratory game birds, including waterfowl, on the tidal marshes of the state as regularly prescribed throughout the season by Federal regulations.

(b) (No change.)

(c) No person shall take, attempt to take, hunt for or have in possession, any migratory game birds including waterfowl, except at the time and in the manner prescribed by the code of Federal regulations of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, for the [1984-85] **1985-86** hunting seasons. The species of migratory game birds, including waterfowl, that may be taken or possessed and unless otherwise provided the daily bag limits shall be the same as those prescribed by the U.S. Department of the Interior, U.S. Fish and Wildlife Service for the [1984-85] **1985-86** hunting season.

(d)-(h) (No change.)

(i) **A special canvasback permit is required to hunt canvasback ducks during the prescribed special season established by Federal Regulations.**

Redesignate (i)-(j) as (j)-(l). (No change in text.)

[(l)] (m) No person shall take migratory game birds:

1.-8. (No change.)

9. By the aid of baiting, [(feeding the birds with corn, wheat, salt, etc.)] **attracting birds to an area by sowing or distributing any corn, wheat or other grain, salt or other feed** (except crows).

10. (No change.)

11. Before 8:00 a.m. on November [10] **9, [1984] 1985**. However this shall not preclude the hunting of migratory game birds on tidal waters or tidal marshes of the State.

12.-13. (No change.)

14. Except at the time and manner prescribed by the state or Federal regulation, or by the [1984-85] **1985-86** Game Code.

15.-19. (No change.)

[(m)] (n) Seasons and Bag Limits

1. Whistling swan (*Cygnusolor columbianus*), and dove (*Zenaida macroura*) are protected. There will be no open season on these birds during [1984-85] **1985-86**.

2. Rail and Gallinule

i. The duration of the season for hunting clapper rail (*Rallus longirostris*), Virginia rail (*Rallus limicola*), sora rail (*Porzana carolina*) and common gallinule (*Gallinula chloropus*) shall be September [1] **2** through November [9, 1984] **8, 1985** inclusive.

ii. (No change.)

3. Woodcock

i. North Zone: [The duration of the season for hunting woodcock (*Philohela minor*) in] That portion of the State situated north of Route 70 from Point Pleasant west to Camden [shall be October 6 through November 29, 1984].

ii. South Zone: [The duration of the season for hunting woodcock in] That portion of the state situated south of Route 70 from Point Pleasant west to Camden [shall be October 27 through December 1, 1984 inclusive and December 15 to January 2, 1985 including December 12, 13 & 14 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open].

[iii. Bag limits for woodcock: 5 daily; 10 possession.]

[iv.] iii. Hunting hours for woodcock are sunrise to sunset except on November [10] **9**, when the hunting hours are 8:00 a.m. to sunset.

[(n)] (o) (No change.)

7:25-5.14 (No change.)

7:25-5.15 Common crow (*Corvus brachyrhynchos*)

(a) Duration for the season for hunting the common crow shall be Monday, Thursday, Friday and Saturday from August [20, 1984] **19, 1985** through March [30, 1985] **29, 1986** inclusive, excluding December [3-8] **9-14** and December [12, 13 & 14, 1984] **18, 1985** in those deer management zones in which a special regular firearm deer season is authorized.

(b) (No change.)

(c) The hours for hunting crows shall be sunrise to 1/2 hour after sunset, except on November [10] **9** when the hours are 8:00 a.m. to 1/2 hour after sunset.

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

7:25-5.16 (No change.)

7:25-5.17 Raccoon (*Procyon lotor*) and Virginia opossum (*Didelphis virginiana*) hunting

(a) The duration for the season of hunting raccoons and Virginia opossum shall be one hour after sunset on October 1, [1984] **1985** to one hour before sunrise on March 1, [1985] **1986**. The hours for hunting shall be one hour after sunset to one hour before sunrise.

(b) (No change.)

(c) No person shall hunt for raccoon or opossum with dogs and firearms or weapons of any kind on December [3-8, 1984] **9-14** and on December [12, 13 & 14, 1984] **18 and 19, 1985** in those deer management zones in which a special shotgun deer season is authorized and including any extra special shotgun permit deer season day.

(d) No person shall train a raccoon or opossum dog other than during the period of September 1 to October 1, [1984] **1985** and from March 1 to May 1, [1985] **1986**. The training hours shall be one hour after sunset to one hour before sunrise.

(e) (No change.)

7:25-5.18 Woodchuck (*Marmota monax*) hunting

(a) Duration for the hunting of woodchucks with a rifle in this state shall be March [16] 15—September [28, 1985] 27, 1986. License hunters may also take woodchuck with shotgun or long bow and arrow or by means of falconry during the regular woodchuck rifle season and during the upland game season established in N.J.A.C. 7:25-5.3.

(b)-(f) (No change.)

7:25-5.19 Red fox (*Vulpes fulva*) and gray fox (*Urocyon cinereoargenteus*) hunting

(a) The duration of the red fox and gray fox hunting season is as follows:

1. Northern Zone: November [10, 1984] 9, 1985 through March 1, [1985] 1986 inclusive, excluding December [3-8] 9-14 and December [12, 13 & 14, 1984] 18 and 19, 1985 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra special shotgun permit deer season day if declared open.

2. Southern Zone: November [10, 1984] 9, 1985 through February [9, 1985] 8, 1986, excluding December [3-8 and] 9-14 [12, 13 & 14, 1984] 18 and 19, 1985 in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra special shotgun permit deer season day if declared open.

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

(d) The hours for hunting fox shall be 8:00 a.m. to 1/2 hour after sunset on November [10, 1984] 9, 1985 and other days sunrise to 1/2 hour after sunset.

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

7:25-5.20 Dogs

(a) There shall be no exercising or training of dogs on State Fish and Wildlife Management Areas May 1 to August 31, inclusive, except on portions of various wildlife management areas designated as dog training areas, and there shall be no exercising or training of dogs on any Wildlife Management Area on November [9] 8 and on Clinton, Flatbrook, Black River, Assunpink and Whittingham WMA's on the following Sundays: November [11] 10, [18] 17 and [25, 1984] 24, and December 1, 1985.

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

7:25-5.21 (No change.)

7:25-5.22 (No change.)

7:25-5.23 Firearms and missiles, etc.

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

(e) Within the areas described as portions of Passaic, Mercer, Hunterdon, Warren and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 513 and the New York State line; then south along Rt. 513 to its intersection with the Morris-Passaic County line; then west along the Morris-Passaic County line to the Sussex County line; then south along the Morris-Sussex County line to the Warren County line; then southwest along the Morris-Warren County line to the Hunterdon County line; then southeast along the Morris-Hunterdon County line to the Somerset County line; then south along the Somerset Hunterdon County line to its intersection with Route 202; then southwest along Rt. 202 to its intersection with Rt. 31; then south along Rt. 31 to its intersection with Rt. 546; then west along Rt. 546

to the Delaware River; then north along the east bank of the Delaware River to the New York State line; then east along the New York State line to the point of beginning at Lakeside; and in that portion of Salem, Gloucester, Camden, Burlington, Mercer, Monmouth, Ocean, Atlantic, Cape May and Cumberland counties lying within a continuous line beginning at the intersection of Rt. 295 and the Delaware River; then east along Rt. 295 to its intersection with the New Jersey Turnpike; then east along the New Jersey Turnpike to its intersection with Rt. 40; then east along Rt. 40 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Rt. 536; then east along Rt. 536 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 571; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Rt. 9 at Somers Point; then south along Rt. 9 to its intersection with Rt. 83; then west along Rt. 83 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Dennis Creek; then south along the west bank of Dennis Creek to its intersection with Delaware Bay; then northwest along the east shore of Delaware Bay and the Delaware River to the point of beginning; persons holding a valid and proper rifle permit in addition to their [1985] 1986 firearm hunting license may hunt for squirrels between January [21] 20 and February [9, 1985] 22, 1986 using a .36 caliber or smaller muzzleloading rifle loaded with a single projectile.

(f) Except as specifically provided below for waterfowl hunters, semi-wild and commercial preserves, muzzleloader deer hunters and trappers, from December [3-8] 9-14 inclusive, it shall be illegal to use any firearm of any kind other than a shotgun. Persons hunting deer shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with the [standard hollow base] lead or lead alloy rifled slug or [hollow base] slug shotgun shell only or a shotgun not smaller than 12 gauge nor larger than 10 gauge with the buckshot shell. It shall be illegal to have in possession any firearm missile except the 20, 16, 12 or 10 gauge [hollow base] lead or lead alloy rifled slug or hollow base slug shotgun shell or the 12 or 10 gauge buckshot shell. (This does not preclude a person legally engaged in hunting on semi-wild or commercial preserves for the species under license from being possessed solely of shotgun and nothing larger than No. 4 fine shot, nor a person engaged in hunting waterfowl only from being possessed solely of shotgun and nothing larger than No. 2 lead fine shot or BB steel shot. A legally licensed trapper possessing a valid rifle permit may possess and use a .22 rifle and short rimfire cartridge only while tending his trap line.)

1. Persons who are properly licensed may hunt for deer with a muzzleloading rifle during the [1984] 1985 six day firearm deer season and the special permit, muzzleloading rifle deer season.

2. (No change.)

3. Properly licensed persons 14 years of age and older engaged in hunting with a muzzleloading rifle must have in possession a proper and valid rifle permit. Properly licensed persons 14 years of age or older, hunting during the muzzleloading rifle deer season with a smooth bore muzzleloader must also have in possession a proper and valid rifle permit. Rifle permits for 14-17 year olds will be valid for muzzleloader deer hunting [only] and woodchuck hunting.

(g)-(o) (No change.)

7:25-5.24 Bow and arrow, general provisions

(a) A bow means longbow, recurved bow or compound bow that is hand held and hand drawn and that has no mechanical devices built into or attached to, that will enable the archer to lock the bow at full or partial draw. **Except as provided in N.J.A.C. 7:25-5.24(e) all draw locking and draw holding devices are prohibited and all crossbows or variations thereof are prohibited. Hand-held releasing devices are permitted.**

(b) No person shall use a bow and arrow for hunting, on December [12, 13 & 14, 1984] **18 & 19, 1985** in those deer management zones in which a special regular shotgun deer season is authorized or on any extra Special Permit Deer Season Day is declared open, or between 1/2 hour after sunset and 1/2 hour before sunrise during the Fall Bow and Arrow Deer Seasons or during the 6-Day Firearm Deer Season, or between 1/2 hour after sunset and sunrise during other seasons.

(c) During the Bow and Arrow Seasons for taking deer, September [29] **28**-November [9, 1984] **8, 1985** in most deer management zones; September [29] **28**-December [1, 1984] **7, 1985**, excluding November [24] **28**, in zones [13, 36, 49, 50 and 51] **2, 5, 6, 9, 13, 16, 17, 35, 36, 49, 50 and 51**; and, January [5-19, 1985] **4-18, 1986**, or any other time bow and arrow deer or turkey hunting is permitted, all arrows used for taking deer or turkey must be fitted with an edged head of the following specifications:

1.-5. (No change.)

(d) (No change.)

(e) **The Division may issue a Special Bow Use Permit to certain physically handicapped individuals which would allow these individuals as specified below in this subsection to hunt with a longbow, recurved bow or compound bow that has been modified such that it has a mechanical device built into or attached to, that will enable the archer to draw and lock the bow at full or partial draw. Crossbows are prohibited. Special Bow Use Permit applications will require certification by a physician licensed to practice medicine in the State of New Jersey and be subject to Division's review and ratification. For the purposes of this permit, a handicapped individual is defined as one who is incapable of using a bow due to a permanent disability resulting from the loss of, or loss of use of, one or both arms as a result of birth defect, injury or disease.**

[(e)] (f) (No change.)

7:25-5.25 White-tailed deer (*Odocoileus virginianus*) fall bow and arrow exclusively (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from September [29] **28**-November [9, 1984] **8, 1985** inclusive; except in zones [13, 36, 49, 50 and 51] **2, 5, 6, 9, 13, 16, 17, 35, 36, 49, 50 and 51** where the season shall be September [29] **28**-December [1, 1984] **7, 1985**, excluding November [22, 1984] **28, 1985**. Legal hunting hours shall be 1/2 hour before sunrise to 1/2 hour after sunset.

(b) Bag Limit: One deer of either sex. Kill must be tagged immediately with completely filled in "transportation tag" and must be transported to a deer checking station before 8:00 p.m. EST on day killed. Nothing contained herein shall preclude a person who has legally killed and reported a deer from then procuring one valid and proper permit which will allow this person to continue hunting and take one additional [legal] deer **of either sex** during the [1984] **1985** fall bow and arrow deer season. This permit shall not be valid on the day of issuance.

1. (No change.)

2. Deer taken during the period of November [10] **9**-December [1, 1984] **7, 1985**, in zones [13, 36, 49, 50 and 51] **2, 5, 6, 9, 13, 16, 17, 35, 36, 49, 50, 51** inclusive, must be transported to a designated deer checking station before 7:00 p.m. EST on the day killed.

(c) This season shall be open only to holders of a valid [1984] **1985** bow and arrow hunting license which contains an attached fall bow and arrow deer "transportation tag." If the anticipated harvest of deer has not been accomplished during this season, additional days of bow and arrow deer hunting may be authorized by the Director. Such authorization and dates thereof shall be announced by press and radio. **Handicapped individuals hunting with a modified bow must have a valid Special Bow use Permit on their person while hunting in addition to a valid Bow and Arrow Hunting License.**

(d) (No change.)

7:25-5.26 White-tailed deer (*Odocoileus virginianus*) winter bow and arrow, exclusively (either-sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from 1/2 hour before sunrise on January [5] **4** to 1/2 hour after sunset on January [19, 1985] **18, 1986**. Legal hunting hours shall be 1/2 hour before sunrise to 1/2 hour after sunset.

(b) Bag Limit: One deer of either sex. Deer must be tagged immediately with "transportation tag" appropriate for the season (special winter bow and arrow) completely filled in, and must be transported to a deer checking station before 7:00 p.m. EST on day killed. Any legally killed deer which is recovered too late to be brought to a check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement district headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possession tag." If the season has concluded, said deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag." Nothing contained herein shall preclude a person who has legally killed and reported a deer from then procuring one valid and proper permit which will allow this person to continue hunting and take one additional deer **of either sex** during the [1985] **1986** winter bow season. This permit shall not be valid on the day of issuance. [Only deer with antlers at least three inches in length may be taken under this permit (second tag) provision.]

(c) This season will be open only to holders of a valid [1985] **1986** bow and arrow hunting license which contains an attached winter bow season "transportation tag," in addition to the regular fall bow season "transportation tag." If the anticipated harvest of deer has not been accomplished during this season, additional days of special winter bow and arrow deer hunting may be authorized by the Director. Such authorization and dates thereof shall be announced by press and radio. **Handicapped individuals hunting with a modified bow must have a valid Special Bow Use Permit on their person while hunting in addition to a valid Bow and Arrow Hunting License.**

(d) (No change.)

7:25-5.27 White-tailed deer (*Odocoileus virginianus*) six day firearm

(a) Duration for this season will be December [3-8, 1984] **9-14, 1985** inclusive with shotgun or muzzleloading rifle, exclusively.

(b) Bag Limit: One deer, antlered only, except in those areas designated as "hunter's choice" indicated in subsection (d) below. One deer for the season, with antler at least three inches in length. Kill must be tagged immediately with completely filled in "transportation tag" and must be transported to a deer checking station before 7:00 p.m. EST on day killed. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement district headquarters. Said deer must be brought to a checking station on the next day to receive a legal "possession tag." If the season has concluded, said deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag." Nothing contained herein shall preclude a person who has legally killed and reported a deer from then procuring one valid and proper permit which will allow this person to continue hunting and take one additional, legal deer during the [1984] 1985 firearm deer season. This permit shall not be valid on the day of issuance.

(c) A person who has legally taken deer during the fall bow and arrow season can legally take an antlered deer with a shotgun or muzzleloading rifle during the interval of December [3-8, 1984] 9-14, 1985 if he possesses his valid firearm license[, but he may not take another deer with a bow]. If the anticipated harvest of deer has not been accomplished during this season, additional days of deer hunting may be authorized by the Director, with the approval of the Council. Such authorization and dates thereof shall be announced by press and radio.

(d) (No change.)

(e) Hunting Hours: December [3] 9-December [8, 1984] 14, 1985, inclusive, 7:00 a.m. EST to 5:00 p.m. EST, with shotgun or muzzleloading rifle.

(f)-(g) (No change.)

7:25-5.28 White-tailed deer (*Odocoileus virginianus*) special permit season, muzzleloading rifle, either sex

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

(c) One deer of either sex, and any age, may be taken with a special muzzleloading rifle deer permit. Nothing contained herein shall preclude a person who has legally killed and reported a deer from then procuring one valid and proper permit which will allow this person to continue hunting and take one additional deer of either sex during the [1984] 1985 special permit, muzzleloading rifle deer permit season. This permit shall not be valid on the day of issuance. [Only deer with antlers at least three inches in length may be taken under the special, second tag (permit) provision.] It is unlawful to attempt to take or hunt for more than the number of deer permitted.

(d) Duration of special deer permit season for muzzleloading rifles shall be from 7:00 a.m. EST to 5:00 p.m. EST on December [10, 11, 15 and 17-22, 1984] 16, 17, 20, 21, 23, 26, 27, 28 and 30, 1985 or any other time as determined by the Director.

(e) (No change.)

(f) Method: The taking of one deer of either sex with a muzzleloading rifle under a special deer permit for muzzleloading rifles, or a farmer deer permit for muzzleloading rifles in addition to legal antlered deer allowed under statewide six day firearm deer season and either-sex deer allowed under the statewide fall bow and arrow season and either-sex deer allowed during the winter bow season, will be permitted in designated deer management zones by holders of a special

deer permit for muzzleloading rifles and on their own property by holders of a farmer muzzleloading rifle deer permit.

1. Special deer permits for muzzleloading rifles will be issued on an individual basis to holders of valid [1984] 1985 firearm licenses. Only one application per person may be submitted for the special either sex deer seasons for muzzleloading rifle or shotgun. Special farmer muzzleloader deer permits will be issued on an individual basis to owners or lessee of farms who reside thereon or to the immediate members of their families 14 years of age or older who also reside thereon, upon receipt of a notarized application form.

(g) Special permits for muzzleloading rifles consist of back display which include a "special permit transportation tag" and a validated permit application stub. The back display portion of the permit will be conspicuously displayed on the outer clothing in addition to the valid firearm license. The validated application stub must be in the possession of permittee while hunting. The "Deer Transportation Tag" portion of the permit must be completely filled out, separated at the perforation and affixed to the deer immediately upon killing. This completely filled in "special permit transportation tag" allows legal transportation of the deer of either sex to an authorized checking station only. Personnel at the checking station will issue a "possession tag." Any permit holder killing a deer of either sex on December [10, 11, 15 and 17-22, 1984] 16, 17, 20, 21, 23, 26, 27, 28 and 30, 1985 must transport this deer to an authorized checking station by 7:00 p.m. EST on the day killed to secure the legal "possession tag." The possession of a deer of either sex after 7:00 p.m. EST on the day killed without a legal "possession tag" shall be deemed illegal possession. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement district headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possession tag." If the season has concluded said deer must be taken to a regular deer check station on the following weekday to receive a legal possession tag.

(h) Applying for a Special Muzzleloading Rifle Deer Permit:

1. Only holders of valid [1984] 1985 firearm hunting licenses may apply by detaching from their hunting license stub marked "Special Deer Season [1984] 1985" signing as provided on the back, and sending the stub, together with a Special Muzzleloading Rifle Deer Season computer card application form which has been properly completed in accordance with instructions. Application cards may be obtained from:

i.-iii. (No change.)

2. No [bow and arrow or] juvenile license holders are eligible.

3. (No change.)

4. Fill in the application form to include: Name, address, [1984] 1985 firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection by card sorting machine which are received in the Trenton office during the period of August [25] 24-September [10] 9, [1984] 1985 inclusive. Applications post-marked after the [13th] 10th will not be considered. DO NOT SEND FEE WITH THE APPLICATION. Selection of permittees will be made on the basis of a random selection of computer cards.

5. (No change.)

6. Successful applicants will be notified by mail. The computer card and the permit fee of \$10.00 in the form of a money order, made payable to "Division of Fish, Game and Wildlife" must be returned by mail before October 10, [1984] 1985. The Special Deer Permit will then be issued. Permits not claimed by October [11] 10 will be immediately reallocated in the same random manner as the original selection and be returnable two weeks thereafter.

(i) Applying for the Special Farmer Muzzleloading Rifle Deer Permit.

1.-2. (No change.)

3. Fill in the application form to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of September 1-17, [1984] 1985. There is no fee required, and all qualified applicants will receive a special farmer muzzleloading rifle deer permit, delivered by mail.

4. (No change.)

(j) (No change.)

(k) Deer Management Zone Map (on file at the Office of Administrative Law).

[1984] 1985 MUZZLELOADING RIFLE DEER SEASON PERMIT QUOTAS, EITHER SEX

Deer Mgt. Zone No.	Anticipated Deer Harvest		Permit Quota		Portions of Counties Involved
	[1984]	1985	[1984]	1985	
1	[56]	72	[400]	385	Sussex
2	[25]	48	[155]	340	Sussex
3	[28]	54	[280]	490	Sussex, Passaic, Bergen
4	[123]	151	[880]	975	Sussex, Warren
5	[129]	158	[860]	900	Sussex, Warren
6	[49]	73	[445]	440	Sussex, Morris, Passaic, Essex
7	[79]	125	[440]	545	Warren, Hunterdon
8	[211]	261	[1,240]	1245	Warren, Hunterdon, Morris, Somerset
9	[38]	77	[235]	280	Morris, Somerset
10	[160]	176	[725]	695	Warren, Hunterdon
11	[41]	68	[295]	385	Hunterdon
12	[139]	175	[730]	755	Mercer, Hunterdon, Somerset
13	[17]	22	[120]	125	Morris, Somerset
14	[37]	55	[365]	420	Mercer, Somerset, Middlesex, Burlington
15	[18]	39	[175]	220	Mercer, Monmouth, Middlesex
16	[25]	26	[250]	240	Ocean, Monmouth
17	[14]	25	[140]	165	Ocean, Monmouth, Burlington
18	[16]	19	[155]	170	Ocean
19	[11]	15	[105]	140	Camden, Burlington
20	[11]	13	[105]	115	Burlington
21	[30]	59	[300]	270	Burlington, Ocean
22	[5]	7	45		Burlington, Ocean
23	[34]	50	[340]	370	Burlington, Camden, Atlantic
24	[48]	51	[240]	255	Burlington, Ocean
25	[21]	33	[205]	300	Gloucester, Camden, Atlantic, Salem
26	[38]	58	[210]	250	Atlantic
27	[35]	43	[185]	230	Salem, Cumberland
28	[19]	24	[110]	135	Salem, Cumberland, Gloucester
29	[36]	51	[240]	325	Salem, Cumberland
30	[8]	15	[35]	55	Cumberland
31		2	[15]	20	Cumberland
32	[4]	3		20	Cumberland
33		12		85	Cape May, Atlantic
34	[30]	31	[185]	250	Cape May, Cumberland
35	[15]	18	[150]	120	Gloucester, Salem
41	[62]	76	[270]	285	Mercer, Hunterdon
42		4		35	Atlantic
43	[11]	8	[45]	75	Cumberland
44		2		15	Cumberland
45		15	[90]	140	Cumberland, Atlantic, Cape May
46	[14]	15		60	Atlantic

47		2		20	Atlantic, Cumberland, Gloucester
48	[8]	13	[80]	120	Burlington
49		0		0	Burlington, Camden, Gloucester
50	[5]	9	[50]	80	Middlesex, Monmouth
51	[10]	8	[100]	70	Monmouth, Ocean
Total	[1,699]	2,261	[11,180]	12,660	

(l) Muzzleloader, either-sex permits not applied for by September [10, 1984] 9, 1985 will be reallocated to shotgun either-sex season permit applicants.

(m) Authority: The authority for the adoption of the foregoing section is found in N.J.S.A. 23:3-56.2, 23:4-42, 23:4-43, 23:4-47, 23:4-48, and other applicable statutes.

7:25-5.29 White-tailed deer (Odocoileus virginianus) special permit season, shotgun only, either sex

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

(d) Duration of the special permit shotgun deer season shall be from 7:00 a.m. EST to 5:00 p.m. EST on Wednesday, December [12, 1984] 18, 1985 except that in Zones [2, 5, 6, 7, 8, 12, and 16] the special permit shotgun season will also include December 13, 1984; and, except that in Zones [9, 13, 14, 41, 50, and 51] 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 27, 29, 41, 50 and 51 the special permit shotgun season will also include December [13 and 14, 1984] 19, 1985; or at other times as determined by the Director.

(e) (No change.)

(f) Method: The taking of one deer of either sex with a shotgun under a special shotgun deer permit or a farmer shotgun deer permit, in addition to the legal antlered deer allowed under statewide antlered deer season and either-sex deer allowed under the statewide fall bow and arrow season and either-sex deer allowed during the winter bow season, will be permitted in designated deer management zones by holders of a special shotgun deer permit and on their own property by holders of a farmer shotgun deer permit.

1. Special shotgun deer permits will be issued on an individual basis to holders of valid [1984] 1985 firearm licenses. Only one application per person may be submitted for the special season whether as a farmer or a license holder. Farmer shotgun deer permits will be issued on an individual basis to owners or lessees of farms who reside thereon, or the immediate members of their families 10 years of age or older who also reside thereon, upon receipt of a notarized application form.

(g) (No change.)

(h) Applying for a Special Shotgun Deer Permit:

1. Only holders of valid [1984] 1985 firearm hunting licenses including juvenile firearm license holders may apply by detaching from their hunting license stub marked "Special Deer Season [1984] 1985" signing as provided on the back, and sending the stub, together with a computer card application form which has been properly completed in accordance with instructions. Application cards may be obtained from:

i.-iii. (No change.)

2.-3. (No change.)

4. Fill in the application form to include: Name, address, [1984] 1985 firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection by card sorting machine which are received in the Trenton office during the period of August [25] 24-September [10, 1984] 9, 1985. Applications postmarked after the 10th will not be considered. DO NOT SEND FEE WITH

PROPOSALS

Interested Persons see Inside Front Cover

ENVIRONMENTAL PROTECTION

THE APPLICATION. Selection of permittees will be made on the basis of a random selection of computer cards.

5. (No change.)

6. Successful applicants will be notified by mail. The computer card and the permit fee of \$10.00 in the form of a money order, made payable to "Division of Fish, Game and Wildlife" must be returned by mail no later than October [11, 1983] **10, 1985**. The Special Shotgun Deer Permit will then be issued. Permits not claimed by October [11th] **10th** will be immediately reallocated in the same random manner as the original selection and be returnable two weeks thereafter.

(i) Applying for the Special Farmer Shotgun Deer Permit 1.-2. (No change.)

3. Fill in the application form to include: Name, age, size of farm, address, and any other information requested thereon. **THIS APPLICATION MUST BE NOTARIZED**. Properly completed application forms will be accepted in the Trenton office only during the period of September 1-17, [1984] **1985**. There is no fee required, and all qualified applicants will receive a special farmer shotgun deer permit, delivered by mail.

4. (No change.)

(j) (No change.)

(k) Deer Management Zone Map (on file at the Office of Administrative Law.)

[1984] 1985 SHOTGUN DEER SEASON PERMIT QUOTAS, EITHER SEX

Deer Mgt. Zone No.	Anticipated Deer Harvest		Permit Quota		Portion of Counties Involved
	[1984]	1985	[1984]	1985	
1	[149]	156	[931]	1,040	Sussex
2†	[258]	276	[860]	1,296	Sussex
3	[38]	92	[380]	767	Sussex, Passaic, Bergen
4	[111]	200	[585]	1145	Sussex, Warren
5†	[1,025]	766	[2,770]	2,901	Sussex, Warren
6†	[201]	230	[1,150]	1,385	Sussex, Morris, Passaic, Essex
7†	[365]	312	[986]	1160	Warren, Hunterdon
8†	[1,076]	1,264	[2,624]	3,425	Warren, Hunterdon, Morris, Somerset
9††	[304]	239	[950]	1,021	Morris, Somerset
10†	[608]	654	[1,737]	1,786	Warren, Hunterdon
11†	[348]	435	[1,122]	1,151	Hunterdon
12†	[676]	577	[1,502]	2,098	Mercer, Hunterdon, Somerset
13††	[197]	147	[657]	794	Morris, Somerset
14††	[461]	426	[1,537]	1,684	Mercer, Somerset, Middlesex, Burlington
15	[107]	65	[713]	488	Mercer, Monmouth, Middlesex
16††	[63]	33	[630]	541	Ocean, Monmouth
17	[118]	107	[407]	482	Ocean, Monmouth, Burlington
18	[38]	45	[292]	378	Ocean
19	[31]	34	[172]	212	Camden, Burlington
20	[33]	30	[275]	286	Burlington
21	[17]	13	[131]	144	Burlington, Ocean
22	[15]	18	[136]	170	Burlington, Ocean
23	[15]	9	[125]	127	Burlington, Camden, Atlantic
24	[9]	19	[64]	142	Burlington, Ocean
25	[27]	32	[142]	281	Gloucester, Camden, Atlantic, Salem
26	[32]	7	[128]	53	Atlantic
27†	[74]	85	[296]	313	Salem, Cumberland
28†	[21]	20	[117]	156	Salem, Cumberland, Gloucester
29†	[202]	208	[594]	592	Salem, Cumberland
30	[18]	8	[72]	52	Cumberland
31	[9]	2	[90]	20	Cumberland
32	0	0	0	0	Cumberland
33	[30]	33	[167]	176	Cape May, Atlantic
34	[48]	30	[117]	109	Cape May, Cumberland
35	[53]	34	[212]	239	Gloucester, Salem
41†††	[541]	371	[751]	742	Mercer, Hunterdon
42	[10]	5	[67]	22	Atlantic
43	0	0	0	0	Cumberland

44	[10]	7	[42]	44	Cumberland
45	0	0	0		Cumberland, Atlantic, Cape May
46	[21]	13	[75]	84	Atlantic
47	[12]	5	[48]	48	Atlantic, Cumberland, Gloucester
48	[35]	41	[218]	229	Burlington
49	0	0	0		Burlington, Camden, Gloucester
50†††	[57]	27	[285]	270	Middlesex, Monmouth
51†††	[52]	47	[260]	470	Monmouth, Ocean
Total	[7,515]	7,122	[24,417]	28,523	

† Indicates two day zones (December [12 and 13, 1984] **18 and 19, 1985**) with provision for second deer tag.

†† Indicates three day zones (December 12, 13, and 14, 1984) with provision for second deer tag.]

(l) Shotgun, either-sex permits not applied for by September [10] **9, [1984] 1985** will be reallocated to muzzleloading rifle, permit applicants.

(m) (No change.)

(n) Locations of Deer Management Zones (No change.)

ZONE #1 to ZONE #51. (No change.)

7:25-5.30 White-tailed deer (*Odocoileus virginianus*) special permit, firearms only, either-sex, Great Swamp

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

(c) Duration of the Great Swamp Special Permit Season shall be from 7:00 a.m. EST to 5:00 p.m. EST on the following dates: [December 6, 7, 8, 1984 and January 17, 18, 19, 1985] **December 12, 13, 14, 19, 20 and 21, 1985** or as may otherwise be designated by the U.S. Fish and Wildlife Service.

(d) Bag Limit: [Two] **Three** deer of either sex, any age, may be taken with a Great Swamp Special Deer Permit. Only one deer may be taken in a given day. [This shall not preclude the taking of a third deer in that portion of Great Swamp designated as the Wilderness Area.] **The third deer must be taken in that portion of the Great Swamp designated as the Wilderness Area.**

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

(g) Procedures for applying for a Great Swamp Special Deer Permit will be the same as outlined for the Special Deer Permit (see N.J.A.C. 7:25-5.25(h)), with the exception that applicants for a Great Swamp Special Deer Permit must indicate Zone 38 on the application card in the space reserved for deer management zone number [and juvenile hunters are not eligible for a permit for Great Swamp].

(h)-(i) (No change.)

7:25-5.31 (No change.)

7:25-5.32 Pheasant and quail stamp designated areas

(a) Designated wildlife management areas where the special "pheasant and quail" stamp is required.

1. (No change.)

2. Designated wildlife management areas:

- Assunpink
- Berkshire Valley
- Black River
- Clinton
- Colliers Mills
- Dix
- Flatbrook-Roy
- Glassboro
- Greenwood (including Pasadena-Howardsville)

[Hainesville]
 [Heislerville]
 Mad Horse
 Manahawkin
 Medford
 Bevan-Cedarville (Millville)
 Nantuxent
 Peaslee
 Pt. Republic
 Stafford Forge
 MacNamara (Tuckahoe-Corbin City)
 [Turkey Swamp]
 Walpack
 White Bog
 Winslow
 Whittingham
Pequest
Stokes State forest
Fort Dix
Manasquan River Reservoir
Delaware Water Gap Nat'l Recreation Area
 3. (No change.)

- 7:25-5.33 Controlled hunting wildlife management Areas
 - (a) No wildlife management areas have been selected for limited hunter density for the [1984-85] **1985-86** season.
 - (b) (No change.)
- 7:25-5.34 (No change.)
- 7:25-5.35 (No change.)
- 7:25-5.36 (No change.)
- 7:25-5.37 (No change.)

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries

**Proposed Readoption with Amendments:
 N.J.A.C. 7:25-18**

Authority: N.J.S.A. 23:2B-6 and N.J.S.A. 23:2B-14.
 DEP Docket No.: 021-85-04.
 Proposal Number: PRN 1985-286.

Public hearings concerning the proposed readoptions will be held on:

June 6, 1985 at 6:30 P.M.
 Cape May County Extension Office
 Dennisville Road
 Route 657
 Cape May Court House, N.J.

June 10, 1985 at 6:30 P.M.
 Brookdale College
 Room COM 001
 765 Newmans Springs Road
 Lincroft, N.J.

Submit comments by June 19, 1985 to:
 Paul Hamer, Chief
 Bureau of Marine Fisheries
 Department of Environmental Protection
 Nacote Creek Research Station
 Star Route
 Absecon, N.J. 08201

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order 66(1978), the Department of Environmental Protection proposes to readopt N.J.A.C. 7:25-18 concerning marine fisheries. The entire subchapter shall expire on September 17, 1985. The proposed readoption is necessary to continue in full force and effect these Marine Fisheries Administration rules.

A **summary** of the text of each section in N.J.A.C. 7:25-18 follows:

N.J.A.C. 7:25-18.1, size limits, sets minimum lengths for the purchase or sale of fluke, codfish, bluefish, weakfish, sea bass, kingfish, blackfish, mackerel, porgy and winter flounder.

N.J.A.C. 7:25-18.2, fishpound nets, sets limits or net mesh size and proximity to adjacent fishpound nets.

N.J.A.C. 7:25-18.3, net identification tags, provides for the proper use of State-supplied identification tags.

N.J.A.C. 7:25-18.4, spearfishing, defines and authorizes spearfishing in the marine waters of the State.

N.J.A.C. 7:25-18.5, general net regulations, sets license fees and governs the use of various net types. (This section was adopted by emergency procedures. See Adoptions, this issue.)

The proposed amendments to N.J.A.C. 7:25-18.1 would discontinue the five percent tolerance of fish below the minimum stated size limits to be purchased, sold, offered for sale or exposed for sale. The amendment would establish a minimum size limit of 12 inches on summer flounder for the recreational fishery and increase that minimum size by one inch annually until a size of 14 inches is reached. In addition, a penalty schedule for specific violations of N.J.A.C. 7:25-18.1 is established by the commissioner under the provisions of N.J.S.A. 23:2B-14.

Social Impact

Readoption of this subchapter will have a minimal social impact upon the public. It is anticipated that the readoption of this subchapter with the aforementioned amendments will permit the continued management of the marine fisheries resource to permit continued enjoyment thereof by affected commercial and recreational interests. The major social impact of the proposed amendments will be upon the recreational fishery. Recreational fishermen will have to release all summer flounder, also known as fluke, less than 12 inches in length upon adoption of this rule. Surveys conducted in 1981,

1982, and 1983 indicate that from 6 to 31 percent of the summer flounder landed over this time period were less than the 12 inch limit. As the season progresses and the fish increase in size due to growth, the number of fish caught that are below 12 inches decreases. This rule will become effective in the middle of the fishing season and the immediate effect will, therefore, be substantially reduced. Increasing the size limit annually beyond 12 inches will have very little additional effect because growth studies have shown that summer flounder grow substantially faster than the one-inch-per-year increment. The release of undersized fish will have an overall beneficial social impact on recreational fishermen because the average size and total poundage available for harvest will have increased.

Economic Impact

The readoption of this subchapter will have a minimal economic impact on the public. It is anticipated that the readoption of this subchapter with the aforementioned amendments will further management objectives permitting continued exploitation of the marine fisheries resource, thereby economically benefitting both recreational and commercial fisheries interests. There may be some short-term economic loss to the charter and party boat industry and the boat rental businesses as a result of the proposed amendments, but this loss should be relatively limited because of the anticipated mid-season implementation date of July 15, 1985. This same segment of the recreational industry will, in turn, experience long-term economic benefits from the increased business generated by an increase in the overall harvest and quality of summer flounder available.

The proposed amendments may have a small adverse economic impact on the commercial fishery from discontinuing the sale of the five percent of the harvest that is below the legal-size limit. This loss should be significantly less than five percent of the generated income of the commercial fisherman because the five percent tolerance is a maximum limit and the fact that smaller, sub-legal-sized fish are much less valuable on a pound for pound basis. The elimination of the five percent tolerance will also make enforcement of the size limits much more effective thereby benefitting both the recreational and commercial fishery.

The commercial fishery may benefit somewhat from the recreational size limit on summer flounder established by the proposed amendments. At the present time, the recreational fishery has an advantage over the commercial fishery in that a significant portion of their harvest is below the size limit allowed the commercial fishery. After January 1, 1987, both the commercial and recreational fisheries will have a 14-inch possession limit and will, therefore, be on a more equitable basis.

Environmental Impact

The continuation of regulatory provisions as provided for in the readoption will permit continued effective conservation and management of the affected marine resource, thereby continuing its contribution to the marine ecosystem. There will be a positive environmental impact on the summer flounder stocks when these amendments take effect. By instituting a minimum legal size limit, the reproductive capacity of the population is maintained by allowing a larger percentage of the fish to spawn at least once prior to entering the fishery.

When the size limit reaches 14 inches, approximately 65 percent of the females and 95 percent of the males will have reached sexual maturity prior to entering the fishery. By increasing the number of fish in the spawning population, the opportunity for summer flounder to increase year class strength on a continuing basis is enhanced.

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

7:25-18.1 Size limits

(a) No person shall purchase, sell, offer for sale or expose for sale any sea sturgeon measuring less than 42 inches in length [No person shall purchase, sell, or offer to sell or expose for sale any quantity of fish, where more than five percent of the], summer flounder, commonly called fluke, measur[e]ing less than 14 inches in length, [more than five percent of the] codfish measur[e]ing less than 12 inches in length, [more than five percent of the] bluefish or weakfish measur[e]ing less than nine inches in length, [more than five percent of the] sea bass or kingfish measur[e]ing less than eight inches in length, [more than five percent of the] blackfish, mackerel, or porgy measur[e]ing less than seven inches in length or [more than five percent of the] winter flounder measur[e]ing less than six inches in length.

(b) **No person shall take from the marine waters of the State or have in his possession any summer flounder, commonly called fluke, under 12 inches in length from the effective date of this regulation through December 31, 1985, under 13 inches in length from January 1, 1986 through December 31, 1986 and under 14 inches in length after December 31, 1986.**

(c) **Any person violating the provisions of this section shall be liable to a penalty of \$20.00 for each fish taken or possessed for the first offense and \$40.00 for each fish taken or possessed for each subsequent offense.**

(d) **Pursuant to N.J.S.A. 23:10-21 and -21.1 any gear used in the violation of the provisions of this subchapter may be seized and forfeited to the Division of Fish, Game and Wildlife.**

7:25-18.2 Fishpound nets

(No change.)

7:25-18.3 Net identification tags

(No change.)

7:25-18.4 Spear fishing

(No change.)

7:25-18.5 General net regulations

(No change.)

HEALTH

Proposals numbered PRN 1985-270, 271, 272, 273, 274 and 275 are authorized by J. Richard Goldstein, M.D., Commissioner, Department of Health; with the approval of the Health Care Administration Board.

(a)

CERTIFICATE OF NEED PROGRAM

Certificate of Need Application and Review Process

Proposed Repeal: N.J.A.C. 8:33 Proposed New Rule: N.J.A.C. 8:33

Authority: N.J.S.A. 26:2H-1 et seq.
Proposed Number: PRN 1985-270.

A **public hearing** concerning this proposal will be held on Thursday July 11, 1985 at 1:30 P.M. at the following location:

Richard J. Hughes Justice Complex
Conference Room C, 4th Floor
Court Cube Building
Market and South Warren Streets
Trenton, NJ 08625

Submit comments by July 17, 1985 to:

Susan Hendrickson, Esq.
Chief, Certificate of Need Program
New Jersey State Department of Health
Room 604
CN 360
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In 1971, the Department of Health was granted the authority pursuant to N.J.S.A. 26:2H-1 et seq. to have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and related health care services, health care facility cost containment programs and all public and private institutions whether State, county, municipal, incorporated or not incorporated serving principally as nursing or maternity homes, residential health care facilities, or as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition(s).

Pursuant to these statutes the Department promulgated regulations specifically for the Certificate of Need application and review process in order to clarify and execute the intent of these laws. In brief, N.J.A.C. 8:33 defines the scope of the regulations, establishes guidelines and criteria for the submission of applications for Certificate of Need, and assigns fees based on the category of facility.

These rules are in conformance with Title XV of the Public Health Service Act enacted by the Health Planning and Resource Development Amendments of 1979 (P.L. 96-79).

Prior to this notice for repeal in its entirety of N.J.A.C. 8:33 and the adoption of this proposed new N.J.A.C. 8:33, the agency conducted an internal review of the entire chapter. During this review the agency determined that the existing

rules required significant revision. Because the necessary revisions were so extensive, it was decided to delete the entire current rule and replace it with a new Chapter 33 (N.J.A.C. 8:33).

Under the Administrative Procedures Act a 30 day comment period is required. However, because of the complexity of this proposal, the comment period will be extended to 60 days and will end on July 17, 1985.

The proposed new rules were reviewed in their entirety by the Statewide Health Coordinating Council and the Health Care Administration Board. They are necessary to further clarify the intent of N.J.S.A. 26:2H-1 et seq. and N.J.S.A. 26:2H-8, and to clearly define and refine public policy and the various Certificate of Need process requirements. The proposed new rule will also establish policy on several procedural actions (for example, deferral of Certificate of Need applications) which the applicant, the Department, and Statewide Health Coordinating Council, and/or the Health Systems Agency may take.

The proposed new rule is also necessary in order to ensure the equitable treatment of all applications, and to enable the review process to become a more effective tool for implementing the State Health Plan and other State policies and State regional planning regulations as well as to improve the effectiveness and efficiency of the entire Certificate of Need process.

The proposed new rules add several statements of public policy: An approved Certificate of Need cannot be sold or otherwise transferred (see N.J.A.C. 8:33-1.3(o)). Approved applicants must file periodic progress reports on the implementation of conditions placed on Certificate of Need approvals (see N.J.A.C. 8:33-1.3(q)). Conditions placed on an approval become part of the licensure requirements of the approved facility (see N.J.A.C. 8:33-1.3(r)). Certificate of need applications from applicants with existing major violations of licensure standards will not receive approvals except if the application is to correct these violations (see N.J.A.C. 8:33-1.3(s)). The review will include a consideration of both the capital and operating costs, usually until one year beyond break-even (see N.J.A.C. 8:33-1.3(t)); and a section which requires that applicants must own the site of the proposed facility or service or have a purchase or lease option for the site of the proposed facility or service (see N.J.A.C. 8:33-1.3(u)).

Moreover, the proposed new rules raise the monetary thresholds applied to applications for Certificate of Need (see N.J.A.C. 8:33-1.4). They change the deadline date for application submission from the last day of the month to the first day of the month. Additional services that will be batched are Home Health Services, Surgical Facilities and Services, Emergency Transport Services, and Ambulatory Care Services (see N.J.A.C. 8:33-1.5). Moreover, the proposed new rules clarify the access criteria that must be addressed by each applicant (see N.J.A.C. 8:33-2.1); and require a two phase application process for hospital construction projects costing 10 million dollars or more (see N.J.A.C. 8:33-1.5 and 2.7). The rules require a Transfer of Ownership application whenever there is any proposed transfer of stock or capital interest and add a section which allows the Department to approve a transfer of ownership of an approved certificate under certain specific conditions (see N.J.A.C. 8:33-2.10). Moreover, the proposed new rules clarify the extension of time rules and specify the requirements for obtaining such extensions (see N.J.A.C. 8:33-2.14), and expand the financial criteria, particularly the equity contribution (see N.J.A.C. 8:33-2.15). They further

delineate the responsibilities of health systems agencies in reviewing Certificate of Need applications (see N.J.A.C. 8:33-3.9), and define procedures and limitations for modifying applications that have been submitted (see N.J.A.C. 8:33-3.10). The proposed new rules define the process for the deferral of applications (see N.J.A.C. 8:33-3.11). Moreover, they outline review criteria for a proposed transfer of services from an acute care hospital (see N.J.A.C. 8:33-4.2(c)), and add a new section delineating review criteria for the optional replacement of equipment (see N.J.A.C. 8:33-4.4). Finally, the proposed new rules add a new section delineating review criteria for the architectural and cost review of hospital construction/modernization/renovation projects (see N.J.A.C. 8:33-4.15).

Social Impact

N.J.S.A. 26:2H-1 recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs"

New Jersey's Certificate of Need program has been in operation since 1971 when the Health Care Facilities Planning Act was passed. The Certificate of Need Drafting Subcommittee of the Statewide Health Coordinating Council met throughout 1984 and the first months of 1985. The subcommittee concluded that "New Jersey has been successful in meeting the intent of the legislation." However, the members also found that "with the introduction of new technologies, increased competition for limited resources, and perceived inconsistencies in the processing of applications, it has become apparent that certain aspects of the review process need to be strengthened, clarified, or eliminated."

The intent of this new Chapter 33 is to address the spirit and intent of the 1971 Health Care Facilities Planning Act, as amended, by maintaining a Certificate of Need Program that promotes quality, cost-effective, and accessible services. These rules also implement the recommendations of the subcommittee and ensure that all applications are treated equitably; that the rules are more clearly written to ensure that better recommendations are received by the Department from all participants in the review process; that the review process become a more effective tool for implementing State plans, policies, and planning regulations; and to improve efficiency by streamlining various aspects of the review process. In this way, the Certificate of Need process can continue to help ensure that all citizens of the State have access to quality, cost-effective health services and facilities.

Economic Impact

These rules are proposed to implement the provisions of State and Federal laws to provide for the protection and promotion of the health of the residents of the State, promote the financial solvency of hospitals and similar health care facilities, and contain the rising cost of health care services.

The proposal significantly and realistically increases the various monetary thresholds which determine whether or not a Certificate of Need application is necessary. This will serve

to relieve health care facilities of the requirement and economic burden of filing applications for relatively minor, low-cost projects.

The requirement in the proposal for the process to review the total cost of a proposed project and not just the capital cost will serve to contain unnecessary increases in health care costs by ensuring that the project, including its entire financial component, is a cost-effective way to meet a demonstrated need.

Full text of the proposed new rule follows.

**CHAPTER 33
CERTIFICATE OF NEED: APPLICATION AND
REVIEW PROCESS**

SUBCHAPTER 1. GENERAL PROVISIONS

FOREWORD

The purpose of these rules is to identify procedures and policies for conducting Certificate of Need activities pursuant to N.J.S.A. 26:2H-1 et seq. (1971 Health Facilities Planning Act), Public Law 92-603 (Section 1122 of the Social Security Act), Public Law 93-641 (The National Health Planning Resources Development Act of 1974), and the Health Planning and Resources Development Amendments of 1979 (Public Law 96-79). These rules may be amended as necessary to best implement the provisions of the State and Federal laws and to reflect changing economic and systemic conditions within the health care system.

Health Care Facilities, as defined by the above referenced statutes and laws, and described within these rules should direct all inquiries regarding Certificate of Need to:

Certificate of Need Program
New Jersey State Department of Health
CN 360
Health-Agriculture Building
John Fitch Plaza
Trenton, New Jersey 08625
(609) 292-6552

In addition, before filing an application, applicants are also encouraged to contact the Health Systems Agency in the proposed service area to examine the relationship of the proposed project with the agency's plans, guidelines, and criteria. Applicants should refer to Exhibits 1 and 2 for information and assistance in determining how their proposed service area relates to the appropriate Health Systems Agencies. If the proposed service area overlaps more than one planning area, the applicant should work with each of the applicable agencies.

8:33-1.1 Introduction

(a) All inquiries regarding Certificate of Need policy and/or process, or the particular application of Certificate of Need regulations to a proposed service or facility, shall be directed in writing to the Certificate of Need Program of the State Department of Health.

(b) If a Certificate of Need is determined to be required, the facility or service representative shall be provided with the appropriate application forms and instructions for properly completing such forms by the Certificate of Need Program.

(c) These rules supersede the previously published regulations "Guidelines and Criteria for Submission of Applications For Certificate of Need" effective August 6, 1981.

8:33-1.2 Filing fees

(a) Below is the schedule of fees required when submitting applications for a Certificate of Need. Fees must be paid in full at the time applications are filed with the Certificate of Need Program. Certified checks, cashiers' checks or money orders must be made payable to Treasurer, State of New Jersey. No cash or personal checks will be accepted.

Facility Category	Fee Required
Hospitals	\$1,000
Nursing Homes	1,000
Residential Health Care Facilities	500
All other Health Care Facilities (for example group homes for the mentally retarded, halfway houses, other homes for the care of those with special health problems)	500

(b) Projects as noted in N.J.A.C. 8:33-4 which require administrative review shall file, in accordance with the above procedure, the appropriate fee designated for the type of facility or service involved:

Hospitals	\$ 500
Nursing Homes	500
All Other Health Care Facilities	250

8:33-1.3 General statements of public policy

(a) It is the public policy of the State that hospital and related health care services of the highest quality, of demonstrated need, efficiently provided, properly utilized, and at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health has been designated as the sole agency in this state for comprehensive health planning under the "National Health Planning and Resources Development Act of 1974" (Federal Law 93-641), as amended and supplemented. In this role the Department shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and related health care services planning, health care facility cost containment programs, as well as planning with all public and private institutions whether State, County, municipal, incorporated or not incorporated, serving principally as nursing or maternity homes, residential health care facilities, or as facilities for the prevention, diagnosis, or treatment of human disease, pain, injury, deformity or physical condition(s). All such institutions shall be subject to the provisions established.

(b) The Commissioner, to implement the provisions and purposes stated above, shall have the power to inquire into the accessibility to and availability of health care services and the operation of health care facilities and to conduct periodic inspections of such facilities with respect to the fitness and adequacy of the premises, equipment, personnel, rules and bylaws and the adequacy of financial resources and sources of future revenues.

(c) No health care facility shall be constructed or expanded, and no new health care services shall be instituted except upon application for and receipt of a Certificate of Need.

(d) No agency of the State or of any county or municipal government shall approve any grant of funds for, or issue any

license to, a health care facility which is constructed or expanded, or which institutes a new health care service, in violation of established policy.

(e) No final arrangement or commitment for financing the development of a proposed Certificate of Need project shall be made unless a Certificate of Need has been granted.

(f) No Certificate of Need shall be issued unless the action proposed in the application for such certificate is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, and will contribute to the orderly development of adequate and effective health care services. In making such determinations there shall be taken into consideration the availability of facilities or services which serve as alternatives or substitutes, the need for special equipment and services in the area, the possible economies and improvement in services to be anticipated from the operation of joint central services, the adequacy of financial resources and sources of present and future revenues, the availability of sufficient manpower in the several professional disciplines, the accessibility to and availability of health care services to low income persons, and such other factors as may be established by regulation. The Commissioner shall cause appropriate surveys and studies to be made concerning the need for health care facilities and keep current records and statistics thereon by designated areas or regions of the State.

(g) Recommendations concerning Certificate of Need shall be governed and based upon the principles and considerations set forth in these rules or applicable state policy.

(h) In case of an application by a health care facility established or operated by any recognized religious body or denomination, the needs of the members of such religious body or denomination for care and treatment in accordance with their religious or ethical convictions may be considered to be public need.

(i) The Commissioner shall establish minimum requirements and the needs for health care facilities in each area or region of the State, taking into consideration the recommendations of the Health Systems Agencies and the Statewide Health Coordinating Council. Such requirements and needs are specified in detail in Department of Health Planning Regulations adopted pursuant to N.J.S.A. 26:2H-1 et seq. and the New Jersey State Health Plan and State Medical Facilities Plan which are the standards, guidelines and criteria for the review of Certificate of Need applications. However, in every case, it is the responsibility of the applicant to adequately and appropriately demonstrate the need for the proposed project. It is not incumbent upon the review process to demonstrate lack of need. All applications shall be reviewed for conformance with the regulations which are in effect at the time the application is accepted for processing.

(j) Application for a Certificate of Need shall be made to the Department and shall be in such form and contain such information as the department may prescribe. The Department shall charge a non-returnable fee for the filing of an application for a Certificate of Need. The fee will be established by regulation. Application forms are available from the Certificate of Need Program.

(k) Using the documents stated at N.J.A.C. 8:33-1.3(i), as well as other applicable criteria, the Health Systems Agencies and the Statewide Health Coordinating Council shall provide full consideration of each application submitted to them and shall develop recommendations thereon. Such recommendations, whether favorable or unfavorable, shall be forwarded to the Commissioner within 90 days of the date the applica-

tion was accepted for processing by the Department of Health.

(l) Certificates of Need shall be issued by the Commissioner based upon criteria and standards established by the Commissioner.

(m) Pursuant to N.J.S.A. 26:2H-9, no such Certificate shall be denied without the approval of the Health Care Administration Board. If the Commissioner's decision is contrary to the recommendation of the Statewide Health Coordinating Council, the Health Systems Agency or the applicant, that body shall be granted the opportunity of a fair hearing. The Commissioner or his designee shall furnish the board in writing his recommendations with supporting reasons. Any applicant who has a Certificate of Need in any appeal or hearing status may not file a similar Certificate of Need application in the same county while such appeal or hearing is under consideration.

(n) Requests for a fair hearing are discussed in N.J.A.C. 8:33-3.6(g).

(o) The sale of approved Certificates of Need is prohibited. Ownership of approved Certificates may be transferred only under the conditions identified at N.J.A.C. 8:33-2.10(e). The ownership of an existing licensed health care facility, beds, services, or equipment is transferable as described at N.J.A.C. 8:33-2.10.

(p) A Certificate of Need shall be valid for one year from the date of issue. An extension of the certificate may be considered pursuant to criteria defined at N.J.A.C. 8:33-2.14(a)1 and 2.

(q) All approved projects shall be monitored by the Department of Health and other appropriate agencies to assure compliance with stated policies, all standards (including appropriate construction codes), the approved application's contents, approved costs, and all conditions of approval. Whenever conditions are attached to an approved application, the applicant must file a progress report on meeting such conditions with the Certificate of Need Program annually for the first two years of the project commencing with the receipt of a license. The Department of Health may require additional reports if they deem these reports to be necessary.

(r) Any conditions placed on a Certificate of Need approval shall become part of the licensure requirements for that approved facility. Failure to comply with approved Certificate of Need conditions or reporting requirements may result in licensure or rate action by the Department and may be considered by the Department when reviewing subsequent Certificate of Need applications.

(s) No Certificate of Need application will be approved from any applicants with existing major violations of licensure standards, as determined by the Department, including but not limited to conditions which threaten the life and safety of patients or employees. An exception will be in the case of applications submitted for the purpose of correcting recognized major licensure deficiencies. An exception to this provision may also be granted for applications submitted for the closure or substantial reduction of underutilized beds, services, or equipment.

(t) The Certificate of Need review process shall consider the fully proposed capital cost, including financing and carrying costs, of any proposed service, facility, or equipment and the operating costs and revenues, generally to one year beyond the break-even point.

(u) No Certificate of Need applications shall be accepted for processing unless the applicant documents in the application that he owns the site where the facility, service, or equip-

ment will be located, or has an ownership or lease option for such site which is valid at least through the Certificate of Need processing period.

(v) 100 percent of the ownership of the proposed facility, service or equipment must be accounted for in the Certificate of Need application. Each and every principal involved in the proposal must be identified along with the percentage of his or her interest. If the principals are a corporation, each and every stockholder holding 10 percent or more interest in the corporation also must be identified.

(w) The operator of the proposed facility, service, or equipment must file and sign the application. In the case of transfer of ownership the current owner must file and sign a supplement to the application.

(x) Any health care facility which has closed or substantially ceased operation of any of its beds, facilities, services, or equipment for a period of 18 months or longer shall require a Certificate of Need before reopening such beds, facilities, services, or equipment.

8:33-1.4 Thresholds

(a) The monetary thresholds applied to applications for Certificate of Need review include:

1. Acquisition of major moveable equipment	\$400,000
2. Modernization/renovation/construction:	
i. Hospitals	\$600,000
ii. Long-term care facilities	\$600,000
iii. All other health care facilities	\$600,000

3. Any modernization/renovation/construction project below the thresholds noted at N.J.A.C. 8:33-1.4(a)2 does not require a Certificate of Need and will not be accepted for processing unless they include any activity noted at N.J.A.C. 8:33-1.4(b)1.-7.

(b) The following activities require a Certificate of Need regardless of the amount of capital or operating cost involved:

1. Initiation of any new health care service (except as modified in Exhibit 3B for component services that do not exceed the monetary thresholds identified at N.J.A.C. 8:33-1.4(a)).
2. Regionalized services which are identified in Department of Health planning regulations.
3. Bed additions, reductions, or conversions.
4. Expansion or relocation of a facility, service, or equipment to an area that substantially changes the patterns of usage for such facility, service, or equipment.
5. Termination or substantial reduction of any service which required or would require a Certificate of Need to initiate.
6. Transfer of any hospital patient care service from one corporate entity to another.
7. Transfers of ownership.

(c) See N.J.A.C. 8:33-2.4-2.9 for additional thresholds and further detail on the thresholds noted at N.J.A.C. 8:33-1.4(a) and (b).

8:33-1.5 Batching cycles and deadlines dates

(a) There shall be 12 review cycles for non-batched Certificate of Need applications in a year. The beginning of each cycle shall be the fifteenth day of each month and a decision should be rendered by the Commissioner of Health approximately three months after the beginning of the review process.

(b) Deadlines for initial submission of applications shall be no later than the first day of the month preceding the beginning of a review cycle.

(c) The Calendar for the non-batched Certificate of Need review process follows:

Deadline for Initial Submission		Cycle Begins		Commissioner's Decision Due	
December	1	January	15	April	15
January	1	February	15	May	15
February	1	March	15	June	15
March	1	April	15	July	15
April	1	May	15	August	15
May	1	June	15	September	15
June	1	July	15	October	15
July	1	August	15	November	15
August	1	September	15	December	15
September	1	October	15	January	15
October	1	November	15	February	15
November	1	December	15	March	15

(d) Batching cycles: Applications pertaining to the following services, facilities, and equipment must be batched according to the following review cycles:

Category	Deadline for Actual Submission	Cycle Begins
Hospital bed additions; modernization/renovation/new construction of \$10 million or more (two phase process)	Phase 1: July 1	August 15
	Jan. 1	Feb. 15
Long term care bed additions; new construction	Phase 2: Administrative Review—may be submitted for any cycle.	
	Oct. 1	Nov. 15
CAT scanners; PET scanners; nuclear medicine equipment; magnetic resonance imaging	Feb. 1	Mar. 15
	June 1	July 15
Megavoltage therapy equipment	Apr. 1	May 15
	Aug. 1	Sept. 15
Cardiac diagnostic and surgical services, modernization/renovation and equipment	Dec. 1	Jan. 15
	Apr. 1	May 15
End stage renal disease equipment and services	Aug. 1	Sept. 15
	Dec. 1	Jan. 15
Home Health Care Services	May 1	June 15
	Sept. 1	Oct. 15
Surgical Facilities and Services (inpatient and free-standing)	Jan. 1	Feb. 15
	July 1	Aug. 15
Emergency Transport & MICU Services	Jan. 1	Feb. 15
	Oct. 1	Nov. 15
Other Ambulatory Care Services (initiation and expansion; does not include renovating only to hospital outpatient services)	Feb. 1	Mar. 15
	June 1	July 15
	Apr. 1	May 15
	Aug. 1	Sept. 15
	Dec. 1	Jan. 15

8:33-1.6 Definitions

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

“Administrative Review Process” means the review by the Department of Health of an application meeting certain specified criteria, with the Health Systems Agency having the option for review and presentation of recommendations to the Department. Such a review process is generally of shorter duration than the full review process and normally does not

include a review by the Statewide Health Coordinating Council.

“Affected persons” mean the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health care facilities within that geographic area; the health systems agency for the health service area in which the project is to be offered or developed, Health Systems Agencies serving contiguous health systems areas; health care facilities and health maintenance organizations in the health service area in which the project is to be offered or developed which provide services similar to the proposed services under review; health care facilities and health maintenance organizations which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide such similar services in the future; third party payors who reimburse health care facilities for services in the future; third party payors who reimburse health care facilities for services in the health service area in which the project is proposed to be located; and any agency which establishes rates for health care facilities or HMOs located in the health service area in which the project is proposed to be located.

“Alcoholism services” mean the following:

1. Outpatient services: The provision of scheduled, or non-scheduled, non-residential diagnostic and primary alcoholism treatment services by a detoxification, residential treatment center or a hospital.

2. Residential treatment: The provision of an intermediate term (28 days average) therapeutic residential program of comprehensive structured alcoholism treatment services, medical support and a wide range of supportive services for detoxified individuals.

3. Detoxification service: The provision of short-term (two to seven days) residential care and service for the reception and observation of intoxicated persons; the detoxification of intoxicated persons; the counseling of alcoholics to motivate their further treatment, and the referral of detoxified persons to appropriate treatment programs for continued care.

“Applicant” means an individual, a partnership, a corporation (including associations, joint-stock companies, and insurance companies) a State, or a political subdivision or instrumentality (including a municipal corporation) of a State that will be the operator of the proposed service, facility or equipment, except in the case of a transfer of ownership where the applicant means the proposed new owner(s) of the service, facility, or equipment with the current owner(s) required to file and sign a supplement to the transfer application.

“Bed capacity” means the licensed number of beds by service within the facility.

“Change in the cost of financing” means an increase in financing related charges for the project; or an increase in the annual interest rate for the financing.

“Change in the method of financing” means a change in the source of financing for a project (for example a change from tax-exempt bonds to taxable bonds), or a change in the amount of project costs which are to be paid from cash, fund raising, grants or other sources other than mortgages, loans or leases.

“Change in project scope” is defined as a deviation from the approved project which results in an increase or decrease in any one of, but not limited to the following:

1. Number of beds by service;
2. Major moveable equipment;
3. Array of services;

4. Service area;
5. Square footage to be constructed or renovated;
6. Access or availability to the approved project.

"Construction" means the erection, building, or substantial acquisition, alteration, reconstruction, improvement, renovation, extension or modification of a health care facility, including its equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

"Deferral" means a voluntary request to the Department by a Certificate of Need applicant or the acceptance of a request from a reviewing body by an applicant to suspend further review of a submitted application for a limited period of time.

"Drug abuse services" mean the following:

1. Detoxification: The modality in which there is planned withdrawal from drug dependency supported by use of prescribed medication.

2. Maintenance: The modality in which methadone and/or any of its derivatives is administered over a long period of time in order to either maintain patients at a stable degree or, by slow reduction of the dosage, achieve a drug-free state.

3. Drug-free residential: The modality that does not include any chemical agent or medication as the primary part of drug treatment but where the client resides in a drug abuse treatment unit other than a prison or hospital.

4. Drug-free outpatient (including day care): The modality that does not include any chemical agent or medication as the primary part of the drug treatment. The client resides outside the clinic but attends the clinic or participates in drug abuse treatment programs.

"Equipment system" means a group of equipment units, which operate together to perform a function. For example, the central processing unit of a computer and its peripheral equipment comprise an equipment system. The bedside cardiac monitor units and the nursing console form an equipment system.

"Equipment unit" is an apparatus that can perform its designated function by itself without the addition of any other component.

"Financing Charges" mean charges, fees and costs incurred by a health care facility in connection with obtaining financing for a project, including, but not limited to: points, discount, financing fees and other charges by the financing agency, authority, bank or trustee; interest on borrowings during construction, net of any interest earnings derived from the investment of borrowed funds; fees of bond counsel, counsel to the lender and counsel to the trustee, if any; fees of accountants and feasibility or other financial consultants; a reserve for debt service equal to one year's principal and interest; charges for title insurance, mortgage insurance, bond insurance or other insurance required in connection with the financing; and rating service fees, printing costs and other costs incurred in connection with the financing; provided that where financing is being provided with tax exempt bonds, an application for a Certificate of Need will be deemed to include a reserve for debt service of one year's principal and interest and a reasonable underwriter's discount or financing fee, as approved by the bond issuing authority.

"Fixed equipment" means equipment which is attached to the physical plant of a facility.

"Full Review Process" means the review of an application by the Health Systems Agency(ies) and the Statewide Health Coordinating Council as well as the Department of Health.

Such a review process generally results in a decision within 90 days of the beginning of a review cycle.

"Health care facility" means the facility or institution, whether public or private, principally engaged in providing services for health maintenance, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, special hospital, mental hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate care facility, tuberculosis hospital, chronic disease hospital, maternity hospital, outpatient clinic, dispensary, home health care agency, residential health care facility and bio-analytical laboratories or central services facility serving one or more such institutions but excluding institutions that provide healing solely by prayer and excluding such bio-analytical laboratories as are independently owned and operated, and are not owned, operated, managed or controlled in whole or in part, directly or indirectly by any one or more health care facilities and the predominant source of business of which is not by contract with health care facilities within the State of New Jersey and which solicit or accept specimens and operate predominantly in interstate commerce. Exhibits 3A and 3B provide examples of some types of the services provided by a health care facility.

"Health care service" means the preadmission, outpatient, inpatient, and post-discharge care provided in or by a health care facility, and such other items or service as are necessary for such care, which are provided by or under the supervision of a physician for the purpose of health maintenance or diagnosis or treatment of human disease, pain, injury, disability, deformity, or physical condition, including, but not limited to nursing service, home care nursing and other paramedical service, ambulance service associated with a health care facility, service provided by an intern, resident in training or physician whose compensation is provided through agreement with a health care facility, laboratory service, medical social service, drugs, biologicals, supplies, appliances, equipment, bed and board, but excluding services provided by a physician in his private practice or by practitioners of healing solely by prayer, and services provided by first aid, rescue and ambulance squads as defined in the "New Jersey Highway Safety Act of 1971", P.L. 1971, C. 351.

"Health maintenance organization" or HMO means a public or private organization organized under the N.J.S.A. 26:2J-1 et seq. and which is qualified under section 1310 (D) of Title XIII of the Federal Public Health Services Act or which is state certified and meets the definition of HMO under section 1122 of the Social Security Act (which definition reads "an HMO is an organization which (1) provides or otherwise makes available to enrolled participants Health Care Services, Hospitalization, Laboratory, X-Ray, Emergency and Preventive Services and out of area coverage; (2) is compensated (except for co-payments) for the provision of the basic health care services listed in clause (1) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided, and which is fixed without regard to the frequency, extent, or kind of health care service actually provided; and (3) provides physician's services primarily, (I) directly through physicians who are either employees or partners of such organization, or (II) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.").

"Health systems agency" (HSA) means an officially recognized health systems agency formed under the provision of Federal Public Law 93-641, as amended and supplemented.

"Inpatient psychiatric units" mean a setting for continuous 24-hour diagnostic, treatment and therapeutic mental health services housing organized medical, nursing and ancillary treatment staffs for patients who have any of a variety of psychiatric disorders. These units include the following types:

1. "Adult Open Acute Psychiatric Beds" mean licensed psychiatric beds in a designated and separate unit of a New Jersey hospital, for the provision of intensive treatment and rehabilitation of persons who are experiencing an acute episode of psychiatric disorder. Admissions to the unit generally have a length of stay which averages 30 days or less.

2. "Inpatient Screening Beds" mean licensed psychiatric beds within or contiguous to a licensed psychiatric unit of a licensed New Jersey hospital which have been designated as Mental Hospital beds by the Commissioner of the Department of Human Services. Such beds are for the provision of intensive treatment, evaluation, and stabilization of adults who are experiencing an acute episode of a psychiatric disorder. All persons admitted to the unit must be under involuntary commitment order. Maximum stay under involuntary commitment order in an inpatient screening bed is 72 hours.

3. "Closed Acute Psychiatric Beds" mean licensed psychiatric beds in a separate unit of a licensed New Jersey hospital which have been designated as Mental Hospital beds by the Commissioner of the Department of Human Services. Such beds are for the provision of intensive treatment and rehabilitation services for persons who are experiencing an acute episode of a psychiatric disorder. Admissions to the unit have an average length of stay of less than 30 days.

4. "Intermediate Psychiatric Beds" mean licensed psychiatric beds in a New Jersey psychiatric (special) hospital, established for the purpose of providing intensive treatment and rehabilitation of persons who are experiencing an acute episode of a psychiatric disorder, who have been determined to require provision of a more comprehensive and specialized program of psychiatric services than prescribed by Department of Health licensure standards governing Adult Open Acute Psychiatric units. Admissions to the Intermediate Psychiatric unit or facility have an average length of stay between 30 to 60 days.

"Major moveable equipment" means equipment which generally is not attached to the physical plant of a facility and has for depreciation purposes a predetermined life.

"Mandatory replacement of equipment and/or mandatory renovations to facilities" means replacement of equipment or renovations for one or more of the following reasons (the "mandatory" nature of the replacement or renovation shall be determined by the Department of Health):

1. Required as a result of a mandate from any Federal, State, county or municipal governmental agency.

2. Required to operate the health care facility without harm or major disruption to the care of patients.

3. Examples of this type of replacement would include the breakdown of a heating and/or cooling plant within a facility or a malfunction rendering inoperable the power plant of a facility.

"Mobile intensive care services" (MICU) mean hospital managed clinical services provided for emergency prehospital care of the acutely ill or injured patient; they consist of the trained/certified personnel and equipment necessary to provide advanced life support techniques such as administration of medications, intravenous fluids, airway maintenance and

defibrillation as authorized under Public Law 1973, Chapter 229; they are provided under the remote on-line medical direction of qualified hospital staff in accordance with pre-established treatment protocols; and they treat only acute patients and supplement the basic life support care administered by emergency ambulance services. Each mobile intensive care unit is staffed by a minimum of two persons who may be paramedics qualified under N.J.S.A. Title 26, Chapter 2K; nurses certified by a hospital to provide advanced life support, or physicians.

"Medically underserved" groups shall mean all population groups including racial and ethnic minorities, migrant workers, the handicapped, Medicaid recipients, women and families with incomes below 80 percent of the median income for either the state or the Standard Metropolitan Statistical Area in which they reside, and other identifiable segments of the population which currently fail to use health care services in numbers approximately proportionate to their presence in the population as adjusted to account for their need for such services.

"Modernization" includes the alteration, expansion, major repair (to the extent permitted by regulations), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and the replacement of obsolete equipment of existing buildings.

"New health care service" means the addition of a health service which was not offered by or on behalf of the facility within the previous 12 months. New Health Care Service may result from addition of staff, acquisition of equipment through purchase, lease or donation, and/or the creation of a new service area.

"Nonbed related psychiatric care" includes the following which to be considered a health care service must meet standards as prescribed by the Rules and Regulations Governing Community Mental Health Services and State Aid under the Community Mental Health Services Act (N.J.A.C. 10:37-1 et seq.):

1. Outpatient care: A setting in which the recipient receives relatively brief services, usually less than three hours, on an individual or group basis. The setting is usually a clinic or similar facility, but may be in the recipient's home or some other setting. Services provided by an outpatient program include Counseling, Assessment and Evaluation, Service Procurement (case management), and Treatment and Therapy.

2. Partial care (partial hospitalization): A setting in which a planned program of mental health services are generally provided in sessions of three or more hours per day to groups of recipients.

3. Emergency screening: A setting in which short-term interventions are available to clients in need on an immediate basis. The mode of intervention may be by: telephone, such as a 24-hour "hot-line"; outreach, such as a home visits; or at a facility easily accessible to clients with an acute need for mental health services, such as a hospital emergency room. Services may include Assessment and Evaluation, Counseling, Medical/Psychiatric Care, Treatment and Therapy, Information and Referral, and Service Procurement.

"Not Accepted for Processing" means the Department of Health may decide not to accept for review an application submitted in an incorrect batch or one that is inappropriately submitted for administrative review.

"Null and Void" and "nullification" means the termination of a Certificate of Need by the Commissioner of Health prior to the expiration of the Certificate.

“Optional replacement of equipment” means replacement by equipment which will perform more analyses, operate more efficiently, economically or reliably or in some manner improve operations in a unit.

“Similar equipment units” mean pieces of equipment which are similar in function and appearance. For example, a manually operated bed and an electrically operated bed are similar units. A 1,000 power microscope and 500 power microscope are similar units. A coulter counter and a microscope are not similar units.

“State agency” means the New Jersey State Department of Health.

“Statewide health coordinating council” means the Statewide Health Coordinating Council formed under the provision of Federal Public Law 93-641, as amended and supplemented.

“Total Project Cost” means all costs associated with the proposed project, including all capital costs, carrying and financing costs, interest on borrowings during construction, and lease/rental agreements. Total project costs exclude any contingency amounts.

“Withdrawal” means a voluntary written request to the department by a Certificate of Need applicant to cease any further review of a submitted application. Such a request shall be considered final by the Department and no further consideration or review shall be given to the “withdrawn” application.

SUBCHAPTER 2. CRITERIA FOR SUBMISSION OF CERTIFICATE OF NEED APPLICATIONS

8:33-2.1 Access criteria

(a) Each applicant for Certificate of Need must demonstrate how the proposed project offers equal access to low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups. In determining the extent to which the proposed service provides equal access and availability to the aforementioned populations, the applicant shall address in writing the following:

1. The extent to which medically underserved populations currently use the applicant’s service or similar services in comparison to the percentage of the population in the applicant’s service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

2. The performance of the applicant in meeting its obligation, if any, under any applicable State and Federal regulations requiring provision of uncompensated care, community services, or access by minorities and handicapped persons to programs receiving Federal financial assistance (including the existence of any civil rights access complaints against the applicant);

3. The extent to which Medicare, Medicaid and medically indigent patients are served or are proposed to be served by the applicant;

4. The extent to which the applicant offers a range of means by which a person will have access and availability to its service (for example, outpatient services, admission by house staff, admission by personal physician);

5. In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the

ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly to obtain needed health care;

6. The amount of charity care, both free and below cost service, that will be provided by the applicant. In determining eligibility for this care the applicant shall use the eligibility categories A and B of the Hill-Burton Act regulations 42 CFR 124.501 et seq.;

7. Access to public or private transportation to the proposed project must be documented;

8. As applicable, effective communication between the staff of the proposed project and non-English speaking people and those with speech, hearing, or visual handicaps must be documented; and

9. Where applicable, the extent to which the project will eliminate architectural barriers to care for handicapped individuals.

(b) No Certificate of Need shall be granted to any facility that currently fails to provide or fails to contractually commit to provide services to medically underserved populations residing or working in its service area as adjusted for indications of need. In addition, no Certificate of Need shall be granted to any facility that fails to commit it will inform the public, especially medically underserved individuals, of its obligation to provide free and below cost services to eligible individuals and of its obligation not to discriminate against low income persons, minorities, and handicapped individuals.

8:33-2.2 Long range plans

(a) No applications for Certificate of Need from a hospital shall be processed by the Department unless the applicant has submitted to the Department an acceptable long-range plan in accordance with N.J.A.C. 26:2H-1 et seq. and N.J.A.C. 8:31-16.1.

8:33-2.3 Letters of intent

(a) Any person or organizational entity intending to submit any Certificate of Need application shall first file a Letter of Intent in such detail as may be necessary to inform the Department of Health and the applicable Health System Agency(ies) of the scope and nature of the intended project. Such letter must be submitted to the Department and the applicable Health Systems Agency(ies) not less than 90 days before the initial submission of an application for construction, modernization, renovation, bed additions, or equipment acquisition in excess of 3 million dollars and at least 60 days before submitting an application for any other type of project. Letter of Intent forms are available from the Certificate of Need Program. No application will be accepted for processing if the required Letter of Intent was not filed on a timely basis.

8:33-2.4 Buildings

(a) The following criteria shall apply to buildings:

1. Regardless of cost, a Certificate of Need is required for any purchase, rental, lease, donation or construction of a building which will:

i. Establish a new health care facility;

ii. Replace an existing bed related health care facility;

iii. Establish a bed related satellite location for an existing health care facility;

iv. Involve the relocation and replacement of an existing non-bed related health care facility into a new health service area or to an area that substantially changes the patterns of usage for the facility;

v. Establish a non-bed satellite service of an existing health care facility into a new health service area.

8:33-2.5 Bed capacity

(a) The following criteria shall apply to bed capacity:

1. Any increase in the total number of licensed beds requires a Certificate of Need. Any project involving an increase in total licensed beds, where the total cost of the entire project is 10 million dollars or greater shall follow the review process described at N.J.A.C. 8:33-1.5(d) and 8:33-2.7(a)11.

2. Any increase in the total number of residential health care beds of up to ten beds or ten percent of existing licensed capacity, whichever is less, requires a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.8; any increases greater than this shall be subject to full review.

3. The relocation of beds from one physical facility or site to another requires a Certificate of Need.

4. Any change in the number of beds within categories licensed for a facility that will not affect the total number of licensed beds, or result in a capital expenditure requires a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.8.

5. Any decrease in the total licensed bed capacity of a facility which under generally accepted accounting principles, will result in a capital expenditure, requires a Certificate of Need.

6. Any decrease in the total number of licensed beds which will not involve a capital expenditure requires a Certificate of Need and will follow the administrative review process outlined in N.J.A.C. 8:33-4.9.

8:33-2.6 Health care services

(a) The following criteria shall apply to health care services:

1. Implementation of any new health care service, regardless of the amount of capital or operating expenditures requires a Certificate of Need.

2. Discontinuance of any health care service for which a facility is recognized for reimbursement will require a Certificate of Need. Sixty days prior to the substantial reduction of any such health care service the facility must notify the Department in writing of this intent. Based upon indicators of need, access, and economic viability, the Department, after consultation with the appropriate Health System Agency(ies), shall determine whether such reduction in services requires a Certificate of Need review and shall notify the facility of its determination within sixty days of receipt of the notice of intent.

3. Mandatory implementation of a new health care service requires a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.10.

4. A Certificate of Need is required whenever a health care facility wishes to transfer to another corporate entity, in whole or in part, any patient care service and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.2(c).

8:33-2.7 Equipment and modernization

(a) The following criteria shall apply to equipment and modernization:

1. The acquisition of any major moveable equipment through purchase, lease, or donation whose cost including installation and renovation under generally accepted accounting principles results in a total project cost of \$400,000 or more requires a Certificate of Need.

2. A Certificate of Need is required for acquisition of a group of similar equipment units or an equipment system for which cumulative total project costs are \$400,000 or more, or

are expected to be \$400,000 or more, within a 12-month period.

3. Acquisition of major moveable equipment not owned and operated by a health care facility also requires a Certificate of Need if the equipment will be used to provide services to any inpatients of one or more health care facilities and the acquisition results in a total project cost of \$400,000 or more per unit of equipment or for an equipment system including installation. Such applicants are subject to the Letter of Intent requirements identified at 8:33-2.3. Such acquisition applications may be subject to the batching requirements identified at N.J.A.C. 8:33-1.5(d).

4. The addition of renal dialysis stations and operating rooms, regardless of the amount of capital or operating expenditures requires a Certificate of Need.

5. Mandatory replacement of moveable equipment, as defined at N.J.A.C. 8:33-1.6, in excess of the cost regulations for replacement requires a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.3.

6. A Certificate of Need is required for the acquisition of fixed equipment, or the modernization/renovation/new construction of a health care facility which under generally accepted accounting principles results in a total project cost over a 12-month period of time of:

- i. \$600,000 or more for all hospitals;
- ii. \$600,000 or more for all long-term care facilities;
- iii. \$600,000 or more for all other health care facilities.

7. Replacement of existing equipment with the same equipment which exceeds the dollar thresholds indicated at N.J.A.C. 8:33-2.7(a)1 and 8:33-2.7(a)2 shall follow the administrative review process described at 8:33-4.4 unless the Department, in consultation with the appropriate Health Systems Agency(ies), determines a full review is necessary. This applies to replacement equipment that maintains existing capability and does not include up-grading to a new technology or a new capability. Any replacement that results in an up-grading of capability requires a full review.

8. Mandatory replacement of fixed equipment and/or mandatory renovations to facilities as defined at N.J.A.C. 8:33-1.6 in excess of the monetary thresholds for equipment replacement or renovations requires a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.3.

9. Acquisition of telephone or computer systems in excess of \$400,000 requires a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.11.

10. Acquisition of fixed equipment and/or renovations to facilities dealing exclusively with energy conservation and management in excess of the cost thresholds for optional replacements or renovations requires a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.14.

11. For projects involving hospital bed additions, modernization/renovation, or new construction which under generally accepted accounting principles results in a total project cost of 10 million dollars or more, the applicant is required to submit two separate Certificate of Need applications as follows:

- i. The first application shall address the need for the project and its conformance with appropriate Departmental regulations, the State Health Plan, and the area's health systems plan. The application shall be a request to undertake facility planning studies and for conceptual drawings with scope and cost estimates indicating various architectural options for the construction/modernization/renovation;

ii. If the first application is approved the second application shall be submitted following consultation with the Department and appropriate Health Systems Agency staff regarding the findings of the facility planning studies and architectural, planning, and cost options. This Certificate of Need request shall follow the administrative review process outlined in N.J.A.C. 8:33-4.15 and shall be for the specific construction/modernization/renovation option the applicant has chosen and shall include capital cost and operating cost estimates;

iii. Applications shall be batched according to the schedule specified in N.J.A.C. 8:33-1.5(d).

8:33-2.8 Batching

(a) Applications pertaining to the following services, facilities, and equipment must be considered in relation to each other ("batched") according to the schedule specified in N.J.A.C. 8:33-1.5(d):

1. Hospital bed additions/modernization/renovation/new construction of 10 million dollars or more.
2. Long-term care bed additions/new construction.
3. Computerized tomography (CT) services; positron emission tomography (PET) services; nuclear medicine equipment; magnetic resonance imaging.
4. Megavoltage therapy equipment.
5. Cardiac diagnostic and surgical services, including modernization/renovation/new construction and the acquisition and/or replacement of equipment.
6. End-stage renal disease equipment and services.
7. Home health care services.
8. Surgical services (inpatient and free-standing).
9. Emergency transport and MICU services.
10. Ambulatory care services.
11. Others as defined by specific planning regulations.

(b) Any equipment acquisition which is subject to Certificate of Need batching requirements must be processed in the appropriate batch and cannot be included as part of another application such as a facility modernization/renovation/construction project.

(c) Applications which satisfy the requirements of N.J.A.C. 8:33-2.6(a)3, 8:33-2.7(a)5, 7, 8, 9, and 10 are not required to be batched.

8:33-2.9 Facility/service planning

(a) The following criteria shall apply to facility and/or service planning:

1. A Certificate of Need is required when the expenditures required for plans, feasibility studies, surveys, designs, or architectural drawings are \$150,000 or more in a lump sum amount or over a 12-month period.
2. Expenditures for plans, feasibility studies, surveys, designs, or architectural drawings less than \$150,000 but more than \$50,000 (cumulative expenditures over a 12-month period) require a Certificate of Need and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.4.

8:33-2.10 Transfer of ownership

(a) Certificates of Need are not transferable in whole or in part. Only the ownership of an existing, licensed health care facility, or licensed, existing beds, services, or equipment is transferable.

(b) Transfer of ownership procedures pertain exclusively to existing licensed health care facilities. If there is an acquisition or a transfer of ownership which will increase or establish an interest in a health care facility as defined in N.J.A.C. 8:33-1.6 through sale, lease or by other means a Certificate of Need

is required. The process for obtaining a Certificate of Need shall follow the administrative review process outlined in N.J.A.C. 8:33-4.2. An acquisition or a transfer of ownership which will increase or establish an interest in a health care facility as defined in N.J.A.C. 8:33-1.6 shall be deemed to take place if:

1. Corporations:

i. There is an acquisition by or a transfer of ownership to an individual, partnership or corporation through purchase, contract, donation, gift, stock option, etc., of any amount of a corporation's outstanding stock (preferred or common);

ii. There is acquisition of the physical assets of a corporation, partnership or individually owned health care facility by a newly formed or existing corporation, even if there is a common membership for both boards of directors.

2. Partnerships:

i. There is acquisition by or a transfer of ownership to an individual, partnership, or corporation of any amount of the existing partnership's total capital interest;

ii. There is acquisition of the physical assets of a corporation, partnership or individually owned health care facility by a newly formed or existing partnership.

3. Proprietorship:

i. There is a purchase of the physical assets of a health care facility.

(c) The application for transfer of ownership must specify each and every principle involved in the facility and service and their percentage of ownership. The entire ownership must be identified in the application.

(d) If the facility being transferred has any partially implemented or unimplemented Certificate of Need approvals, approval of the transfer of ownership of the existing, licensed facility shall null and void these Certificate of Need approvals.

(e) At the discretion of the Department, an exception to N.J.A.C. 8:33-2.10(a) and (b) may be permitted and the transfer of ownership process may be allowed to proceed on an unimplemented Certificate of Need approval for facility construction if all the following criteria are satisfied:

1. The transfer process only involves a change in the type of organizational entity owning the facility (for example, a change from a corporation to a partnership or vice versa).

2. There has been no change in the principals awarded the original Certificate of Need.

3. There has been no change in the percentage owned by any of the principals awarded the original Certificate of Need.

4. The change in type of organizational entity must be as a result of changes in the requirements of a government agency and enhance the likelihood of obtaining financing.

(f) The transfer of ownership of any licensed general acute care, special hospital and psychiatric hospital shall follow the full review process and may not be processed under the administrative review process.

8:33-2.11 Changes in cost/scope

(a) The following criteria shall apply to changes in cost or scope:

1. Any proposed change in the cost of an approved project shall require a change of cost review and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.7. However, under no circumstances shall an approved certificate receive more than one administrative review for proposed changes involving cost. Thus, any subsequent proposed changes involving cost, regardless of the absolute or percentage of change, shall require a full review.

2. Any change in the proposed method of financing, which will result in an increase in the debt service charges included in operating costs of 10 percent or more shall be considered a change in the financing of the project and shall follow the administrative review process outlined in N.J.A.C. 8:33-4.7.

3. Any significant change in the scope of an approved project requires a Certificate of Need. A significant change consists of any of the following:

i. Increase or decrease in the number or category of approved beds;

ii. Deletion of approved major moveable equipment;

iii. Addition, substantial reduction, as determined by the Department, or elimination of any of the standard categories of health care services;

iv. Relocation of the proposed project from one county to another or from municipalities with a population greater than 50,000 to any other municipality, or to an area that substantially changes the patterns of usage of the project requires a full review; any other relocation shall follow the administrative review process outlined in N.J.A.C. 8:33-4.14, except where the Department, in consultation with the appropriate Health Systems Agency(ies), determines that the proposed relocation may diminish access to patients historically served, a full review may be required; or

v. Any increase or decrease of ten percent or more of the total approved square footage to be renovated and/or constructed that also results in an increase in total approved project costs requires a full review; any increase or decrease of less than ten percent of the total approved square footage for such projects that also results in an increase in total project costs shall follow the administrative review process outlined in N.J.A.C. 8:33-4.7.

4. The Department shall not process any applications for changes in scope and/or cost when the changes in scope and/or cost have already occurred and have been implemented by the time the application is submitted for processing unless the Commissioner determines that the changes arose from extraordinary unforeseeable circumstances outside the applicant's control.

5. During the course of a review of a change in cost, financing, or scope the need for the original approved project will be reexamined.

6. The approval of a change in cost, financing, or scope application shall not extend the expiration date of the original approval. If an extension of the expiration date is also desired, such request, along with reasons for the request, must be specifically made in writing in the change in cost, financing, or scope application.

8:33-2.12 Demonstration/research projects

(a) The following criteria shall apply to demonstration/research projects:

1. Implementation of any unique demonstration or research project requiring a Certificate of Need, but for which criteria and standards for licensure have not been established, shall follow the administrative review process as outlined in N.J.A.C. 8:33-4.12 unless the Department determines that a full review is necessary.

2. Applications approved for demonstration or research projects should incur only minimal costs for physical plant construction and/or renovation until the completion of the demonstration period and criteria and standards for licensure have been developed.

3. At the time of review the Department shall establish a time-frame within which the demonstration shall function.

The Department shall issue a report regarding the demonstration and, depending upon the results, shall issue appropriate standards and criteria.

8:33-2.13 Health maintenance organizations

(a) The following criteria shall apply to health maintenance organizations (HMO):

1. A Certificate of Need shall not be required for an HMO to develop its ambulatory care facility or to provide basic and supplemental ambulatory services except where such services are the subject of an approved Department of Health regionalized service planning regulation.

2. A Certificate of Need shall not be required when an exemption has been granted by the Commissioner of Health for the offering of an inpatient institutional health service, the acquisition of major medical equipment for the provision of an inpatient institutional service or the obligation of a capital expenditure for the provision of an inpatient institutional health service by:

i. An HMO or combination HMOs if:

(1) The HMO or combination of HMOs has in the service area of the HMO or the service area of the HMOs in combination, an enrollment of at least fifty thousand individuals;

(2) The facility in which the service will be provided is or will be reasonably accessible to such enrolled individuals; and

(3) At least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such HMO or combination of HMOs.

ii. A health care facility if:

(1) The facility primarily provides inpatient health services, and

(2) The facility is controlled directly or indirectly by an HMO or combination of HMOs which has, in the service area of the HMO or combination of HMOs an enrollment of at least fifty thousand individuals; and

(3) The facility is geographically located so that the service will be reasonably accessible to such enrolled individuals; and

(4) At least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such HMO or combination of HMOs; or

iii. A health care facility (or portion thereof) if:

(1) The facility is leased by an HMO or combination of HMOs which has in the service area an enrollment of at least fifty thousand individuals and on the date the application is submitted under 4 below at least fifteen years remain in the term of the lease;

(2) The facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals; and

(3) At least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such HMO.

3. For the purposes of this section, "indirect control of a health care facility" includes circumstances in which a majority of the members of the board of a hospital corporation are employees, officers or directors of an HMO, or in which members of the board of an HMO are the same as members of the board of a hospital corporation.

4. An HMO, or combination of HMOs, or health care facility shall not be exempt from obtaining a Certificate of Need before offering an institutional health service, acquiring major medical equipment, or obligating capital expenditures unless:

i. It has submitted an application for exemption to the Certificate of Need program and the appropriate Health Systems Agency(ies);

ii. The application contains such information to show that the HMO or combination of HMOs meet the requirements of 2. above.

iii. The Commissioner of Health approved such application.

(1) The Commissioner shall approve an application for exemption if the applicable requirements of 2. above have been met or will be met on the date the proposed activity for which an exemption was requested will be undertaken.

5. A health care facility (or portion thereof) or medical equipment for which an exemption was granted may not be sold or leased, a controlling interest in the facility, or equipment or in a lease of the facility or equipment may not be acquired, and a health care facility described in 2.iii above which was exempted may not be used by any person other than the lessee described in 2.iii above unless a Certificate of Need has been granted for the sale, lease, acquisition, or use, or the Commissioner of Health determines, upon application, that the entity which intends to buy or lease the facility or equipment, or acquire the controlling interest in it, or which intends to use it, is an HMO or a combination of HMOs which have applied for and been granted exemption.

8:33-2.14 Extensions of time

(a) The following criteria shall apply to extensions of time:

1. A Certificate of Need is valid for one year from the date of issue. If the project or portions thereof have not been completed within this time frame the uncompleted project or portions shall be deemed to be terminated except that the Commissioner may renew the Certificate for further periods if the applicant documents substantial progress towards completion of the project. For construction or renovation projects no renewal of the Certificate will be granted unless preliminary construction plans have been submitted to the Department.

2. Substantial progress shall mean:

i. That the applicant owns the land, has a lease, or option that is valid during the extension period; and,

ii. That financing has been secured or will be by the end of the extension period. If financing is not secured by the end of the first extension period, the Certificate will be deemed null and void; and,

iii. That required approvals by other governmental agencies (e.g., CAFRA, Pinelands Commission) have been granted or are submitted and in process of review; and,

iv. That plans have been submitted on a timely basis.

3. The only exception to N.J.A.C. 8:33-2.14(a)2 is that an extension of time may be granted if the applicant is engaged in litigation to reverse an adverse zoning decision before the Superior Court of New Jersey, Law Division or Chancery Division.

4. Applications for extension of time shall follow the administrative review process outlined at N.J.A.C. 8:33-4.6.

8:33-2.15 Financial criteria

(a) The following financial criteria shall apply in the review of all applications:

1. For purposes of Certificate of Need review, equity shall mean a non-operating asset contribution which will reduce the size of the total debt. It may include cash, other liquid assets, and the fair appraised market value of land owned by an applicant which is the viable site for the proposed project.

2. For all hospital applications involving a capital cost, each applicant must document that 15 percent of the total

project cost, including all financing and carrying costs, is available in the form of equity defined at N.J.A.C. 8:33-2.15(a)1. In licensed general acute care hospitals only, this 15 percent equity requirement may be reduced by one-half of one percent per each full percentage point the hospital uncompensated care percentage exceeds the statewide average uncompensated care percentage for acute care hospitals. All other applications must document that 10 percent of the total project costs, including all financing and carrying cost, is available in the form of equity.

3. Each applicant must document that the project's cost will be financed through the least cost method of financing.

4. It shall be a condition of any approved Certificate of Need application that capital reimbursement will be predicated upon the higher of actual patient volume or the volume projected in the approved application and the rate calculation will be adjusted to reflect this condition.

8:33-2.16 Violation of licensure standards

(a) No Certificate of Need applications will be approved from any applicants with existing major violations of licensure standards, as determined by the Department, including but not limited to conditions which threaten the life and safety of patients or employees. The only exception will be in the case of applications submitted for the purpose of correcting recognized major licensure deficiencies.

SUBCHAPTER 3. THE REVIEW PROCESS

8:33-3.1 Development of applications

(a) Before filing an application, applicants are encouraged to contact the Health Systems Agency in the proposed service area to examine the relationship of the proposed project with the agency's plans, guidelines, and criteria. Applicants should refer to Exhibit 1 for information and assistance in determining how the proposed service area relates to the appropriate Health Systems Agencies. If the proposed service area overlaps more than one planning area, the applicant should work with each of the Health Systems Agencies.

(b) Separate applications shall be required for projects having component parts of such a nature where the Department determines that these component parts properly require a separate review under the review criteria.

(c) The Department of Health will not accept for review a resubmission of an application denied by the Health Care Administration Board until 90 days after its action unless new facts indicate a need has recently developed. The determination relating to the acceptability of the new facts will be made by the Department of Health.

8:33-3.2 Submission of applications; cycles

(a) When complete, three copies of the application shall be submitted to the appropriate Health Systems Agency(ies) simultaneously with eight copies to:

Certificate of Need Program
New Jersey State Department of Health
CN 360
John Fitch Plaza
Trenton, New Jersey 08625 (609) 292-6552

(b) There are 12 review cycles for non-batched Certificate of Need applications each year. The beginning of each cycle is the fifteenth day of each month. The Commissioner of Health should render a decision on or about the fifteenth day of the month, three months from the beginning of the review process.

8:33-3.3 Review for completeness

(a) The Department of Health shall make the determination of the completeness status of applications. Health Systems Agencies must provide the Department with written recommendations by the twentieth day of each month on the completeness of applications. The Department will review the Health Systems Agency recommendations and make a decision on completeness by the beginning of each review cycle and will notify both the applicant and the applicable Health Systems Agency(ies) in writing of its determination. Only complete applications will be processed. If an application has been determined incomplete, the Department shall notify the applicant and the appropriate Health Systems Agency(ies) citing the specific deficiencies in the application.

(b) Applications may be determined to be incomplete only once. After the applicant has forwarded the appropriate information, the application will be processed in the closest appropriate cycle beginning after receipt of the additional information.

(c) Once an application has been determined to be complete and submitted to the review process, no subsequent submission of information will be accepted, unless specifically requested in writing by the Department or the Health Systems Agency(ies). The Health Systems Agency questions and subsequent responses must be submitted to the Department on a timely basis.

(d) An application submitted in the incorrect batch or inappropriately requesting administrative review may be declared not accepted for processing by the Department of Health. The Department will notify the applicant of this decision and return the filing fee.

8:33-3.4 Notification to affected persons

(a) The Department of Health shall submit written notification to the Health Systems Agency for the health service area in which the proposed project is to be offered or developed and Health Systems Agencies serving contiguous health systems areas, of the beginning of a review and the proposed schedule for the review. Notification to members of the public will be provided through newspapers of general circulation.

(b) Upon receipt of a letter of intent to apply for a Certificate of Need, the Health Systems Agencies shall identify and notify all potential affected persons.

8:33-3.5 Role of the Statewide Health Coordinating Council

(a) The Statewide Health Coordinating Council shall act as the coordinating agency for the recommendations of the Health Systems Agencies, and other State departments as necessary in all substantive review matters.

(b) The Statewide Health Coordinating Council shall furnish written findings to the Commissioner which give the basis for any recommendations made by the council. Such written findings shall be forwarded to the Commissioner within 75 days after the beginning of a review cycle.

8:33-3.6 Procedures for state agency review

(a) Applicants are required to submit to the Department of Health (State Agency) in such form and manner, and containing such information as the Department shall prescribe and publish, such information as the Department may require concerning the subject of such review. Such information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(b) The Department of Health may require the submission of periodic reports by providers of health services and other persons subject to Certificate of Need requirements respecting the development of proposals subject to Certificate of Need review (see N.J.A.C. 8:33-1.3(q)).

(c) The Commissioner shall make his decision and supporting reasons in writing. The decision will be sent to the applicant and to the appropriate Health Systems Agency, and shall be available to others upon request. In the case of a project proposal by an HMO the decision will be sent to the regional office of the Department of Health and Human Services at the time these are sent to the applicant.

(d) The Commissioner may not make his final decision subject to any condition unless the condition directly relates to the criteria for State Agency Review (see N.J.A.C. 8:33-3.7), criteria prescribed by State regulation, promotes the legislative intent of the enabling legislation (Chapters 136 and 138, Laws of New Jersey 1971), or Public Law 93-641 as amended, or related to material presented in the application itself.

(e) The Department of Health shall notify, upon their request, providers of health services and other persons subject to Certificate of Need requirements of the status of the State Agency review of Certificate of Need project proposals, findings made in the course of such review, and other information respecting such review.

(f) Pursuant to N.J.S.A. 26:2H-9, if the Commissioner disapproves a Certificate of Need application, the applicant shall be granted an opportunity for fair hearing to contest the Commissioner's action. In addition, the Statewide Health Coordinating Council and the Health Systems Agency shall be granted an opportunity for fair hearing when the Commissioner acts contrary to either of their recommendations concerning a Certificate of Need application.

(g) A request for a fair hearing shall be made to the Department of Health within 30 days of receipt of notification of the Commissioner's decision. The fair hearing shall be conducted according to N.J.S.A. 52:14F-1 et seq. and the uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1). The Health Care Administration Board within 30 days of receiving all appropriate hearing records or, in the absence of a request for a hearing within 30 days of receiving the denial recommendations of the Commissioner, shall make its determination.

(h) Any affected person may, for good cause shown, request of the State Agency in writing a public hearing for purposes of reconsideration of a final decision of the State Agency regarding a Certificate of Need application. A decision request for a public hearing shall be deemed to have shown good cause if it presents significant relevant information not previously considered, demonstrates that there have been significant changes in factors or circumstances relied upon in reaching the final decision, demonstrates that the State Agency has materially failed to follow its procedures in reaching the final decision or provides such other basis for a public hearing as the State Agency determines to constitute good cause. A request for such a public hearing must be received within 30 days of the Commissioner's decision. The public hearing shall commence within 30 days of receipt of the request. The State Agency shall make written findings which give the basis for its decision within 45 days after conclusion of such public hearing.

(i) Upon the request of any affected person, the decision of the Commissioner to issue, deny, or null and void a Certifi-

cate of Need or to grant or deny an exemption shall be administratively reviewed by the State Agency. The request must be received within 30 days of the Commissioner's decision, and the review must commence within 30 days of receipt of the request. The decision of the reviewing agency must be made in writing within 45 days after the conclusion of the review and shall be sent to the person proposing the project, the person requesting the review, the appropriate Health Systems Agency, and to others upon request. The decision of the reviewing agency shall be considered the final decision of the State Agency, unless the matter is remanded for further action or consideration.

(j) After the commencement of a public hearing in the course of review or a public hearing for reconsideration of a State Agency decision and before a decision is made, there shall be no ex parte contacts between any person acting on behalf of the applicant or holder of a Certificate of Need, or any person opposed to the issuance or in favor of nullification of a Certificate of Need and any person in the State Agency who exercises any responsibility for reviewing the application or nullification. Ex parte communication is defined as an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given. It shall not include requests for status reports on any matter or proceeding. Any communications made after commencement of the public hearing that are placed in the record of the proceedings are not ex parte and are not prohibited.

(k) If the State Agency's decision is contrary to the recommendation made by either the Health Systems Agency or the Statewide Health Coordinating Council, the State Agency shall submit to the appropriate organization a statement of the reasons for not accepting the recommendation. If the final decision is not consistent with the goals of the applicable health systems plan or the priorities of the applicable annual implementation plan, the State Agency shall submit to the appropriate Health Systems Agency a written, detailed statement of the reasons for the variation.

(l) The determination of the Health Care Administration Board is the final decision of the State Agency where the Commissioner of Health has denied a project application or where his decision is contrary to the recommendation of the Statewide Health Coordinating Council or the Health Systems Agency and a fair hearing is requested and held. After the Health Care Administration Board has denied a project or acted contrary to the Statewide Health Coordinating Council or Health Systems Agency, such action may be appealed to the Appellate Division of the Superior Court.

(m) If the Department of Health determines that the holder of an approved Certificate is not making a good faith effort to implement the project, the Commissioner may, after considering any recommendation made by the appropriate Health Systems Agency, null and void the Certificate. Prior to such a determination, the Department must notify the holder of the Certificate of its intent to initiate the nullification process. The holder of the Certificate shall have 30 days from the date of such notice to submit written documentation regarding the significant or substantial progress (see N.J.A.C. 8:33-2.14(a)1 and 2) which has been made in implementing the Certificate. Therefore, the nullification process shall follow the procedure in N.J.A.C. 8:33-3.4 through 3.6.

8:33-3.7 Criteria for State Agency review

(a) Projects will be reviewed by personnel of the Department as deemed appropriate. Criteria adopted for reviews may vary according to the purpose for which a particular

review is being conducted or the type of health service reviewed. Review evaluation, and recommendations will be based upon the following:

1. The relationship of the health service being reviewed to the applicable health systems plan, annual implementation plan, State Health Plan, other State plans and policies, and State health planning regulations.

2. The relationship of services reviewed to the long range development plan (if applicable) of the applicant.

3. The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated, or eliminated.

4. The immediate and long-term financial implications of the proposal as well as the probable effect of the proposal on the costs of and charges for providing health services by the applicant proposing the service, and the probable effect on the costs of providing services within the health delivery system in the area and the State. These financial implications include, but are not limited to:

i. Capital costs;

ii. Operating costs;

iii. Income to at least one year beyond break-even; and

iv. Estimated impact on the costs and revenues of other providers of the same service to the same service area.

5. The need that the population served or to be served has for the services proposed and the extent to which all residents of the area will have access to those services, particularly low income persons, racial and ethnic minorities, women, handicapped persons, other underserved groups, and the elderly.

i. In the case of a reduction or elimination of a service, including the relocation of a facility or service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability to obtain needed health care of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly.

6. The contribution of the proposed service in meeting the health related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women, and handicapped persons), particularly those needs identified in the applicable health systems plan, annual implementation plan, and State Health Plan and State health planning regulations as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the State Agency shall consider:

i. The extent to which medically underserved populations currently use the applicant's service in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

ii. The performance of the applicant in meeting its obligation, if any, under any applicable Federal regulations requiring provision of uncompensated care, community services, or access by minorities and handicapped persons to programs receiving Federal financial assistance (including the existence of any civil rights access complaints against the applicant);

iii. The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant;

iv. The ways the applicant offers a range of means by which a person will have access to its services (e.g., outpatient

services, admission by house staff, admission by personal physician); and

v. How and to what extent the applicant will provide services to the medically indigent.

7. The relationship of the services proposed to be provided to the existing health care system of the area in which the services are proposed to be provided.

8. The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan, State Health plan, and State health planning regulations.

9. The possible economies and improvements in services to be anticipated from the operation of joint central services for the regionalization of services.

10. The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services, if applicable.

11. The extent to which the health professions schools and professional training in the area will have access to the services for training purposes if it is a regional service.

12. Special needs and circumstances of those applicants which provide a substantial portion of their services on a Statewide or regional basis.

13. The special needs and circumstances of HMOs. These needs and circumstances shall be limited to:

i. The needs of enrolled members and reasonably anticipated new members of the HMO for the proposed health services proposed to be provided by the organization; and

ii. The current availability of the new health service from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the agency shall consider only whether the services from these providers:

(1) Would be available under a contract of at least five years' duration;

(2) Would be available and conveniently accessible through physicians and other health professionals associated with the HMO. (For example—whether physicians associated with the HMO have or will have full staff privileges at a non-HMO hospital);

(3) Would cost no more than if the services were provided by the HMO; and

(4) Would be available in a manner which is administratively feasible to the HMO.

14. The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

15. In the case of a construction project:

i. The costs and methods of the proposed construction, including the costs and methods of providing and conserving energy; and

ii. The probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons.

16. The special circumstances for conserving energy.

17. The estimated impact on price competition for the service in comparison to the health care delivery system taken as a whole, including physician charges.

18. Improvements or innovations in the financing and delivery of health services which foster competition while maintaining quality and cost effectiveness.

19. The efficiency and appropriateness of using existing services and facilities similar to those proposed.

20. Evaluating the character and competence of the sponsor(s) based upon State licensure, survey records, or other information of State regulatory agencies.

21. Such other factors as may be established by regulation.

22. In the case of existing services or facilities, the documented quality of care provided by those facilities in the past.

23. When an application is made by an osteopathic or allopathic facility for a Certificate of Need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The State Agency shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

24. All access factors identified at N.J.A.C. 8:33-2.1.

8:33-3.8 Required findings on access

(a) For each project it approves, the State Agency shall make a written finding (which shall take into account the current accessibility of the facility as a whole) on the extent to which the project will meet the State Agency's criteria as specified in N.J.A.C. 8:33-2.1, 3.7(a)5 and 6 except in the following cases:

1. Where the project has been determined by a State or Federal agency to be mandatory; or

2. Where the project is a proposed capital expenditure not directly related to the provision of health services or to beds or major medical equipment; or

3. Where the project is projected by or on behalf of an HMO or a health care facility which is controlled, directly or indirectly, by an HMO.

(b) In any case where the State Agency finds that an approved project does not satisfy the State Agency's criteria based on the considerations in N.J.A.C. 8:33-3.7(a)5 or 6, it may, if it approves the application, impose the condition that the applicant take affirmative steps to meet those criteria.

(c) When this written finding is required, the State Agency, in evaluating the accessibility of the project, must take into account the current accessibility of the facility as a whole. If the State Agency disapproves a project for failure to meet the need and access criteria, it must so state in its written findings.

(d) In any case where the State Agency finds that a project does not satisfy the State Agency's criteria based on the considerations in N.J.A.C. 8:33-3.7(a)5 or 6, it shall so notify in writing the applicant and the appropriate Regional Office of the Department of Health and Human Services.

8:33-3.9 Functions of health systems agencies

(a) Each Health Systems Agency shall have as its primary responsibility the provision of effective health planning for its health service area and the promotion of the development within the area of health services, manpower, and facilities which meet identified needs, reduce documented inefficiencies, and implement the health plans of the agency. Proposed projects must be reviewed and recommendations developed in conformity with the health systems plan and annual implementation plan of the agency. Recommendations need not be

based solely on policies established by the State or the Commissioner of Health since this would remove the consideration of areawide or local needs or circumstances from the review process.

(b) The specific responsibilities or activities expected of Health System Agencies are:

1. Assistance to the sponsor in the completion of appropriate application forms.

2. Written notification to affected persons of the beginning of a review, which shall include notification of the proposed schedule for the review, of the period within which a public hearing may be requested by persons directly affected by the review, and of the manner in which notification will be provided of the time and place of any hearing so requested.

3. Provision for public hearing in the course of agency review if requested by one or more persons directly affected by the review.

4. Evaluation of the public need for each proposal with general consideration given to the items specified in the criteria for State Agency review (N.J.A.C. 8:33-3.7).

5. Provision for written findings which give the basis for any decision or recommendation made by the Health Systems Agency. Such findings must include the items specified in the required findings on access (N.J.A.C. 8:33-3.8).

6. Evaluation of the public need for each proposal with special consideration given to:

i. The conformity of the proposal with locally developed criteria and guidelines for planning health facilities, including conformity to local zoning requirements;

ii. The unique population characteristics of the service area involved, considering how it might affect the local demand for service including:

- (1) The age-sex composition of the population;
- (2) Changes in the population;
- (3) The educational/employment level of the population;
- (4) The population density and housing pattern of the area;
- (5) Factors affecting travel and travel time in the area.

iii. The unique economic characteristics of the service area involved, vis-à-vis the proposal, including:

- (1) The availability of disposable income;
- (2) The availability of third party payment mechanisms;
- (3) The availability of alternate service programs;
- (4) The accessibility to and availability of health care services to medically underserved persons.

iv. The conformity of the proposal with the State Health Plan, the State Medical Facilities Plan, State planning regulations, and other applicable State criteria. If a waiver to a regulation or plan is requested, the following shall apply:

(1) Waivers to a planning regulation will be granted only if permitted in the language of the regulation itself. Waivers to the State Health Plan, State Medical Facilities Plan, or other applicable criteria will be considered only where justified on the basis of unique reasons. Such a waiver only will apply to the specific project under review. Reasons for the waiver must be specified in writing by the Health Systems Agency to the Department.

(2) Where a Health Systems Agency board agrees that a waiver is justified, it must offer in the Health Systems Agency project abstract its specific reasons for supporting the waiver request.

(c) The following activities are not the responsibility of the Health Systems Agencies:

- 1. Involvement in architectural plans review of approved projects.
- 2. Construction monitoring of approved projects.

3. Determining compliance with Departmental licensure requirements.

(d) The following activities are not the primary responsibility of the Health Systems Agencies:

1. Evaluating the character and competence of the sponsor(s) based upon State licensure, survey records, or other information of State regulatory agencies.

2. Evaluating the financial competence of the sponsor(s) and the feasibility of the proposal based upon the records of the Health Economics Program of the Division of Health Planning and Resources Development.

(e) After the Health Systems Agency has completed its primary responsibility it may submit comments on N.J.A.C. 8:33-3.9(d) if it has the capabilities and time to do so.

(f) The Health Systems Agency may recommend changes in an application deemed complete and not subject to batching (as defined at N.J.A.C. 8:33-1.5(d)) as long as such recommended changes are within the limits identical to an administrative review. The Health Systems Agency and the applicant must inform the State in writing of any such changes at least one week before the Statewide Health Coordinating Council's Review Committee meeting.

8:33-3.10 Modification of applications

(a) No application for Certificate of Need shall be modified or altered by an applicant after the deadline date for application submission. Additional information shall be permitted only in direct response to written questions submitted to the applicant by the Department or the Health Systems Agency(ies) as specified at N.J.A.C. 8:33-3.3(c).

(b) Under no circumstances may an application be modified or altered to change the number or category of inpatient beds or any services after the application submission deadline date. An applicant desiring to make such a modification or alteration shall be required to withdraw the application from the current cycle and submit a new application for the next monthly review cycle or the next batch.

(c) Exceptions to (a) and (b) above may only be permitted in the case where a non-batched application is modified or altered in a non-substantive way in the Health Systems Agency review process. Non-substantive shall mean that the modification or alteration, if proposed separately, would either not require a Certificate of Need review or would only require a review through the administrative process (see N.J.A.C. 8:33-3.9(f)).

8:33-3.11 Deferral of applications

(a) An applicant may request a deferral for up to a total of four months or, for batched applications, into the next batch, whichever is shorter. If the applicant fails to reactivate the application within this time frame it will be declared withdrawn.

(b) The Health Systems Agency, the Statewide Health Coordinating Council or its Review Committee, or the Department may request an applicant to defer the review. Acceptance of such request for deferral is the option of the applicant. If an applicant does not accede to the deferral request the application shall continue under review. In batched applications, all applicants in the batch and within the same service area or county must accede to a request for deferral or none may be deferred. The only exception shall be when an applicant accedes to a deferral with the explicit understanding that other applications in the same batch and service area or county may continue to be processed.

(c) An applicant may accept a deferral request by one or more of the review agencies identified at 8:33-3.11(b) for a

period not to exceed one year. Such a deferred applicant may be required by the Department to submit updated information prior to reactivation of the application. If for any reason such a deferred application is not acted on within the one year period, the applicant will be required to submit a new application.

1. Reactivated applications with no changes or with only a change in cost shall continue in the review process from the point of deferral.

2. Reactivated applications with any change in project scope will be treated as a new application and subject to full review beginning at the local level.

(d) When a deferral is requested or accepted by an applicant, the applicant shall provide written confirmation.

(e) The Department of Health will not accept any requests for a deferral once the Statewide Health Coordinating Council's Review Committee has made its recommendation.

8:33-3.12 Conditions on approval

(a) Conditions may be placed on Certificate of Need approval if they relate to material presented in the application itself, are prescribed in State regulation, relate to the criteria specified in N.J.A.C. 8:33-3.7, or promote the intent of Chapters 136 and 138, Laws of New Jersey 1971 (N.J.S.A. 26:2H-1 et seq.).

(b) Any conditions, placed on a Certificate of Need approval shall become part of the licensure requirements of the approved facility.

(c) When conditions are included in the Commissioner of Health's approval letter, the applicant must file a progress report on meeting such conditions with the Certificate of Need Program at least 12 months from the date of approval and at any other time when requested by the Department in writing. Failure to file such reports may result in the nullification of the approved Certificate of Need or fines and penalties imposed through licensure action.

SUBCHAPTER 4. ADMINISTRATIVE REVIEW PROCESS

8:33-4.1 Statement of purpose

(a) The administrative review process may be used in the following situations:

1. Emergency situations which demand rapid action;
2. The size of the project in relation to that of the facility argues against major expenditure of effort in review; and,
3. The Commissioner determines that, flexibility of the review process is critical.

(b) Applications will be reviewed to determine the completeness of the required information.

(c) The appropriate Health Systems Agency(ies) shall be notified prior to the beginning of the administrative review process.

(d) The timetable for the review period is as follows:

1. Deadlines for initial submission of applications shall be no later than the fifteenth day of the month preceding the beginning of a review cycle.

2. Within 30 days of the end of the filing deadline, the Department shall notify the applicant of the completeness status of the application.

3. A decision by the Commissioner of Health is generally forthcoming within 45-60 days. The appropriate Health Systems Agency(ies) will be notified of this decision.

(e) Administrative reviews do not include the Statewide Health Coordinating Council. The Health Systems Agency has the option of reviewing applications under the administra-

tive review process but must do so within the identified time frames.

(f) The determination of whether or not a project is eligible for processing under the administrative review process rests with the Department of Health.

(g) Applications for administrative review may be obtained from and must be filed with:

Certificate of Need Program
New Jersey State Department of Health
CN 360
Health-Agriculture Building
John Fitch Plaza
Trenton, New Jersey 08625 (609) 292-6552

8:33-4.2 Transfer of ownership/services

(a) Only the ownership of an existing, licensed health care facility, or licensed, existing beds, services, or equipment is transferable.

(b) Minimum information required for review shall include the following:

1. Trade name of facility.
2. Indication of type of facility, i.e. nursing home, hospital, etc.
3. Corporations:
 - i. For privately held corporations, information required for review shall include:
 - (1) Latest financial statements of the existing health care facility.
 - (2) Latest Medicaid cost report, if any, of the existing health care facility.
 - (3) Current rates and other charges.
 - (4) List of all present stockholders, percentage of shares held, names of directors and officers before acquisition or transfer.
 - (5) Change of directors, officers, leases and/or operator(s) if any, due to acquisition or transfer, including changes resulting from leases or similar transactions.
 - (6) Where interest is being acquired by transfer, list name or names of all stockholders transferring, percentage of interest before transfer, percentage of interest being transferred; list all parties to whom interest is transferred and the percentage of interest each will hold.
 - (7) Name of legal counsels if any, representing parties transferring under (b)3i.(6) above.
 - (8) List any financial business transactions the prospective owner and/or operator and lessee(s), if any, has had directly or indirectly with the health care facility within the last three years.
 - (9) List number of patient days, staffing pattern and operating expenses for the most current year prior to the transfer and the first full year after the transfer occurs.
 - ii. For public corporations, information required for review shall include:
 - (1) Items in (b)3i.(1) through (3), (5), and (8) through (9) above required by privately held corporations must be completed;
 - (2) Where interest is not being purchased on a public exchange, list name or names of stockholders transferring, percentage of interest before transferred, percentage of interest being transferred by each; list all parties to whom interest is transferred and the percentage of interest each will hold.
 - (3) Name of legal counsel, if any, representing parties transacting under (2) above.
 - iii. For newly formed or existing corporations purchasing physical assets, information required shall include:
 - (1) Copy of contract of purchase.

(2) Items in (b)3.i(1) through (3), (5), and (8) through (9) above required by privately held corporations must be completed; list all parties to whom interest is transferred and the percentage of interest each will hold.

(3) Financial statements of newly formed or existing corporations before acquisition of physical assets.

(4) Pro-forma statements reflecting cost of physical assets at acquisition.

(5) Name of Legal Counsels representing parties.

4. For partnerships, information required for review shall include:

i. Latest financial statements of the existing health care facility;

ii. Latest Medicaid cost report, if any, of the existing health care facility;

iii. Current rates and other charges;

iv. List of present partners, percentage of capital interest;

v. List of partners and/or operators and/or lessees after acquisition and percentage of capital interest being transferred by each;

vi. List of all partners after transfer, percentage of capital interest, name of partner or partners transferring, percentage of capital interest being transferred by each;

vii. Name of legal counsel, if any, representing parties transacting under subparagraph v. or vi. of this paragraph;

viii. List any financial business transactions the prospective partner and/or lessee, and/or operator has had directly or indirectly with the health care facility within the last three years;

ix. List number of patient days, staffing pattern and operating expenses before the transaction and projected.

5. For newly formed or existing partnership purchasing physical assets, information required shall include:

i. Copy of contract of purchase;

ii. Subparagraphs (b)4 i.-iv., vi., and viii.-ix. above must be completed;

iii. Financial statements of newly formed or existing partnership before acquisition of physical assets;

iv. Pro-forma and appraisal statements reflecting cost of physical assets at acquisition;

v. Name of legal counsel representing parties.

6. For Proprietorships, information required for review shall include:

i. Copy of contract of purchase;

ii. Latest financial statements of the existing health care facility;

iii. Latest Medicaid cost report, if any, of the existing health care facility;

iv. Current rates and other charges;

v. Financial statement of prospective owner and/or lessee and/or operator prior to acquisition, including changes resulting from leases or similar transactions;

vi. Pro-forma statements reflecting cost of physical assets at acquisition;

vii. Name of legal counsels representing parties;

viii. List any financial transactions the prospective owner and/or lessee and/or operators have had directly or indirectly with the health care facility within the last three years;

ix. List number of patient days, staffing pattern and operating expenses before the transaction and projected.

7. Give a complete description of the financing of the acquisition or transfer:

i. Where payment is made in full or in part with other than cash give description of item or items, date acquired, cost at acquisition, depreciation, if any, and method of determining

payment value if greater than book value. State if prospective owner (stockholders, partnership, or individual) ever had directly or indirectly an interest in the item or items being transferred;

ii. A schedule of long term loans, mortgages, notes and other payables owed by the prospective owners;

iii. A list of names and addresses of individuals, partnerships or corporations holding the liabilities. Identify amount, method of payment, and any interest thereon.

8. A description of any lease or rental arrangements and a copy of documentation of such arrangements.

9. A copy of the latest governmental property tax assessment which indicates the value of the facility and land.

(c) The following principles shall apply in the review of applications for the transfer of services from an acute care hospital:

1. A Certificate of Need is required whenever a hospital wishes to transfer to another corporate entity, in whole or in part, any patient care service as defined in N.J.A.C. 8:33 (Exhibits 3A and 3B).

2. The applicant must document in writing in the application that the following will be the policy at the transferred service:

i. Any such service transferred in whole must provide indigent care at the same level as provided for that same service in the two (2) years preceding the application or at a level commensurate with other hospitals in the area over the preceding two years, whichever is greater.

ii. Any such service transferred in part must, together with the applicant hospital, provide in the aggregate the same level of indigent care as provided for that same service in the two years preceding the application or at a level commensurate with other hospitals in the area over the preceding two (2) years, whichever is greater.

3. The applicant must document at the time of application that implementation of the proposed transfer of service will not violate any bond covenant or any loan and security agreement between itself and the New Jersey Health Care Facility Financing Authority or any other financing agency.

4. At the time of application, the applicant must provide a quality assurance and review program for the health services to be provided and agree in writing that such a program will be implemented at the proposed service.

5. No portion of the operating or capital costs incurred by or related to the proposed service will be incorporated into rates approved for the acute care hospital transferring the service. Any losses generated by this proposed service cannot be used as a justification for increases in the rates of the acute care hospital transferring the service.

6. It is expected that any surpluses generated from the operation of the transferred service will be dedicated to support, either directly or indirectly, health care services provided by either the hospital from which the services were transferred or by the entity actually providing the transferred service.

(d) Applications shall be reviewed by appropriate staff within the Department of Health for the purpose of providing information to the Commissioner to assist in the final decision.

(e) As identified at N.J.A.C. 8:33-2.10 the transfer of ownership of any licensed general acute care hospital, special hospital and psychiatric hospital shall follow the full review process and may not be processed under administrative review.

(f) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.3 Mandatory replacement of equipment and renovations to existing facilities

(a) When the health and safety of the patient is immediately at risk, and the capital costs exceed the thresholds identified in Subchapter 1 of this Chapter, an application for administrative review must be filed.

(b) Minimum information required for review shall consist of:

1. A project description, capital cost and operating cost, square footage (if any), service(s) affected, completion date, equipment involved, source of funds and other relevant information.

2. Justification for the proposed project should include:

i. An explanation of the mandatory nature of the replacement, including opinions regarding hazards and safety effects upon patient care by experienced professionals, or notification from Federal, State, county or municipal governmental agencies. The Department shall make the determination about the mandatory nature of the project;

ii. A narrative explanation of how the project will foster economies, if any, within the patient charge structure;

iii. Utilization statistics both inpatient and outpatient that demonstrate the necessity for the equipment or structure;

iv. Age of equipment to be replaced and/or structure to be renovated.

(c) Applications shall be reviewed by appropriate staff within the Department of Health for the purpose of providing information to assist the Commissioner in making the final decision.

(d) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.4 Optional replacement of equipment

(a) Applicants may request replacement equipment acquisitions to be reviewed under the administrative review process.

(b) The administrative review process may be used only if the new equipment maintains existing capability and does not include upgrading to a newer technology that expands the range of service.

(c) The Department, in consultation with the appropriate Health Systems Agency(ies), shall determine during the completeness review period whether or not the application shall be reviewed under the administrative review process. If it is determined that an administrative review is not appropriate, the applicant shall be notified in writing after the completeness review period. The applicant may elect to have the application be reviewed under the full review process and submit the required additional filing fee; or the applicant may elect to withdraw the application and submit a new one. In either event, if the application is deemed to require a full review, it will, if applicable, fall under the batching requirements identified at N.J.A.C. 8:33-1.5(d).

(d) Minimum information required for review shall consist of:

1. An explanation of what is to be done, square footage (if any), services affected, completion date, equipment involved, source of funds, and other relevant information;

2. A description of why the present equipment must be replaced, including age of equipment, downtime, repair costs, and safety factors.

3. Utilization statistics, both inpatient and outpatient, that demonstrate the necessity for the equipment to be maintained.

4. Identification of the capital costs, operating costs and revenues, if appropriate, to one year beyond break-even. Also, identification of all cost savings, if appropriate.

5. An explanation of the disposal of the equipment that is being replaced. If the equipment will be retained for "back-up", the new equipment shall be considered an addition to the service and shall not be eligible for consideration under the administrative review process.

(e) Applications shall be reviewed by appropriate staff within the Department for the purpose of providing information to assist the Commissioner in making the final decision.

(f) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.5 Expenditures for studies, surveys, designs, architectural drawings and so forth under \$150,000 but more than \$50,000

(a) Minimum information required shall consist of:

1. The purpose of study.

2. The source of funds.

3. The name and address of consulting firm, if any, with which the facility has contracted or anticipates to contract and reasons for use of an outside consultant.

4. The amount to be expended.

(b) Applications shall be reviewed by appropriate staff within the Department of Health for the purpose of providing information to assist the Commissioner in making the final decision.

(c) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.6 Extensions of implementation dates

(a) A request for an extension of the time set in the Commissioner's letter of approval to implement a project must be filed at least 60 days prior to such deadline.

(b) A request for an extension of time may be granted only if the applicant has documented that substantial progress towards completion of the project has occurred. Substantial progress is defined at N.J.A.C. 8:33-2.14(a)2.

(c) A copy of the request for the extension shall be filed with the appropriate Health Systems Agency(ies). Such agency shall forward its recommendation to the Department.

(d) Minimum information required for review includes:

1. Date of original approval.

2. Information delineating previous extensions requested and approved.

3. Amount of additional time requested.

4. Reasons justifying necessity for extension:

i. Such reasons should include any supporting documentation such as letters from zoning boards, licensure departments, municipalities, or other regulatory bodies.

(e) Applications shall be reviewed by appropriate Departmental staff, and Health Systems Agencies who shall report to the Certificate of Need Program within 45 days after receipt of a completed application.

(f) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.7 Change in cost, financing or scope

(a) Approved applicants whose projects increase in cost as defined in Subchapter 1 of this chapter and/or whose total square footage changes as defined in N.J.A.C. 8:33-2.11(a)3.v. must file for a change in cost and/or scope.

(b) Minimum information required includes:

1. New project costs by category, that is, architectural fees, major moveable equipment, renovation contracts, and so forth; new square footage.

2. Justification for increase by category including such factors as but not limited to economic factors, licensure require-

ments, grant requirements, and so forth; justification for any changes in total square footage.

3. If there is to be a new financing alignment, describe what it will be with supporting documentation and the reasons for the change.

(c) The Certificate of Need Program shall circulate to appropriate staff the change in cost applications for review and comment and forward to the Commissioner of Health for a final decision.

(d) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.8 Change in the number of categorically licensed beds; increase in total number of residential health care beds up to 10 beds or 10 percent whichever is less

(a) Applicants for a change in the number of categorically licensed beds as defined in Subchapter 1 of this chapter may file for an administrative review.

(b) Minimum information required includes:

1. Number of beds to be reclassified by licensed category; or,

2. Number of residential health care beds to be added.

3. Such factors as necessary to justify the project including description of service area, effect on operating expenses, current utilization rates and utilization trends by service, required changes in staffing patterns, assurances that the impact on existing and approved facilities will foster optimum utilization and factors affecting travel time in area and availability of manpower for staffing.

(c) Applications shall be reviewed by appropriate Departmental staff and community Health Systems Agencies who shall respond to the Certificate of Need Program within 20 days upon receipt of a complete request.

(d) Within 60 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.9 Decrease in total number of licensed beds

(a) Applicants for a decrease in the total number of licensed beds as defined in Subchapter 1 of this chapter may file for an administrative review.

(b) Minimum information required includes:

1. Explanation of beds by service involved in the project, number of beds affected, services affected, and total number of beds available at the completion of the project.

2. Description of service area to be affected, including such demographic information as necessary to justify the program.

3. Impact on existing facilities in the service area.

4. Utilization and utilization trends for all services affected by the change.

5. Required changes in staffing patterns.

6. Effect on operating expenses.

(c) Applications shall be reviewed by appropriate Departmental staff and Health Systems Agencies who shall respond to the Certificate of Need Program within 45 days after receipt of a completed application.

(d) Within 60 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.10 Mandatory new health care services

(a) When it becomes necessary to implement a new health care service as a result of Federal, State, county or municipal governmental requirements, applicants may file for an administrative review.

(b) Minimum information required for review includes:

1. An explanation of the proposed service.

2. Documentation of the mandatory nature of the service.

3. Cost impact information which includes capital costs, operating costs and revenues to one year beyond break-even.

4. Projected utilization statistics.

(c) The Department shall determine the mandatory nature of the project.

(d) Application shall be reviewed by appropriate staff within the Department of Health for the purpose of providing information to assist the Commissioner in making the final decision.

(e) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.11 Telephone systems and computer systems

(a) Applicants for telephone and computer systems may file for an administrative review.

(b) Minimum information required for review includes:

1. Type of equipment to be acquired.

2. Total purchase cost value, financing arrangements, and financing sources.

3. Utilization statistics, both inpatient and outpatient, that show the necessity for the equipment to be acquired and maintained.

4. Effect of the acquisition on the economics of the cost center where it will be placed and the effect on the patient charge structure.

(c) Applications shall be reviewed by appropriate staff within the Department of Health for the purpose of providing information to assist the Commissioner in making the final decision.

(d) Within 60 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.12 Demonstration or research project

(a) Applicants for a demonstration or research project may file for an administrative review. It is mandatory that an applicant verify in writing with the Department that the proposed project may be considered as a demonstration or research project (see N.J.A.C. 8:33-2.12).

(b) Minimum information required shall be:

1. A completed Certificate of Need application form.

2. The project narrative must address the specific criteria and standards for licensure which will be studied, if appropriate.

3. The duration of the demonstration period must be specified.

4. The evaluation criteria must be specified.

(c) The review process rules are as follows:

1. Simultaneously with the filing of an application with the Certificate of Need program, a copy shall be sent to the Health Systems Agency in which the project is located. The Health Systems Agency will forward its recommendation to the Commissioner within 30 days after receipt of the application.

2. If appropriate, the Commissioner of Health shall appoint an advisory committee for the project. If the advisory committee is appointed to review the application, it will forward its comments directly to the Commissioner within 30 days after receipt of the application.

(d) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming if it is done under administrative review.

(e) Evaluation period rules are as follows:

1. An approved Certificate of Need for a demonstration or research project shall be conditionally issued for the life of the project. During the conditional period, the Alternative Health

Systems program will monitor the project and make reports when necessary to the Commissioner. Project evaluation reports will be solicited from the Health Systems Agency in which the project is located. Copies of all project evaluation reports will be sent to all the health systems agencies for information purposes.

2. Upon completion of the demonstration period, final project reports including any evaluations conducted will be submitted by the project director and Department staff to the Commissioner, the advisory committee and the Health Systems Agencies.

3. The Advisory Committee will review and advise the Commissioner on each demonstration or research project which has shown unproductive results. The Commissioner may consider this advice and any other pertinent data before making a final determination of revocation of a Certificate of Need.

4. After the demonstration period, if the project has been determined successful, the State Licensing, Certification and Standards Service will be requested to develop criteria and standards for licensure, when appropriate.

8:33-4.13 Energy conservation projects

(a) When an applicant wishes to expend capital funds in excess of the criteria outlined in N.J.A.C. 8:33-1 and 2 and the project exclusively involves energy conservation, such applicant may file for administrative review.

(b) Minimum information required for review includes:

1. An explanation of what is to be done, including capital cost and operating cost, square footage (if any), completion date, materials used, equipment involved, source of funds and other relevant information.

2. Justification for the proposed project should include:

i. A narrative explanation that documents that the facility has established an energy data baseline which is normalized for climatic changes;

ii. A narrative explanation of how the proposed project will influence the normalized energy data baseline;

iii. An explanation of how the existing recommendations for energy conservation opportunities for the area to be renovated will be affected by the current application.

(c) Applications shall be reviewed by appropriate staff within the Department of Health for the purpose of providing information to assist the Commissioner in making the final decision.

(d) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.14 Relocation of an approved project within the same county

(a) Applicants for the relocation of an approved project within the same county may file for an administrative review provided that the relocation is not from a municipality with a population greater than 50,000. However, as indicated at N.J.A.C. 8:33-2.11(a)3.iv, after consultation with the appropriate Health Systems Agency concerning access, the Department may determine that the proposed relocation shall be subject to full review.

(b) Minimum information required for review includes:

1. An explanation of what is to be done and a justification of the proposed relocation. This shall include the effects of the relocation on capital and operating costs; financing; access of the population the original approval was to serve; programmatic or service changes; and changes in patient mix, charges, or fees.

2. Impact on existing facilities in the proposed new location.

3. Revised dates of implementation of the Certificate.

(c) The Certificate of Need Program shall circulate to appropriate staff such applications for review and comment and forward to the Commissioner of Health for a final decision.

(d) Within 45 days after initiation of the review cycle, a decision from the Commissioner shall be forthcoming.

8:33-4.15 Architectural and cost review of hospital construction/modernization/renovation projects

(a) After a hospital applicant has satisfied the requirements identified at N.J.A.C. 8:33-2.7(a)11 for projects with a total project cost of 10 million dollars or more, such applicant shall file for the administrative review of the specific construction/modernization/renovation option chosen.

(b) Minimum information required includes:

1. Outline of all construction options that were considered.

2. Reasons that the specific option requested for review was chosen.

3. Capital cost estimates for all options.

4. Operating cost estimates for all options.

(c) Applications shall be reviewed by appropriate staff within the Department of Health for the purpose of providing information to assist the Commissioner in making the final decision.

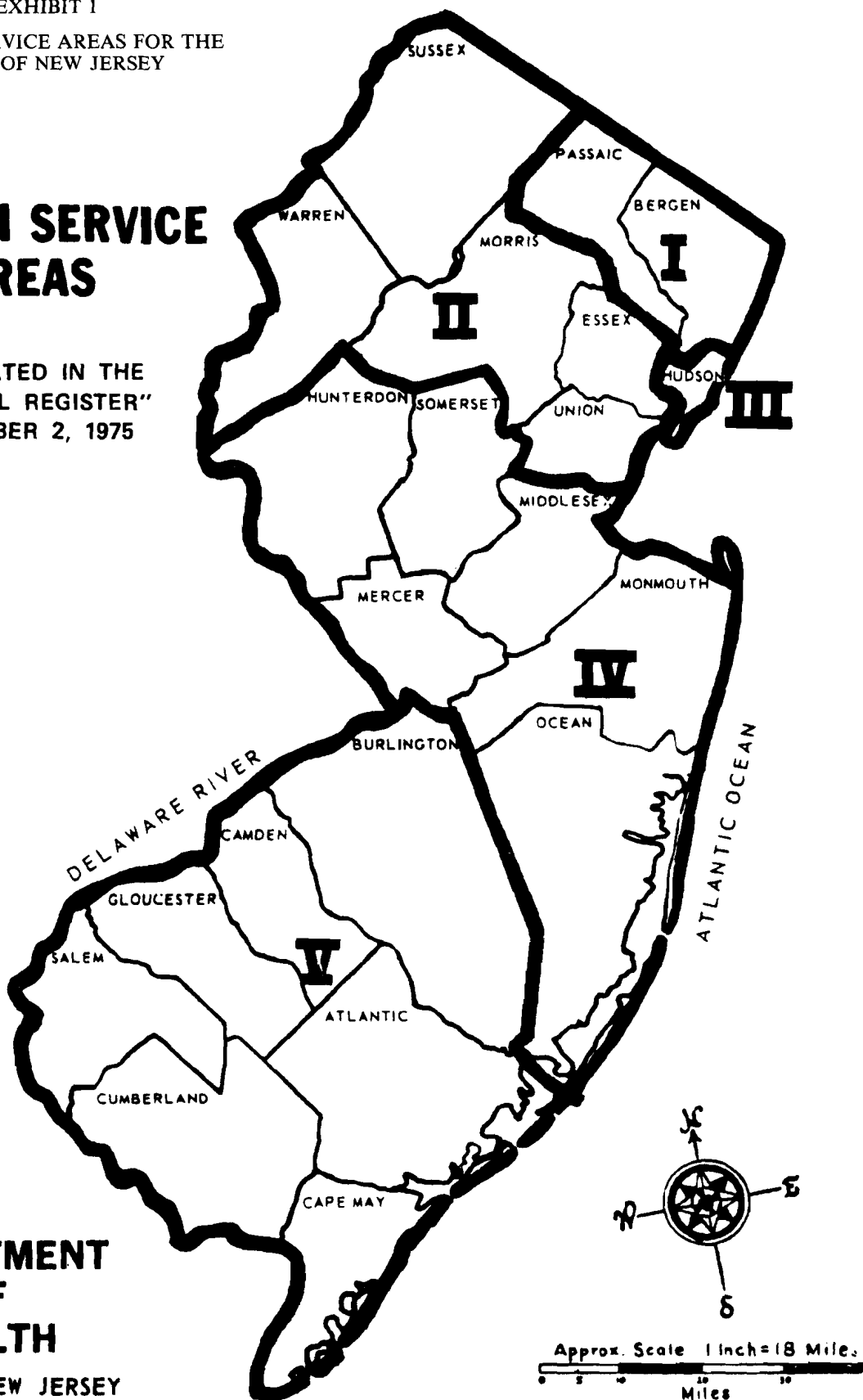
(d) Within 90 days after initiation of a review cycle, a decision from the Commissioner shall be forthcoming.

EXHIBIT 1

HEALTH SERVICE AREAS FOR THE STATE OF NEW JERSEY

HEALTH SERVICE AREAS

DESIGNATED IN THE "FEDERAL REGISTER" SEPTEMBER 2, 1975



DEPARTMENT OF HEALTH
STATE OF NEW JERSEY

EXHIBIT 2

HEALTH SYSTEMS AGENCIES IN NEW JERSEY

AREA I	Bergen-Passaic Health Systems Agency 15-01 Broadway Fairlawn, New Jersey 07410 Marvin Burton, Executive Director (201) 794-8640	Bergen Passaic
AREA II	Regional Health Planning Council 8-10 Park Place Newark, New Jersey 07102 Martin Parker, Executive Director (201) 622-3280	Essex Morris Sussex Union Warren
AREA III	Hudson Health Systems Agency 871 Bergen Avenue Jersey City, New Jersey 07306 Jesse Huang, Executive Director (201) 451-5024	Hudson
AREA IV	Central Jersey Health Planning Council, Inc. CN 5259 Princeton, New Jersey 08540 Edward Peloquin, Executive Director (609) 452-2320	Mercer Middlesex Monmouth Hunterdon Ocean Somerset
AREA V	Southern NJ Health Systems Agency, Inc. Kor-Center East Interstate Industrial Park Belmar, New Jersey 08030 Daniel Apostolu, Executive Director (609) 933-0641	Atlantic Burlington Camden Cape May Cumberland Gloucester Salem

EXHIBIT 3A

STANDARD CATEGORIES OF HEALTH CARE SERVICES

Note: The installation or implementation of any of the specified health care services as shown below, which have not been previously provided by the health care facility will require a Certificate of Need. Please refer to Exhibit 3B for a sample listing of health services which lie within the STANDARD CATEGORIES.

A. Bed-related

1. Medicine, surgery
2. Obstetrics, gynecology
3. Pediatric
4. Intensive care (ICU)
5. Cardiac care (CCU)
6. Rehabilitation
7. Long term care
8. Residential health care
9. Adult acute psychiatric
10. Adult sub-acute psychiatric
11. Children's acute psychiatric
12. Children's sub-acute psychiatric
13. Alcohol detoxification
14. Alcohol residential treatment
15. Drug free residential (therapeutic community)

B. Non-bed-related

1. Outpatient and clinic services
2. Emergency room services
3. Diagnostic radiology

4. Nuclear medicine
5. Laboratory services
6. Physical medicine
7. Dentistry
8. Vocational/disability services
9. Social services
10. Home health agency
11. Drug rehabilitation—outpatient drug free
12. Alcohol rehabilitation
13. Free-standing health screening centers
14. Mobile multiphasic health testing services
15. Outpatient mental health care
16. Partial hospitalization
17. Mental health emergency/screening
18. Drug rehabilitation-detoxification/maintenance

C. Special Services

1. Renal dialysis
2. Cardiac diagnostic services
3. Burn center
4. Neurosurgery
5. Cardiac surgical services
6. Organ transplant/organ procurement
7. Therapeutic radiation
8. Organ bank
9. Blood bank
10. Perinatal intensive care
11. Health maintenance organizations
12. Hemophilia services
13. Hospice program
14. Any service for which regionalization criteria or health planning regulations have been developed
15. Mobile intensive care services
16. Computed tomographic (CT) scanning services
17. Medical day care
18. Other new health/medical care technologies

EXHIBIT 3B

HEALTH CARE SERVICES WITHIN THE STANDARD CATEGORIES

Note: Within some of the STANDARD CATEGORIES OF HEALTH CARE SERVICES are those component services which are considered to be sub-elements of such CATEGORIES. The component services are listed below and shown within the appropriate STANDARD CATEGORY. If any health facility or organization is currently providing one or more component services within a STANDARD CATEGORY the implementation of additional component services within that STANDARD CATEGORY shall not be regarded as the institution of a new health care service. Thus, the addition of a component service within a previously existent STANDARD CATEGORY shall not require a Certificate of Need application provided that the institution of the service does not exceed the monetary limits as stated in N.J.A.C. 8:33.

A. Bed-related

1. Medicine	Surgery
	Component Services:
Allergy	General
Anesthesiology	Ophthalmology
Communicable Disease	Thoracic

PROPOSALS

Interested Persons see Inside Front Cover

HEALTH

Dermatology
Endocrinology
Gastroenterology
Cardiac Care (Non-CCU)
Physical and Medical
Evaluation
Family Practice
Internal Medicine
Pulmonary Function and
Inhalation Therapy
Geriatric
Urology
Eye, Ear, Nose, Throat
Neurology

Otorhinoloryngology
Proctology
Orthopedic
Urology
Cystoscopy
Oral
Plastic

- 2. Obstetrics, gynecology
- 3. Pediatric
- 4. Intensive care (ICU)
(All ICU excluding separate Cardiac Care Unit
and separate Neo-natal Intensive Care Unit)
- 5. Cardiac Care (CCU)
- 6. Adult acute psychiatric

Component Service:

Mental Health Emergency/Screening

- 7. Adult sub-acute psychiatric
- 8. Children's acute psychiatric
- 9. Children's sub-acute psychiatric
- 10. Rehabilitation
- 11. Long term care
- 12. Residential health care
- 13. Alcohol detoxification
- 14. Alcohol residential treatment
- 15. Drug free residential (therapeutic community)

B. Non-bed-related

- 1. Outpatient and Clinic Services

Component Services:

Allergy	Parasitology
Arthritis	Pediatrics
Cardio-vascular	Podiatry
Cerebral Palsy	Proctology
Cystic Fibrosis	Psychiatric
Dermatology	Sickle Cell Anemia
Diabetes	Speech
Employee Health	Hearing
Endocrinology	Surgery
Eye, Ear, Nose, Throat	Thoracic
Family Planning	Toxemia
Genito-Urinary	Tuberculosis
Glaucoma	Tumor Cancer
Gynecology	Venereal disease
Hypertension	Diagnostic and
Inoculation	Preventive Medicine
Medical	Private Ambulatory Service
Muscular Dystrophy	Home Care Program
Neurology	Out-Reach Clinic
Obstetrics	Ambulance Service affiliate with a health care facility
	Day Accommodation
	Surgery

- 2. Emergency Room Services
- 3. Diagnostic Radiology

Component Services:

Diagnostic X-Ray
Cinefluorography
Ventriculography
Angio-Cardiology

- 4. Nuclear Medicine
- 5. Laboratory Services

Component Services:

Microbiology	Pathology
Clinical Chemistry	Histopathology
Serology	Autopsy
Hematology	Basal-Metabolism

- 6. Physical Medicine

Component Services:

Physical Therapy	Recreational Therapy
Occupational Therapy	Audiology
Speech Therapy	Prosthetics, Brace Fitting

- 7. Dentistry

Component Services:

Oral Surgery	Prostodontia
Operative/Restorative	Periodontia
Dentistry	Orthodontia
Endodontia	

- 8. Vocational Sevices

Disability Services

Component Services:

Vocational Evaluation	Deafness
Vocational Counseling	Blindness
Pre-Vocational Experiences	Tuberculosis
Special Education Services	Cardiac Conditions
Vocational Training	Orthopedic Conditions
Sheltered Employment	Neurology
Travel Training for the Blind	

- 9. Social Services

Component Services:

Social Casework Department
Family Planning Service
Recreation (non-medical)
Social Study and Evaluation
Social Group Work

- 10. Home Health Agency
- 11. Drug rehabilitation—outpatient drug free
- 12. Drug rehabilitation-detoxification/maintenance
- 13. Alcohol rehabilitation
- 14. Free-standing health screening centers
- 15. Mobile multiphasic health testing services
- 16. Outpatient mental health care
- 17. Partial hospitalization
- 18. Mental health emergency screening

C. Special Services

- 1. Renal Dialysis
- 2. Cardiac Diagnostic Services
- 3. Burn Center
- 4. Neurosurgery
- 5. Cardiac Surgical Services
- 6. Organ transplant/organ procurement
- 7. Therapeutic Radiation

Component Services:

X-Ray Therapy	Megavoltage X-Ray
Orthovoltage X-Ray Therapy	Therapy
Radium Therapy	Gamma Beam Therapy

- 8. Organ Bank
- 9. Blood Bank
- 10. Perinatal Services
- 11. Health Maintenance Organizations
- 12. Hemophilia Services
- 13. Computed tomographic (CT) scanning services
- 14. Medical day care
- 15. Position emission tomography services
- 16. Magnetic resonance imaging services

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

For proposals numbered PRN 1985-271, 272 and 273, submit comments by June 19, 1985 to:

John A. Calabria, Coordinator
 New Jersey Department of Health
 Health Planning Services, Room 604
 CN 360
 Trenton, N.J. 08625

Certificate of Need: Computerized Tomography (CT) Services

Proposed Amendments: N.J.A.C. 8:33G-1.1, 1.2, 1.3 and 1.4

Authority: N.J.S.A. 26:2H-1 et seq.
Proposal Number: PRN 1985-273.

The agency proposal follows:

The Department of Health proposes to amend N.J.A.C. 8:33G-1.1 et seq. The proposed amendments largely recommend the retention of current Department of Health policy, standards and criteria for the planning and certification of need of computerized tomography (CT) services. Amendments are proposed to allow greater flexibility with regard to the minimum utilization requirement at N.J.A.C. 8:33G-1.2(a) for hospital applicants and for non-hospital applicants whose proposed service is geographically isolated from an existing Certificate of Need approved CT service. In addition, applicants who qualify under the utilization exception will bear some financial risk in conducting this service.

These amendments are being proposed in recognition that CT has proven itself as a valuable diagnostic modality that should be available to all full-service hospitals that can provide the service in an economically efficient manner.

Social Impact

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospital and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs . . ."

Computerized Tomography (CT) is recognized by the Department as a diagnostic modality of established clinical value which should be available to all full-service hospitals where the case mix is adequate to support an effective and efficient CT service as well as to all residents of the State. The proposed changes will increase accessibility to this important technology for all New Jerseyans.

Currently there are a number of acute care hospitals in New Jersey that do not provide CT services. Opportunities for initiation of CT services at these hospitals will be enhanced by the proposed amendments which relax the existing minimum utilization requirements for the initial installation of hospital-based CT units where the hospital satisfies the other requirements of these rules. In addition non-hospital applicants may apply for relaxation of the projected minimum utilization requirements where they propose an initial installation of the CT unit to be located and operated at a site which is not within a 10 mile radius of an existing Certificate of Need approved CT service. By offering opportunities for exceptions to the minimum utilization requirements identified in the current rules, the Department anticipates that an increased number of CT installations will result, thereby increasing access to this diagnostic service.

Economic Impact

During 1984, there were 74 hospital-based CT units in operation at 70 sites in the State. Statewide CT utilization of these units increased by 26 percent over the previous year, averaging 3,388 patients scanned per unit. The cost of providing CT services, both capital and operating costs, remains relatively high. Since the cost of providing CT services is largely determined by the spreading of fixed costs over the number of cases performed at each site, the department has consistently sought documentation that a minimum number of cases could be projected annually. Given the total acceptance of CT scanning as a necessary diagnostic imaging modality, the Department is proposing exceptions to the utilization requirements for hospital applicants and geographically isolated non-hospital applicants provided that they assume some financial risk if the service is underutilized. In effect, the Department will permit a relaxation of the utilization requirement provided the applicant is at risk for costs resulting from operational inefficiencies. Thus the consumer will not bear an unreasonable cost if the CT service does not meet a utilization level consistent with operational efficiencies.

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

8:33G-1.1 Introduction

(a) Computerized Tomography (CAT/CT) represents [a revolutionary] **an important** radiologic [technique] **advance-**

ment which permits [a safe system of] **the** imaging [the] of internal structures of the body through the use of computer assisted x-ray scanning. [The use of this CT technology represents] **It has proven to be** a major advance over conventional radiology techniques since it allows the discrimination of soft tissues of differing densities and spatially localizes structures to a specified area of interest. [(to the complete exclusion of sections not under study). In effect, only the structures of particular interest are scanned and the three-dimensional image is reduced to a two-dimensional image which is not distorted by structures adjacent to the field of view. By employing highly sensitive scintillation detectors rather than film, CT scanners are able to record small differences in x-ray attenuations and its utilization of narrow, pencil-shaped or flat, fan-beam x-rays greatly minimizes the scattering of radiation in contrast to conventional radiographs. CT scanners require a large capital investment for the purchase of the unit and the maintenance of a competent and efficient staff to operate its sophisticated equipment. In an effort to limit negative cost impacts, a phased approach to the acquisition and operation of computerized tomographic scanners is needed. The policies recommended herein seek to assess and meet community need by establishing standards and criteria which will maximize effective utilization of each CT scanner approved and placed in operation while minimizing unnecessary cost and duplication. In establishing these guidelines, however, it must be emphasized that they will be subject to periodic review as technological change and pertinent utilization data are made available.] **Images that are produced are not distorted by structures adjacent to the field of view.**

(b) The Department recognizes that computerized tomography is a diagnostic modality of established clinical value which should be available to all full-service hospitals where the case mix is adequate to support an effective and efficient CT service as well as to all residents of the State.

(c) The policies identified herein shall apply to the planning for and review of certificate of need applications for computerized tomography services within the State of New Jersey. While these policies permit exceptions to the utilization standard for applicants, there is a recognized potential for facilities not achieving the minimum utilization standard identified herein to operate in an economically inefficient manner. Therefore, some applicants who qualify under the utilization exception will bear some financial risk in conducting this service. These rules shall be subject to periodic reexamination as technological changes occur and new clinical information becomes available.

8:33G-1.2 Utilization standards

(a) Each applicant for a computerized tomographic scanner must show evidence of a minimal proposed volume of 2,000 scans per unit, per year by application of the Leonard model, herein attached as Appendix A.

1.-2. (No change.)

3. A relaxation of utilization standards, identified [in (a) above,] **at N.J.A.C. 8:33G-1.2(a) above** may be permitted [in instances of severe geographic isolation of a population from a needed computerized tomography service.] **for a computerized tomography service where:** [in supporting its request for a variance from the utilization standards, a hospital applicant must satisfy the following conditions:]

[i. Provide written documentation that over fifty percent of the total population of the applicant facility's service area is a more than 45 minutes mean travel from a facility providing computerized tomography services.]

i. **The applicant for a certificate of need is a hospital; and**
 ii. **The application is for the initial installation of CT scanner as opposed to the replacement or addition of CT scanning equipment beyond the first scanner; and**

[ii] iii. [Document] **The applicant has demonstrated in its certificate of need application** that [the applicant facility] it has available, either directly or through formal arrangements, a full range of diagnostic services including, at a minimum, diagnostic and therapeutic radiology services, nuclear medicine and diagnostic ultrasound; and

[iii] iv. [Document that the applicant facility] **The applicant has documented in its application that it has available**, either on staff or through formal arrangements, individuals for the treatment of neurological, thoracic, cardiac, abdominal, medical and radiological oncological, gynecological, neurosurgical and genitourinary conditions as well as other conditions diagnosed by computerized tomography.

[iv. Document that the acquisition and operation of the unit will be financially feasible:]

4. **In addition, a non-hospital applicant may qualify for a relaxation of the utilization standards identified at N.J.A.C. 8:33G-1.2(a) above where:**

i. **Written evidence is provided that the proposed service will be located and operated at a site which is not within a ten mile radius from an existing Certificate of Need approved CT service; and**

ii. **The application is for the initial installation of a CT scanner as opposed to the replacement or addition of CT equipment.**

(b) In establishing reimbursement to applicants who have qualified pursuant (a)3 or 4 above and have been granted an exemption to minimum utilization standards identified at (a) above, the Department shall establish a price per scan based upon the prevailing, usual and customary fee schedules for CT services.

[(b)] (c) Each application seeking to replace or update its existing computerized tomographic scanner must show evidence of a minimal volume of 2,000 scans per year.

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

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

8:33G-1.3 Personnel standards

(a) Each applicant for a certificate of need for a computer tomographic scanner must provide the Department with written documentation that the following minimal staff complement will be available within the facility to each unit:

1.-3. (No change.)

(b) In addition, sufficient supportive personnel consistent with the efficient delivery of quality CT services should be assigned to the CT scanner (e.g., aides, secretary, clerk).

8:33G-1.4 General criteria

(a) As part of the application for a computed tomographic scanner, each applicant must meet each of the following minimum general criteria:

1. Provide written documentation of need as expressed by the Leonard model (Appendix A) and show evidence that the proposed action is both consistent with the institution's approved long-range plan, [submitted to the department under requirements of] **where such submission is required pursuant to N.J.A.C. 8:31-16.1**, and with the health systems plan and annual implementation plan of the health systems area in which the applicant is located.

2.-5. (No change.)

6. Maintain and provide basic statistical data on the operation of the unit(s) and report that data to the New Jersey

Department of Health on a quarterly basis and on a standardized form prepared by the department. Copies of the full text of the required quarterly reporting forms may be obtained upon written request to the New Jersey State Department of Health, Health Data Services, Room 405, CN 360, Trenton, New Jersey 08625.

7.-8. (No change.)

9. The Department's [will establish a] technical advisory committee [to] **will** review the regulation on a regular basis. This committee will perform its review within three years and make its recommendations to the Commissioner of Health.

Appendix A (No change.)

(a)

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

Proposed Readoption with Amendments: N.J.A.C. 8:33H-1.1 through 3.11

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.
 Proposal Number: PRN 1985-271.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), these rules will expire on September 18, 1985. The Department has found the rules to be necessary, reasonable, and proper, and therefore proposes that they be readopted.

The current rules require periodic updating based upon the need to address current activities in the expanding long-term care field. The body of existing rules have been in effect since September 1980, with substantive amendments concerning Medicaid utilization criteria adopted in May 1982; exemption from certain review requirements for long-term care beds in continuing care or life care communities adopted in July 1983; and a new long-term care bed need methodology adopted in September 1983. A number of substantive amendments were adopted in October 1984, largely for the purpose of clarifying, as well as extending, the intent and requirements of existing policy regarding appropriate alternatives to long-term care beds, the direct Medicaid admissions utilization criteria, and life care/continuing care communities. In addition, new criteria for determining the need for medical day care facilities were adopted. The full text of the rule including the proposed amendments were reviewed and approved by the Statewide Health Coordinating Council (SHCC) in the Department of Health.

The rule proposed for readoption contains three subchapters. The first subchapter (N.J.A.C. 8:33H-1) describes a number of policies and general provisions to be used in the planning and Certificate of Need review of long-term care facilities and services; the second subchapter (N.J.A.C. 8:33H-2) contains definitions of a number of terms used throughout the rule; and subchapter three (N.J.A.C. 8:33H-3) contains specific standards and guidelines used in the planning and Certificate of Need processes for long-term care facilities and services. These specific standards and guidelines cover size of facilities, required occupancy rates, need for medical day care, necessary alternatives to long-term care

beds, required utilization of long-term care beds by Medicaid recipients, requirements for the long-term care portion of Continuing Care Retirement Communities, the state long-term care bed need methodology and other criteria.

This proposal recommends the readoption and retention of Department of Health policy, standards and criteria, as reflected in the existing rules, with the following proposed substantive changes: Proposed amendments to N.J.A.C. 8:33H-3.3(a)4 would require that approved long-term care facilities and their appropriate alternatives be constructed on a concurrent basis. Proposed amendments to N.J.A.C. 8:33H-3.3(a)6 clarify the intent of the life care/continuing care communities exemption from certain Certificate of Need review requirements by modifying the qualifying criteria to include only those continuing care retirement communities (CCRCs) which provide post-acute and chronic nursing home care within the term of a contract, in return for an entrance fee or periodic payments or both, in the event such care is required by residents. Subparagraphs N.J.A.C. 8:33H-3.3(a)6i-xi reorder and expand upon the former criteria. The addition of subparagraph N.J.A.C. 8:33H-3.3(a)6xii proposes that those CCRC rental projects which seek Certificate of Need approval to construct an on-site long-term care facility but do not meet the required definition and criteria for LTC bed need exemption in terms of provision of nursing home care on a contract basis, as opposed to priority admission on a per diem basis, may apply to the Department of Health for an exemption from the existing long-term care bed need under certain circumstances but are subject to all other Certificate of Need review requirements and applicable CCRC criteria. The proposed amendment at N.J.A.C. 8:33H-3.3(a)7 creates a standard for the utilization of new and/or additional residential health care beds by Supplemental Security Income (SSI) recipients, similar to that of the basic Medicaid utilization standard for long-term care beds. The codifies a long-standing practice of the SHCC to require as a condition for approval that a minimum of 10 percent of the total bed complement be occupied by SSI recipients. The proposed amendment of N.J.A.C. 8:33H-3.3(b)2 proposes that wherever there is a long-term care bed need for less than a usual full-sized facility of 120 beds, only additions to existing facilities in accordance with N.J.A.C. 8:33H-3.1(a)iii should be approved.

Social Impact

N.J.S.A. 26:2H-1 recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospitals and health care services, and health facility cost containment programs. . . ."

The New Jersey State Health Plan recognizes that the provision of long-term care for the frail elderly is fast emerging as a problem that may pose the greatest challenge to health and social policy, both on a State and national level, now and in the years ahead. The reasons for this problem are primarily two-fold: changing demographic patterns and the current patterns of financing and providing long-term care. The major problems associated with long-term care service delivery in New Jersey are seen as the inadequate development of and

access to non-institutional options for geriatric patients, combined with inadequate access to long-term care facilities by Medicaid populations, including persons waiting in the community and those discharged from inpatient psychiatric facilities pending placement. These problems are closely interrelated, in that a primary cause of inappropriate long-term care facility placement is the lack of community-based alternatives and, in turn, the inappropriate utilization of such costly existing resources results in a shortage of long-term care beds for those most in need of such care, as well as reduced resources for financing alternatives. In view of the increasing recognition that many elderly neither need nor prefer nursing home care, institutional placement should be considered a last resort rather than the care of first choice.

The demographic shift which has resulted in the aged becoming an increasingly larger proportion of the population, combined with improved medical procedures which have increased general life expectancy but placed this population at greater risk to debilitating chronic conditions has increased the need for various long-term care services. However, a growing barrage of criticism in recent years has been directed toward the issue that long-term care for the elderly is overly dependent upon the nursing home or long-term care facility. This almost exclusive emphasis on the provision of institutional services organized along a medical model of care is felt to be inappropriate since it imposes a medical solution on a variety of social problems, particularly the lack of sheltered housing options and community support services. It also has been suggested that efforts toward promoting health services for the aged in this regard have been counter-productive. Lives have been prolonged but little has been done to improve the quality of life, in that too often the prolonged life has led to increased dependence and institutionalization. A "warehouse approach" often has been developed to handle the problems of geriatric health care.

The needs of an aging society and the lack of balance in the chronic care system are such that long-term care will have to be a dominant theme of national health and social policy through the balance of this century. Likewise, a major goal of public policy in New Jersey for this decade and beyond must be the provision and financing of an adequate array of long-term care services. These services must range from non-institutional community/social services to full-time institutional medical/nursing services in long-term care facilities. The basic framework or structure of these services must emphasize an integrated, coordinated, and comprehensive system responsive to the enormous variety and frequent instability of impairments and functional deficits of the frail elderly; the delivery of services within the least restrictive environment and emphasizing maximum freedom for the individual; a renewed reliance on the family and community in the provision of care; concern for the cost-effectiveness of service provision and realistic cost-containment measures; and, most importantly, quality.

The Long-Term Care Policy Manual represents a concrete step toward the development of an improved long-term care system in New Jersey, its intent being the implementation of system goals through the planning and Certificate of Need review processes. The proposed amendments serve to strengthen the existing rules to address appropriate areas of concern. In particular, they require a commitment that long-term care beds and their appropriate alternatives be constructed on a concurrent basis in order to ensure that such alternative care modalities will be available in a timely manner rather than subsequently "phased in" or entirely abandoned. Continuing care retirement communities are evolving as one

method for responding to the increasing longevity that many members of our society are experiencing. They provide a valuable alternative for elderly people who want a permanent answer to their long-term residential and health care needs. The modification of the qualifying criteria for the continuing care retirement communities exemptions is intended for the benefit of both the industry and the public at large. It serves to ensure equity among applicants and to strengthen the assurance that such long-term care beds exempted from the existing bed need and other competitive review requirements largely will serve only residents of the sponsoring community and will not have an adverse effect upon existing facilities. In addition, it promotes those CCRCs which propose to more fully provide for the future health care needs of the elderly at a cost they know they can afford, thus placing the facility rather than the public at risk. At the same time, communities offering other configurations of care are encouraged. The SSI utilization requirements for residential health care facilities helps to ensure that at least a minimum number of beds will be available to those indigent persons generally most in need of such care.

The sections of the regulation which are proposed for re-adoption will continue the Department of Health policy of encouraging the development of a continuum of care for the elderly. The continuum consists of the following services: Long-term care, residential health care, medical day care, congregate living arrangements, and life care communities. Any applicant proposing to develop long-term care facilities will, with re-adoption, continue to be required to develop appropriate alternatives to that care.

Economic Impact

The New Jersey State Health Plan recognizes the provision of long-term care services, particularly institutional long-term care, as an important factor contributing to the rapidly escalating costs of health care. The highly unbalanced and almost exclusive emphasis on the provision of institutional services organized along a medical model of care have sent costs climbing. Traditional long-term care resources appear to have reached capacity and the existing system's high costs almost preclude expansion in its current form. A continued orientation toward more costly health services and settings capable of caring for relatively few, at the expense of social and supportive services and housing resources for the increasing larger population at risk, predicts serious financial and social consequences. This is in the face of a relatively stable portion of the population capable of producing the goods, services, and attendant tax revenues necessary to support government assistance for the growing numbers dependent because of age or disability. Public and private spending on long-term care, which doubled nationally between 1975 and 1980, is expected to double again between 1980 and 1985 without any expansion of policies or programs. Public expenditures for nursing home care alone, which were \$800 million in 1965, are expected to reach \$9.5 billion in 1984.

Financing for these services must assure economic accessibility and should include an appropriate mix of private and public dollars. The inexorable demographics of the aging process will require that significant amounts of money be spent in the next several decades for long-term care. This will be true even if no changes are made in current programs. In this context, it should be noted that only about five percent of the over 65 population resides, at any given time, in long-term care facilities. Based on the projected demographics and current program trends, over the next twenty years, New Jersey can expect to spend at least 600 million dollars (in 1980 dol-

lars) for capital investments and an average of 1.5 billion dollars per year (in 1980 dollars) for program operations. The issue is how to spend the money to achieve the far greater humanity and cost-efficiency possible under an adequate, balanced long-term care system that will serve more people better at a lower unit cost. Despite the increased commitment of resources to meet a rising demand for services, dissatisfaction obviously exists regarding the structure and orientation of the delivery system.

The proposed amendments seek to promote the orderly development of adequate and effective long-term care services within cost restraints, while at the same time ensure their availability and accessibility to the aged population and particularly those most in need among them. They assure that lower cost alternatives will be constructed as part of long-term care facilities and that residential health care beds will be available to the indigent. The approval of long-term care bed additions rather than entire facilities where there is a limited bed need is intended to promote cost efficiency. The construction of a new facility represents both higher capital and operating costs in terms of ancillary space and services, administration, and staffing.

The continuing care retirement community amendments should have no significant adverse economic impact on existing or future long-term care facilities, as such communities generally tend to function as self-contained entities. The on-site nursing facilities tend to be quite small compared to independent free-standing facilities, with 60 beds as the average size for newly developing facilities, as the emphasis of the community is to keep the resident functioning independently in a residential unit at lower cost for as long as possible in order to maintain financial viability. The analogy can be made to an HMO which is at risk to provide an individual with total health care for a fixed monthly capitation fee and must keep costs down wherever possible. Thus, nursing care admissions are necessarily kept brief or to a minimum. The positive economic benefits to the elderly of life-time care at a predictable cost have been addressed previously. The concept of the continuing care retirement community is valuable for the State of New Jersey from a variety of points. Such a community provides an enormous economic boost to the local community. Middle and upper middle income elderly people who are inclined to travel less and rely heavily upon local merchants are concentrated in a single area. Such a development also provides a new alternative encouraging New Jersey residents to remain in the State after retirement, close to friends or families, rather than move to other areas of the country that typically attract the elderly.

The sections of the regulation which are proposed for re-adoption have promoted the development of long-term care services in an orderly and cost-effective manner. The continuum of long-term care services has encouraged the cost-effective development of humane alternatives within long-term care facilities. It is expected that if the trend toward the development of more alternatives to long-term care continues, it will reduce the need for more costly modes of long-term care.

Full text of the proposed re-adoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33H.

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

8:33H-3.3 Expansion and new construction
(a) Standards are as follows:

1.-3. (No change.)

4. Standard III-04, alternatives to long-term care beds: [Preference will be given to those] Certificate of Need applicants for long-term care beds [who] **shall** propose the inclusion of institutional (residential health care, congregate housing, for example) and non-institutional alternatives to inpatient long-term care beds. Applicants are instructed to consult with the Department's health planning staff in regard to alternatives appropriate to their projects, as well as the long-term care sections of the State Health Plan, prior to submission of an application. **A written commitment to construct long-term care beds and their appropriate alternatives on a concurrent basis shall be submitted with the application and will be included as a condition of approval.**

5. (No change.)

6. Standard III-06, continuing care [or life care/] retirement communities[/facilities]. such communities [/facilities] are defined as those that combine independent living accommodations for the elderly with **the provision of social and health care services, including post-acute and chronic nursing home [and medical] care, through an agreement to provide such continuing care for the term of a contract, [most] frequently for the duration of a resident's life, in return for an entrance fee or periodic payments or both, in the event such care is required by residents.** Those communities [/facilities] seeking Certificate of Need approval to construct an on-site long-term care facility, which meet the above definition as **determined by the Department of Health** and contain a minimum of [300] **240** residential units, may apply for exemption from the long-term care bed need, utilization criteria, and batching cycle requirements. Such projects will be included in the Certificate of Need full review process; however, the process may be expedited with the concurrence of the local Health Systems Agency. Applicants shall apply for the above exemptions by submitting all of the following required documentation [with the application]:

i. The ratio of residential units to long-term care beds is not less than [5:1] **4:1**, based upon initial schematic drawings, as well as the subsequent submission of construction plans as requested by the Department. [In addition, the applicant will provide evidence to the Department of Health that financing has been approved for the residential housing which specifies the number of residential units approved for financing before]

ii. **Before the Department will review any plans for the long-term care facility[.], the applicant will provide evidence to the Department of Health that financing has been approved for both the long-term care facility and the residential housing, which specifies the number of long-term care beds and residential units approved for financing.**

iii. **Before the Department will approve final construction plans for the long-term care beds, the applicant will provide evidence of: control of the project site, either by fee simple title or lease or contract that extends beyond the life of the buildings; zoning and variance approvals for the residential units; and the required financing commitments.**

[vi.] iv. [The nature] **A copy of the resident contract or agreement to provide continuing care, including the health care and other services to be offered; term or duration of the contract; projected charges, including entrance fees and/or periodic monthly payments; and residents' rights, with the recognition that this information will be provided to residents in [standard contract] non-technical language. The contract shall clearly disclose the long-term care services arrangement and will be reviewed to ensure that residents will have continued access to the long-term care beds at affordable or reduced rates and as Medicaid recipients if they become Medicaid**

eligible. The contract shall fully disclose whether the residents may be denied long-term care services if they cannot spend down their resources to Medicaid eligibility levels due to excessive monthly income or other applicable circumstances. In addition, a copy of the marketing study conducted for the proposed continuing care retirement community, which includes economic and demographic analyses, shall be submitted with the application.

[ii.] v. Within five years of occupancy of the first residential unit, at least 70 percent of the occupants of the long-term care facility will be drawn exclusively from the sponsoring continuing care retirement community. [The remaining 30 percent must include a reasonable number of Medicaid eligible persons.]

vi. **After five years of occupancy of the first residential unit, no more than 30 percent of the occupants of the long-term care facility may be drawn from outside the continuing care retirement community and, of this group, at least 35 percent must be Medicaid-eligible persons.**

[iii.] vii. Patients occupying a bed in the long-term care facility who did not originally come from the continuing care retirement community are allowed to remain as long as their need exists, regardless of the number of residents who are waiting for long-term care services.

[iv.] viii. The long-term care facility will conform to all Federal and State licensure, construction, and inspection laws and regulations.

[v.] ix. If for any reason the corporation owning the continuing retirement care community gives up the operation of the community and the residential units in effect become the same as any other residential units on the open market, the long-term care beds will revert to the general pool of long-term care beds for that planning area and the residents will no longer have priority for those beds. **If any organization that receives a Certificate of Need for the long-term care bed portion of a continuing care retirement community relinquishes the ownership of the residential unit of that community, it must also relinquish ownership of the long-term care facility.**

[vii.] x. The long-term care facility will be constructed subsequent to or simultaneous with the residential units. The applicant will accept this requirement as a condition of approval based upon recognition that the Certificate of Need for the long-term care facility is contingent upon construction of the minimum required number of residential units, and that if these units are not constructed the Certificate of Need is null and void. [In addition, the licensed long-term care bed capacity will reflect the minimum number of completed residential units.]

xi. **Applicants may add residential health care facility beds to enhance the economic viability of the project.**

xii. **Rental projects are not entitled to the stated exemptions for long-term care beds. However, the Department of Health will review under these criteria and give careful consideration to any continuing care retirement community rental project that has obtained an inducement resolution by the New Jersey Housing and Mortgage Finance Agency for low and moderate income persons.**

7. Standard III-07, utilization of new and/or additional beds by Supplemental Security Income recipients: **Residential health care facilities seeking Certificate of Need approval to add beds to an existing facility or to construct a new facility, which includes both freestanding facilities and beds in a long-term care facility, will be required to comply with the following utilization criteria:**

i. Minimum of 10 percent of total residential health care bed complement must be occupied by direct admission Supplemental Security Income recipients or eligibles no later than one year from license issuance;

ii. Facility must continue to maintain direct Supplemental Security Income Admissions to a minimum of 10 percent of its total residential health care bed complement thereafter;

iii. Facility must reflect this requirement for preferential direct Supplemental Security Income admissions as part of its written admission policies.

(b) Guidelines are as follows:

1. (No change.)

2. Guideline III-02, exception to Standard III-03, addition of beds: If an applicant cannot submit the documentation required in Standard III-03, (a)3ii above, for long-term care beds, new or additional beds may still be approved if the request is for no more than 10 beds or a hospital requests the exchange of acute care beds for long-term care beds on a one for one basis. **Wherever there is a long-term care bed need for less than a usual full-sized facility of 120 beds, only additions to existing facilities in accordance with N.J.A.C. 8:33H-3.1(a)1ii will be approved.**

(a)

Certificate of Need: Hospital Policy Manual

Proposed Amendments, New Rules, and Repeals: N.J.A.C. 8:43E-1

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

Proposal Number: PRN 1985-272.

The agency proposal follows:

Summary

The 1971 Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq., as amended) requires the Department to assure that New Jersey's hospital and related health care services are of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost. To implement this public policy, Chapter 136 gave the Department of Health broad responsibilities in regulating the health care system through authorization of the Certificate of Need program.

The Department initially adopted *The Policy Manual for Planning and Certificate of Need Reviews of Health Care Facilities and Services within the State of New Jersey* (the Hospital Policy Manual) on April 21, 1977. These regulations became effective prior to the issuance of Executive Order No. 66 in 1978, which established a "sunset" provision of five years for all administrative rules. In that the Hospital Policy Manual has not been amended by the Department since its initial adoption, an expiration date will be established through these amendments.

In view of the significant changes that have occurred in the health care system since 1977, the Department determined that major revisions to the existing rules should be undertaken. In developing these amendments, the Commissioner obtained the recommendations and approval of the Statewide Health Coordinating Council (SHCC). The SHCC Plan Development and Implementation Committee fully considered

the revisions to the rules in their entirety. Several changes were incorporated into their recommendation of endorsement to the SHCC which were made following receipt of written comments on the proposed regulations from the hospital industry and from Health Systems Agencies.

The purpose of the proposed rules is to identify policies, standards and criteria which shall be used by the Department of Health and the Health Systems Agencies to guide the planning and review of all Certificate of Need applications submitted by hospitals in the State of New Jersey. The rules will not govern Certificate of Need applications for projects in which separate and specific regulations have been adopted, such as Cardiac Surgery, (N.J.A.C. 8:33E-2) Perinatal Services, (N.J.A.C. 8:33C-1) or Regional End-Stage Renal Disease Services, (8:33F-1). However, the rules do establish policies, standards and criteria pertaining to major hospital projects such as bed additions, modernization/renovation programs, acquisition of major moveable equipment, and mergers or relocations. The criteria include sections that specifically address issues of accessibility, planning, cost effectiveness, capital financing, and the minimum size of facilities.

The rules have been found effective in their ability to insure the quality of care, regional accessibility, and adequate utilization of hospital services in New Jersey. The rapidly escalating costs of the health care system evidenced nationally have not been experienced to the same extent in this State. This can in part be attributed to the authority afforded to the Department of Health by these rules to regulate the rate of growth in hospital services and beds.

Social Impact

N.J.S.A. 26:2H-1 recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs. . . ."

The New Jersey State Health Plan recognizes the underutilization of inpatient beds, specialty services, and expensive equipment as an important factor contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered, by improving the solvency of hospitals offering these expensive services, and by containing the rising costs of health care services.

The Department of Health has through the Hospital Policy Manual implemented public policy that has been directed towards both improving the health of residents and towards increasing the accessibility, acceptability, continuity, and quality of services provided to them. Through these rules, hospitals and related health care facilities submitting Certificate of Need applications must meet established standards and criteria addressing all of these concerns. Through adoption of the proposed amendments, the Department will update these standards to reflect changes both in the health care system and in public policy that have been evidenced since initial adoption in 1977. New standards are established addressing current practices in measuring efficiency, hospital

mergers, and new equipment categories. Access to health care in particular is broadened considerably by rules in which Certificate of Need applicants must demonstrate the availability and accessibility of clinics and all existing and proposed services to medically indigent and medically underserved populations.

New Jersey's 99 general hospitals experienced almost 1.1 million admissions in 1983, resulting in a total of over 8.7 million patient days. The structure and design of the health care system as promoted by these rules thus has a significant impact on the lives and well-being of New Jersey's residents.

Economic Impact

Total expenditures in New Jersey's hospital industry were estimated to have exceeded \$2.5 billion in 1983. Capital expenditures by hospitals approved through Certificate of Need during 1984 totalled \$278 million dollars. Through application of the Hospital Policy Manual and other planning regulations, a significant number of projects were denied Certificates of Need by the Commissioner of Health. The Hospital Policy Manual therefore has provided the Department with an essential means to objectively assess and evaluate the need for and impact of proposed new capital and operating expenditures.

The proposed amendments to the Hospital Policy Manual are intended to update and strengthen the criteria by which the Commissioner can make a determination on a proposed capital expenditure.

The Governor's Advisory Committee on Capital Expenditures for Health Care Facilities recently recommended a series of actions to improve New Jersey's health capital policy. These proposed rules have incorporated several key components of the Governor's Advisory Committee's report. Hospital capital payments are limited to a maximum of 7.5 percent of annual expenditures, a level that is above the projected current state average of 6.64 percent. This will be a significant step towards beginning to implement the "budget neutral" capital policy for future system-wide expenditures as recommended by the Governor's Advisory Committee. The use of hospital efficiency measures in making determinations on Certificate of Need applications is another key recommendation which would be implemented through these rules.

Maintaining an affordable health care system in New Jersey is essential to assuring access to health care by all residents of the state. The proposed rules are critical to the Department's efforts to design a system that is of the highest quality, of demonstrated need, and is both efficiently provided and properly utilized.

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

CHAPTER 43E

[POLICY MANUAL FOR PLANNING AND CERTIFICATE OF NEED REVIEWS OF HEALTH CARE FACILITIES AND SERVICES WITHIN THE STATE OF NEW JERSEY]

CERTIFICATE OF NEED: HOSPITAL POLICY MANUAL

SUBCHAPTER 1. GENERAL PROVISIONS

8:43E-1.1 Introduction

(a) The 1971 Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq. and N.J.S.A. 26:2H-8) as amended estab-

lished as public policy of the State of New Jersey "that hospital and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health."¹

(b) To implement this policy, Chapter 136 has given the State Department of Health "the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and related health care services, and all public and private institutions, whether State, county, municipal, incorporated and not incorporated, serving principally as boarding, nursing or maternity homes or other homes for the sheltered care of adult persons or as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity, or physical condition(s)."²

(c) "No health care facility shall be constructed or expanded, and no new health care services shall be instituted except upon application for and receipt of a Certificate of Need."³

(d) The Department of Health has a major responsibility for the promotion of quality health services rendered in an efficient and economical manner and available to all citizens of the State. To ensure significant progress toward the achievement of this policy [goal] planning and Certificate of Need activities will be directed toward the provision of facilities and services which:

1. "Improve the health of residents of a health service area;
2. "Increase the accessibility (including overcoming geographic, architectural and transportation barriers), acceptability, continuity and quality of health services provided them;
3. "Restrain increases in the cost of providing them health services;
4. "Prevent unnecessary duplication of health resources, and"⁴
5. **Reduce financial barriers to care.**

(e) The general policies, standards and guidelines set forth in this document are intended to provide substantive criteria for the planning, [development and review] **review and implementation** of health care facilities and services within the State of New Jersey.

(f) The general policies presented here apply to all facility and service planning within the State. In addition to these general policies, specific planning and review standards and guidelines shall be presented for broad categories of health care facilities and services as well as for specialized types of health care which shall be made available on a regionalized basis.

[(g) These policies, standards and guidelines shall also be used to guide the development of the State Medical Facilities Plan required under Title XVI of Public Law 93-641.]

(g) **This manual is to be distinguished from the "Guidelines and Criteria for Submission of Applications for Certificate of Need" published by the New Jersey State Department of Health (N.J.A.C. 8:33-1 et seq.) which identifies the procedures, rules, and regulations which carry out the Certificate of Need program pursuant to N.J.S.A. 26:2H-1 et seq. (1971 Health Facilities Planning Act), Public Law 92-603 (Section 1122 of the Social Security Act) and Public Law 93-641 (the National Health Planning and Resources Development Act of 1974) as amended.**

[(h) This manual is to be distinguished from the "Guidelines and Criteria for Submission of Applications for Certifi-

cate of Need" published by the New Jersey Department of Health.]

(h) This document presents substantive criteria for the planning of health care facilities and services as provided by hospitals within the State. These policies, standards and guidelines shall be applied in the review of proposed actions requiring Certificate of Need authorization.

[i] The latter document identifies the procedures, rules, and regulations to carry out N.J.S.A. 26:2H-1 et seq. (1971 Health Facilities Planning Act), Public Law 92-603 (section 1122 of the Social Security Act) and Public Law 93-641 (the National Health Planning and Resources Development Act of 1974.)

[j] This document, on the other hand, presents substantive criteria for the planning of health care facilities and services within the State. It is these policies, standards and guidelines which shall be applied in the review of proposed actions requiring certificate of need authorization.]

[k] One of the principal factors influencing enactment of Federal legislation requiring reviews of proposed capital expenditures is the rapidly escalating costs of health care. The provisions identified herein derive from a concern over this serious economic condition and are intended both to promote cost containment as well as to improve quality within the health care system of our State.]

¹Chapter 136, N.J.S.A. 26:2H-1 as amended.

²*Ibid.*

³Chapter 136, N.J.S.A. 26:2H-7 as amended.

⁴P.L. 93-641, Section 1513(a).

8:43E-1.2 General policies

(a) The general policies identified herein shall apply to all facilities licensed and regulated under N.J.S.A. 26:2H-1 et seq. and amendments thereto.

(b) "No certificate of need shall be issued unless the action proposed in the application for such certificate is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, and will contribute to the orderly development of adequate and effective health care services."⁵

(c) No certificate of need shall be awarded to a hospital which does not have [an accepted] a **current** hospital long-range plan [pursuant to] **developed in compliance with requirements identified at N.J.A.C. 8:31-16.1** [by January 9, 1977, or the date agreed to by] **and acceptable** to the Department of Health. [The annual update shall be due January 31 every year.] All [other] facilities obligated to file a long-range plan with the State pursuant to N.J.A.C. 8:31-16.1 shall [be denied] **not have** certificate of need **applications accepted for [approval] processing** until such time [that] as they have complied with the requirements of [this law.] **these rules.** Except for applications requiring an administrative review, no certificate of need shall be issued if the subject of the application is not anticipated in the "certificate of need forecast" of the institution's most recently accepted long-range plan. Exceptions to the "forecast" can be made for applications of unusual merit particularly if they respond to other State and Federal policies, arise in response to emergency situations, or result from significant technological advances or unforeseen growth in volume.

(d) **No certificate of need shall be awarded to a hospital that does not demonstrate that:**

1. The medically underserved populations in its primary service area have access to all existing and proposed services, and

2. The hospital provides necessary outpatient clinics where these are determined needed in the area for medically underserved population groups.

[(d)] (e) [It is the policy of t] The State of New Jersey [to] encourage planning which promotes:

1. [Is directed toward the] Achievement of national health planning goals and guidelines issued pursuant to section 1501 and priorities referenced in section 1502 of Public Law 93-641, "The National Health Planning and Resources Development Act of 1974; and **amendments thereto;**

2. [Promotes a] **Actions** consistent with the New Jersey Health Plan, the State Medical Facilities Plan, and [other] departmental policies and regulations;

3. [Promotes and is] **Actions** consistent with the goals and objectives of the health systems plan for the health service area in which the proposed action is planned;

4. [Promotes p] **Prevention** of disease through early intervention and the provision of primary care services, and encourages the continued development of alternative service modalities to substitute for inpatient hospital care and alternative facilities to substitute for hospital inpatient construction.

5. Regionalization of medical resources to achieve cost efficiencies and to enhance the quality of care.

[i. Special consideration in the awarding of certificate of need approvals shall be given to applications which promote paragraphs 1 through 3 of this subsection.]

6. Accessibility to and the availability of services to those persons unable to pay for services.

7. Reduces or eliminates environmental and occupational illness and disease.

[(e) Institutions which engage in cooperative regional planning and which demonstrate that they are sharing their resources on a regional basis shall be given special consideration in the awarding of certificate of need.]

(f) In making determinations on applications for certificate of need approval "there shall be taken into consideration (a) the availability of facilities or services which may serve as alternatives or substitutes, (b) the need for special equipment and services in the area, (c) the possible economies and improvement in services to be anticipated from the operation of joint central services, (d) the adequacy of financial resources and sources of present and future revenues, (e) the availability of sufficient manpower in the several professional disciplines, and (f) such other factors as may be established by regulation . . ."⁶

[(f) N.J.A.C. 8:31-16.1 shall be amended to add the following: Hospital long-range plans shall demonstrate efforts on the part of the institution to develop cooperative arrangements with other facilities in its area. These arrangements shall address but not be limited to the following:

1. The regionalization of specialty services;
2. Joint purchasing and shared services; and
3. Participation in the development of efficient discharge planning.]

(g) Any health care facility which does not apply for a certificate of need and implements a project for which a certificate of need approval must be obtained, shall be determined to be unlawful and the institution shall be required to remove or discontinue utilization of such services or equipment. The appropriate rate setting program shall be notified and no costs for unlawful actions shall be included in rates established for reimbursement to the health care facility.

[(g) Hospitals seeking certificate of need approval to add beds to an existing facility or to construct a new facility must

demonstrate an efficient use of existing beds. Among the factors to be considered in assessing the efficient use of existing beds shall be included:

1. Demonstrated lengths of stay at or below the mean for its peer grouping as defined by Health Economics Services, New Jersey State Department of Health;

2. The quality of existing admissions scheduling procedures: Hospitals should strive toward the goal of scheduling up to 75 percent of elective patient admissions several weeks in advance of actual admission;

3. A description of the institution's experience of the previous year's pre-admission testing program presented, wherever possible, quantitatively. The institution's policies regarding pre-admission testing should accompany the description.

4. Documentation of efforts to keep at a minimum the length of time required to return the results of in-hospital testing;

5. Documentation of efforts by the hospital to operate an optimal utilization review program for all patients, including an efficient discharge program;

6. Documentation that the hospital is participating in its local PSRO activities;

7. A description of the alternatives to inpatient modalities that were considered by the hospital and why they were rejected.]

(h) Each certificate of need application shall comply with the State Health Plan and all appropriate health planning and rate setting regulations adopted by the Department of Health and should also be in compliance with the Health Systems Plan of the health system agency in which the action is planned.

[(h) Upon the recommendation by the appropriate health systems agency to the department to grant waivers from certain licensure standards, the full range of services required of each hospital by the Department of Health Licensure standards, does not have to be provided if the health systems agency can demonstrate to the Department that persons in the hospital's service area will have access to comparable services. The appropriate health systems agency is the one located in the health service area pursuant to Public Law 93-641 in which the hospital is located.]

(i) The Department of Health shall give preference to applicants which:

1. Document existing working relationships with other area hospitals and health care facilities providing primary care services including but not limited to referral arrangements for regionalized services; and

2. Document the provision of services to persons who are unable to pay.

(j) The applicant must identify alternative approaches to the project which were considered and demonstrate in specific terms how the option selected, relative to all other alternatives, most effectively benefits the health care system through achieving capital and operational savings, increasing access, and/or improving quality of care.

(k) If a hospital has closed, ceased or not maintained operation of any of its beds, facilities, or services for a period of eighteen months or more, a Certificate of Need shall be required to reopen such beds, facilities, or services.

⁵Chapter 136, N.J.S.A. 26:2H-8.

⁶Chapter 136, N.J.S.A. 26:2H-8.

8:43E-1.3 Definitions

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

"Acquisition" shall mean the obtainment of a health care facility or service through purchase, lease, donation or other means which requires a Certificate of Need.

"Construction" shall mean the erection, building, alteration, reconstruction, improvement, renovation, extension or modification of a health care facility, including its equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

"Debt Service" shall mean those funds allocated to the repayment of principal, depreciation, and interest as a result of the financing of a capital expenditure.

"Department" shall mean the New Jersey Department of Health.

"Equity" shall mean a voluntary non-operating asset contribution which will reduce the total size of the debt.

"Fixed Equipment" shall mean equipment which is attached to the physical plant of a facility.

"Guidelines" shall mean those general factors to be considered in applying a given standard, or to guide decision-making in areas for which specific standards are not available or would not be appropriate.

"Health Systems Agency" shall mean an officially recognized health systems agency formed under the provision of Federal Law 93-641, as amended and supplemented.

"Hospital Service Area" shall mean the county of hospital location or that geographic area which can be determined through a methodology contained in the New Jersey State Medical Facilities Plan or its amendments to constitute a hospital service area.

"Incentive Position" shall mean that financial position, under Chapter 83 Rate Setting Regulations which is achieved when a facility's treatment costs in comparison to hospitals in the same peer group are below Statewide averages.

"Major Movable Equipment" shall mean equipment which generally is not attached to the physical plant of a facility and has for depreciation purposes a predetermined life.

"Medically Underserved" groups shall mean all population groups including racial and ethnic minorities, migrant workers, the handicapped, Medicaid recipients, women and families with incomes below 80 percent of the median income for either the state or the Standard Metropolitan Statistical Area in which they reside, and other identifiable segments of the population which currently fail to use health care services in numbers approximately proportionate to their presence in the population as adjusted to account for their need for such services.

"Modernization" shall mean the alteration, expansion, major repair (to the extent permitted by regulations), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and the replacement of obsolete equipment of existing buildings.

"Proposed Capital Expenditure" shall mean the sum total of expenditures anticipated by the facility at the conclusion of a project, which includes expenditures by a facility acting as its own contractor, which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.

“Replacement Funding” is the amount of reimbursement as determined under Chapter 83 Rate Setting Regulations (NJAC 8:31 B-3 and B-4) which provides for replacement of capital facilities and fixed equipment.

“Relative Length of Stay Index” shall mean the analysis published by the Department which compares the Average Length of Stay for an individual hospital within that hospital’s peer group controlling for casemix. The methodology for the Relative Length of Stay Index is contained in the official New Jersey State Health Plan, as amended, and shall be based on the most recent data collected by the Department.

“Standards” shall mean [means] the specific requirements that applicants must satisfy in developing applications for certificate of need approval. To the extent practicable, standards shall address measurable characteristics that such applications must meet.

8:43E-1.4 [Standards and guidelines for planning and certificate of need reviews of hospital facilities and services; generally] **Scope**

The standards and guidelines defined herein shall apply to all hospitals licensed and regulated under N.J.S.A. 26:2H-1 et seq. and amendments thereto.

8:43E-1.5 Standards regarding minimum size; acute general hospitals

(a) The minimum size for an acute general hospital shall be 200 beds. This standard shall not apply to:

1. Facilities licensed for fewer than 200 beds at the time of adoption of this regulation [unless a bed expansion is planned]. Where there is a documented need for additional beds within a planning region, the preferred manner for authorizing bed additions shall be to add beds to an institution that is over 200 beds or will be brought up to 200 beds by the addition;

2. Facilities of less than 200 beds proposing to expand to at least 200 beds, where the need for expansion is justified;

3. Facilities with less than 200 beds which are or will be sponsored and operated by full-service general acute hospitals with over a 200-bed capacity and which provide or will provide only those services which are necessary to meet the community’s need without duplication of service;

4. Facilities licensed exclusively for provision of inpatient psychiatric services shall have a minimum of 75 beds. Waivers may be granted for facilities of less than 75 beds if the Department determines that operational costs and reimbursement rates will be comparable to industry standards.

[4. Facilities proposing renovations or improvements in its physical plant necessary to meet minimum State and Federal Life Safety Code requirements (A renovation plan with costs which equal or exceed the cost of replacement will be considered as a proposal for new construction and the policies which apply to new construction will apply to it);]

[5. Facilities which have successfully reduced bed requirements by providing alternative ambulatory services or short-stay service programs, which as a consequence fall below the 200-bed minimum.]

8:43E-1.6 Standards regarding minimum size; obstetric services

[Standards for the minimum size of obstetric services will be consistent with “Standards and General Criteria for the Planning and Certification of Need of Perinatal Services.”]

The minimum size of an obstetric service shall be 20 beds unless waivers are granted pursuant to N.J.A.C. 8:33C-1.1 et seq. “Certificate of Need and Designation Perinatal Services.”

8:43E-1.7 Standards regarding minimum size; pediatric services

[The department anticipates developing standards for the regionalization of pediatric services including standards governing the appropriate minimum size of pediatric units. Once these standards are adopted, they shall apply to all planning and certificate of need activities in the State of New Jersey.]

(a) **The minimum size of a pediatric unit shall be 20 beds. Exceptions will be considered where it is documented that:**

1. The distance to an alternate pediatric unit exceeds 20 miles for 10 percent or more of the hospital’s pediatric service area population, or

2. At the proposed lower capacity, occupancy will exceed minimum occupancy standards identified at 8:43E-1.11.

[8:43E-1.8 Guidelines regarding maximum size; acute general hospitals

(a) The recommended maximum size of any hospital is 500 beds. This guideline may be exceeded in situations where:

1. Licensed hospitals currently exceed 500 beds; and/or
2. A demonstrated need for a system of tertiary level services (subject to all other applicable criteria) requires that the facility expand beyond 500 beds.

(b) To encourage the development of multi-hospital corporations. This guideline may be exceeded where it can be demonstrated that a satellite facility which brings a hospital’s bed capacity in excess of 500 is more cost effective and results in more efficient delivery of service.]

8:43E-1.8 Limitations on approvals

(a) **Approval for construction, renovation, or purchase of a facility relates only to that project. No implicit approval for additional beds, services, or equipment can be implicitly or explicitly inferred from the approval.**

(b) **Any action by a health care facility independently requiring a Certificate of Need not specifically identified in an application requires a separate Certificate of Need to be filled.**

[8:43E-1.9 Compliance to criteria for regionalization

Each certificate of need application for a new service or for additional equipment shall comply with criteria for regionalization—that is, both to general criteria for regional health services and to specific regulations established for particular services by the New Jersey State Department of Health—and shall demonstrate compliance with plans for regionalized services adopted thereto by the health systems agency in which the action is planned.]

8:43E-1.9 Standards regarding shelled space

Shelled space (that part of the physical plant which is constructed for future use or occupancy) has generally not been proven to be cost effective. Projects proposing shelled space shall not be approved unless the applicant can demonstrate significant cost savings to both the institution and the health care system.

[8:43E-1.10 Instituting services without prior certificate of need approval

All those institutions that do not apply for a certificate of need and that institute new services, equipment, and so forth, for which a certificate of need approval must be obtained, shall be called unlawful and the institution shall be asked to remove such services or equipment. No costs for unlawful actions shall be included in rates established for reimbursement to the institution. See “Guidelines and Criteria for Submission of Applications for Certificate of Need,” New Jersey State Department of Health.]

8:43E-1.10 Guidelines regarding bed need

(a) Any application for establishment of or expansion of licensed beds must demonstrate need for these beds in the proposed service area based upon needs assessment methodology identified in:

1. Adopted Department of Health planning regulation governing regionalization of the service(s); and
2. The State Health Plan, and amendments thereto;
3. Planning documents as developed by the Department and the Statewide Health Coordinating Council.

(b) Where the applicant is proposing beds to support specialized services for which there are no methodologies referenced in the documents cited at N.J.A.C. 8:43E-1.10(a), the need for beds shall be documented by an analysis of scientific and medical data which demonstrates that beds for a new service are cost effective, beneficial to patients, accessible, of high quality, and could not be provided in a less costly setting. In addition, an applicant shall provide information demonstrating the need for beds by documenting estimates of:

1. Referrals from major referral sources, as reflected in letters of support, and
2. Projected admissions and average length of stay (the bases for these projections must be specifically identified in the application), and
3. Utilization based upon methodologies established by federal, regional, or other health planning or financing authorities, and
4. Occupancy level projections which shall be demonstrated to have achieved a minimum of 80 percent (for the beds proposed in the application) within the initial two years of full operation and 90 percent within the initial four years of full operation.

[8:43E-1.11 Standards regarding cooperative arrangements

(a) Each facility must be responsive to the medical, economic, and social necessities of coordinating its programs and services with other providers in its hospital service area to avoid unnecessary duplication of services, equipment and personnel. Where a hospital initiates a new program or service or expands an existing one, it shall support its application for a certificate of need by providing written documentation of existing working relationships or of plans to develop working relationships with other providers in the area. In demonstrating present and proposed working relationships within the service area, the hospital, as necessary, shall consider the following entities:

1. Other hospitals, especially those offering tertiary care services;
2. Other inpatient health facilities such as:
 - i. Long-term care facilities;
 - ii. Facilities for the mentally retarded;
 - iii. Institutions for the treatment and care of alcohol and drug abusers;
 - iv. Homes for the blind and/or deaf;
 - v. Institutions for the emotionally disturbed;
 - vi. Other providers of inpatient care;
3. Outpatient and non-patient health services such as:
 - i. Ambulance services;
 - ii. Blood banks;
 - iii. Clinical laboratories;
 - iv. Community mental health centers;
 - v. Neighborhood health centers;
 - vi. Migrant health programs;
 - vii. Dental group practices;
 - viii. Family planning services;

- ix. Home health services;
- x. Medical group practices;
- xi. Rehabilitation services;
- xii. Other providers of outpatient services;
4. Major professional categories of providers, such as physicians, nurses, psychiatrists, psychologists, dentists, and so forth;
5. Health maintenance organizations;
6. Areawide planning agencies;
7. Public health departments;
8. Departments of social services;
9. Local employment agencies;
10. Police departments;
11. Other health care providers.]

8:43E-1.11 Standards regarding occupancy rates

(a) For purposes of review of Certificate of Need applications, the minimum and optimal occupancy rates based upon licensed beds for an acute general hospital, by service category, shall be:

	Minimum	Optimal
Medical/Surgical	80%	90%
Obstetrics	65%	85%
Pediatrics		
Units of less than 40 beds	65%	85%
Units of 40-79	70%	90%
Units of 80 beds or more	75%	90%
ICU/CCU	65%	85%
Psychiatric	75%	90%

[8:43E-1.12 Standards regarding utilization of regionalized health services

Applications for certificate of need approval for equipment, services, and so forth, that are regional in scope shall be supported by a policy statement from the governing body that the hospital will accept all appropriate referrals to that service.]

8:43E-1.12 Standards regarding addition of beds

(a) No certificate of need shall be approved where the applicant has not demonstrated compliance with the following:

1. In the previous 24 months, the applicant hospital must exceed both minimum occupancy rates for all existing services as well as optimal occupancy rates for the service being proposed for expansion.
2. The hospital must have an average length of stay which does not place it below the 65th percentile of the Relative Length of Stay Index for its peer group.
3. In the previous 24 months, all acute care hospitals within the applicant's service area must exceed optimal occupancy levels within the service type for which expansion is being requested.

(b) Exceptions to (a)1 may be considered where:

1. The applicant is proposing to reduce licensed beds through conversion or decertification thereby demonstrating that occupancy levels will be in compliance with minimum standards at the completion of the project; or
2. The applicant can demonstrate that there will be a net bed reduction in its County resulting from cooperative planning with neighboring hospitals;
3. The applicant can demonstrate additional bed need by documenting rapid changes in demographics or casemix as well as having evidenced appropriate increases in utilization

over the previous 24 months. This exception will be considered only in areas where both the State Health Plan and the Health Systems Plan have projected a need for beds in the service(s) proposed for expansion.

(c) Exceptions to (a)3 may be considered where:

1. The applicant has demonstrated efficiencies of operation through:

i. An appropriate average length of stay. This shall be defined as a Medical/Surgical ALOS which keeps an institution above the 35th percentile on the Relative Length of Stay Index for its peer group for the two previous years for which data is available; and

ii. Maintaining an incentive position for both the cost center in the service being proposed for expansion and for the hospital overall; as determined by the Department; and

iii. Other standards of patient care efficiencies as may be developed by the Department.

2. The applicant has demonstrated an historical commitment to caring for the medically indigent.

[8:43E-1.13 Standards regarding shelled-in space

(a) Shelled-in space shall be strongly discouraged. It shall only be allowed when an institution can clearly demonstrate beyond a reasonable doubt that the space will be in use in the manner defined within the certificate of need application and the institution's long-range plan, within five years of the date of approval of the certificate of need authorizing the installation of the shelled-in space. The institution must show that not installing such shelled space will result in substantial dis-economies, or the application for shelled space shall be denied.

(b) This shall not preclude a consideration of additional structural preparation (as, for example, heavier footings) to accommodate bed replacements or future expansion which such expansion is warranted on the basis of documented projections contained in the hospital's long-range plan.]

8:43E-1.13 Standards regarding financing of capital expenditures

(a) No certificate of need shall be awarded where the applicant does not meet the following criteria:

1. As a result of the project, total debt service expenditures and replacement funding cannot exceed 7.5 percent of the hospital's annual operating budget. Exceptions may be considered where the Department has determined that:

i. The project will result in operational efficiencies such that annual debt service expenditures exceeding this rate will not have a negative impact upon reimbursement rates, or

ii. The project is necessary to correct conditions constituting an imminent hazard to the health and safety of patients and staff, and the proposed project is determined by the Department to be the appropriate alternative for correcting the hazard, or

iii. The project is critical and necessary to meet specific health care needs of clearly-defined population groups.

2. Financing of hospital construction, modernization/renovation, or major moveable equipment projects requires a minimum equity contribution from the hospital of at least 15 percent of total project costs, including all financing and carrying charges. This equity requirement may be reduced by one-half of one percent for each full percentage point the hospital uncompensated care percentage exceeds the State-wide average uncompensated care percentage for acute care hospitals.

3. All projects involving long-term financing of capital construction costs shall demonstrate use of the least-cost financing reasonably available.

4. Financing arrangements for construction, expansion, renovation, or purchase of facilities shall not entail debt obligations of greater duration than the expected useful life of the assets financed.

(b) It shall be a condition of any approved Certificate of Need that capital reimbursement shall be predicated upon the higher of actual volume or volumes projected in the approved application.

[8:43E-1.14 Standards regarding medical arts building

Medical arts buildings, particularly in urban areas, can be a useful device in creating a close relationship and better availability of physicians to the hospital. Applications for a certificate of need to purchase, construct, modernize, renovate or expand a medical arts building shall provide full written documentation of the purchase, construction, renovation and operational costs of the proposed unit. The applicant shall include both direct and indirect costs, that is, personnel, maintenance agreements, and so forth. Projections of anticipated revenues during the first two years of operation shall be supplied with the certificate of need applications. The costs of the purchase, construction, renovation, expansion and operation of the proposed medical arts building shall be to the greatest extent possible underwritten by charges to users.]

8:43E-1.14 Standards regarding Modernization/Renovation projects not proposing bed additions

(a) No certificate of need shall be awarded for modernization/renovation projects not proposing the addition of beds unless the applicant has demonstrated compliance with all the following:

1. The elimination of all excess beds in services located in the physical plant area(s) for which modernization/renovation is proposed;

2. Specific improvements in delivery of care to patients;

3. The continued need for the services offered in the physical plant area(s) proposed for renovation;

4. That all alternatives to the project have been considered and the proposal is the most cost-effective course of action;

5. That the hospital is operated in a cost-efficient manner, as determined by:

i. Its maintaining an appropriate average length of stay in the previous two calendar years for which data is available and reported to the Department. This shall be defined as a Medical/Surgical length of stay which keeps an institution above the 65th percentile on the Relative Length of Stay index for its peer group; and

ii. Its maintaining occupancy rates in the majority of all acute services provided which exceed minimum standards as defined in 8:43E-1.11, for the previous two calendar years. Where a hospital provides only two acute services, the total occupancy rate for all beds must be above 80 percent; and

iii. Other patient care efficiency measures as may be developed by the Department.

6. That the proposed project will result in increased cost-efficiencies, as measured by reduction of direct or indirect operational costs, improvements in productivity, or other indicators of the more efficient use of all existing fiscal and other resources;

7. That the facility has documented that:

i. It is meeting the needs of medically underserved populations through analysis of additional services required by these groups; and

ii. The entire facility is presently available to and accessible for the provision of health care services to all persons in its service area regardless of ability to pay.

(b) Exceptions to (a)5i and 5ii above may be permitted where the applicant proposes a substantial reduction in acute care bed capacity, and can document that the project will result in the hospital being operated in a cost-efficient manner as defined at (a)5i and 5ii above. A substantial reduction shall mean that at the completion of the project, all services offered by the hospital shall meet minimum occupancy standards as defined at 8:43E-1.11.

(c) Exceptions to (a)5 and 6 above shall be considered where the project scope is limited to the correction of conditions constituting an imminent hazard to the health and safety of patients and staff as determined by the Department.

8:43E-1.15 Guidelines regarding certificate of need; factors in assessment

In making determinations on a request for certificate of need approval "there shall be taken into consideration (a) the availability of facilities or services which may serve as alternatives or substitutes, (b) the need for special equipment and services in the area, (c) the possible economies and improvement in services to be anticipated from the operation of joint central services, (d) the adequacy of financial resources of present and future revenues, (e) the availability of sufficient manpower in the several professional disciplines, and (f) such other factors as may be established by regulation"

8:43E-1.15 Standards regarding the transfer of services from an acute care hospital

(a) The transfer of a service from one corporation to another, regardless of their relationship, requires a Certificate of Need application through procedures identified at N.J.A.C. 8:33-1.1 et seq.

(b) The facility or corporation transferring out the service must comply with the following criteria and conditions:

1. Implementation of the proposed transfer of service will not violate any bond covenant or any loan and security agreement between itself and the New Jersey Health Care Facility Financing Authority or any other financing agency.

2. The applicant must assure within the application that:

i. No portion of the operating or capital costs incurred by or related to the proposed service will be incorporated into rates approved for the acute care hospital transferring out the service.

ii. Any losses generated by this proposed service will not be used as a justification for increases in the rates of the acute care hospital transferring out the service.

3. The hospital must guarantee that services which are corporately and/or physically transferred from hospitals to other areas are accessible and available to all persons independent of their ability to pay with special attention given to medically underserved groups in the existing hospital service area. The hospital must document that public transportation is available to the aforementioned groups, and if it is not, the hospital must make arrangements to guarantee that transportation will be made available to those individuals.

(c) The facility or corporation receiving the new service must comply with the following criteria and conditions:

1. Any service transferred, in whole, must provide indigent care at the same level as provided for that same service in the two calendar years preceding the application or at a level

commensurate with other hospitals in the area over the preceding two calendar years, whichever is greater.

2. Any service transferred in part must, together with the applicant hospital, provide in the aggregate the same level of indigent care as provided for that same service in the two years preceding the application or at a level commensurate with other hospitals in the area over the preceding two years, whichever is greater.

3. A quality assurance and review program for the health services must be provided and it must be documented that such a program will be implemented at the proposed service.

4. The hospital must guarantee that services which are corporately and/or physically transferred from hospitals to other areas are accessible and available to all persons independent of their ability to pay with special attention given to medically underserved groups in the existing hospital service area. The hospital must document that public transportation is available to the aforementioned groups, and if it is not, the hospital must make arrangements to guarantee that transportation will be made available to those individuals.

8:43E-1.16 Guidelines regarding alternatives to inpatient care

The department strongly encourages any certificate of need applicant for inpatient beds to examine appropriate alternatives to inpatient care and their economic feasibility. No inpatient capital program involving beds shall be approved for a certificate of need unless appropriate alternatives to inpatient care and their economic feasibility have been examined and their evaluation documented.]

8:43E-1.16 Standards regarding acquisition or replacement of major movable equipment

(a) No certificate of need shall be awarded for the acquisition or replacement of major movable equipment unless the applicant has demonstrated compliance with the following criteria:

1. Conformance with all applicable Departmental regulations for the proposed service;

2. For equipment categories not governed by existing Departmental regulation:

i. Projects involving addition of new equipment shall demonstrate need through:

(1) Documenting improved patient care as a result of such equipment; and

(2) Documenting adequate patient volume for cost-effectiveness and, if appropriate, operational cost savings;

(3) Where appropriate, documenting cooperative arrangements with area hospitals and other providers that will avoid duplication of services and ensure access to residents of the service area; and

(4) Documenting access to new equipment by persons who are unable to pay.

ii. Projects involving the replacement of existing major movable equipment shall demonstrate need through:

(1) Documenting historical operating volumes to warrant continued use of such equipment; and

(2) Documenting that the existing equipment has surpassed its estimated useful life expectancy; and

(3) Documenting operational inefficiencies of existing equipment through excessive downtime; and

(4) Documenting access to existing equipment by persons who are unable to pay.

(b) No Certificate of Need shall be awarded for the acquisition or replacement of major movable equipment unless the applicant has:

- 1. Documented use of least-cost financing;
- 2. Documented efficient operation of the area in which the proposed equipment is utilized; through maintaining:
 - i. An overall incentive position for the hospital or an incentive position in the cost center where the equipment will be utilized;
 - ii. Documented (through most recently available financial reports submitted to the Department) that the costs for patients on whom the equipment is predominantly utilized are not above Statewide standards.
- 3. Where method of acquisition is through lease arrangement, it must be demonstrated that the proposed lease arrangement is more cost-effective than purchase, giving consideration to maintenance costs, warranties, and other related costs; as well as to the imputed value of a 15 percent equity contribution.

(c) Exceptions to (b)2 above can be made where the applicant submits an acceptable plan which demonstrates that efficiencies will result in costs which are consistent with Statewide standards or will enable the hospital to maintain an overall and specific cost center incentive position.

(d) Equity contributions to the financing of the project must be a minimum of 15 percent of total project costs. In projects proposing both acquisition of major moveable equipment and modernization/renovation, equity contributions must be pro-rated equally between equipment costs and costs of the remainder of the project.

8:43E-1.17 Guidelines regarding cost efficiency

Priority consideration shall be given to actions which promote cost effective measures. Determination of whether a proposed action promotes cost effectiveness requires an analysis of the impact of a proposed action on projected payment rates in the applicant institution itself and upon its neighboring related institutions as determined by the Department of Health. Consideration should be given to a projection of payment rates with facilities of comparable size and service array Statewide and in the health service area in which the facility is located, and in the local service area served by the applicant.]

8:43E-1.17 Guideline regarding single-bedded rooms

No certificate of need proposing the construction, modernization, renovation, or change in licensed bed capacity of acute care beds shall be approved where the total number of single-bedded rooms at the completion of the project exceeds 15 percent of the total complement of licensed medical/surgical, pediatric, and obstetric/gynecological beds. These shall be exclusive of isolation rooms as determined necessary by Departmental licensure standards.

8:43E-1.18 Standards regarding quality of health services

Special consideration will be given to certificate of need applications which promote the quality of health services rendered in an efficient and economical manner and available to all residents of the institution's service area.]

8:43E-1.18 Guidelines regarding Intensive Care/Critical Care Units

(a) No Certificate of Need for ICU/CCU beds shall be approved where the total ICU/CCU bed capacity at the completion of the proposed project shall exceed 10 percent of total medical/surgical and obstetric/gynecological bed complement.

(b) Exceptions to (a) above shall be considered where the applicant is a major teaching hospital and justifies such addi-

tional capacity as necessary to provision of designated tertiary care services.

(c) Pediatric Intensive Care beds shall be provided on a regionalized basis. No facility shall offer such services unless need is demonstrated through casemix, delivery of tertiary care services, and establishment of cooperative arrangements with area hospitals.

8:43E-1.19 Guidelines regarding costs of parking garages

(a) Applications for a certificate of need to purchase, construct, modernize, renovate or expand a parking garage should provide full written documentation of the purchase, construction and operational costs of the proposed unit, including land acquisition and building demolition related thereto. The applicant should include both direct and indirect costs. In addition, costs related to the remodeling or renovation thereof should be included. Projections of anticipated revenues during the first two years of operation should be supplied with the certificate of need application.

(b) To the greatest extent possible, the costs of purchase, construction, renovation, expansion and operation of the proposed parking garage should be fully underwritten by charges to users. To the greatest extent possible, the costs should not be financed, directly or indirectly, in whole or in part by charges to patients.]

8:43E-1.19 Guideline regarding outpatient clinics

(a) Applicants for Certificate of Need must demonstrate the availability of follow-up care for all discharged patients and all residents of the service area either through direct provision of such services by the hospital or its physicians, or through formal written linkages with other health care providers in the area.

(b) The applicant shall demonstrate competitive pricing with all other providers of similar services and shall demonstrate that there will not be a negative economic impact on the health care system.

8:43E-1.20 Standards regarding occupancy rates by service

- (a) The desired occupancy rates (based on licensed beds) for an acute general hospital by service category shall be:
 - 1. Medical/surgical 90 per cent;
 - 2. Obstetrics 75 per cent;
 - 3. Pediatrics 75 per cent;]

8:43E-1.20 Standards regarding energy conservation projects

(a) Any certificate of need application related to energy conservation must address, but not be limited to, the following items, which shall be considered indicators of the cost effectiveness of the project:

- 1. Description of measures to be undertaken and why these measures were chosen over possible alternatives;
- 2. Cost of design, acquisition, and installation;
- 3. Useful life of the measure to be undertaken;
- 4. Effect of this measure on operating and maintenance costs;
- 5. Salvage value at the end of useful life of the measure to be undertaken;
- 6. Annual energy consumption by appropriate category for the three previous years;
- 7. Estimated energy consumption and energy savings at least three years into the future or until the pay-back year, whichever is longer;
- 8. Financial estimates of the savings of the energy costs and savings at least three years into the future or until the pay-back year, whichever is longer.

[8:43E-1.21 Standards regarding need for pediatric beds

The need for pediatric beds shall be governed by and demonstrate compliance to departmental regulation for the regionalization of these services and plans for implementation adopted thereto by the health systems agency in which the services are provided.]

8:43E-1.21 Standards regarding location of hospitals

(a) Any certificate of need application proposing the relocation, major new construction at an existing hospital by a new corporate entity, or new construction of an acute care hospital must meet all criteria in these regulations and must specifically address the following:

1. No certificate of need shall be awarded to a hospital proposing to re-locate, unless it demonstrates compliance with the following criteria:

i. There must be a bed need in the area of proposed location for all services to be relocated;

ii. The applicant must demonstrate that there are sufficient resources in the former area to ensure access to care to the former patient population;

iii. The proposed site must be accessible to patients of the newly defined service area both economically and in terms of driving time and public transportation, where available;

iv. All alternatives have been considered and the proposed project is responsive to identified health needs and represents the most cost-effective course of action to meet those needs;

v. The applicant must at a minimum demonstrate long term reductions in total health system costs.

2. No certificate of need shall be awarded for the construction of a new hospital unless compliance with the following criteria has been demonstrated:

i. Bed need in the area has been documented for each proposed service;

ii. The hospital at its proposed location must be physically and economically accessible to patients of the defined services area;

iii. All hospitals located within a 25-mile radius of the proposed location shall have occupancy levels which exceed optimal levels as defined in 8:43E-1.11 for the previous two calendar years;

iv. The applicant must demonstrate that the proposed project represents the most cost-effective approach to meeting identified health care needs of the area.

[8:43E-1.22 Standards regarding need for obstetric beds

The need for obstetric beds shall be governed by and demonstrate compliance to departmental regulation for the regionalization of these services and plans for implementation adopted thereto by the health systems agency in which the services are proposed.]

8:43E-1.22 Standards regarding costs of parking garages

(a) Where a hospital voluntarily submits an application for a certificate of need to purchase, construct, modernize, renovate or expand a parking garage, it must provide full written documentation of the purchase, construction and/or renovation costs of the proposed unit including land acquisition and building demolition related thereto. The applicant should include both capital and operating costs. Projections of anticipated revenues and costs along with the significant assumptions for the first two years of operation, (or the break-even year, whichever is later) should be incorporated into the certificate of need application.

(b) The costs of purchase, construction, renovation, expansion and operation of the proposed parking garage shall be

fully underwritten by charges to users, as the costs will not be financed, directly or indirectly, in whole or in part by charges to patients. An exception can be made for employee benefits if the applicant demonstrates necessity and if such costs are determined to be reasonable in comparison to all hospitals.

[8:43E-1.23 Standards regarding consolidation

Consolidation which would require the expansion of a pediatrics or OB/GYN unit must be supported by letters of agreement, between the applicant facility and other facilities in its service area, to use the proposed consolidated unit, prior to filing any request for a certificate of need to expand these types of beds at the applicant facility. The consolidation action must be in compliance with appropriate plans for consolidation of services developed by the health systems agency in which the action is proposed.]

8:43E-1.23 Standards regarding medical arts building

(a) Where a hospital voluntarily submits an application for a certificate of need to purchase, construct, modernize, renovate or expand a medical arts building it shall provide full written documentation of the purchase, construction and renovation costs of the proposed unit. The applicant shall include both capital and operating costs, including personnel, maintenance agreements, and related expenses. Projections of anticipated revenues and costs (and the assumptions for these projections) during the first two years (or break-even year, whichever is later) of operation shall be supplied with the certificate of need application.

(b) The costs of the purchase, construction, renovation, expansion and operation of the proposed medical arts building shall be wholly underwritten by charges to users. An exception can be made when documentation is provided and the Department determines that it is cost effective to locate hospital services in the building.

[8:43E-1.24 Standards regarding occupancy rates; addition of beds

(a) If an applicant submits a request for a certificate of need to permit it to add beds to an existing facility or to construct a new facility, it will be required to submit documentation demonstrating an occupancy history which meets the occupancy standards delineated in section 20 of this subchapter. The following policies shall apply to such requests:

1. If in the previous two quarterly reporting periods the occupancy rates in a facility fall below an average of 90 per cent for its medical/surgical beds, 75 per cent for its pediatric beds and 75 per cent for its obstetric beds, the addition of beds within the service type which is not achieving desired occupancy levels will be denied certificates of need;

2. If in the previous two quarterly reporting periods the occupancy rates in an individual hospital service area, as defined by the health systems agency after consultation with the New Jersey State Department of Health, fall below an average of 90 per cent for its medical/surgical beds, 75 per cent for obstetric beds and 75 per cent for pediatric beds, the addition of beds in the service type which is not achieving desired occupancy levels will be denied certificates of need.]

8:43E-1.24 Standards regarding accessibility

(a) The applicant must demonstrate compliance with all Chapter 83 (N.J.A.C. 8:31B) and Hill-Burton (42 CFR 124.501) obligations for uncompensated care and community services where applicable.

(b) The applicant must demonstrate accessibility and availability to all provided services thereby meeting the needs of all underserved populations.

(c) The applicant must demonstrate accessibility and availability of health professionals at all times who have the capacity to facilitate communications between non-English speaking patients and health care staff, where these populations constitute 10 per cent or more of the service area population.

(d) The applicant must demonstrate that it has effectively maintained community and patient awareness of the availability and accessibility of services to all residents of the service area, regardless of age, sex, race, financial status, language barriers, and/or handicapping conditions.

(e) The applicant must have the capacity to assist patients with arrangements for transportation where this constitutes a barrier to the accessibility of services.

[8:43E-1.25 Exceptions; standards regarding occupancy rates and addition of beds

(a) Exceptions to section 24 of this subchapter regarding occupancy levels may be examined under the following conditions:

1. Identification of a population in a rural area whose travel time under normal conditions places residents more than 30-40 minutes from their place of origin to the nearest general hospital offering needed medical, surgical, pediatric and obstetrical care (independent of the availability of more specialized tertiary services), where standards in this subchapter are met;]

8:43E-1.25 Guidelines regarding multi-hospital arrangements

(a) Hospitals which propose the merger, acquisition, or joint establishment of corporate structures with any other licensed hospital(s) for the purpose of providing a health care service, or where a change in ownership Certificate of Need application is filed by a licensed hospital, it shall demonstrate in the Certificate of Need that:

1. Cost efficiencies will be effected and will result in significant net operational savings to the participating hospitals and to the health care system as a whole; and

2. A reduction of all underutilized bed capacity will result for all participating hospitals through decertification or conversion of acute care beds; and

3. Duplication of services will be eliminated through the proposed merger, acquisition or corporate restructuring; and

4. All participating hospitals will have achieved an overall incentive position as a result of the proposed project.

[8:43E-1.26 Standards regarding certificate of need requirements for modernization, renovation or new construction

Applications for certificates of need to modernize, renovate or initiate new construction which is not directed toward correcting life-safety code violations in categories "A" and "B", N.F.P.A. (Life-Safety Code 101), shall be denied until such time that the applicant has filed with the department a plan of correction and submitted a certificate of need to correct existing violations in categories "A" and "B", N.F.P.A. (Life-Safety Code 101), cited by the Division of Licensure, Certification and Standards, or has deleted these beds from its inventory.]

8:43E-1.26 Standards regarding relocation or closure of services

(a) No certificate of need shall be awarded for the relocation or closure of services unless the applicant has demonstrated:

1. That the existing service area population will continue to have access to the same type and level of needed health care

services which the applicant is proposing to close, reduce, or relocate. This shall be documented by submission of an analysis containing the following information as it relates to the existing area population:

i. Current utilization patterns of affected services;

ii. A demographic profile including race, sex, age, handicapping conditions, income;

iii. Payment source for all patients who have received care within the affected services;

iv. Alternative available sources of health care including discussion of:

(1) Potential barriers to alternative sources;

(2) Impact upon identified alternative provider sources;

v. Impact of proposal upon underserved groups.

2. That alternatives to the proposal have been considered and the reasons why the identified project was chosen over those alternatives have been justified.

3. An exception to these requirements can be made by the Department if, on the basis of information presented by the applicant, it can be determined and verified that another provider in the same service area can and will take the added patient load.

[8:43E-1.27 Standards regarding construction, modernization and renovation

Plans for construction of proposed new general hospitals or for modernization or renovation of existing facilities shall meet requirements defined under H.R.A. 74-4000, "Minimum Requirements of Construction and Equipment for Hospitals and Medical Facilities".]

[8:43E-1.28 Standards regarding nonconforming beds

All hospitals with beds which are nonconforming under category "A", life safety regulations, have two years from the effective date of this regulation to obtain a certificate of need either for replacement of these beds or for deletion of them from the hospital's inventory. All such beds which have not been approved for replacement through the certificate of need process within two years of the effective date of this regulation shall be deleted from the State plan inventory of beds. Within five years of the effective date of this regulation, all hospitals with beds which are nonconforming under category "A", life safety regulations, shall have replaced the category "A" beds for which certificates of need for replacement were granted, or the nonconforming beds shall be removed from service.]

[8:43-1.29 Standards regarding patient care

Any hospital wishing to modernize, renovate or initiate new construction must demonstrate a record of substantial compliance with the Manual of Standards for Hospital Facilities as developed by the New Jersey State Department of Health. If in the previous two years these criteria have not been met, a certificate of need will not be granted. After a period of two years of satisfactory operation as above defined an application will be considered. The Division of Licensure, Certification and Standards, and Health Economics Services, Division of Health Planning and Resources Development, State Department of Health, will review these applications and report on their status.]

[8:43E-1.30 Guidelines regarding access; time-distance to basic services

The location of a proposed new general hospital offering needed medical, surgical, pediatric and obstetrical inpatient care should allow for reasonable access to the facility by patients, physicians and immediate family of the patient. Rea-

sonable access is interpreted to mean not more than 30-40 minutes driving time under normal conditions from the point of origin of the patient.]

[8:43E-1.31 Guidelines regarding access; time-distance to speciality services

Where accessibility factors to speciality services are established, they will be covered under the regionalization standards for the specific tertiary service.]

[8:43E-1.32 Guidelines regarding access to public transportation

Where possible, each facility shall be located where access is easily gained by low cost public transportation.]

[8:43E-1.33 Guidelines regarding physical environment

(a) Each facility shall be located so as to be served by all necessary utilities and must conform to the transportation and land use plan of the area.

(b) Where possible, the site of any new facility construction must allow for future expansion, provide ample parking, be free from any present or potential adjacent construction and conform to local zoning and building requirements.]

[8:43E-1.34 Guidelines regarding exposure to adverse environmental conditions

Hospitals should be located so as to prevent exposure of patients to adverse environmental conditions which might hamper or interfere with their recovery, including excessive noise levels, offensive odors, or unsightly physical surroundings.]

[8:43E-1.35 Guidelines regarding safety

Hospitals should be located so as to reduce the risks of physical harm resulting from physical environmental factors upon patients, staff or visitors entering or leaving the facility.]

[8:43E-1.36 Guidelines regarding zoning and land use approvals

Hospitals should not seek formal zoning or land use approval prior to receiving an approved certificate of need. While there may be some cases when circumstances promote quick and inexpensive approvals from government agencies for land use prior to certificate of need approval, hospitals generally should not enter into costly land use approval procedures until a certificate of need is approved.]

[8:43E-1.37 Standards regarding environmental impact statement

An environmental impact statement is required as supporting documentation for location and/or relocation of health facilities proposed to be funded through the use of Hill-Burton or Federal Housing Administration resources.]

SUBCHAPTERS 2. through 4. (No change.)

(a)

**DIVISION OF HEALTH FACILITIES
EVALUATION**

**Standards for Licensure of Residential
Health Care Facilities Administration**

**Proposed Redoption as a New Rule
N.J.A.C. 8:43-4**

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

Proposal Number: PRN 1985-274.

Submit comments by June 19, 1985 to:

Wanda J. Marra, Coordinator
Standards Program
Division of Health Facilities Evaluation
Department of Health
CN 367
Trenton, N.J. 08625

N.J.A.C. 8:43-4 expired on May 8, 1985. The reoption of expired rule becomes effective upon publication in the New Jersey Register of the notice of its reoption.

The agency proposal follows:

Summary

The current text of N.J.A.C. 8:43-4, Administration, of the Manual of Standards for Residential Health Care Facilities, expired on May 8, 1985, in accordance with the "sunset" provisions of Executive Order No. 66(1978), it is therefore proposed for reoption as a new rule. The Department proposes to reoption without change N.J.A.C. 8:43-4 for a five-year period. The Department has reviewed the rules and found them to be necessary, reasonable and proper. Therefore, the proposed reoption includes no changes in the current text.

N.J.A.C. 8:43 became effective October 27, 1985, and was promulgated by the New Jersey State Department of Institutions and Agencies, which is no longer in existence. The responsibility for the licensure and regulation of health care facilities was transferred from the New Jersey State Department of Institutions and Agencies to the New Jersey State Department of Health in 1971 by Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto. However, N.J.A.C. 8:43-4 has continued in effect. This subchapter was amended effective May 8, 1980, and was assigned an expiration date of May 8, 1985.

According to N.J.A.C. 8:43-1.1, definitions, a residential health care facility is any establishment which furnishes food and shelter to four (4) or more adult persons (persons over 18 years of age) unrelated to the proprietor and which admits or retains any adult person in need of personal care or services beyond food, shelter, and laundry. Such facilities are distinct from other health care facilities in that they serve as a substitute for the residents' own homes, furnishing facilities and comforts normally found in a home, and provide in addition such services, equipment and safety features required for safe and adequate care. Facilities which fulfill the above requirements are considered health care facilities as defined in Chapters 136 and 138, Health Care Facilities Planning Act, 1971, N.J.S.A. 26:2H-1 et seq. and shall adhere to the rules contained in the Manual of Standards for Licensure of Residential Health Care Facilities (N.J.A.C. 8:43-1 et seq.). The name of this type of facility was officially changed from "Boarding Home for Sheltered Care" to "Residential Health Care Facility" in September of 1980. (See: 12 N.J.R. 394(b), 12 N.J.R. 518(d)) The following is a summary of the current rules concerning administration of residential health care facilities.

N.J.A.C. 8:43-4.1, admission policy, is divided into subsections (a), (b), and (c). N.J.A.C. 8:43-4.1(a) deals with rules concerning the types of residents who may be admitted to residential health care facilities. N.J.A.C. 8:43-4.1(b) recommends that individuals, relatives and agencies review the programs of individual facilities to determine their suitability in meeting the needs of residents. N.J.A.C. 8:43-4.1(c) prohibits the facility from exceeding its licensed capacity unless justified by emergency conditions. Should it be deemed necessary

to exceed capacity, the facility operator shall notify the Department by telephone of the circumstances which cause the excess capacity as well as the steps being taken to reduce the capacity to its normal level.

N.J.A.C. 8:43-4.2, recreation and diversion, encourages facilities to provide in-house recreational activities based upon the specific needs of the residents. Privacy, privileges and visiting policy are the subjects of N.J.A.C. 8:43-4.3(a) through (h). The rule ensures a diversity of activities and that residents' privacy is respected and visiting privileges are honored. N.J.A.C. 8:43-4.4 mandates the prompt delivery of mail to residents and prohibits the facility operator from opening sealed mail under any conditions. Telephone service must be available upon request at all times to residents, and privacy must be assured, according to N.J.A.C. 8:43-4.5.

N.J.A.C. 8:43-4.6 concerns the amount of supervision of residents required in residential health care facilities. N.J.A.C. 8:43-4.6(a) indicates the qualifications of the supervisor of the residents and activities. N.J.A.C. 8:43-4.6(b) requires that at least one responsible person other than a resident be on the premises at all times to supervise the residents. N.J.A.C. 8:43-4.6(b)1 mandates that in facilities of 24 beds or more, at least one person shall be on the premises and awake at all time (24 hours a day, seven days a week) to actively supervise residents. In facilities with fewer than 24 licensed beds, inactive supervision is acceptable during the normal sleeping hours of residents (usually between 10 P.M. and 6:00 A.M.), according to N.J.A.C. 8:43-4.6(b)2. Inactive supervision requires having a responsible person other than a resident on duty and available on the premises but not necessarily awake. According to N.J.A.C. 8:43-4.6(d), all facilities with more than 24 beds must have a sufficient number of on-duty staff to provide at least one hour of supervision for each resident during a 24-hour period. N.J.A.C. 8:43-4.6(f) proscribes hiring individuals under 18 years of age for positions involving the care of residents. N.J.A.C. 8:43-4.6(g) encourages facilities to utilize female employees when providing personal care services to female residents. N.J.A.C. 8:43-4.6(h) and (i) respectively require the facility operator to maintain time records indicating hours worked for all employees as well as to provide adequate training and instruction to anyone who is placed in charge of the facility in the operator's absence. Personnel with any reportable communicable disease or infection or exposure to infection are restricted by N.J.A.C. 8:43-4.6(c) and (j) from entering the facility until a physician certifies to the operator that the employee's condition will not endanger the health of the residents or other employees.

N.J.A.C. 8:43-4.7 delineates the requirements for maintenance of records. N.J.A.C. 8:43-4.7(b) emphasizes the confidentiality of records and information regarding individual residents, and restricts access to such information to responsible persons. According to N.J.A.C. 8:43-4.7(c), all records must be maintained for a period of ten years after a resident's discharge from a facility. N.J.A.C. 8:43-4.7(d) requires the facility to keep a register containing a current census of all residents and to keep in individual record for each resident. These records must be kept on the premises and be available for review at any time by Department of Health representatives. N.J.A.C. 8:43-4.7(d)1 outlines the standards for maintaining the register. The rule requires that the register contain a record of all admissions and discharges, that it be kept up-to-date, and that it be stored in a safe, fire-resistant container.

N.J.A.C. 8:43-4.7(d)2 specifies the contents of the resident's record which include: an admission record, a medical certification, a record of physician visits and a death record

when applicable. Major occurrences or incidents of an unusual nature must be reported immediately to the Division of Health Facilities Evaluation of the Department of Health by telephone, according to N.J.A.C. 8:43-4.7(e).

N.J.A.C. 8:43-4.8 prescribes policies and procedures for handling, storing, and disposing of medications. The regulations mandate that the operator of a facility provide a medicine cabinet of sufficient size to store residents' prescriptions and supervise the taking of such medications in accordance with physicians' orders. The operator must see to it that the cabinet is locked when not in use; that no stock supply of medications shall be kept other than those that can be bought without a prescription; that medications no longer in use be destroyed or returned to the resident's relative or guardian; and that, upon death, all unused portions of prescribed medications be destroyed.

N.J.A.C. 8:43-4.9, accident prevention, indicates that periodic inspections of physical facilities, equipment, and furniture be made, to determine whether hazardous conditions exist within the facility.

N.J.A.C. 8:43-4.10(a) through (c), housekeeping, requires that all areas of the facility be maintained in a clean and orderly condition. The rule further states that all corridors and stairways are to be kept free from obstructions. To protect the health and safety of residents and employees, rules insuring minimum standards of sanitation have been established in N.J.A.C. 8:43-4.11(a) through (e). This rule requires that an adequate and continuous supply of hot water is available at all times for bathing, dishwashing, laundry and general cleaning; the water supply is safe and suitable for drinking purposes; precautions are taken to guard against the presence of flies, insects and vermin; window screens capable of keeping the facility insect-free are provided; and all floors in kitchens, bathrooms and laundry rooms are non-absorbent. In order to comply with the rule, N.J.A.C. 8:43-4.12(a) through (d), concerning laundry, residential health care facilities must make provisions for regular laundering of residents' personal clothing and insure that soiled linen is collected and handled in a sanitary manner and is kept separate from food preparation and food storage areas.

N.J.A.C. 8:43-4.13, personal needs allowance, discusses the resident's right under law to a personal needs allowance of \$50 per month as determined by the New Jersey State Department of Human Services. N.J.A.C. 8:43-4.13(a) forbids the operator to withhold or retain for him or herself or require payment to him or her of any portion of the personal needs allowance. N.J.A.C. 8:43-4.13(b) addresses the need for facility operators to maintain written financial records for any resident who agrees to entrust to the operator stewardship of his or her financial resources. Such records would include a ledger to record the date of each payment received and the amount of payment, and the amount, date and reasons for each disbursement made by, or on behalf of, residents. N.J.A.C. 8:43-4.13(c) obligates residents to acknowledge in writing receipt of funds, goods, or services purchased with such funds at the time of disbursement.

Since the adoption of N.J.A.C. 8:43-4 in October 1965, seven amendments have been adopted and incorporated into Subchapter 4. An amendment to N.J.A.C. 8:43-4.1(a)3, which became effective May 8, 1980, defined the persons who may not be admitted to a residential health care facility. (See: 12 N.J.R. 116(a), 12 N.J.R. 273(c)) Effective October 9, 1980, the Health Care Administration Board repealed N.J.A.C. 8:43-4.6(c) and (c)1 and (j) in deference to the adoption of N.J.A.C. 8:31-26.3, which addresses the requirements for

employee health examinations. (See: 12 N.J.R. 463(b), 12 N.J.R. 578(c)) An amendment to N.J.A.C. 8:43-4.7(c) that increased the mandatory retention of records from five to ten years after a resident's discharge took effect on October 25, 1977. This conforms to the requirement for other types of health care facilities as mandated by state statute. (See: 9 N.J.R. 421(c), 9 N.J.R. 519(b)) A new rule N.J.A.C. 8:43-4.13 became effective on August 6, 1981, and was amended twice. It established a personal needs allowance for residents which was set at \$40 per month. (See: 13 N.J.R. 268(b), 13 N.J.R. 495(b)) An increase in the allowance, to \$46 per month, took effect June 6, 1983. (See: 15 N.J.R. 309(a), 15 N.J.R. 923(a)) On August 6, 1984, the allowance was again raised to \$50.00. (See: 16 N.J.R. 808(a), 16 N.J.R. 2126(a)) N.J.A.C. 8:43-4.14, concerning resident discharge, was repealed effective October 3, 1983, and incorporated into a new subchapter, N.J.A.C. 8:43-7, Resident Rights. (See: 15 N.J.R. 992(a), 15 N.J.R. 1658(a))

An internal review and evaluation of N.J.A.C. 8:43-4 by the Department indicated that this subchapter has been effective in assisting the Department to carry out the functions mandated by the Health Care Facilities Planning Act. These rules are necessary for the Department to effect its legal mandate to protect the health, safety, and well-being of the residents in the residential health care facilities in New Jersey. The rules in N.J.A.C. 8:43-4 are essential for the regulation of residential health care facilities to assure minimum quality care and the provision of required services.

The Department intends to revise N.J.A.C. 8:43-4 to incorporate newer terminology and more specific language to render the rules more objective, measurable, and enforceable. Due to time constraints and priorities within the Department, it has not been possible to revise the current rules prior to the expiration date of May 8, 1985, mandated by Executive Order No. 66(1978). In proposing the readoption of N.J.A.C. 8:43-4, the Department has also taken into consideration the considerable amount of time necessary to complete the procedures for the promulgation of new rules. Until this subchapter is revised, it is imperative that the current text of N.J.A.C. 8:43-4 be readopted without change. The Department needs these rules to accomplish its legal mandates and, pursuant to the regulatory process, to assist the Department to continue its efforts to provide minimum standards for quality care.

Social Impact

The readoption of N.J.A.C. 8:43-4 will have social impacts on the Department, patients, and the facilities. The Department is mandated by Chapters 136 and 138, P.L. 1971, Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., and amendments thereto, to protect and promote the health and safety of the inhabitants of the State. Licensure regulations are one of the means by which the Department monitors the quality of health care services provided to residents in residential health care facilities throughout the State. The quality of health care, to a great extent, depends on the organization and effectiveness of the health care services provided. N.J.A.C. 8:43-4 establishes minimum administrative policies for residential health care facilities to promote and support quality care and continuity of care for the residents. If this rule is not readopted, the social impact resulting from the loss of this rule would have serious consequences for residents of residential health care facilities.

For example, without licensure regulations governing admission policies, the nature and purpose of residential health care facilities would be fundamentally altered. By not restrict-

ing the types of people admitted, individuals who require more intensive health care services could be seriously endangered by residing in a facility that is not capable of meeting their health care needs. The absence of regulations regarding recreation and diversion, mail service, telephone service, as well as privacy, privileges and visiting policies could have potentially serious and adverse consequences for residents by reducing their access to information and communications from outside the facility and isolating them from relatives, friends, and clergy. Elimination of regulations relating to personnel policies would have a deleterious effect both on the safety of the residents as well as on the reputation of the facility. Failure to retain an adequate complement of qualified, competent personnel capable of discharging their responsibilities in a timely, conscientious manner would jeopardize the welfare of the residents and could have serious legal implications for the facility and its operator.

The lack of regulations to ensure proper resident record maintenance would directly affect the care and supervision of residents. Without documentation of the admission record, the medical certification, and a record of physician's visits, the personnel responsible for the supervision of the resident would have no information to guide them, thereby causing fragmented and/or inappropriate care and supervision for the resident. Conversely, the readoption of the rules for residents' records will continue to ensure that residential health care facilities maintain residents' medical records that are documented accurately, and in a timely manner, that are readily accessible to authorized persons, and that permit prompt retrieval of information in order to protect the health and safety of residents. The resident's record is an instrument by which care is coordinated, particularly when different practitioners are involved in the care of an individual resident. The documentation in the resident's record serves as a means of coordinating care and supervision to assure continuity of care and stability for the resident's life in the facility.

The lack of regulations regarding the storage and handling of medications and supervision of residents' self-administration of medications would create a very dangerous situation. If medications are not kept locked, anyone including residents would have access to them thus allowing residents to take medications not prescribed for them and possible drug abuse. Without supervision of residents' medications and self-administration, residents may not take their medications as prescribed by their physician, for example, the resident may take too much, too little, or no medications.

The absence of rules regarding housekeeping, accident prevention, sanitation, and laundry services, would also create a dangerous situation leading to increased infections and accidents for both residents and personnel.

Residential health care facilities represent a low-cost means by which adults 18 years of age or over can be cared for in a home-like environment. In addition to the social and recreational activities, dietary services and supervision provided by all residential health care facilities, health maintenance and monitoring services and supervision of self-administration of medications are also provided for residents, thereby helping to insure that the psychological and physical needs of the residents are met. The current trend toward de-institutionalization of chronically ill, long-term patients into a more home-like milieu has greatly enhanced the importance of residential health care facilities as an alternative in the health care delivery system. Residential health care facilities are an alternative to long-term care facilities, hospitals, and home health agencies in the continuum of health care. Continuation of the

rules for licensure of residential health care facilities will therefore result in the availability of facilities for those residents who need this type of care. The New Jersey State Department of Health has the responsibility to provide for the protection and promotion of the health of all inhabitants of the State. Failure to readopt N.J.A.C. 8:43-4 could jeopardize the quality of services provided in residential health care facilities which could adversely effect the residents' health and safety because there would be no regulatory mechanism.

Economic Impact

The readoption of N.J.A.C. 8:43-4 will not have any new discernible economic impact on providers of care since the rules are now in existence and compliance is required of the facilities. There will be no new discernible economic impact on the Department of Health since the facilities are in existence now and are currently being surveyed using these rules.

However, failure to readopt N.J.A.C. 8:43-4 could have serious consequences with a concomitant economic impact. For example, without rules regarding the control and supervision of medications, residents who do not take their medications as prescribed may become ill and require hospitalization, a much costlier form of health care than a residential health care facility. Without rules for housekeeping, sanitation, accident prevention, and laundry services, residents might acquire infections or have accidents requiring more intensive and more expensive health care than that provided in a residential health care facility. Without requirements for resident records there would be no documentation regarding the resident which might result in fragmented or lack of care or duplications of services, thus increasing the cost of care. Failure to readopt the regulations concerning the personal needs allowance could have a very direct and serious financial and emotional impact on residents who are recipients of Supplemental Security Income or General Public Assistance because the regulations contain a provision forbidding the operator to withhold or retain for him or herself a resident's monthly personal needs allowance.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:43-4.

(a)

NARCOTIC AND DRUG ABUSE CONTROL

Controlled Dangerous Substances: Buphenorphine to Schedule V

Proposed Amendment: N.J.A.C. 8:65-10.5

Authority: N.J.S.A. 24:21-3.

Proposal Number: PRN 1985-275.

Submit comments by June 19, 1985 to:

Lucius A. Bowser, R.P., M.P.H.
Chief, Drug Control Program
CN 362
Trenton, N.J. 08625
(609) 984-1308

The agency proposal follows:

Summary

The Department of Health proposes to amend the schedules of the Controlled Dangerous Substances Act to reschedule the drug Buphenorphine to Schedule V from its present listing as a narcotic, opiate in Schedule II. This substance has been rescheduled under the Federal Controlled Substances Act similarly because a new drug application has been approved for the marketing of a preparation containing Buphenorphine. The soon to be marketed product has a drug dependency liability akin to those other Schedule V substances.

Buphenorphine was rescheduled by the U.S. Department of Justice, Drug Enforcement Administration as published as a final notice in the Federal Register, cited as 50 F.R. 8104, dated February 28, 1985. The effective date of the Federal Order is April 1, 1985. By amending the provisions of N.J.A.C. 8:65-10.5 through the change of Buphenorphine to Schedule V, the New Jersey regulations will be in conformity with the Federal regulation.

The marketing of the Buphenorphine product will allow a new analgesic drug with a potential for abuse of low incidence. This substance was part of Schedule II by virtue of its being a derivative of the opiate thebaine and it will be classified as a narcotic.

Social Impact

The proposal to amend the controlled dangerous substances schedules to include the rescheduling of Buphenorphine into Schedule V will permit the domestic marketing of products that currently are in use in European countries for valid medical reasons. It will require slightly different levels of security than presently enjoyed in Schedule II. The proposal will not dramatically impact on any physician's ability to prescribe this substance. It will however cause an impact on the availability of a useful medical product for a patient.

Economic Impact

The proposal to reschedule Buphenorphine into Schedule V will have little if any economic impact on a physician except that he would have less of a security responsibility and lowered recordkeeping responsibility in prescribing and dispensing Buphenorphine. The proposal would have a greater impact upon a patient in that the drug would be more readily available for use. Recordkeeping and security by pharmacists would also be diminished by this proposal. The patient would benefit additionally because the change in schedule would allow for this drug to be refilled up to one year upon direct authorization of a physician whereas presently under Schedule II it would be non-refillable.

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

8:65-10.5 Controlled dangerous substances; schedule V

(a) (No change.)

(b) The following is Schedule V listing the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substances numbers.

1. (No change.)

2. **Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:**

Buphenorphine

9064

HUMAN SERVICES

Proposals numbered PRN 1985-284, 288 and 289 are authorized by George J. Albanese, Commissioner, Department of Human Services.

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

For proposals numbered PRN 1985-288 and 289, submit comments by June 19, 1985 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, N.J. 08625

(a)

Administration Manual, Manual for Hospital Services, Independent Clinic Services Manual

Narcotic and Drug Abuse Treatment Centers

Proposed Amendments and New Rules:

**N.J.A.C. 10:49-1.4; 10:52-1.21; 10:66-1.2,
1.6 and 3.3**

Authority: N.J.S.A. 30:4D-6b(16); 42 CFR 440.90 and 42 CFR 440.130.

Proposal Number: PRN 1985-288.

The agency proposal follows:

Summary

This proposal concerns Narcotic and Drug Abuse Treatment Centers (hereinafter referred to as "centers"). These "centers" became part of New Jersey's Medicaid (Title XIX) Program as the result of an amendment to the New Jersey Medicaid Statute (L. 1984, c.86, effective July 18, 1984 and codified as N.J.S.A. 30:4D-6b(16)).

A "center" is defined as a facility to provide services in connection with the inpatient or outpatient treatment or care of drug abuse when the treatment is prescribed by a physician and provided in a licensed hospital or in a narcotic and drug abuse treatment center approved by the Department of Health pursuant to L.1970 c.334 (N.J.S.A. 26:2G-21 et seq.) and whose staff includes a medical director, and limited to those services eligible for federal financial participation under Title XIX of the Federal Social Security Act.

Those services that could be covered are identified in the procedure code listing under N.J.A.C. 10:66-3.3. The services include urine analysis, certain types of psychotherapy or family counseling, and methadone treatment.

In order for a "center" to become an approved Medicaid provider, the "center" must apply to the Provider Enrollment Unit of the Division of Medical Assistance and Health Services. In order to be recognized as an approved provider, certain requirements, such as executing a Medicaid provider agreement and obtaining approval by the New Jersey Department of Health, are necessary.

Once approval is granted, the "center" may submit claims to the Medicaid program only for those procedure codes which correspond to the allowable services included in their New Jersey Medicaid provider approval letter. Claims must be submitted to the Prudential Insurance Company on the claim form used by Independent Clinics (MC-14).

Social Impact

This proposal should help make "centers" available for treatment of Medicaid patients with drug related problems.

The proposal impacts primarily on licensed hospitals or "centers" which have been approved by the New Jersey Department of Health. These providers will be able to obtain Medicaid reimbursement services associated with medical treatment and covered by New Jersey's Title XIX program. Room, board and other residential services will not be covered.

Economic Impact

There will be no cost to the Medicaid patient for services or treatment provided in a "center".

The Division has no cost figures available at this time because this type of provider is a new addition to the Medicaid program. However, State funding for this program will be supplied by the New Jersey Department of Health, Division of Narcotics and Drug Abuse Control.

"Centers" which become approved Medicaid providers will be reimbursed in accordance with the Medicaid fee schedule associated with the appropriate procedure code. Some new procedure codes have been added as part of this proposal. The codes, narrative descriptions, and fee schedules appear in the text below (see Section 10:66-3.3, Procedure Code Listing, codes numbered 8927 and 9180 through 9187). In addition, approved "centers" will be reimbursed only for those procedure codes which are allowable as indicated in the summary statement. "Centers" must submit the appropriate claim form within the prescribed time frames.

If the service is provided in an outpatient "center" affiliated with a hospital, the "center" must accept the fee-for-service payment as payment in full. Additional charges cannot be requested as a bad debt or uncompensated care through the hospital rate setting process.

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

10:49-1.4 Authorized Services for Covered Persons

(a) The items and services provided to covered persons [will] **are** not normally [be] limited in duration or amount. Any limitation imposed will be consistent with the medical necessity of the patient's condition, as determined by the attending physician or other practitioner, in accordance with standards generally recognized by health professionals and promulgated through the New Jersey Medicaid Program. The following items and services, more specifically defined in subsequent sections of the **appropriate** provider manual, are authorized under the program:

1. through 19: (No change.)

20. Narcotic and drug abuse services: Certain specified services (excluding room, board and other residential services) are covered in connection with the inpatient or outpatient treatment or care of drug abuse when the treatment is prescribed by a physician and provided in a licensed hospital or in a narcotic and drug abuse treatment center approved as a provider by the New Jersey Medicaid Program.

10:52-1.21 Narcotic and Drug Abuse Treatment Center

(a) A hospital affiliated narcotic and drug abuse treatment center may provide services in connection with the outpatient treatment or care of drug abuse when the treatment is prescribed by a physician, and provided in a licensed hospital with approval by the New Jersey State Department of Health pursuant to L.1970 c.334 (NJSA 26:2G-21 et seq.) and whose staff includes a medical director. The New Jersey Medicaid Program will cover only those services eligible for federal financial participation under Title XIX of the Social Security Act.

(b) Reimbursement for services provided in an outpatient narcotic and drug abuse treatment center is on a fee-for-service basis. The New Jersey Medicaid Program payment for drug treatment services must be accepted as payment in full. Additional charges cannot be requested as a bad debt or uncompensated care through the hospital rate setting process.

(c) Approved centers may bill only for those procedure codes which correspond to the allowable services included in their New Jersey Medicaid provider approval letter. Room, board and other residential services are not covered. Claims for reimbursement must be submitted to the Prudential Insurance Company on the claim form used by Independent Clinics (MC-14—"Independent Outpatient Health Facility").

10:66-1.2 Definitions

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

...
 "Narcotic and drug abuse treatment center" means a facility to provide services in connection with the inpatient or outpatient treatment or care of drug abuse when the treatment is prescribed by a physician and provided in a licensed hospital or in a narcotic and drug abuse treatment center approved by the Department of Health pursuant to L.1970 c.334 (NJSA 26: 2G-21 et seq.) and whose staff includes a medical director, and limited to those services eligible for federal financial participation under title XIX of the Federal Social Security Act.
 ...

10:66-1.6 Scope of service

(a) Licensed and approved independent clinics may[,] to the extent of their specialty, license and/or approved New Jersey Medicaid Program Provider Agreement, provide the following services (see 1.6 (b) thru (n)) when medically necessary. Procedure codes, descriptions, and maximum dollar allowances, which correspond to allowable services, are listed in N.J.A.C. 10:66-3.3.

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

(d) Drug abuse treatment services rules are as follows:

1. Services for inpatient or outpatient treatment do not require prior authorization. These services must be prescribed by a physician and provided in a licensed hospital or in a narcotic and drug abuse treatment center.

2. The New Jersey Medicaid Program will cover drug treatment costs only for those services eligible for federal financial participation under Title XIX of the Social Security Act. Room, board and other residential services are not covered services.

3. See N.J.A.C. 10:66-3.3(a) for Examination and Treatment codes, (d) for Laboratory Services codes and (g) for Mental Health Services codes. Approved centers may bill only for those procedure codes which correspond to the allowable

services included in their New Jersey Medicaid provider approval letter.

Reletter (d)-(n) as (e)-(o) (No change in text.)

10:66-3.3 Procedure code listing

Approved clinics may only bill for those procedure codes which correspond to the allowable services included in their current New Jersey Medicaid Provider [Agreement.] approval letter.

Medicaid Dollar Values ("S" and "NS"): First amount represents maximum payment for specialist; second amount, maximum payment for non-specialist.

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

(d) Laboratory services: Only those clinics which have been specifically approved by the New Jersey Medicaid Program to provide laboratory services, in conjunction with the EPSDT screening package, will be reimbursed for the following codes:

(Add the following after code 8936)

8927 Urine analysis for drug addiction: To be used only when Narcotic and Drug Abuse Treatment Centers are approved for this service. To determine what level, if any, a drug is present in the urine.

\$4.50

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

(g) Mental health services: Only those clinics which have been specifically approved by the New Jersey Medicaid Program to provide mental health services may be reimbursed for the following codes.

0050 (No change.)

9183 Psychotherapy rendered in a narcotic and drug abuse treatment center—(Full session): Verbal, drug augmented, or other therapy methods provided by a physician or a professional counsellor under the direction of a physician, in a personal involvement with one patient to the exclusion of other patients and/or duties. A minimum of 50 minutes personal involvement with the patient is required. This includes a prescription visit when necessary.

\$16.00

0051 (No change.)

9187 Psychotherapy rendered in a narcotic and drug abuse treatment center—(Half session): Half Session Verbal, or other therapy methods provided by a physician, or a professional counsellor under the direction of a physician, in a personal involvement with one patient to the exclusion of other patients and/or duties. A minimum of 25 minutes personal involvement with the patient is required. This includes a prescription visit when necessary.

\$8.00

0053 (No change.)

9184 Group therapy rendered in a narcotic and drug abuse treatment center: Verbal or other therapy methods provided by one or more physicians, or professional counsellors under the direction of a physician, in a personal involvement with two or more patients, with a maximum of 8 patients. A minimum session of 1½ hours is required. This includes preparation time in addition to the 1½ hours session time.

\$8.00 per person

0068 (No change.)

0069 (No change.)

0067 (No change.)

9182 Prescription visit rendered in a narcotic and drug abuse treatment center: A visit with a physician for review and evaluation of the medication history of the patient and the writing, or renewal of prescription, as necessary.

\$4.50

0062 (No change.)

9180 Family therapy rendered in a narcotic and drug abuse treatment center: Therapy with the patient and with one or more family members present. Verbal or other therapy methods are provided by a physician, or a professional counsellor under the direction of a physician, in personal involvement with the patient and the family to the exclusion of other patients and/or duties. A minimum session of 1½ hours is required with a minimum of 80 minutes personal involvement with the patient and the family and up to 10 minutes for the recording of data. The clinic may bill only for the patient and not for other family members.

\$22.50

0064 (No change.)

9181 Family conference rendered in a narcotic and drug abuse treatment center: Meeting with the family or other significant persons to interpret or explain medical, psychiatric or psychological examinations and procedures, other accumulated data and/or advice to the family or other significant persons on how to assist the patient. A minimum of 50 minutes of personal involvement with the family is required. The clinic may bill only for the patient and not for other family members.

\$15.00

0060 (No change.)

9185 Complete psychological testing rendered in a narcotic and drug abuse treatment center: Five hours of psychometric and/or projective tests with a written report.

\$75.00

9186 Methadone treatment rendered in a narcotic and drug abuse treatment center: A per diem payment based on the number of days a recipient is supplied methadone during the billing period. This is an all-inclusive rate for cost of drug, packaging, nursing time, and administrative costs.

\$2.50

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Services Manual Preventive Vaccines, Biologicals, Drugs, and Therapeutic Drugs

Proposed Amendment: N.J.A.C. 10:51-1.13, 1.14, Appendix A, and 3.12

Authority: N.J.S.A. 30:4D-6b(6).
Proposal Number: PRN 1985-289.

The agency proposal follows:

Summary

This proposal's basic goal is to delete the current text of Appendix A and replace it with the new text printed below. The current text needs to be deleted because it contains a reference to the New Jersey Department of Health's "Distributing Stations", which are no longer used to distribute the drugs. The rule also amends sections 10:51-1.13, 1.14, and 3.12 to indicate that preventive drugs, vaccines and biologicals and therapeutic drugs (hereinafter referred to as "vaccines") that are available free of charge are not eligible for reimbursement by Medicaid. If the "vaccines" cannot be obtained free of charge, then prior authorization is required from the Medicaid District Office. However, immunization vaccines (Appendix A—Item A1) are generally provided by physicians in their offices, who submit a claim to the Prudential Insurance Company in the usual manner. If the patient went to a clinic, the vaccine might be available at no cost.

Social Impact

The rule impacts on physicians and pharmacies who should be aware of the "vaccines" that can be obtained free of charge and the procedures for obtaining prior authorization.

The Medicaid patient will still be able to receive the necessary "vaccines" regardless of whether the provider paid for the "vaccine", and billed the Medicaid program, or obtained the "vaccine" free of charge, and did not submit a claim. In some instances the "vaccines" are available for use by local health departments which have child health clinics on school age health clinics and in these instances the patient may receive the inoculations at these clinics.

Economic Impact

There is no cost to the Medicaid patient for these "vaccines". There would be some cost saving to the Division if the provider obtained the "vaccine" free of charge and did not submit a claim.

Those providers who are required to purchase the "vaccine" would be reimbursed in accordance with existing policies, procedures, and fee schedules, including prior authorization when required.

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

10:51-1.13 Services requiring prior authorization

(a) The therapeutic classes and dosage forms listed below require prior authorization, obtained by the prescriber from the [local Medicaid unit] **Medicaid District Office**. If the prior authorization request is approved, an authorization number will be provided and must appear on the prescriber's original or valid transcribed prescription. The space labeled "Check if Prior Authorized Service" on the prescription claim form (MC-6) must be checked and the "prior authorization" number provided must be entered in the proper space.

1. [Preventive drugs and biologicals listed in Appendix A to this subchapter when not available through listed distributing stations.] **Preventive drugs, vaccines and biologicals and therapeutic drugs listed in Appendix A of this subchapter when not available free of charge.**

2. Injectable medications as follows:

[i. Gamma globulin when not available from the Department of Health or other agencies;]

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

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

3. Protein replacement products, such as, but not limited to, Prohana, Portagen, [Neo-Mullsoy] **and other special items listed in Appendix E.**

4.-6. (No change.)

10:51-1.14 Services not eligible for reimbursement

(a) The following classes of prescription drugs are not eligible for reimbursement:

1.-5. (No change.)

6. [Preventive drugs and biologicals provided without charge through other agencies (i.e., New Jersey State Department of Health, New Jersey Heart Association, etc.). See Appendix A to this subchapter.] **Preventive drugs, vaccines and biologicals and therapeutic drugs when available free of charge. See Appendix A.**

i. Exceptions: [Instances where preventive drugs are not available conducted by or through other agencies at the listed distribution stations and prior authorization to provide these items has been obtained from the local Medicaid unit.] **Instances where prior authorization to provide preventive drugs, vaccines and biologicals and therapeutic drugs has been obtained from the Medicaid District Office.** Such authorization must be requested for each prescription for these products.

7.-9. (No change.)

10. Food supplements, milk modifiers, infant formulas and therapeutic diets.

i. Exception: **Protein replacements and other special items listed in Appendix E.**

11.-13. (No change.)

14. Injectable drug products;

i. Exceptions:

(1) (No change.)

[(2) Gamma globulin when not available from the Department of Health or other agencies. Prior authorization must be obtained by the prescriber;]

[(3)] (2) (No change in text.)

[(4)] (3) (No change in text.)

[(5)] (4) (No change in text.)

15.-16. (No change.)

(b) (No change.)

Delete in its entirety the current text at N.J.A.C. 10:51-1, Appendix A and replace it with the following:

APPENDIX A

Preventive Vaccines, Biologicals and Drugs and Therapeutic Drugs

Preventive vaccines, biologicals and drugs and therapeutic drugs are available free of charge from certain agencies under certain conditions as listed below:

A. Preventive Vaccines and Biologicals

1. Immunization Vaccines

Pediatric Routine Immunizations—Free vaccines for routine pediatric immunizations such as oral polio; rubella; measles; mumps; diphtheria, pertussis and tetanus combined; etc. are available for use by local health departments which have child health clinics or school age health clinics. For information about these clinics, call the New Jersey State Health Department (609) 292-5635.

Free vaccines are not available to physicians in private practice.

2. Rabies Vaccine

Rabies Vaccine, Human Diploid Cell (H.D.C.V.) and Rabies Immune Globulin (human origin) are available at certain designated hospitals upon consultation with a New Jersey State Department of Health physician (Division of Epidemiology and Disease Control, Communicable Disease Control Services, call (609) 292-7300 during the day; (609) 392-2020 at night, on weekends or holidays.)

3. Immune Serum Globulin (ISG)

Immune Serum Globulin is available from the New Jersey Department of Health in Trenton upon consultation with a New Jersey State Department of Health physician (Division of Epidemiology and Disease Control, Communicable Disease Control Services, Telephone (609) 292-7300). It is released only for use against hepatitis A in selected instances, i.e., medically indigent, outbreak control, etc. It is not available for women exposed to Rubella.

B. Preventive and Therapeutic Drugs

1. Antituberculous Drugs

Antituberculous drugs are available free of charge for patients under the supervision of chest clinics approved by the New Jersey State Department of Health. Free antituberculous drugs are not available to patients under private physician supervision. For information about the location of these "approved" chest clinics, call the New Jersey State Health Department (609) 292-7100.

2. Sexually Transmitted Disease (STD) Drugs

Drugs for the prevention and treatment of sexually transmitted diseases are available free of charge for patients under the supervision of STD clinics approved by the New Jersey State Department of Health. Such medication is also available to private physicians. For information about the availability of such medication call the New Jersey State Health Department (609) 292-4027.

10:51-3.12 Services not eligible for reimbursement

(a) The following classes of prescription drugs are not eligible for reimbursement:

1.-5. (No change.)

6. [Preventive drugs and biologicals provided without charge through other agencies (i.e., New Jersey State Department of Health, New Jersey Heart Association, etc.).] **Preventive drugs, vaccines and biologicals and therapeutic drugs when available free of charge. See Appendix A of N.J.A.C. 10:51-1.**

i. Exceptions: [Instances where preventive drugs or preventive biologicals are not available at the listed distributing stations.] **Instances where prior authorization to provide preventive drugs, vaccines and biologicals and therapeutic drugs has been obtained from the Medicaid District Office.**

7.-8. (No change.)

9. Food supplements, milk modifiers, infant formulas and therapeutic diets;

i. **Exception: Protein replacements and other special items listed in Appendix E.**

10.-14. (No change.)

(a)

DIVISION OF PUBLIC WELFARE

Public Assistance Manual

Distribution of Arrearage Payments on Child Support Orders

Proposed New Rule: N.J.A.C. 10:81-11.19

Authority: N.J.S.A. 44:7.6 and 44:10-3; Child Support Enforcement Amendments of 1984 (P.L. 98-378).

Proposal Number: PRN 1985-284.

Submit comments by June 19, 1985 to:
Audrey Harris, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

Summary

Arrearages accrued from past due child support may reflect amounts due from more than one individual and/or agency. Therefore, a priority scheme is necessary to establish a uniform distribution process to reimburse welfare agencies for assistance payments and to prevent hardships which could force the obligee onto public assistance. The new rule at N.J.A.C. 10:81-11.19 delineates such order of priority for distribution of arrearage payments on child support orders. The Child Support Enforcement Amendments of 1984 require that in situations where individuals are receiving or have received Aid to Families with Dependent Children (AFDC), tax intercepts (Federal and State Income Tax and Homestead Rebates) must first be used to satisfy arrearages owed the county welfare agencies. However, the remainder of these payments shall be distributed to the obligee. Past due payments from other sources shall be directed to the obligee first.

Social Impact

The proposed rule will have a beneficial impact, particularly for individuals who are not receiving public assistance, in that they will have the assurance that much needed child support payments will be forthcoming. Thus, the distribution process will aid in averting hardship and the possibility of these individuals becoming public assistance recipients. Obligees who are receiving AFDC will also benefit since they will receive the remainder of any payments collected through tax intercepts upon satisfaction of any arrearage claims owed to the county welfare agencies while past due payments from other sources will be distributed to obligees first. Finally, the priority process will provide uniformity and clarification in the process of distribution of arrearages.

Economic Impact

The economic impact is directed to the administrative costs of making arrearage payments based on priorities and is not expected to be significant.

Full text of the proposal follows.

10:81-11.19 Distribution of arrearage payments on Child Support orders

(a) Arrearage priorities: Payments on arrearages accrued from past due child support shall be used to satisfy claims as follows:

1. If the obligee is receiving AFDC, any payment must first satisfy arrearages owed to the county welfare agency before any payment to the obligee.

2. If the obligee has never received AFDC, all payments shall go to the obligee.

3. If the obligee once received AFDC:

i. Payments from tax intercepts (Federal and State income tax and Homestead Rebate) first shall satisfy any arrearages owed the county welfare agency;

ii. All other payments (for example, wage executions and unemployment garnishment) shall satisfy arrearages in the following priority order:

(1) Arrearages which have accrued to the obligee since leaving AFDC shall go to the obligee;

(2) Arrearages assigned to the county welfare agency up to the amount of assistance granted shall go to the county welfare agency; and

(3) Any remaining arrearage balance owed to the obligee before receiving AFDC shall go to the obligee.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CRIMINAL JUSTICE

Police Training Commission

Police Officer Certification, Curriculum, Responsibilities of Law Enforcement Agencies and Other Agencies

Proposed Amendments: N.J.A.C. 13:1-5.1, 6.1 and 8.1

Authorized By: Police Training Commission, Leo A. Culloo, Executive Secretary.

Authority: N.J.S.A. 52-17B-71h.

Proposal Number: PRN 1985-278.

Submit comments by June 19, 1985 to:

Leo A. Culloo, Executive Secretary
New Jersey Police Training Commission
Richard J. Hughes Justice Complex
CN 085
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments set forth the authority to promulgate a curriculum at commission-approved training schools; the requirements necessary for police officer certification and the responsibilities of employing law enforcement agencies. The Basic Course for Police Officers supersedes and includes requirements previously contained in the Commission's Written Examination Manual and other manuals covering special subjects.

Social Impact

The social impact of these amendments will be favorable for the public and the law enforcement community. They will provide more uniform standards for training of police officers by commission-approved training schools and municipal and county law enforcement agencies. This will insure to the public that all such officers receive equivalent training.

Economic Impact

There will not be any economic impact as a result of the adoption of this rule. It imposes no payment of fees to the Commission and will not cause any additional costs to the public or the law enforcement community.

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

13:1-5.1 Certification requirements; basic course

(a) A trainee shall be eligible for certification when the School Director affirms that:

1. The trainee has achieved the minimum requirements set forth in the [commission's Written Examination Manual and Firearms Manual] **Basic Course for Police Officers** and has demonstrated an acceptable degree of proficiency in the [subjects of Defensive Tactics and First Aid or a similar course.] **performance objectives contained therein.**

2. The trainee has participated in no less than 90 percent of the total [subject hours in the curriculum that the commission has approved for the school, exclusive of physical conditioning.] **instructional time assigned to those performance objectives designated by the commission.**

3. **The trainee has successfully completed the employing law enforcement agency training required by the commission. This requirement shall not apply to campus police officers, sheriffs' officers, county prosecutors' detectives, or other personnel not covered by the Police Training Act.**

13:1-6.1 Commission to prescribe curriculum

A curriculum promulgated by the commission shall be the [minimum] required curriculum at a school holding commission certification. In addition to the required curriculum, a school may also offer, with commission approval, additional **instruction.** [subjects and/or increase the time elements allocated to the subjects in a commission curriculum. A trainee must complete not only the commission's minimum required curriculum, but also any additional subjects and/or increase in time elements approved by the commission.]

13:1-8.1 Investigation **and training** of police officers prior to acceptance into a basic course

(a) Prior to the acceptance of a police officer into a basic course, the employing law enforcement agency shall:

1. Fingerprint the individual and forward copies of the fingerprints to the New Jersey State Police and the Federal Bureau of Investigation in order to ascertain if the individual has an arrest record. The results obtained from the State Police and the Federal Bureau of Investigation shall be made known and available to the appropriate appointing authority.

2. Investigate the individual to ascertain if he or she is suitable for police service. The results of this investigation shall be made known and available to the appropriate appointing authority.

3. **Provide training at the employing law enforcement agency in those performance objectives designated by the commission. This requirement shall not apply to campus police officers, sheriffs' officers, county prosecutors' detectives, or other personnel not covered by the Police Training Act.**

(b) (No change.)

(a)

BOARD OF PROFESSIONAL PLANNERS

Permissible Division of Responsibility in Submission of Site Plans and Major Subdivision Plats

Proposed Readoption: N.J.A.C. 13:41-4.1 through 13:41-4.5

Authorized By: Mary Winder, President, New Jersey State Board of Professional Planners.

Authority: N.J.S.A. 45:14A-4 and 45:1-21(d)(e).
Proposal Number: PRN 1985-280.

Submit comments by June 19, 1985 to:
Cathleen A. McCoy, Executive Secretary
New Jersey State Board of Professional Planners
Room 317
1100 Raymond Boulevard
Newark, NJ 07102

The readoption of N.J.A.C. 13:41-4 becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption.

The agency proposal follows:

Summary

The Board of Professional Planners proposes to readopt the provision of N.J.A.C. 13:41-4.1 through 13:41-4.5 concerning the preparation of site plans. These rules were initially filed and became effective on September 10, 1981. They will expire on June 12, 1986. The rules are now to be readopted in accordance with Executive Order No. 66(1978). N.J.A.C. 13:41-4.1 to 13:41-4.3 sets forth the information that must be contained in the site plan: a description of the proposed buildings, drives, parking layout, pedestrian circulation and means of ingress and egress, drainage facilities, utility connections, sewage disposal, building floor plans and landscaping. N.J.A.C. 13:41-4.4 specifies what must be contained in a major subdivision plat: a description of the facilities, site improvements, lot layouts, public improvements and final subdivision map. N.J.A.C. 13:41-4.5 indicates that no municipal or city ordinance or action can reduce or expand the scope of professional practice of architects, engineers, land surveyors, or planners.

Social Impact

The rules proposed for readoption have a positive impact on site plan preparation. They provide a minimum consistent standard by which, municipal/county officials and developers may rely on the sufficiency of the site plans. They also provide professional planners with information to know what is expected of them professionally in the preparation of site plan. The proposed readoption will have a continuing beneficial impact on the preparation of site plans and the rules have been determined to be necessary, adequate and reasonable for their intended purpose.

Economic Impact

The rules have had minimal economic impact upon the public, licensees, municipal/county officials and developers. The rules have been in effect since 1981 and there has been no record of any objection to these rules in as much as there have been no increased costs incurred as a result of the rules. Therefore, it is not expected that there will be any future financial concern caused by readoption of these rules.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:41-4.

(a)

DIVISION OF CONSUMER AFFAIRS**Inspections of Kosher Meat Dealers and Kosher Poultry Dealers; Records Required to be Maintained by Kosher Meat Dealers and Kosher Poultry Dealers****Proposed New Rules: N.J.A.C. 13:45A-22**

Authorized By: Irwin I. Kimmelman, Attorney General of New Jersey.

Authority: N.J.S.A. 56:8-4.

Proposal Number: PRN 1985-282.

Submit comments by June 19, 1985 to:
James J. Barry, Jr., Director
Division of Consumer Affairs
Room 504
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

Under rules adopted by the Division of Consumer Affairs on April 2, 1984 (N.J.A.C. 13:45A-21), it is unlawful for any establishment engaged in the sale of food or food products to sell, offer for sale, serve or possess with intent to sell, any food which is falsely represented as Kosher. One of the areas which has a great potential for fraud is the processing and sale of Kosher meat and Kosher poultry. This potential for fraud results from the difficulty in determining whether the Kosher meat dealer or Kosher poultry dealer, who offers the meat and poultry for sale to a customer, has falsely represented the meat or poultry to be Kosher meat or Kosher poultry. This difficulty arises from the fact that, although Kosher meat and Kosher poultry are properly identified as such at the slaughterhouse, by the affixing thereto of Kosher plumbas, Kosher tags and/or Kosher brands, these identification markings are removed from the meat and poultry by the Kosher meat dealer or Kosher poultry dealer, who cuts the meat or poultry into smaller quantities or portions intended for sale to a customer. Thus, because of the very nature of the business, the potential exists that a Kosher meat dealer or Kosher poultry dealer could cut non-Kosher meat or poultry into smaller portions and offer such meat or poultry for sale to a customer as Kosher meat or as Kosher poultry. Absent the ability of the Division of Consumer Affairs to inspect the meat and poultry in the possession of Kosher meat and Kosher poultry dealers, as well as to inspect the records of purchases of meat and poultry made by such dealers, this fraud would go undetected. Accordingly, this proposal will establish inspection procedures to be utilized by the Division of Consumer Affairs to inspect Kosher meat dealers and Kosher poultry dealers and will require such persons to maintain complete and accurate records of all purchases of Kosher meat and poultry.

The following detailed synopsis describes the content of the proposal.

N.J.A.C. 13:45A-22.1 sets forth the definitions of the words and terms used in the subchapter. "Kosher meat dealers" and "Kosher poultry dealers" are defined as persons who purchase, obtain or receive properly identified Kosher meat or Kosher poultry from slaughterhouses, wholesalers or

other sources and who cut, slice, carve, break down or divide such Kosher meat or Kosher poultry into smaller portions intended for sale to a customer as Kosher meat or Kosher poultry. Such places of business may also purchase, sell, handle, package or process non-Kosher meat or non-Kosher poultry and other Kosher and non-Kosher food products. Thus, a person who sells both Kosher meat and Kosher poultry would be a Kosher meat dealer and a Kosher poultry dealer, even if the person also sold non-Kosher meat and poultry.

"Properly identified Kosher meat" and "properly identified Kosher poultry" are also defined. Such meat and poultry must be obtained from animals and poultry which is approved and slaughtered in strict compliance with the laws and customs of the Orthodox Jewish religion and which has affixed thereto the Kosher plumbas, Kosher tag and/or Kosher brand placed on such Kosher meat and Kosher poultry at the slaughterhouse where the animal or poultry was slaughtered. The proposal also defines non-Kosher meat and non-Kosher poultry.

N.J.A.C. 13:45A-22.2 specifies the records that are required to be maintained by Kosher meat dealers and Kosher poultry dealers. Under N.J.A.C. 13:45A-22.2(a), such persons will be required to maintain complete and accurate records of all purchases of properly identified Kosher meat and properly identified Kosher poultry for a two year period. Such records must include the name and address of the slaughterhouse, wholesaler or other source from which such purchases are made, the dates, quantities and identity or nature of meat or poultry included in all such purchases and copies of all invoices and bills of sale relating to all such purchases. If the Kosher meat dealer or Kosher poultry dealer also purchases, sells, handles, packages or processes non-Kosher meat, poultry or food products, separate complete records must be maintained of all purchases of such products for a 90-day period under N.J.A.C. 13:45A-22.2(c).

To aid the identification process, N.J.A.C. 13:45A-22.2(b) provides that Kosher plumbas, Kosher tags and Kosher brands shall not be removed from Kosher meat and Kosher poultry until the time immediately preceding the point when such Kosher meat or Kosher poultry is ready to be cut into smaller quantities or portions.

Pursuant to N.J.A.C. 13:45A-22.2(d), a failure to keep complete and accurate records in accordance with N.J.A.C. 13:45A-22.2(c) shall be punishable as an unlawful act under this subchapter.

N.J.A.C. 13:45A-22.3 sets forth the procedures to be utilized by the Division of Consumer Affairs in inspecting Kosher meat and Kosher poultry dealers to ensure compliance with the regulations. Under N.J.A.C. 13:45A-22.3(a)1. the inspections shall only be conducted by authorized inspectors of the Director of the Division of Consumer Affairs. The authorized inspectors, in conducting an inspection, shall utilize the inspection report form, approved by the Director, to report the date of the inspection, the nature and scope of the inspection and the findings of the inspection. N.J.A.C. 13:45A-22.3(a)2.

Pursuant to N.J.A.C. 13:45A-22.3(b), the authorized inspectors shall have a right of entry to, upon, and through the business premises of all Kosher meat dealers and Kosher poultry dealers for the purpose of making the inspection.

The purposes for which inspections are to be made are specifically set forth in N.J.A.C. 13:45A-22.3(c). By visual inspection of the meat and/or poultry on the business premises, and by visual inspection of all records, plumbas and tags required to be maintained, the inspectors will determine

whether the Kosher meat dealer or Kosher poultry dealer has engaged in, is engaging in, or is about to engage in either the cutting of non-Kosher meat or non-Kosher poultry which is falsely represented to be Kosher meat or Kosher poultry; or the false representation of non-Kosher meat or non-Kosher poultry to be Kosher meat or Kosher poultry.

N.J.A.C. 13:45A-22.3(d) specifically sets forth the scope and manner of the inspection to be conducted. Pursuant to N.J.A.C. 13:45A-22.3(d)1., the inspector shall present appropriate identification at the commencement of the inspection to the dealer and shall advise the dealer of the scope and purposes of the inspection to be conducted. Under N.J.A.C. 13:45A-22.3(d)2., the inspection shall be limited to the business premises, including all places where meat and poultry are stored, cut or sold and shall also be limited to the records, plumbas and tags required to be maintained by the dealer under this subsection.

Pursuant to N.J.A.C. 13:45A-22.3(d)3., inspections shall be made during the dealer's regular business hours and at any time, including non-business hours, when meat or poultry is delivered to the dealer and at any time, including non-business hours, when meat or poultry is being cut by the dealer. This will ensure that inspections will be conducted at a time, prior to the time when the meat or poultry is cut up, when the meat or poultry can still be identified as Kosher meat and Kosher poultry. In order for the inspections to be meaningful, no advance notice of an inspection shall be provided to any person. N.J.A.C. 13:45A-22.3(d)4.

Pursuant to N.J.A.C. 13:45A-22.3(d)5., all inspections shall be conducted in such a manner as to not unduly interfere with the regular business operations of Kosher meat and Kosher poultry dealers.

Pursuant to N.J.A.C. 13:45A-22.3(e), the inspectors shall file a completed copy of the inspection report with the records of the Director of the Division of Consumer Affairs.

Social Impact

The proposed new rules would have a positive social impact. Through the inspection process, Kosher meat and Kosher poultry dealers will be inspected to ensure that such dealers have properly identified meat and poultry as Kosher meat and Kosher poultry and that such dealers have not falsely represented non-Kosher meat and poultry to be Kosher meat and Kosher poultry. Therefore, the inspection procedures set forth in the proposal will protect the consumer who, for reasons of religion, conscience, quality or health, intends to purchase Kosher meat and Kosher poultry.

Economic Impact

Because the proposed new rules provide for the inspection of Kosher meat and Kosher poultry dealers which will foster increased public confidence in the products offered for sale by such dealers, the economic impact should be positive. Under the proposal, the dealers will be required to keep records regarding Kosher meat and Kosher poultry for a two year period which should only have a minimal, if any, economic impact upon such dealers. In addition, the inspections provided for in this proposal will be conducted in such a manner as to not interfere with the regular business operations of Kosher meat and Kosher poultry dealers. Furthermore, the ensured integrity of Kosher meat and Kosher poultry will also economically benefit the consumer of such meat and poultry.

AGENCY NOTE: These proposed new rules are codified at N.J.A.C. 13:45A-22. In the March 18, 1985 New Jersey Register, rules on Deceptive Practices concerning Watercraft Re-

pairs were proposed at N.J.A.C. 13:45A-22. Upon adoption the Watercraft Repair rules will be recodified to N.J.A.C. 13:45A-23.

Full text of the proposed new rules follows.

SUBCHAPTER 22. INSPECTIONS OF KOSHER MEAT DEALERS AND KOSHER POULTRY DEALERS; RECORDS REQUIRED TO BE MAINTAINED BY KOSHER MEAT DEALERS AND KOSHER POULTRY DEALERS

13:45A-22.1 Definitions

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

"Kosher meat dealer" means any person who purchases, obtains or receives properly identified Kosher meat from slaughterhouses, wholesalers or other sources and who cuts, slices, carves, breaks down or divides such kosher meat into smaller quantities or portions intended for sale to a customer as kosher meat. Places of business carrying on the aforesaid actions include, but are not limited to: caterers, hotels, summer camps, butcher shops, delicatessens, supermarkets, grocery stores, freezer dealers and food plan companies. Such places of business may also purchase, sell, handle, package and process non-kosher meat and other kosher and non-kosher food products.

"Kosher poultry dealer" means any person who purchases, obtains or receives properly identified kosher poultry from slaughterhouses, wholesalers or other sources and who cuts, slices, carves, breaks down or divides such kosher poultry into smaller quantities or portions intended for sale to a customer as kosher poultry. Places of business carrying on the aforesaid actions include, but are not limited to: caterers, hotels, summer camps, butcher shops, delicatessens, supermarkets, grocery stores, freezer dealers and food plan companies. Such places of business may also purchase, sell, handle, package and process non-kosher poultry and other kosher and non-kosher food products.

"Non-kosher meat" means meat which is not obtained from animals which are approved, and slaughtered, in strict compliance with the laws and customs of the Orthodox Jewish religion and which does not have affixed thereto the kosher plumba, kosher tag and/or kosher brand placed on such kosher meat at the slaughterhouse where the animal was slaughtered. Non-kosher meat also means meat which is obtained from animals which are approved and slaughtered in strict compliance with the laws and customs of the Orthodox Jewish religion but which does not have affixed thereto the kosher plumba, kosher tag and/or kosher brand placed on such meat at the slaughterhouse where the animal was slaughtered.

"Non-kosher poultry" means poultry which is not approved, and slaughtered, in strict compliance with the laws and customs of the Orthodox Jewish religion and which does not have affixed thereto the kosher plumba, kosher tag and/or kosher brand placed on such poultry at the slaughterhouse where the poultry was slaughtered. Non-kosher poultry also means poultry which is approved and slaughtered in strict compliance with the laws and customs of the Orthodox Jewish religion but which does not have affixed thereto the kosher plumba, kosher tag and/or kosher brand placed on such poultry at the slaughterhouse where the poultry was slaughtered.

"Properly identified kosher meat" means kosher meat which is obtained from animals which are approved, and slaughtered, in strict compliance with the laws and customs of the Orthodox Jewish religion and which has affixed thereto the kosher plumba, kosher tag and/or kosher brand placed on such kosher meat at the slaughterhouse where the animal was slaughtered.

"Properly identified kosher poultry" means kosher poultry which is approved, and slaughtered, in strict compliance with the laws and customs of the Orthodox Jewish religion and which has affixed thereto the kosher plumba, kosher tag and/or kosher brand placed on such kosher poultry at the slaughterhouse where the poultry was slaughtered.

13:45A-22.2 Records required to be maintained by kosher meat dealers and kosher poultry dealers

(a) Complete and accurate records of all purchases of properly identified kosher meat and properly identified kosher poultry from slaughterhouses, wholesalers or any other source shall be kept by every kosher meat dealer and by every kosher poultry dealer, including the name and address of the slaughterhouse, wholesaler or other source from which such purchases are made, the dates, quantities and identity or nature of meat or poultry included in all such purchases, and copies of all invoices and bills of sale relating to all such purchases. Kosher meat dealers and kosher poultry dealers shall retain all such records for a two year period following the purchase of properly identified kosher meat and properly identified kosher poultry.

(b) Kosher meat dealers and kosher poultry dealers shall not remove the attached plumbas or tags or any duly affixed identifications affixed thereto by the slaughterhouse on kosher meats, kosher poultry, or any other kosher products received therefrom until the time immediately preceding the point in time when said kosher meat, kosher poultry, or product whenever appropriate is ready to be cut, sliced, carved, broken down, or divided into smaller quantities or portions.

(c) Complete and accurate records of all purchases of non-kosher meat and non-kosher poultry from slaughterhouses, wholesalers or other sources shall be kept by any kosher meat dealer and by any kosher poultry dealer, who also purchases, sells, handles, packages or processes non-kosher meat, poultry or food products, including the name and address of the slaughterhouse, wholesaler or other source from which such purchases are made, the dates, quantities and identity or nature of meat or poultry included in all such purchases, and copies of all invoices and bills of sale relating to all such purchases. Such records shall be kept separate and apart from all records required to be kept for kosher meat and for kosher poultry. Kosher meat dealers and kosher poultry dealers shall retain all such records for a two year period following the purchase of non-kosher meat and non-kosher poultry.

(d) A failure to keep complete and accurate records in accordance with (a) and (c) above shall be punishable as an unlawful act under this subchapter.

13:45A-22.3 Inspections of kosher meat dealers and kosher poultry dealers

(a) The inspections provided for by this subsection shall only be conducted by authorized inspectors of the Director of the Division of Consumer Affairs of the Department of Law and Public Safety.

(b) In conducting an inspection as provided for by this subsection, the authorized inspectors shall utilize the inspection report form, approved by the Director of the Division of

Consumer Affairs of the Department of Law and Public Safety, to report the date of the inspection, the nature and scope of the inspection and the findings of the inspection.

(c) For the purpose of making any inspection under this subsection, the authorized inspectors of the Director of the Division of Consumer Affairs in the Department of Law and Public Safety shall have a right of entry to, upon, and through the business premises of all kosher meat dealers and kosher poultry dealers.

(d) Authorized inspectors of the Director of the Division of Consumer Affairs in the Department of Law and Public Safety shall make inspections of kosher meat dealers and kosher poultry dealers for the purposes of:

1. Determining by examination of the meat, poultry, food product, tags, plumbas, or any other proper identification and by inspection of the records whether the establishment under inspection is in compliance with these regulations.

(e) The scope and manner of inspection shall be as follows:

1. At the commencement of all inspections provided for by this subsection, the authorized inspectors of the Director of the Division of Consumer Affairs of the Department of Law and Public Safety shall present appropriate identification to the kosher meat dealer and/or kosher poultry dealer, owner, manager or any sales person and shall advise the kosher meat dealer and/or kosher poultry dealer, owner, manager or any sales person of the purposes of the inspection to be conducted under the provisions of this subsection.

2. All inspections provided for by this subsection shall be limited to:

i. The meat and poultry and other food products located on the business premises of the kosher meat dealer and/or kosher poultry dealer. The business premises shall include all places of storage of meats and/or of poultry, all places where meat and/or poultry are cut, sliced, carved, broken down or divided into smaller quantities or portions and all places where meat and/or poultry are sold to customers; and

ii. The records required to be kept by kosher meat dealers and kosher poultry dealers under the provisions of this subchapter.

3. The inspections provided for by this subsection shall be made during the regular business hours of the kosher meat and/or kosher poultry dealer, and at any time including non-business hours when deliveries of meat and/or poultry are made to the kosher meat and/or kosher poultry dealer, at any time including non-regular business hours when the kosher meat dealer and/or kosher poultry dealer is engaged in the cutting, slicing, carving, breaking down, preparing, packaging, processing, or dividing of meat and/or poultry into smaller quantities or portions.

4. In carrying out the requirements of this subsection, no advance notice of an inspection shall be provided to any person.

5. All inspections of the meat and poultry located on the business premises of kosher meat dealers and kosher poultry dealers and all inspections of the records required to be kept by them under the provisions of this subchapter shall be conducted in such a manner as to not unduly interfere with the regular business operations of such kosher meat dealers and kosher poultry dealers.

(f) A failure to allow an authorized inspector a right of entry upon the business premises of a Kosher meat dealer or Kosher poultry dealer in accordance with the requirements of this section shall be punishable as an unlawful act under this subchapter.

(g) At the completion of all inspections provided for by this subsection, the authorized inspectors of the Director of the Division of Consumer Affairs of the Department of Law and Public Safety shall make an inspection report, which shall show the date of the inspection, the nature and scope of the inspection and the findings of the inspection. A copy of the inspection report shall be filed with the records of the Director of the Division of Consumer Affairs.

(a)

Charitable Fund Raising

Proposed New Rules: N.J.A.C. 13:48-1 through 11

Authorized By: James J. Barry, Jr., Director, Division of Consumer Affairs.

Authority: N.J.S.A. 45:17A-15.

Proposal Number: PRN 1985-279.

Submit comments by June 19, 1985 to:

James J. Barry, Jr., Director
Division of Consumer Affairs
1100 Raymond Boulevard, Room 504
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Charities Registration and Investigation Section, an agency of the Division of Consumer Affairs, proposes to adopt N.J.A.C. 13:48-1.1 through N.J.A.C. 13:48-11.3 concerning the administration and enforcement of the Charitable Fund Raising Act of 1971, N.J.S.A. 45:17A-1 et seq., pursuant to authority of N.J.S.A. 45:17A-15. After careful review and with concern for current laws and social implications, these regulations are recommended as proposed. Except for certain technical changes, the proposed regulations are identical to the former regulations of the Charities Registration and Investigation Section. It has been determined that these provisions are necessary, comprehensive, reasonable, efficient, understandable and responsive to the purposes for which they were initially promulgated. Revisions were made in order to delete references to a percentage limitation on payments by a charity to a professional fund raiser because a similar limitation was ruled unconstitutional by the Supreme Court of the United States in **Secretary of State of Maryland v. Joseph H. Munson Company, Inc.**, _____ U.S. _____, 104 S.Ct. 2839, 81 L.Ed.2d 786 (1984).

A summary of the pertinent sections follows:

N.J.A.C. 13:48-1.1 to 1.4: These regulations deal with the declaration of the Charities Registration and Investigation Section as the body charged with the administration and enforcement of the Charitable Fund Raising Act of 1971, the Chief being the individual charged with the day-to-day conduct of the Section, and the powers and responsibilities delegated to the Chief, which include the filing of forms, recording of all information and records, the collection of all fees, the cancellation or withdrawal of registration for failure to file reports or supply information, the determination as to subjectivity to the requirements of the Act, the prescription of

standards and classifications of accounts, the inspection of records, the approval of fund raisers' bonds and contracts, the determination of violations and the delegation to staff of ministerial duties under the Act. The regulations are not to be construed to constitute a delegation by the Attorney General to institute suit, promulgate rules and decide matters. The Attorney General may supplement, amend, modify, reverse or override the Chief's decisions.

N.J.A.C. 13:48-2.1 to 2.4: These regulations contain general provisions which concern the applicability and construction of the rules, definitions and practice when the rules do not govern.

N.J.A.C. 13:48-3.1 to 3.9: These regulations provide that the Charities Registration and Investigation Section, through the use of such forms as it deems appropriate, is to make determinations regarding registrability and compliance with the Act's requirements, including bond requirements, and is to receive certain financial reports from charitable organizations and professional fund raisers. All information submitted to the Section is to be a matter of public record, unless the Director or the Chief otherwise provides. The Section is to be the repository for all public information concerning charity solicitation in the State.

N.J.A.C. 13:46-5.1 to 7.5: These regulations establish rules of practice for summary proceedings regarding administrative cancellation of registration and disapproval of contracts between charitable organizations and professional fund raisers and/or professional solicitors. These regulations also govern the Section's determination of whether paid personnel are, in fact, professional fund raisers or solicitors. Rules also are established regarding events or shows planned or conducted by professional fund raisers and tickets for such events or shows.

N.J.A.C. 13:48-8.1 to 8.5: These regulations pertain to reporting requirements, which must incorporate the accrual basis system, and further deal with annual financial reports, appointment of accountants, reporting by chapters of organizations and extended fund raising campaigns.

N.J.A.C. 13:48-9.1 to 9.6: These regulations govern solicitation conduct in advertising and telephone or verbal solicitation, and govern billing practices. Misrepresentation, intimidation and certain repeat solicitations are clearly prohibited.

N.J.A.C. 13:48-10.1 to 10.3: These regulations govern exemptions from registration and reporting requirements of the Act; solicitations for named persons; and comity exemptions between the State of New Jersey and other states.

N.J.A.C. 13:48-1.1 to 11.3: These regulations govern reciprocal agreement between the State of New Jersey and any Federal, State or local authority to standardize registration and reporting requirements; prohibit the fact of registration as constituting an endorsement or approval by the State of New Jersey or the Attorney General; and contain a severability provision.

Social Impact

The proposed regulations are of benefit to and govern both consumers and charitable organizations in the lawful solicitation of contributions in New Jersey. The proposal sets forth what is essential to the orderly and equitable conduct of charitable activities and charitable fund raising for the protection of the citizens of this State. The proposed regulations are the result of efforts to establish safeguards for the residents of this State against unscrupulous or otherwise unworthy organizations. Fraudulent activities siphon off substantial dollars from support for legitimate organizations. Therefore, regula-

tion by government is a sound method of encouraging responsible philanthropic activities.

Economic Impact

Every year, New Jersey residents receive an increasing number of requests for donations from various cultural, health, social and other charitable organizations. Additionally, government appropriated funding to charitable organizations further increases the responsibilities of monitoring and administering charitable activities. These substantial charitable contributions require a prudent and vigorous monitoring of the activities of charitable organizations and professional fund raisers in order to continue to promote confidence in philanthropic ideals and contributions.

Compliance with these regulations causes no greater economic impact on charitable organizations and professional fund raisers than those costs necessary to comply with the registration, reporting, bond and other requirements of the Charitable Fund Raising Act of 1971. Adoption of these rules will have a positive economic effect on consumers by continuing to assure that their contributions benefit deserving organizations. The administrative costs of enforcement are no more than what is necessary to effectuate the purposes of the Charitable Fund Raising Act of 1971.

Full text of the proposed new rules follows.

CHAPTER 48

CHARITABLE FUND RAISING

SUBCHAPTER 1. CHARITIES REGISTRATION AND INVESTIGATION SECTION

13:48-1.1 Charities Registration and Investigation Section

The Charities Registration and Investigation Section, an agency of the Division of Consumer Affairs, shall be the body charged with the administration and enforcement of the Charitable Fund Raising Act of 1971.

13:48-1.2 Chief

The Chief of the Charities Registration and Investigation Section shall be the individual charged with the day-to-day conduct of the Section and with such specific duties as the Attorney General shall delegate.

13:48-1.3 Powers and responsibilities delegated to the chief

(a) The chief shall be the individual responsible for carrying out:

1. The prescription, amendment and acceptance of all forms for filing with the Attorney General pursuant to any provisions of the Act or rules promulgated thereunder requiring the prescription and/or filing of forms;

2. The recording of all information required to be filed with or otherwise directed to the Attorney General pursuant to any provision of the Act or rules promulgated thereunder requiring the submission of any information or the giving of any notice to the Attorney General or his agents;

3. The maintenance of all information and records submitted and/or kept pursuant to the Act or rules promulgated thereunder for public inspection as the law requires or permits, and the setting of reasonable times and conditions for such public inspections;

4. The collection, receipt and recording of all fees and moneys required to be paid by the Act or rules promulgated thereunder;

5. The cancellation or withdrawal of registration for failure to file reports or supply information including such authority to require additional information and to grant exten-

sions as is vested in the Attorney General by any of the provisions of the Act or the rules promulgated thereto;

6. The initial determination of whether or not to treat any party as subject to any or all of the requirements of the Act, including but not limited to those parties claiming exemptions;

7. The prescription of standards and classifications of accounts to be submitted;

8. The inspection either personally or through an agent, of such books and records as are made subject to inspection by the Attorney General or his designees pursuant to any provisions of the Act or rules promulgated thereunder;

9. The sending of notice and copy of process;

10. The initial approval or disapproval of professional fund raisers' bonds;

11. The initial approval or disapproval of any contract or written statement;

12. The giving of notice to accomplish registration or discontinue solicitation, including the initial determination of whether this section is being violated;

13. The power to further delegate such ministerial duties under the Act and rules promulgated thereunder as the supervisor may deem appropriate to staff members of the Charities Registration and Investigation Section.

13:48-1.4 Powers retained by the Attorney General

(a) Nothing contained in this subchapter shall be construed to constitute a delegation by the Attorney General of the authority to institute suit or of the authority to issue and promulgate rules and regulations or of the authority to personally hear and/or decide such matters as may be provided by law.

(b) The Attorney General shall have the authority in all cases to supplement, amend, modify, reverse or override any decision made by the chief pursuant to this subchapter.

SUBCHAPTER 2. GENERAL PROVISIONS

13:48-2.1 Applicability

These rules shall govern the registering of charities pursuant to the Charitable Fund Raising Act of 1971, and the enforcement of the provisions of that Act.

13:48-2.2 Definitions

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

"Act" means the Charitable Fund Raising Act of 1971 as amended and/or supplemented.

"Charities Registration Section (C.R.S.)" means the Section within the Division of Consumer Affairs of the Department of Law and Public Safety to which the Attorney General of the State of New Jersey has delegated the authority and responsibility of enforcing the Act.

"Attorney for the Charities Registration Section" means a Deputy Attorney General or special counsel appointed or assigned by the Attorney General of New Jersey to represent and render legal services to the Charities Registration Section of the Division of Consumer Affairs.

"Complainant" means any person, including the Attorney General, director or chief, alleging an unlawful practice.

"Director" means the Director of the Division of Consumer Affairs, Department of Law and Public Safety.

"Respondent" means any person charged with an unlawful practice.

"Chief" means the Chief of the Charities Registration Section.

13:48-2.3 Construction

(a) The provisions of this chapter shall be liberally construed to permit the Charities Registration Section to discharge its statutory functions and to carry out the intent of the Legislature as expressed in the Act.

(b) The chief may, upon notice to all parties, in the interest of justice, relax the application of these rules.

13:48-2.4 Practice when rules do not govern

In any matter that arises not governed by these rules, the director and/or chief shall exercise their discretion.

SUBCHAPTER 3. ORGANIZATION AND GENERAL PROCEDURES OF THE CHARITIES REGISTRATION SECTION

13:48-3.1 C.R.S. repository of public information

The C.R.S. shall be the State repository for public information concerning charity solicitation in the State of New Jersey.

13:48-3.2 Forms

In order to carry out its function, the C.R.S. shall utilize such forms as it shall deem appropriate, which forms may be amended, supplemented and/or replaced in the discretion of the chief.

13:48-3.3 Completion and return of forms

The C.R.S. will send an appropriate form or statement to any organization or individual to which the Act may be applicable. These forms shall be completed and returned to the C.R.S. within 15 days of receipt.

13:48-3.4 Determination of registrability

Upon receipt of the completed forms the C.R.S. shall determine whether the applicant is registrable or entitled to an exemption. Should it appear that the applicant is entitled to an exemption, the C.R.S. may seek additional information by questionnaire form, telephone inquiry or otherwise.

13:48-3.5 Determination that Act has been satisfied

Should the C.R.S. determine that an entity is registrable as a charitable organization, or that an individual is registrable as a professional fund raiser or professional solicitor, the C.R.S. will send the entity or individual the appropriate form. Upon receipt of the completed form and registration fee and in the case of a professional fund raiser, the required bond, the C.R.S. shall review the submitted documents and determine whether the requirements of the Act have been satisfied.

13:48-3.6 Letter indicating status

The C.R.S. shall, within 10 days of receipt of the completed form or forms, issue a letter informing the entity or individual either that it is properly registered, or that further information is required. No solicitation may take place by any registrable entity or individual prior to the issuance by the C.R.S. of a letter stating registration to be complete.

13:48-3.7 Bond required for registration of professional fund raiser

Registration of a professional fund raiser shall not be considered complete until the bond required by N.J.S.A. 45:17A-8(a) has been received. The obligor of such bond shall be the registered entity.

13:48-3.8 Reporting function

(a) Within six months following the close of the charitable organization's fiscal year, the charitable organization shall file the appropriate form together with such other information as may be required by the Charities Registration Section

detailing the financial position of the organization. The chief may for good cause shown extend the time for filing of the annual financial report up to an additional six months provided that the C.R.S. receives a request for an extension of time in writing prior to the due date of the annual financial report.

(b) Professional fund raisers shall report to the C.R.S. within 20 days after the completion of a fund raising event, or, in the case of an extended fund raising campaign, in accordance with the requirements of N.J.A.C. 13:48-8.5, on a form designed for this purpose. The Chief of the Charities Registration Section may for good cause shown grant a 30-day extension for the filing of the above-mentioned professional fund raiser reports provided that a request is received in writing prior to the due date of the financial report.

13:48-3.9 Completed forms to be public records

All forms submitted shall be a matter of public record unless the director or chief shall for good cause otherwise provide. Public access to these documents shall be provided consistent with the provisions of the law.

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. RULES OF PRACTICE FOR SUMMARY PROCEEDINGS

13:48-5.1 Administrative cancellation of registration

(a) This section shall apply:

1. When a charitable organization has failed to file its annual financial report within six months following the close of its fiscal year or has failed to file such financial report during an extension allowed by the Charities Registration Section or has failed to submit additional information as has been requested by the Charities Registration Section within the time allowed; or

2. When a professional fund raiser has failed to file a financial report within 20 days of the close of a fund raising drive, or, in the case of an extended fund raising campaign, in accordance with the requirements of N.J.A.C. 13:48-8.5, or has failed to submit such additional information as has been requested by the Charities Registration Section within the time allotted therefor.

(b) In the event of such failure, the chief shall notify the entity or individual in question of the proposed cancellation of its registration. Such notice shall contain the offer of an administrative hearing to be held if possible within 14 days of such notice upon request of the registered entity or individual.

(c) If neither such request nor the outstanding information is received, the proposed cancellation shall become effective 15 days after the day following the date of the notice. No further solicitation or collections shall take place thereafter.

(d) If the registered entity desires a hearing, it shall communicate such a desire in accordance with the instructions set forth in the letter of proposed cancellation. The issues at such a hearing shall be limited to whether or not the entity has submitted the requested information or such mitigating circumstances which would render the cancellation improper or inappropriate.

(e) The hearing, if requested, shall be before the Attorney General or such other person as may be authorized by law. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1 et seq.

13:48-5.2 Contracts between charitable organizations, professional fund raisers and professional solicitors

(a) "Contract" shall mean the total compensation agreement between a professional fund raiser and/or professional solicitor and a charitable organization, which shall include, but not be limited to, the written arrangement between the parties.

(b) "Expenses incurred" shall mean any and all expenses reasonably related to the solicitation activities or campaigns of a professional fund raiser.

(c) Every contract or written arrangement between a professional fund raiser and/or professional solicitor and a charitable organization shall be filed with the C.R.S. within 10 days of the execution or completion of this agreement, except that where all parties to the agreement are located out of the State of New Jersey, and where none of the parties contemplates solicitation in this State when the agreement is executed or completed, and the decision to solicit in this State is subsequently made, said agreement shall be filed within 10 days of such decision. In the event that the written contract does not fully and accurately disclose the total compensation agreement between a professional fund raiser and/or professional solicitor and a charitable organization, including, but not limited to, the manner in which expenses incurred are to be paid, a written statement supplementing or amending the written contract shall also be submitted.

(d) The chief shall examine the contract, including all relevant terms and information and ascertain whether the requirements of the Act and these rules have been satisfied. If the chief determines that the Act or these rules have not been fully satisfied, the chief shall disapprove such agreement in writing within 10 days after its filing.

(e) No charitable organization, professional fund raiser or professional solicitor shall carry out an executed contract or commence solicitation in this State unless at least 10 days have elapsed since its filing with the C.R.S. without notice of disapproval.

(f) Any party to a disapproved contract may seek a hearing by filing a written request with the chief within 30 days following notice of the disapproval.

(g) The hearing, if requested, shall be before the Attorney General or such other person as may be authorized by law. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1 et seq.

SUBCHAPTER 6. RELATIONS BETWEEN CHARITABLE ORGANIZATIONS AND PROFESSIONAL FUND RAISERS

13:48-6.1 Contracts with paid personnel; filing

Any charitable organization required to register under the Act which retains or utilizes paid personnel to carry on all or part of its fund raising function shall file with the C.R.S. a contract or, where no written contract exists, a written statement in lieu thereof, clearly setting forth the relationship of such persons to the organization. For the purpose of this section, "paid personnel" shall include without limitation those persons whose compensation is contingent on the amount of money, pledges or other property collected as a result of their efforts, regardless of whether or not they ultimately in fact receive any remuneration.

13:48-6.2 Determination of nature of relationship

Where a claim is made that none of the parties involved is a professional fund raiser or professional solicitor, the chief shall, within 10 business days of the receipt of such contract or statement, make a preliminary determination as to whether

the relationship is one of bona fide employment, and shall so notify the organization and person or persons involved in writing. No fund raising or soliciting shall be engaged in by the persons in question until such notification shall have been received.

13:48-6.3 Contracts found to involve professional fund raisers

Should the chief determine either preliminarily or subsequently that any of the persons in question is in fact a professional fund raiser, the person or persons involved shall be notified that he must comply with statutory registration and bonding requirements. Should the chief determine that the contract or arrangement does not comply with the Act or these rules, he shall disapprove the contract pursuant to the Act and these rules.

13:48-6.4 Contracts found to involve professional solicitors

Should the chief determine either preliminarily or subsequently that any of the persons involved is in fact a professional solicitor, the person or persons involved shall be so notified and instructed to register.

13:48-6.5 Factors to be considered in determination of nature of relationship

(a) The chief shall have the power to make such investigation as he may deem relevant in determining whether any party to a contract or arrangement is in fact a professional fund raiser or professional solicitor subject to the provisions of the Act applicable thereto. The investigation may continue after a preliminary determination has been made. In reaching a determination the following factors, without limitation, may be deemed relevant:

1. The extent of control which the organization may and in practice does exercise over the means by which the fund raising is carried out;
2. The means of compensation, with particular regard to whether the individual has been compensated by salary or commission;
3. The duration of the employment, with particular regard to whether the individual has been hired to carry out a specific project;
4. Compliance or noncompliance with all laws and regulations affecting employment, including income and other tax withholding laws and regulations;
5. The nature of the charitable organization and project or appeal;
6. Which party incurs the expenses involved in a given appeal, project or program, and where the risk of loss lies in the event of an unsuccessful appeal, project or program;
7. Such other factors as may be relevant.

13:48-6.6 Rebuttable presumption of nonemployee status in certain cases

A finding that a person's compensation is determined solely on a percentage basis, or that his employment is limited to a single project or appeal, or that he incurs a risk of financial loss on any appeal, project or program, shall raise a rebuttable presumption that the person is not a bona fide employee.

13:48-6.7 Revised determination based on additional investigation

In the event that the chief shall determine after additional investigation that a relationship preliminarily decided to be one of bona fide employment is in fact otherwise, the charitable organization and party involved shall be so notified in writing. The parties shall thereafter have 10 days either to

request a hearing or comply with the appropriate requirements of the Act.

13:48-6.8 Hearing

Any party shall have leave to apply for a hearing on the chief's decision, whether preliminary or subsequent, within 10 days of notification. Such hearing shall be held before the Attorney General or such other person as may be authorized by law. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1 et seq.

SUBCHAPTER 7. EVENTS OR SHOWS PLANNED OR RUN BY A PROFESSIONAL FUND RAISER

13:48-7.1 Contracts or agreements involving events or shows for charitable organizations

Any contract, or if no written contract exists, a written description of the nature of the agreement, between a charitable organization and other person or persons to produce, conduct, manage, plan or run a show or other event to which admission is charged and/or requested for the purposes of raising funds for the charitable organization, shall be filed with the C.R.S. within 10 days of the conclusion or execution of said contract or agreement. A rebuttable presumption shall exist that any person or entity contracting to produce, conduct, manage, plan or run such an event is a professional fund raiser wherever it appears that a substantial portion of the sales or solicitation appeal relies on the charitable nature of the organization.

13:48-7.2 Determination that contract or agreement involves professional fund raiser or professional solicitor

Should the C.R.S. determine that one or more of the parties to the contract is or may be a professional fund raiser or professional solicitor, it shall so notify all parties to the contract within 10 days after its filing. The contract shall then be treated as one between a professional fund raiser and/or professional solicitor and charitable organization, and all of the requirements of the Act and these rules shall apply. The C.R.S. shall have 10 days after notice is given to the parties of their status to disapprove the contract. Any party aggrieved by either determination shall have 30 days after the disputed notice is received to request a hearing before the Attorney General or such other person as may be authorized by law. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1 et seq.

13:48-7.3 Contract or agreement not to be carried out until expiration of notice period

No person shall carry out a contract to produce, conduct, manage, plan or run a show or event for a charitable organization unless at least 10 days have elapsed since its filing with the C.R.S. without notice that the C.R.S. considers a relationship of professional fund raiser and/or professional solicitor to a charitable organization to exist, or that the C.R.S. has in any manner disapproved the contract. Where the C.R.S. determines that a relationship of professional fund raiser and/or professional solicitor to a charitable organization exists, no person shall carry out or execute the contract in question until at least 10 days have elapsed from notice of such determination without notice of disapproval. Where appropriate, the C.R.S. may combine notice of its determination of status with notice of disapproval.

13:48-7.4 Tickets purported to be used for charitable purposes

No charitable organization, professional solicitor or professional fund raiser shall state in a solicitation that tickets for an event or show will be used to send beneficiaries from an institution, institutions, organization or organizations to that show or event unless there is on file with the Charities Registration Section an affidavit from an officer or officers of each such institution or institutions, organization or organizations, stating that said institution or organization is participating in the program and that adequate procedures for the transportation and supervision of the beneficiaries will be provided.

13:48-7.5 Manifest of tickets

If the professional fund raiser is responsible for the sale of tickets to the show or event such tickets shall be consecutively numbered and a manifest of such tickets shall be presented to the charitable organization prior to the payment of the professional fund raiser's fee, and shall be included in the professional fund raiser's report to the C.R.S.

SUBCHAPTER 8. REPORTING REQUIREMENTS

13:48-8.1 Accrual basis

All financial statements filed with the Charities Registration Section shall reflect the use of the accrual basis of accounting.

13:48-8.2 Annual financial reports; independence defined; form of certification required

(a) For the purpose of this section and N.J.S.A. 45:17A-6(a), a public accountant or certified public accountant shall not be considered independent if, without limitation, he, or his firm, or one of his partners, or a member of a firm with which he is associated:

1. During the period of his professional engagement by the charitable organization, or at the time of expressing his opinion, had or was committed to acquire any direct financial interest or material, indirect financial interest in the charitable organization; or

2. During the period of his professional engagement by the charitable organization, or at the time of expressing his opinion, or during the reporting period, was connected with the charitable organization as a trustee, director, officer, or key employee, unless the position was purely honorary and carried with it no managerial or fiduciary responsibilities or duties; or

3. Participated directly or indirectly in loans or exchange of funds as principal or agent with the charitable organization; or

4. Stands in any other relationship with the charitable organization or its trustees or directors such as would be expected by a reasonable objective observer to bias substantially the professional judgment of the accountant. Notwithstanding the provisions of this section, lack of independence shall not be found where neither the accountant nor the charitable organization knew or should have known that a potentially prejudicial or improper relationship exists or existed.

(b) Each organization required to submit reports shall file said reports with the C.R.S. on such forms as the chief shall prescribe. Such forms shall be signed by the president or other authorized officer and the chief fiscal officer of the organization. Every form shall be accompanied by a signed statement by an independent public or certified public accountant certifying either:

1. That the financial statement and balance sheet therein fairly represent the financial operations and position of the organization; or

2. That the independent public or certified public accountant is unable to so certify, in which case the accountant shall attach a Report of Audit setting forth the reasons for his inability to provide the statutory certification, and with specific reference to the reporting form submitted. In the event such a negative certification is submitted, the chief shall determine what additional steps must be taken before the report will be accepted for filing.

13:48-8.3 Appointment of accountant

The independent public accountant utilized by the organization shall be appointed only by vote of the Board of Trustees of such organization.

13:48-8.4 Reporting by chapters of registered charitable organizations

Any chapter of a registered charitable organization which is authorized to expend moneys raised and/or in fact expends such moneys must file an appropriate annual report, in addition to the annual financial report filed by the parent organization.

13:48-8.5 Extended fund raising campaigns

(a) "Extended fund raising campaign" shall mean any fund raising drive or campaign lasting more than 12 months.

(b) In the event the professional fund raiser is engaged in an extended fund raising campaign or any part thereof, the professional fund raiser shall file reports on the appropriate form by the 10th day of the month following a year in which any fund raising took place and a consolidated form 30 days after the completion of the drive.

SUBCHAPTER 9. SOLICITATION CONDUCT

13:48-9.1 Solicitations involving advertising or acknowledgment in publications

(a) Where contributions are solicited by or on behalf of a charitable organization by means of offering advertising or other acknowledgment of contribution in a magazine, tabloid, newspaper or other publication published, owned, operated or controlled by the charitable organization or other party in contractual relationship with the charitable organization or its parent or affiliate:

1. The date of expected publication and expected circulation shall be clearly expressed to the contributor during the initial solicitation.

2. Such publication shall be identified with a publication date.

3. Every registered charitable organization which publishes or causes to be published such a publication shall as part of the reporting requirement furnish to the Charitable Registration Section a copy of such publication within 10 days of its initial distribution accompanied by a statement of circulation from any recognized circulation audit bureau or an affidavit from an officer of the charitable organization attesting to the circulation of such publication.

4. In the event such publication shall be cancelled or unreasonably delayed all monies received in anticipation of advertising or acknowledgment of contribution in such publication shall be promptly refunded.

13:48-9.2 Use of misleading names, symbols or statements prohibited

No charitable organization, professional fund raiser, professional solicitor or other solicitor shall use a name, symbol or statement so closely related to that used by another charitable organization or government agency that the use thereof

would tend to confuse or mislead the public. Failure to comply with this provision shall be deemed a violation of the Act.

13:48-9.3 Repeat solicitations; misrepresentations prohibited

(a) When a request for a charitable contribution is denied, neither the charitable organization nor any of its agents shall knowingly resolicit the person or organization denying the request until a reasonable period has elapsed. For the purpose of this section a rebuttable presumption shall exist that any period of less than three months is not reasonable.

(b) When an agent or authorized official of an organization denies a request to purchase or contribute, the charitable organization shall not knowingly contact a different official and attempt further solicitation of the organization until a reasonable period, as defined above, has elapsed, nor shall the charitable organization or any of its agents knowingly misrepresent the original denial as an agreement, approval or request for further information.

13:48-9.4 Agreement to contribute required before bill or invoice submitted; false claims prohibited burden

No charitable organization, professional fund raiser, professional solicitor or other solicitor shall falsely claim that any person has authorized an advertisement or contribution. Nor shall they cause an invoice or bill to be sent to a person as evidence of purchase or contribution unless that person has expressly agreed to so purchase or contribute. A request for information or literature concerning the charity's operation or activities, or a request for a proposal of purchase or contribution, shall not be considered an agreement to purchase or contribute. Once there has been submitted evidence of a lack of agreement to purchase or contribute, the burden of establishing such agreement shall rest upon the solicitor.

13:48-9.5 Intimidation prohibited

No charitable organization or its agents shall use any solicitation or collection technique which would tend to intimidate the public.

13:48-9.6 Telephone or verbal solicitation

(a) In any campaign by or on behalf of a charitable organization which shall use telephone or verbal solicitation, the professional fund raiser or, if the organization has no professional fund raiser, the organization, shall first file with the C.R.S. a copy of the solicitation text to be used, certified as true and correct by an officer of the charitable organization.

(b) Every charitable solicitation text used in the State of New Jersey shall clearly state:

1. The name and address of each organization or fund on behalf of which all or any part of the money collected will be utilized for charitable purposes;

2. The nature of the charitable purpose or purposes for which all or any part of the money collected will be utilized;

3. The amount, stated as a percentage of the total purchase price, or if no purchase is involved, of the total contribution, that will be given to each organization or fund, and the amount, stated as a percentage of the total purchase price or contribution, that will be utilized for each charitable purpose;

4. The nontax-exempt status of the organization or fund, if the organization or fund for which the money is being solicited does not have a charitable tax exemption under both Federal and State law;

5. Where a purchase is involved, the percentage of the total purchase price which may be deducted as a charitable contribution under Federal law.

SUBCHAPTER 10. EXEMPTIONS

13:48-10.1 Solicitations for named persons; loss of exemption

Any group or individual soliciting for a named person who is exempt shall retain such exemption only so long as no expenditures are made out of the funds collected for any purpose other than the direct use and benefit of the named beneficiary. Any group or individual making such an expenditure, and not otherwise entitled to an exemption, shall register with the C.R.S. within 10 days of such expenditure.

13:48-10.2 Solicitations for named persons; filing of statement

Where an exemption for registration is accorded an individual or group, upon disbursement of funds the trustees of such fund shall file with the Charitable Registration Section a statement detailing the names and addresses of such trustee or trustees and detailing to whom such funds were disbursed and the amount so disbursed.

13:48-10.3 Comity exemptions

The chief may in his discretion accord a foreign charitable organization an exemption from the registration and/or reporting requirements of the Act where such exemption has been granted by the state of incorporation, provided that the requirements for exemption of the state of incorporation are substantially similar to those of the State of New Jersey.

SUBCHAPTER 11. MISCELLANEOUS RULES

13:48-11.1 Reciprocal agreements

The chief may enter into reciprocal agreements with any Federal, State or local authorities to effect a standardization of registration and/or reporting requirements or for the purpose of exchanging any information received pursuant to the Act.

13:48-11.2 Exploitation of fact of registration prohibited

No charitable organization, professional fund raiser or professional solicitor shall use or exploit the fact of registration so as to lead the public to believe that such registration constitutes an endorsement or approval by the State of New Jersey or the Attorney General.

13:48-11.3 Severability

If any section, subsection, paragraph, sentence or other part of these rules shall be adjudged unconstitutional or invalid, or shall by legislative action become inapplicable, such judgment or legislative action shall not affect, invalidate or impair the remainder of these rules, but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of these rules directly affected by the legislation or directly involved in the controversy in which judgment shall have been rendered.

TRANSPORTATION

TRANSPORTATION OPERATIONS

Proposals numbered PRN 1985-265 and 266 are authorized by John P. Sheridan Jr., Commissioner, Department of Transportation.

Submit proposals by June 19, 1985 to:
 Charles L. Meyers
 Administrative Practice Officer
 Department of Transportation
 1035 Parkway Avenue
 CN 600
 Trenton, New Jersey 08625

(a)

**Restricted Parking and Stopping
 Routes U.S. 9 in Ocean County and 94 in
 Sussex County**

**Proposed Amendments: N.J.A.C.
 16:28A-1.7 and 1.45**

**Turns
 Route U.S. 206 in Somerset County**

Proposed Amendment: N.J.A.C. 16:31-1.1

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-183.6 and 39:4-199.
 Proposal Number: PRN 1985-266.

The agency proposal follows:

Summary

The proposed amendments will establish "no parking bus stop" zones along Route U.S. 9 in Ocean Township, Ocean County; "no parking" zones along Route 94 in Vernon Township, Sussex County and no left turn along Route U.S. 206 in Hillsborough Township, Somerset County for the safe and efficient flow of traffic, the enhancement of safety, the safety of the well-being of the populace and the safe off/on loading of passengers at established bus stops.

Based upon requests from the local officials the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking bus stop" zones along Route U.S. 9; "no parking" zones along Route 94 and "no left turn along Route U.S. 206 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7, 1.45 and 16:31-1.1 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish "no parking bus stop" zones along Route U.S. 9 in Ocean Township, Ocean County; "no parking" zones along Route 94 in Vernon Township, Sussex County and no left turn along Route U.S. 206 in Hillsborough Township, Somerset 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 Department will bear the costs for the installation of "no parking" and "no left turn" signs and the local officials for the "no parking bus stop" signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28A-1.7 Route 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.-16. (No change.)

[15.] 17. Along the westerly (southbound) side in Dover Township, Ocean County:

i.-ii. (No change.)

[16.] 18. Along the westerly (southbound) side in Ocean Township, Ocean County:

i. Near side bus stops:

(1) (No change.)

(2) Chapel Street—Beginning at the northerly curb line of Chapel Street and extending 105 feet northerly therefrom.

(3) Barnegat Beach Drive—Beginning at the prolongation of the northerly curb line of Barnegat Beach Drive and extending 105 feet northerly therefrom.

(4) Seneca Boulevard—Beginning at the prolongation of the northerly curb line of Seneca Boulevard and extending 105 feet northerly therefrom.

ii. Far side bus stop:

(1) Bay Parkway—Beginning at the prolongation of the southerly curb line of Bay Parkway and extending 100 feet southerly therefrom.

iii. Mid-block bus stop:

(1) Lighthouse Drive—Beginning 655 feet from the prolongation of the northerly curb line of Lighthouse Drive and extending 135 feet northerly therefrom.

[17.] 19. Along the easterly (northbound) side in Ocean Township, Ocean County:

i. Near side bus stops:

(1) (No change.)

(2) Bay Parkway—Beginning at the southerly curb line of Bay Parkway and extending 105 feet southerly therefrom.

ii. Mid-block bus stops:

(1) Seneca Boulevard—Beginning 143 feet north of the northerly curb line of Seneca Boulevard and extending 135 feet northerly therefrom.

(2) Lighthouse Drive—Beginning 655 feet north of the northerly curb line of Lighthouse Drive and extending 135 feet northerly therefrom.

iii. Far side bus stop:

(1) Barnegat Beach Drive—Beginning at the northerly curb line of Barnegat Beach Drive and extending 105 feet northerly therefrom.

[18.]-[33.] renumber 20.-35.

16:28A-1.45 Route 94

(a) The certain parts of State highway Route 94 described in this section shall be designated and established as "no

parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. No stopping or standing in Vernon Township, Sussex County:

i. Along both sides.

(1)-(3) (No change.)

[ii.] (4) [Along the northbound side] [f]From County Road 515 (Stockholm Road) (South intersection) to a point 800 feet northerly therefrom.

2.-5. (No change.)

16:31-1.1 Route U.S. 206

(a) Turning movements of traffic on the certain parts of State highway Route U.S. 206 described in this section are regulated as follows:

1.-3. (No change.)

4. No left turn in Hillsborough Township, Somerset County.

i. Southbound into the entrance (2) of Nelson's Corner Shopping Center.

ii. From the Exists (2) of the Shopping Center to Route U.S. 206, southbound.

(a)

Restricted Parking and Stopping Routes 27 in Union County and 57 in Warren County

Proposed Amendments: N.J.A.C. 16:28A-1.18 and 1.36

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and 39:4-199.

Proposal Number: PRN 1985-265.

The agency proposal follows:

Summary

The proposed amendments will establish "no parking" zones and "no parking" loading zones along Routes 27 in Elizabeth City, Union County and 57 in Washington Borough, Warren County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon requests from the local officials the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking" zones and "no parking" loading zones were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.18 and 16:28A-1.36 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish "no parking" zones and "no parking" loading zones along Routes 27 in Elizabeth City, Union County and 57 in Washington Borough, Warren County respectively, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of signs along Route 27 in Union County and the local officials will bear the costs for signs along Route 57 in Warren County. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28-1.18 Route 27

(a) The certain parts of State highway Route 27 described in [(a) of] this subsection shall be designated and established as "no parking" zones where stopping and standing are 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 Elizabeth City, Union County;

i.-ii. (No change.)

iii. **Along the westerly (southbound) side (Cherry Street):**

(1) From the northerly curb line of (Rahway Avenue) to a point 90 feet northerly therefrom.

7.-16. (No change.)

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

16:28A-1.36 Route 57

(a) The certain parts of State highway Route 57 described in [(a) of] this subsection are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-4. (No change.)

(b) [In accordance with the provisions of N.J.S.A. 39:4-138.1,] [t]The certain parts of State highway Route 57 described in [(b) of] this subsection are designated and established as "no parking" zones **where parking is prohibited as specified** for designated curb loading zones **and at all times for loading zones. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established LOADING ZONES:**

1. (No change.)

2. **No parking at loading zones in Washington Borough, Warren County:**

i. **On the north side beginning at a point 261 feet west of the westerly curb line of Belvedere Avenue and extending 50 feet westerly therefrom.**

Proposal Number: PRN 1985-267.

Submit comments by June 19, 1985 to:

Peter J. Gorman, Esq.
Administrative Practices Officer
Division of Pensions
20 West Front Street
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposed amendment will permit the members of the Teachers' Pension and Annuity Fund to qualify for the paid up contributory life insurance benefits at retirement on the basis of membership in the Teachers' Pension and Annuity Fund (TPAF) rather than in their participation in the contributory insurance plan as is the current situation. Currently a retired TPAF member needs at least 10 years of membership in the insurance program to have any life insurance continued into retirement. The proposed amendment will change the rule from 10 years of membership to 10 years of service credit in the TPAF.

Social Impact

The proposed amendment may affect current and future members of the Teachers' Pension and Annuity Fund who retire from the Fund and who have participated in the contributory insurance program.

Economic Impact

The proposed amendment will not cause any significant, adverse economic impact to the members of the Teachers' Pension and Annuity Fund or to the taxpayers who ultimately fund the program.

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

17:3-3.2 Participation in the program

(a) [Participation in the program means the sum of the years beginning with the date insurance premiums are certified to begin for contributory insurance coverage for any member enrolled in the program on or after July 1, 1971, during which the member has not terminated his membership in the TPAF.] **Participation in the program for members who obtained contributory insurance coverage on or after July 1, 1971, means the sum of the years of service credited for retirement purposes at the time of retirement.**

(b) (No change.)

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

**Teachers' Pension and Annuity Fund
Contributory Insurance**

Proposed Amendment: N.J.A.C. 17:3-3.2

Authorized: Anthony Ferrazza, Secretary, Teachers' Pension and Annuity Fund.

Authority: N.J.S.A. 18A:66-56.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

**Corporation Business Tax
Tax Clearance Certificate; Procedure**

**Proposed New Rules: N.J.A.C. 18:7-14.17,
14.18, 14.19 and 14.20**

Proposed Amendment: N.J.A.C. 18:7-14.12

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1985-268.

Submit comments by June 19, 1985 to:

John R. Baldwin
Director
Division of Taxation
CN 240
Trenton, NJ 08646

The agency proposal follows:

Summary

This proposal is intended to implement P.L. 1973, c.367 (N.J.S.A. 54:50-12 through 19) which repealed N.J.S.A. 54:10A-12 and N.J.S.A. 54:50-11. The Act concerned tax procedure in connection with the dissolution, merger, withdrawal or consolidation of corporations in certain cases.

The proposal describes actions which do not, and actions which do, require the prior issuance of a Tax Clearance Certificate by the Director of the Division of Taxation in order to avoid a transferee liability to certain officers and directors for payment of a corporation's unpaid taxes, fees, penalties and interest. A Tax Clearance Certificate today covers most New Jersey State taxes and not solely the tax, etc. due under the Corporation Business Tax Act, N.J.S.A. 54:10A-1, et seq.

The proposal also describes the procedure for acquiring the Tax Clearance Certificate, the life of the certificate and the consequences of failing to obtain it.

Social Impact

The proposal explicitly recites the process for avoiding the statutory consequences of implementing certain prescribed transactions without having first obtained the required Tax Clearance Certificate. The proposal is intended to reflect the procedural streamlining reflected in the enabling legislation.

Economic Impact

The proposal withdraws certain regulatory language which is inconsistent with the laws as they have been amended and recasts the rules to reflect those amendments. Consequently, it is expected to give rise to a modest economic benefit arising out of the procedural certainty it describes. The proposal will not, in itself, increase or decrease tax revenues nor the cost of administration.

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

18:7-14.12 Personal liability of officers [and] or directors for unpaid taxes

(a) Any officer or director of any corporation who shall [distribute or cause to be distributed any assets in dissolution or liquidation to the stockholders without having first paid all corporation franchise taxes, fees, penalties and interest imposed upon said corporation, in accordance with the provisions of the Act or of Chapters 13 or 32A of Title 54 of the Revised Statutes] be instrumental in the following shall be personally liable for [said] payment of that corporation's unpaid taxes, fees, penalties and interest [to the extent of the value of the assets so distributed]:

1. Violating N.J.S.A. 54:50-13 (which provides for the payment of all State taxes including the Corporation Business Tax, as well as fees, interest and penalties prior to merger, consolidation, dissolution or partial or complete liquidation), or

2. Filing any certification under N.J.S.A. 54:50-15c.(2) (which represents that the corporation making certain undertakings has a net worth ten times the amount of certain taxes paid by another corporation) which is materially false.

(b) The amount of such personal liability shall be recoverable by the State in any court of competent jurisdiction [in an action in debt in the name of the State,] and the Director shall have such additional remedies for the enforcement and collection of such personal liability as may be available under any [other] law of this State.

18:7-14.17 Tax Clearance Certificate

(a) This section describes certain actions and certain transactions by corporations which require the prior issuance of a Tax Clearance Certificate by the Director of the Division of Taxation as evidence that all State taxes, penalties, interest and fees have been paid or provided for in order to avoid a transferee liability to certain officers and directors.

(b) The following words and terms, when used in this section, have the following meanings (unless the context clearly indicates otherwise):

"Authorized foreign corporation" means a corporation holding a general Certificate of Authority to do business in New Jersey issued by the Secretary of State to the exclusion of any other authority, license or right derived from any other source.

"Certification" means a writing on behalf of a corporation making an undertaking executed under oath of its president, vice president or treasurer which represents that the corporation making the undertaking has a net worth not less than ten times the amount of all taxes paid by a corporation applying for a Tax Clearance Certificate during the last complete year in which it filed tax returns with the State of New Jersey. Net worth, for this purpose, is net worth defined in the conventional accounting sense determined consistent with generally accepted accounting principles and not as defined at Section 4(d) of the Corporation Business Tax Act nor at N.J.A.C. 18:7-4.1.

"Director" means the Director of the Division of Taxation.

"Domestic corporation" means a corporation which received its charter under any law of the State of New Jersey.

"Foreign corporation" means any corporation other than a domestic corporation which is subject to taxes. The term includes entities which are taxable as such, as well as any entity obligated to withhold personal income taxes or to collect sales and use tax.

"Liquidation" means any distribution by a corporation to its shareholders with respect to its capital stock except dividend distributions out of retained earnings.

"Taxes" means all taxes, fees, penalties and interest owing under any tax law of the State of New Jersey which are payable to or collectible by the Director.

"Undertaking" means a writing by a domestic corporation or by an authorized foreign corporation executed under another on its behalf by its president, vice president or treasurer which undertakes, as surety and not as guarantor, to pay all taxes of a corporation applying for a Tax Clearance Certificate on or before the date such taxes are payable. Where more than one corporation undertakes to pay such taxes, it must be jointly and severally undertaken.

(c) A corporation may merge under the laws of New Jersey or any other jurisdiction without applying for a Tax Clearance Certificate only where the survivor is a domestic corporation or an authorized foreign corporation.

(d) No corporation may either distribute any of its assets in dissolution or in partial or complete liquidation; or merge or

consolidate, under the laws of any jurisdiction, into a foreign corporation which is not an authorized foreign corporation; and no domestic corporation may dissolve, and no authorized foreign corporation may withdraw as an authorized corporation (except only where that withdrawal is affected by its merger or consolidation under the laws of another state into a domestic corporation or into another foreign corporation which, itself, is an authorized corporation), unless it shall have applied for and received a Tax Clearance Certificate from the Director which is dated not earlier than 45 days prior to the effective date of the corporate action or transaction described.

(e) The Tax Clearance Certificate is issued by the Director upon application in good form which is accompanied by a statutory fee of \$10.00. The Certificate is dated and it voids and becomes a nullity 46 days after that date. The Certificate is evidence that a corporation's taxes have been paid or provided for only during the 45-day period succeeding its issue.

(f) A Tax Clearance Certificate may be issued under any one of three conditions:

1. Where an amount is deposited or paid on account which, in the judgement of the Director, is adequate to cover estimated taxes up to the date of the relevant corporate action. The amount which is deemed to be adequate is described in the instruction sheet accompanying the estimated summary tax return to be filed with the application; or

2. Where the application is accompanied by a written undertaking and a certification; or

3. Solely in the case where:

i. A domestic corporation intends to dissolve or where any corporation proposes to distribute any of its assets in dissolution or in partial or complete liquidation, and

ii. The application is accompanied by a written undertaking by the corporation or corporations which either own 50 percent or more of all classes of the applicant corporation's capital stock, or are a party together with the applicant corporation in the type of reorganization described at Section 368(a)(1)(C) of the Federal Internal Revenue Code, and the application is accompanied by a legal opinion signed by an attorney at law of the State of New Jersey who states that he is familiar with the facts of the transaction to the effect that all of the above requirements are met.

(g) Provided, however, the Director may require as a condition of issuing any Tax Clearance Certificate evidence by affidavit, or by any means that seems to him appropriate, that any foreign corporation which is not an authorized foreign corporation and which is a party to the transaction causing any corporation to seek a Tax Clearance Certificate has, itself, paid all taxes owing by it.

For example: A foreign corporation which is not subject to the corporation business tax or any property tax in New Jersey may be obligated to withhold personal income taxes or remit sales and use tax. Such taxes must be paid whether or not withheld from employees or charged to customers.

18:7-14.18 Actions not requiring the prior issuance of a Tax Clearance Certificate

A corporation may merge under the laws of New Jersey or any other jurisdiction without applying for a Tax Clearance Certificate only where the survivor is a domestic corporation or an authorized foreign corporation.

18:7-14.19 Actions and transactions requiring the prior issuance of a Tax Clearance Certificate in order to avoid a personal liability to certain officers and directors

No corporation may either distribute any of its assets in dissolution or in partial or complete liquidation, or consolidate with another corporation to form a new corporation or merge into a foreign corporation which is an unauthorized foreign corporation, and no domestic corporation may dissolve, and no authorized foreign corporation may withdraw its authority to do business in New Jersey, unless it shall have applied for and received a Tax Clearance Certificate from the Director.

18:7-14.20 Forms and instructions regarding procedure to obtain a Tax Clearance Certificate

(a) Application forms and instructions relating to Tax Clearance Certificates may be obtained by writing to:

New Jersey Division of Taxation
Tax Clearance Group
50 Barrack Street
Trenton, NJ 08646-0269

or by making a telephone call to Taxpayer Information Service at (609) 292-6400.

(b) The consequences of failing to obtain the Tax Clearance Certificate pursuant to this section are described at N.J.A.C. 18:7-14.12.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Patron Credit

Proposed Amendment: N.J.A.C. 19:45-1.27

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(g) and (1) and 5:12-101.

Proposal Number: PRN 1985-269.

Submit comments by June 19, 1985 to:

William H. Delaney, Director
Division of Financial Evaluation & Control
Casino Control Commission
3131 Princeton Pike
Building No. 5, CN 208
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Casino Control Commission proposes to amend N.J.A.C. 19:45-1.27. These amendments are being proposed based upon the Commission's review and analysis of the comments submitted by the Atlantic City Casino Association and the Division of Gaming Enforcement.

Proposed amendments to N.J.A.C. 19:45-1.27 provide an alternative to the Commission's original proposal (see 17 N.J.R. 181) requiring verification of every casino credit patron's address, current casino credit limits, outstanding balances, outstanding indebtedness and personal checking account information every six months. For some patrons the six month reverification process may be unnecessary, while the others, the six month period would be too long. The proposed amendment substitutes certain objective criteria as "trigger

mechanisms" before reverification would be required. However, if, within a twelve month period, none of the established objective criteria trigger a reverification of the casino credit patron's financial information, then the casinos must either reverify the information or suspend the patron's credit privileges. The intent of the amendment is to reverify the credit references of patrons who have used their credit lines for a twelve month period and have not requested an increase or caused the casinos to reverify their credit references for any other reason. Casino credit can be overextended even though the initial credit line was reasonable and there were no increases to the line. A patron can experience financial difficulties by continually playing on an open credit line and repaying. In order to determine whether a patron's credit line remains appropriate over a period of time, casinos should reverify the patron's financial information if it has not been verified within the previous twelve months.

In addition, the proposal requires casino licensees to record in the patron's credit file the date, amount and check number of any checks which have been written off by casino licensees. This is important information that should be available to all New Jersey casinos when the verification process is performed.

Finally, the Commission has to allow the casino industry a period of time in which it can implement the proposed reverification process and be in compliance with the Accounting and Internal Control regulations governing the issuance of credit to patrons of New Jersey's legalized casinos. A subsection was added to the regulation which specifies the parameters established for implementing the complicated reverification procedures.

The proposed repeal and new rule of N.J.A.C. 19:45-1.27 was published on January 21, 1985 at 17 N.J.R. 181 and is being adopted in this issue of the Register.

Social Impact

The proposed amendments to N.J.A.C. 19:45-1.27 provide the casinos an alternative to the rote exercise of reverifying every casino credit patron every six months. The alternative should increase the casinos' vigilance by concentrating primarily on those accounts which have given some indication that they may be experiencing difficulties. The impact on regulatory and enforcement agencies would be to provide these agencies with more currently verified financial information regarding patrons and the casino's credit decisions which could aid in criminal and administrative investigations. With the continuous verification of patrons' credit information, the casinos can more accurately judge the ability of their patrons to continue to repay credit and can set the credit limits accordingly. This proposal, together with the proposal requiring casinos to document in their credit files when patrons' checks are written off, should greatly reduce the possibility that patrons can continue to be extended credit when their capability to repay is reduced or eliminated.

Economic Impact

The proposed amendments to N.J.A.C. 19:45-1.27 will impose upon the industry certain costs of compliance. The expense of verifying credit patrons' accounts at least every twelve months will be substantial but not as substantial as the original proposal requiring verification every six months. However, to ignore this important procedure allows patrons the unlimited ability to continue to gamble on credit until they eventually are unable to make repayment. The requirement to update credit references periodically is a legitimate method of redetermining a patron's ability to pay. In an attempt to help

the casino industry reduce its costs of compliance while making the process more effective the Commission modified its original proposal by supporting the casino industry's recommendation. The Commission's desire for more frequent verifications and the industry's need to utilize its resources efficiently and effectively, can be accomplished by substituting objective criteria as trigger mechanisms for reverification.

The casinos would also experience potential cost savings because the extension of credit would be based on more current verified information which may result in the reduction or denial of credit to patrons who are experiencing financial difficulties. The impact on the regulatory and enforcement agencies would be minimal. However, banks, credit bureaus and casino credit agencies will experience additional demands for information regarding casino credit applicants. These demands will generate additional revenues to these service oriented entities.

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

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

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

(i) [(Reserved)] **The casino licensee's credit department shall:**

1. Comply with the requirements of either 2 or 3 below whenever:

i. A patron's credit file has been inactive for a six month period; or

ii. A patron has failed to completely pay off his credit balance at least once within a six month period; or

iii. A check is returned to any casino by a patron's bank; or

iv. Any information is received by a casino licensee's credit department which reflects negatively on the patron's continued credit worthiness; or

v. The information in the patron's credit file, as required by (c)1 through (c)4 above, has not been verified for a twelve month period.

2. Reverify the patron's address, current casino credit limits, outstanding balances, outstanding indebtedness, and personal checking account information, as required by (c)1 through (c)4 above.

3. Suspend the patron's credit privileges. If a patron's credit privileges have been suspended, the procedures required by (c)1 through (c)4 above shall be performed before that patron's credit privileges are reinstated; provided, however, if the suspension is the result of the requirement of 1.iii. above, the casino licensee may alternatively reinstate the patron's credit privileges by complying with the requirements of (j) below.

(j) (No change.)

(k) All transactions affecting a patron's outstanding indebtedness to the casino licensee shall be recorded in chronological order in the patron's credit file and credit transactions shall be segregated from the safekeeping deposit transactions. The following information shall be included:

1.-5. (No change.)

6. The date, amount and check number of each check returned to the casino licensee by the patron's bank and the reason for its return; [and]

7. The outstanding balance after each transaction; **and**

8. The date, amount and check number of any checks which have been partially or completely written off by the casino licensee and a brief explanation of the reason for such write off.

(l)-(o) (No change.)

OTHER AGENCIES

PROPOSALS

(p) Notwithstanding any other provisions of this section to the contrary, the requirements of (i)1.i., ii. and v. above shall not apply to the patron credit files of a casino licensee which are in existence on the operative date of (i)1.i., ii. and v. above if the casino licensee has submitted and the Commission has approved a plan for the reverification of such files in accordance with this sub-section. This submission must be filed with the Commission and Division at least 90 days prior

to the operative date of (i)1.i., ii. and v. above and shall include, but not be limited to, provisions for the phased reverification or suspension within one year of the operative date of (i)1.i., ii. and v. above of all patron credit files in existence on such operative date.

RULE ADOPTIONS

CIVIL SERVICE

(a)

CIVIL SERVICE COMMISSION

Certification and Appointment Appointment of Eligible Certified

Adopted Amendment: N.J.A.C. 4:1-12.15

Proposed: January 7, 1985, at 17 N.J.R. 10(a).

Adopted: April 2, 1985 by the Civil Service Commission, Eugene J. McCaffrey, Sr., President.

Filed: April 17, 1985 as R.1985 d.227, **without change.**

Authority: N.J.S.A. 11:1-7a, 11:5-1a, 11:10-1, 11:10-5.

Effective Date: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): October 24, 1988.

Summary of Comments and Agency Responses:

Mr. Smolney, Business Administrator of South Amboy, agreed that the current rule which specifies 15 days to make disposition of a certification is unrealistic; however, he indicates that the proposed rule does not speak to a specified number of days to make such disposition. Mr. Fisher, Manager, Borough of Washington, also agrees with discarding the current 15-day limitation and he proposes a 30 day limitation to make such dispositions.

N.J.A.C. 4:1-12.15 is being amended so that the provisions concerning disposition of a certification will be uniform to both State and local governments. The current rule provides that local government appointing authorities must dispose of a certification within 15 days from receipt. Appointing authorities have not been able to comply with this provision, resulting in the Department of Civil Service instituting payroll disapprovals. The proposed rule gives the Department more flexibility for the appointing authority to make such dispositions within a reasonable time. Disposition dates will be provided on the certification and it is anticipated that generally an appointing authority will be given up to 45 days to make the disposition with a proviso for extensions granted only by the Division Director.

Full text of the adoption follows.

4:1-12.15 Appointment of eligible certified

(a) The appointing authority, after receiving a certification of interested eligibles, shall:

1. Appoint the eligible whose name has been certified from the special reemployment list;
2. Appoint the eligible whose name has been certified from the regular reemployment list; or
3. Appoint one of the top three eligibles from the open or promotional employment list, provided that:
 - i. From an open competitive list, disabled veterans and veterans shall be appointed in their order;
 - ii. From a promotional list, if the eligible who ranks first in the certification is a veteran, a non-veteran may not be appointed.

(b) The appointing authority shall forward the record of the disposition of the certification to the Department of Civil Service by the disposition date indicated on the certification. See also 4:1-12.18.

(c) If the certification will result in the displacement of a provisional employee who holds permanent status in a lower title and it is necessary to institute layoff procedures, the Department of Civil Service, upon written request from the appointing authority, may extend the time period for disposing of the certification for an additional 45 days. See N.J.A.C. 4:2-14.1 and N.J.A.C. 4:3-14.2.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Duties of Construction Officials

Adopted Amendment: N.J.A.C. 5:23-4.5

Proposed: February 19, 1985 at 17 N.J.R. 340(a).

Adopted: April 16, 1985 by John P. Renna, Commissioner, Department of Community Affairs.

Filed: April 19, 1985 as R.1985 d.232, **without change.**

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

Effective Date: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 1, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

5:23-4.5 Municipal enforcing agencies—administration and enforcement

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

(f) Duties of construction officials:

1. The construction official shall enforce the regulations and:

i.-xvii. (No change.)

xviii. Coordinate the activities of the subcode officials in enforcement of the energy and mechanical subcodes;

xix. Reply within three business days to any request from the municipal search officer for information concerning construction permits or certificates of occupancy;

xx. Comply with any local procedures which may be established by the governing body to provide the municipal search officer with information concerning construction permits and certificates of occupancy.

2. (No change.)

(g)-(h) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT**Uniform Construction Code Licenses Required; Trainee Personnel****Adopted Amendment: N.J.A.C. 5:23-5.4**

Proposed: February 19, 1985 at 17 N.J.R. 341(a).

Adopted: April 16, 1985 by John P. Renna, Commissioner, Department of Community Affairs.

Filed: April 19, 1985 as R.1985 d.231, **without change.**

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

Effective Date: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 1, 1988.

Summary of Public Comments and Agency Responses: No comments received.

Full text of the adoption follows.

5:23-5.4 Licenses required

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

(d) Rules concerning trainee personnel are:

1. Public enforcing agencies may establish code enforcement trainee positions to employ persons who may be eligible to be licensed within five years.

i. Private enforcing agencies may establish code enforcement trainee positions. With the approval of the construction official of a municipality, trainees who may be eligible to be licensed within five years shall be allowed to perform the same functions in that municipality, subject to the same conditions, as a trainee employed by a public enforcing agency would be permitted to perform, shall be registered by the construction official with the Department of Community Affairs as provided in 2 below and shall be deemed to be occupying municipal trainee positions for purposes of 11 below.

2.-14. (No change.)

(b)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**Rules of the New Jersey Housing and Mortgage Finance Agency****Adopted New Rules: N.J.A.C. 5:80****Adopted Amendments: N.J.A.C. 5:80****Adopted Repeal: N.J.A.C. 19:1-1 through 19:1-5**

Proposed: March 4, 1985 at 17 N.J.R. 505(a).

Adopted: April 29, 1985 by Feather O'Connor, Executive Director, New Jersey Housing and Mortgage Finance Agency.

Filed: April 29, 1985 as R.1985 d.241, **with substantive and technical changes** not requiring additional publicnotice and comment (see N.J.A.C. 1:30-3.5) **and with Subchapters 3 and 4 not adopted.**

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

Effective Date: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): May 20, 1990.

Summary of Public Comments and Agency Responses:*Comment to N.J.A.C. 5:80-2, Actions Regarding Housing Sponsors*

One comment was received regarding N.J.A.C. 5:80-2.2(e) which requires housing sponsors to submit a proposal for curing violations cited by the Agency. The concern was that by submitting a proposal for cure, sponsors would be admitting wrongdoing without being able to offer any defense or explanation.

Response: The Agency believes that no change is required as this section does not preclude sponsors from offering an explanation, defense or other information along with their proposal for cure.

Comment to N.J.A.C. 5:80-6, Sale of Projects Owned by Nonprofit Corporations

One comment was received regarding N.J.A.C. 5:80-6.2(e) which provides that, if the transaction is not completed within six months of Agency approval, the security of the prospective purchaser will be returned except for an amount not to exceed \$15,000 to reimburse the nonprofit corporation. The concern was that a proposed purchaser who is able and willing to go forward should not bear a \$15,000 loss should the transaction not take place.

Response: The Agency believes that no change is required as the amount of security to be returned will only be as much as is needed to reimburse the nonprofit corporation for its actual costs, \$15,000 being the maximum allowed. This amount is a reasonable cost of doing business for a prospective limited partnership who is fully aware of the risks prior to submitting its Commitment Letter.

Comment to N.J.A.C. 5:80-8, Occupancy Requirements

Two comments were received regarding N.J.A.C. 5:80-8.3 which required tenants to provide copies of Federal income tax returns when recertifying their income. The concern was that the requirement was an invasion of privacy which could serve as a deterrent to renting up the project.

Response: The Agency believes that this requirement is not an invasion of privacy as tenants are receiving the benefit of living in Agency financed projects and it is a reasonable and reliable means of determining whether tenants are within the income limits prescribed by New Jersey law. The Agency also acknowledges that Federal income tax returns may not be necessary in all cases and, therefore, has amended this section to provide that recertification of income may include but is not necessarily limited to providing Federal income tax returns.

Comment to 5:80

One comment was received regarding the recodification of N.J.A.C. 5:80-1, 5:80-3 and 5:80-4 without changing NJHFA to NJHMFA and N.J. Housing Finance Agency to N.J. Housing and Mortgage Finance Agency.

Response: These changes have been made in the adoption where appropriate.

Comments to N.J.A.C. 5:80-3 and 5:80-4

The Agency received numerous comments regarding Subchapter 3, Return on Equity and Subchapter 4, Construction Completion Guarantees. Due to the nature of these com-

ments, substantive changes are being considered. Neither subchapter is being adopted at this time but will be re-published in the New Jersey Register for an additional public comment period at a later date.

Summary of Changes between Proposal and Adoption:

5:80-1.1—N.J.S.A. 55:14-1 et seq. was added as the general Agency law.

5:80-1.2(a)2—A technical change was made in the wording of the sentence for clarity.

5:80-1.3—The definitions of Home Improvement Loan and Loan were deleted as they are synonymous terms with Single Family Home Improvement Loan and Single Family Mortgage Loan which are defined terms. Additionally, the definitions of Single Family Home Improvement Loan and Single Family Mortgage Loan have been amended to clarify the owner-occupied requirement.

5:80-1.4—A technical change was made in the wording of the sentence to clarify that other regulations within the subchapter may be applicable to housing projects. Additionally, newly proposed subchapters 17 and 18 have been added as being applicable to housing projects.

5:80-2.2(c)—Change due to typographical error.

5:80-2.3(b)4—Change made to reflect reference to the correct citation.

5:80-2.3(f)—A change was made to allow failure to implement the corrective plan as well as violations thereof to be subject to Agency action.

5:80-5.3(a)3—The change from Certificates of Occupancy to Agency's recognition of project completion was made as not all municipalities provide Certificates of Occupancy.

5:80-8.1(a)—Changes made to reflect the Agency's new name and statutory citation.

5:80-8.3—Change was made to provide that Federal income tax reforms will not be required in all cases but still may be part of the documents required in recertifications of income.

5:80-10.1 and 5:80-13.1—A technical change was made in the wording of the sentence for clarity.

5:80-13.4—A technical change was made in sentence structure. Additionally, it was amended to clarify that the Term Sheet shall be incorporated into the Mortgage Purchase Agreement by reference.

5:80-13.5 and 13.6—The deletion in N.J.A.C. 5:80-13.5 was a technical change in format and was incorporated as the new N.J.A.C. 5:80-13.6. N.J.A.C. 5:80-13.6—13.9 as proposed have been recodified as N.J.A.C. 5:80-13.7—13.10.

5:80-14.1(a)—Technical changes were made in the wording of this section to clarify its meaning.

5:80-19—A technical change was made for clarity.

Home Improvement Loan or Mortgage Loan—The words Single Family were added in front of these terms throughout the adoption, where necessary, in order to be consistent with the terms as defined.

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 1. GENERAL PROVISIONS

5:80-1.1 Authority

These regulations are issued under and pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 constituting Chapter 530 of the Laws of 1983, ***N.J.S.A. 55:14K-1 et seq.; specifically*** N.J.S.A. 55:14K-5(g).

5:80-1.2 Purpose and objective

(a) These regulations are established to effectuate and shall be applied to accomplish the general purposes of the New Jersey Housing and Mortgage Finance Agency including:

1. Assuring the availability of rental and owner occupied housing;

2. Stimulating the construction, rehabilitation and improvement of adequate and affordable housing in the State so as to increase the number of housing opportunities for New Jersey residents particularly those of low and moderate income;

3. Enhancing the production capacity of the private sector ***[toward]* *in*** meeting the housing needs of ***[other]*** residents of New Jersey;

4. Assisting in the revitalization of the State's urban areas; and

5. Responding to changing housing demographic and economic circumstances for the development of innovative and flexible financing vehicles.

5:80-1.3 General definitions

"Act" shall mean the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.

"Collateral" shall mean with respect to any Loan those securities, mortgages or other instruments defined as eligible pursuant to the terms of the Assignment of Collateral and Trust Agreement relating to such Loan.

"Collateral Requirement" shall mean, as of any date of calculation and with respect to any Loan, the amount at which Collateral securing such Loan is required to be maintained pursuant to the terms of the Assignment of Collateral and Trust Agreement relating to such Loan.

["Home Improvement Loan" shall mean an eligible loan as defined in the Act made for the rehabilitation or improvement of a residence.]

"Home Improvement Loan Program Commitment" shall mean the aggregate unpaid principal amount of Home Improvement Loans which a Mortgage Seller offers to deliver and sell to the Agency and the Agency agrees to purchase, such sale and purchase to be made under a Note Purchase Agreement.

"Housing Project" or "Project" shall mean any work or undertaking other than a continuing care retirement community, whether new construction or rehabilitation which is designed for the primary purpose of providing rental housing of more than 25 dwelling units.

"Housing Sponsor" shall mean any person, partnership, corporation or association to which the Agency has made or proposes to make a loan, either directly or indirectly through an institutional lender, for a Housing Project.

["Loan" or "Loans" shall mean any loan or loans made by the Agency to a Mortgage Lender or Mortgage Lenders pursuant to Section 6 of the Act.]

"Mortgage Purchase Agreement" shall mean an agreement, entered into between a Mortgage Seller and the Agency, under which the Mortgage Seller agrees to deliver and sell to the Agency and the Agency agrees to purchase Mortgage Loans.

"Mortgage Servicing Agreement" shall mean an agreement entered into between a Mortgage Seller or other person acceptable to the Agency, under which the Mortgage Seller or other person agrees to service the Mortgage Loans purchased by the Agency from such Mortgage Seller under a Mortgage Purchase Agreement.

"Note Purchase Agreement" shall mean an agreement, entered into between a Mortgage Seller and the Agency, under

which the Mortgage Seller agrees to deliver and sell to the Agency and the Agency agrees to purchase ***Single-Family* Home Improvement Loans.**

“Notice of Acceptance” shall mean the Notice of Acceptance by the Agency to the ***mortgage*** Seller of an Application.

“Primarily Residential in Character” as set forth in N.J.S.A. 55:14K-3(e) shall mean:

1. With regard to an individual unit, structure, or property, that at least 60 percent of the net sheltered area, not including areas for circulation, utilities and common space, is or will be upon completion of scheduled improvements used exclusively as a residence for one or more persons; or

2. With regard to a Project or area, that at least 60 percent of the properties in the area or 60 percent of the floor area in the Project, not including areas for circulation, utilities, and open space, consists of units, properties, or structures devoted primarily to residential use.

“Single Family Mortgage Loan” shall mean any mortgage loan for a structure which contains no more than four dwelling units ***at least one of which is owner-occupied*** and may include an ***owner-occupied*** single dwelling unit within a condominium or cooperative apartment ***[where at least 90 percent of said structure or single dwelling unit is devoted to residential use, and at least one such dwelling unit should be occupied by the Owner or Owners thereof]*** ***Those areas which are non-residential in use shall not exceed those specified by the Federal Housing Administration Property Standards for one or two living units as in effect from time to time*.**

“Single Family Home Improvement Loan” shall mean an eligible loan for the rehabilitation or improvement of a unit or structure which contains no more than four dwelling units where at least 90 percent of said structure or single dwelling unit is devoted to residential use, and at least one such dwelling unit ***[should be]*** ***is owner*** occupied. ***[by the Owner or Owners thereof. Those areas which are non-residential in use shall not exceed those specified by the Federal Housing Administration Property Standards for one or two living units as in effect from time to time]***

“Term Sheet” shall mean the statement of terms, constituting part of the Notice of Acceptance of a Commitment, governing the sale and purchase of Mortgage Loans pursuant to a Commitment.

5:80-1.4 Regulations regarding Housing Projects

(a) All Agency financing in connection with Housing Projects, including eligible loans and loans to lenders made with regard to Housing Projects, shall be subject to the regulations in Subchapters 2 through 9, ***17 and 18. Where appropriate, other regulations within this Chapter are specifically made applicable to Housing Projects.*** ***[Housing Projects may also be subject to regulations found elsewhere within this Chapter.]*** The Regulations of Subchapters 2 through 9, ***17 and 18*** shall not apply to:

1. The construction or rehabilitation of:
 - i. Continuing care retirement communities;
 - ii. Nonresidential facilities or structures (other than those permitted within a housing project);
 - iii. Boarding houses;
 - iv. Residential developments having ***[less than]*** 25 dwelling units ***or less***; or
2. The improvement, acquisition, operation, maintenance or repair of Housing Projects or any other structure or improvement financed by the Agency (other than that determined by the Agency to constitute substantial rehabilitation).

Notwithstanding the foregoing the Agency may require applicable provisions of N.J.A.C. 5:80-4 to apply to any such improvement, maintenance or repair, if it deems such application necessary; or

3. Any Housing Project for which construction or substantial rehabilitation commenced more than one year prior to the actual date of the Agency's having provided financing for the project.

SUBCHAPTER 2. ACTIONS REGARDING HOUSING SPONSORS

5:80-2.1 Rights of housing sponsors

(a) Wherever possible, the Agency will permit, provide for and encourage the right of local housing sponsors to exercise their own initiative and competence in the administration of their assets and the conduct and operation of housing projects, and exercise their rights and responsibilities to the fullest extent permitted by law.

(b) The provisions of the Act pertaining to the regulation and assumption of powers and duties of housing sponsors shall be for the purposes of protecting the collateral for any loan or loans; implementing or enforcing any condition, requirement or criterion for loans or any agreement between the housing sponsor and the Agency; securing the rights and remedies of lenders and bondholders; and protecting the interests of tenants at the projects.

5:80-2.2 Consultation with housing sponsor

(a) Prior to the adoption, amendment, or repeal of any regulation governing the operation of Agency-financed housing projects, the Agency shall:

1. Give housing sponsors 30 days notice regarding any intended action to either adopt, amend, or repeal a rule or regulation governing the operation of Agency-financed housing projects;

2. The 30 days notice shall consist of a clear and concise explanation of the purpose and effect of the intended action;

3. Any housing sponsor wishing to submit data, views, or arguments concerning the intended action may do so in writing not more than 30 days from the date of the notice of intended action;

4. The Agency will consider all submitted data, views, or arguments from housing sponsors before acting;

5. The Agency shall respond in writing to each housing sponsor submitting data, views, or arguments concerning the intended action. To satisfy this requirement, the Agency may send the housing sponsors the presentation that will be submitted to the Agency Board;

6. No regulation governing the operation of a housing project shall be effective unless adopted in substantial compliance with this policy;

7. Upon substantial compliance with this policy, the proposed regulation shall be submitted to the Agency Board for approval. Once the Board approves the regulation or rule, it will be submitted to the Office of Administrative Law for publication in the New Jersey Register.

(b) The Agency also shall give direct notice concerning the adoption of any rules and regulations to any interested party who annually files a request for such information with the Executive Director.

(c) Whenever feasible, the Agency will circulate to housing sponsors notices of proposed changes in Federal Regulations that would affect the operation of HMFA financed developments on which the Agency intends to ***[reply]*** ***rely***. The sponsor may submit comments or opinions on any proposed changes to the Executive Director of the NJHMFA for possi-

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ble inclusion in the Agency comments. All comments will be forwarded to the office or the individual that the Federal Government designates in the notice.

5:80-2.3 Temporary appointment of Agency representative to perform functions on behalf of housing sponsors

(a) The Agency will exercise its remedies and powers under N.J.S.A. 55:14K-7b(6) only with regard to material violations and after reasonable notice and reasonable opportunity to correct the violation is provided to the housing sponsor in accordance with the procedures set forth below.

(b) General areas in which material violations could result in Agency action include:

1. A material violation by the housing sponsor of the terms of any mortgage, mortgage note or regulatory agreement between the Agency and the housing sponsor;

2. A material violation by the housing sponsor of an agreement with the municipality under which it has been granted tax exemption;

3. A material violation by the housing sponsor of the Act or any rules and regulations of the Agency;

4. A determination by the Agency that any loan or advance from the Housing Development Fund pursuant to N.J.S.A. *55:14K-29]* *55:14K-30* is in jeopardy of not being repaid.

(c) Specific material violations of the Act shall include, but are not limited to the following events, which shall generally be sufficient to give rise to the exercise of remedies under N.J.S.A. 55:14K-7b(6) in accordance with the procedure noted in (e) below. The time periods specified here relate solely to initiating action under N.J.S.A. 55:14K-7b(6) and are in no way intended to waive or supercede any time period specified in any other contract, policy or procedure and all obligations of the housing sponsor and any rights and remedies of the Agency with regard thereto remain unchanged.

1. Violation of subsidy contract as declared by HUD which is not corrected to HUD's satisfaction within the time frame as established by HUD;

2. Failure to submit final cost certification within seven months of substantial completion of construction;

3. Failure to submit a rent determination and annual operating budget at least 30 days prior to the end of the fiscal year;

4. Failure to submit the proposed name of a qualified management firm at least 30 days prior to the end of an existing contract or 120 days prior to initial occupancy of the project;

5. Failure to submit an accountant engagement agreement at least 30 days prior to the end of the fiscal year and/or failure to submit the certified annual audit within five months after the close of the fiscal year;

6. Three months arrears of debt service;

7. Failure to maintain at required levels any reserve account required by the Agency in conjunction with the operation of the Project;

8. Failure to correct a physical condition which jeopardizes the safety of tenants or the public or the integrity of any primary building system;

9. Failure to pay any utility bill after a receipt of written notice indicating that service would be terminated;

10. Failure to pay any lien or judgement, including municipal liens, which could jeopardize the financial viability of the development.

(d) It is the obligation of the Agency to give written notice to a sponsor that a condition exists which is of sufficient gravity to warrant exercise of remedies, under N.J.S.A. 55:14K-7b(6). The Agency will provide written notice of the specific material violation(s) to the sponsor, and may suggest courses of action to correct the violation(s).

COMMUNITY AFFAIRS

(e) The housing sponsor shall take the following corrective actions:

1. Within 15 days of the receipt of the notice described in (d) above, the sponsor shall submit a statement to the Director of Management of the Agency setting forth its proposal for curing the violations indicated and a definite time schedule for the corrective actions.

2. If the sponsor is unable to develop a statement within 15 days, it shall submit a written request for an extension of time to prepare the plan to the Director of Management within the 15 day period.

3. The Director of Management may grant extensions of time for up to an additional 30 days for submission of the statement outlining the actions that the sponsor intends to take.

4. During the time allowed for submission of the statement, the Agency staff shall be available to meet with the sponsor in order to assist him in the development of a program of corrective actions. If no proposal is submitted by the sponsor then the Director of Management shall propose a corrective plan to the sponsor.

5. Upon receipt of the proposal from the sponsor, the Director of Management may either accept the plan or suggest alternatives or modifications to the plan in writing to the sponsor.

6. If the sponsor is unwilling to accept the modifications or plan suggested by the Director of Management, then the sponsor may request in writing within 10 days that the matter be referred to the Executive Director of the Agency or his or her designee, for decision on the plan.

7. Once the commitments by the sponsor are accepted by the Agency, or an agreement is reached between the Agency and the sponsor, or a decision is made by the Executive Director, the sponsor shall immediately implement the corrective actions within the time period specified in the plan.

(f) Any violations of ***or failure to implement*** the corrective plan shall be subject to the following:

1. The Executive Director shall bring the matter of such failures and a recommendation of remedy to the Members of the Agency Board at the next public meeting scheduled to allow sufficient time for seven days written notice to the sponsor that the failure to implement or abide by the recommended corrective actions is being brought to the attention of the Members of the Agency Board and that suspension of the sponsor may be requested.

2. The Members shall hear the information provided by the Executive Director along with any information presented by the housing sponsor at a public meeting prior to taking any action pursuant to N.J.S.A. 55:14K-7b(6). The Members may, however, wish to discuss the matter among themselves at a session closed to the public if permitted by N.J.S.A. 10:4-1 et seq.

3. The decision by the Members of the Agency shall be final subject only to review by a court of competent jurisdiction.

(g) Pursuant to the Act, persons appointed to administer the affairs of the project after suspension of the housing sponsor shall only serve for a period co-existent with the duration of the original violation giving rise to the need for the corrections or until the Agency is assured in a satisfactory manner that the violation or violations of a similar nature will not recur. Upon correction of the violation in a reasonable and satisfactory manner, the housing sponsor may submit a request to the Agency for restoration of control back to sponsors. The Agency will respond to such request within 30 days. During that period in which the Agency is considering the

housing sponsor's request, the term of the persons appointed to administer the affairs of the project will continue.

(h) The regulations in this subchapter are intended to be in addition to other powers and remedies which the Agency may have at law or by agreement and shall not be deemed to abridge any other rights or remedies of the Agency or the sponsor.

(i) Upon a vote by the members of the Agency Board that there is an immediate need to take action and a finding that failure to take immediate action could jeopardize the health and safety of tenants at the housing project or cause substantial harm to the financial viability or physical structure of the project, the Agency may waive the regulations set forth above and immediately implement appropriate action.

AGENCY NOTE: Subchapters 3 and 4 as proposed at 17 N.J.R. 509 to 510 are not adopted at this time.

SUBCHAPTER 5. TRANSFER OF OWNERSHIP INTERESTS

5:80-5.1 Definitions
(No change.)

5:80-5.2 General policy
(No change.)

5:80-5.3 Applicability of transfer of ownership interests regulations

(a) There are several circumstances in which a limited dividend corporation or association may decide to sell part or all of its interest. Such circumstances include, but are not limited to, instances where the financial benefits to the Partnership may have been exhausted, a financially troubled project may need a mechanism to raise capital, the owner of a healthy project may be seeking liquidity or where one of the limited partners died or defaulted and a replacement is necessary. The regulations in this subchapter are applicable in their entirety to all proposed changes or transfers of partnership interests except the following:

1. Changes or transfers which are fully encompassed by the separate regulations involving nonprofit conversions (N.J.A.C. 5:80-6). The conversion regulations shall be applicable to transfers involving conversions unless the Agency determines that such treatment would jeopardize the viability of the housing project, in which case the Agency, in its discretion, may apply these regulations to such conversion. In the event, however, of any conflict or inconsistency between the provisions of these Regulations and N.J.A.C. 5:80-6 as it applies to such conversion, the provisions N.J.A.C. 5:80-6 shall control;

2. Changes or transfers which represent the first sale of limited partnership interests in order to provide syndication proceeds on nonprofit conversions provided such sale occurs within 9 months of the conversion closing;

3. Changes or transfers for projects which had profit motivated ownership status at initial mortgage closing and where such changes or transfers occur within three months of the *issuance of the Certificate of Occupancy* ***Agency's recognition of completion of construction or rehabilitation of the project***.

(b) Changes or transfers which fall within 2 and 3 above shall be governed by the general policy as set forth in N.J.A.C. 5:80-5.2 as well as the required documents submission set forth in N.J.A.C. 5:80-5.6 for a modified review.

5:80-5.4 Procedure
(No change.)

5:80-5.5 Scope of review
(No change.)

5:80-5.6 Required documents

(a) Required documents for a modified review must be satisfactory to the Agency and include at least the following:

1. (No change.)
2. Complete description as to the nature of the transition;
3. Copy of Partnership Certificate with proposed revisions;
4. Any other documents determined by the Agency to be necessary.

(b) The following additional documents may be required for full review.

1. Previous Participation Certificates (form 2530) for buyer;
2. Experience questionnaire for buyer;
3. Buyer's certified financial statements;
4. Legal opinion from seller's attorney and, if requested by the Agency, for buyer's attorney;
5. Appraisal of property;
6. Physical inspection report approved by the Agency;
7. Financial report on project operations approved by the Agency.

5:80-5.7 through 5.11 (No change.)

SUBCHAPTER 6. SALE OF PROJECTS OWNED BY NONPROFIT CORPORATIONS TO LIMITED PARTNERSHIPS

5:80-6.1 Definitions

"Commitment Letter" means the initial proposal or letter of intention submitted by the prospective purchaser which outlines the parameters of the transaction and the offer. . . .

5:80-6.2 Procedures

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

(e) Within 21 days of the Agency's approval of the proposed sale of the project, the prospective purchaser shall deliver to the Agency security, in the form of cash, bond or letter of credit, in an amount equal to five percent of the cash proceeds. This security will be held by the Agency until the purchaser has fulfilled its obligations under the Commitment Letter, subject to terms and conditions approved by the Agency. If the purchaser does not fulfill its obligations in accordance with the Commitment Letter as approved by the Agency within six months of the approval, then the security funds shall be deposited by the Agency into a Project Subsidy Reserve or Development Cost Escrow established in the name of the nonprofit. If the proposed purchaser demonstrates its willingness and ability to perform its obligations in accordance with the Commitment Letter, and the transaction is not completed within six months of the Agency's approval, the security shall be returned to the proposed purchaser except for an amount not to exceed \$15,000 to reimburse the nonprofit for its actual costs incurred in the attempted conversion.

(f) (No change.)

5:80-6.3 through 6.11 (No change.)

5:80-6.12 (Reserved)

SUBCHAPTER 7. TENANT SELECTION STANDARDS

(See 17 N.J.R. 580(a)).

SUBCHAPTER 8. OCCUPANCY REQUIREMENTS REGARDING INCOME

5:80-8.1 Maximum gross aggregate family income

(a) Pursuant to N.J.S.A. *[55:14J-10(a)]* ***55:14K-8(a)***, the maximum gross aggregate family income for eligibility for admission to any housing project financed by the New Jersey Housing ***and Mortgage*** Finance Agency shall be \$45,000. The income limit is revised to \$45,000 with the condition that projects having units with income limits in excess of \$36,000 will be required to give preference to qualified applicant households with incomes below \$36,000.

(b) (No change.)

(c) Notwithstanding (a) and (b) above, for Housing Projects which receive a loan from the Agency on or after January 17, 1984, admission to Housing Projects shall be limited to families whose gross aggregate family income at the time of admission does not exceed six times the annual rental or carrying charges approved by the Agency except for families with three or more dependents whose incomes may be up to seven times the annual rental or carrying charge. Annual rental or carrying charges may include the value or cost of heat, light, water, sewerage, parking facilities and cooking fuel which are provided to the family in connection with occupancy of a dwelling. In addition, carrying charges include rent normally associated with rental projects as well as other costs associated with cooperative apartments. There may also be included an amount equal to 6 percent of the original cash investment of the family in a mutual or cooperative housing project and the value or cost of repainting and replacing any fixtures or appliances.

(d) Notwithstanding (a), (b) and (c) above, when a Housing Project has received a loan from the Agency, on or after January 17, 1984, that is insured or guaranteed by the United States of America or any agency or instrumentality thereof, the Agency may adopt the admission standards for such Project then currently prescribed utilized or required by the guarantor or insurer.

(e) Notwithstanding (a), (b), (c) and (d) above, the Agency, in conjunction with any financing on or after January 17, 1984, may impose income limits at levels lower than those set forth above.

(f) In addition (a), (b), (c), (d) and (e) above, any appropriate regulations and requirements of the Department of Housing and Urban Development shall be applied to tenants receiving HUD subsidies.

5:80-8.2 Occupancy requirements

For Housing Projects financed by the Agency with the proceeds of bonds where the interest is exempt from Federal taxation, and where the Project must contain a certain number of units to be occupied by individuals of low and moderate income pursuant to Section 103(b)(4) of the Internal Revenue Code, at all times during the qualified project period, as defined in Section 103(b)(12)(b), at least 23 percent of the units shall be occupied by individuals of low and moderate income as defined in Section 103(b)(12)(c), except in the case of target area projects where at least 18 percent of the units shall be occupied by individuals of low and moderate income. In allocating the units in a project which shall be occupied by individuals of low and moderate income, the distribution of low and moderate income units among the different sized units shall reflect the same percentage distribution as the number of different sized units bears to the total number of units. A greater percentage of the low and moderate income units may, however, be allocated to the larger units. If there

are changes in Federal law or in the internal revenue code or regulations with regard to the above-referenced matter, the Agency may adjust the above requirements accordingly.

5:80-8.3 Recertification of income

The Agency will adopt reasonable procedures regarding the certification or recertification of income ***[including, but not limited to,]* ***which may include but is not necessarily limited to***** requiring tenants to provide copies of Federal income tax returns and other documents. If the tenant fails to provide information required by the Agency or otherwise fails to comply with procedures established by the Agency to determine income eligibility, the tenant may be subject to eviction or the imposition of surcharges ***in the same manner and rate as those imposed on tenants with excess income*** pursuant to N.J.S.A. 55:14K-8(b).

SUBCHAPTER 9. RENT INCREASES

5:80-1.1 through 1.13 recodified as **5:80-9.1** through **9.13**
(No change in text.)

SUBCHAPTER 10. LOANS TO LENDERS FOR SINGLE FAMILY MORTGAGE LOANS

5:80-10.1 Authority

[In accordance with]* ***This Subchapter is promulgated pursuant to the authority of** N.J.S.A. 55:14K-11(b), ***whereby*** the Agency may make loans to institutional lenders in order to furnish funds to make eligible loans, provided such loans are authorized by Federal Taxation Laws.

5:80-10.2 Requests for loans

(a) The Agency shall provide a loan application to each mortgage lender located within any particular area of the State for which the Agency has determined that there is an inadequate supply of single family mortgage loans. Alternatively, the Agency may notify mortgage lenders of a proposed loan program and provide a loan application only to those mortgage lenders requesting the same. Such application shall be sent to mortgage lenders at least 14 days in advance of the date all such applications must be submitted to the Agency. The loan application shall be in the form prescribed by the Agency and shall contain, among other things:

1. Provision for the mortgage lender to State the maximum amount of loan requested;
2. The date by which the loan application must be submitted so as to be considered for an allocation of loan funds and the date upon which loans will be awarded by the Agency;
3. Provision for the mortgage lender to furnish information regarding the mortgage lender's deposit and mortgage activity during a time period prescribed by the Agency;
4. The terms and conditions of the loan including, among others, the maximum interest rate, the term, the percentage of the principal to be paid each year or the manner of determining principal payments, and the prepayment terms;
5. The terms and conditions of the reinvestment of the loan proceeds, including:
 - i. The type of single family mortgage loan;
 - ii. Maximum sales price or loan amounts;
 - iii. Minimum or maximum mortgage terms;
 - iv. Maximum income levels for owners or occupants;
 - v. Location;
 - vi. Loan to ratio value; and
 - vii. Number of units;
6. The schedule of any fees and charges of the Agency with respect to loans; and

7. An undertaking by the mortgage lender to take any loan granted by the Agency up to the amounts specified in the application and providing for liquidated damages or other remedies in the event that the mortgage lender does not take such loan.

5:80-10.3 Allocation of loans

In allocating funds available for loans, the Agency shall consider, among other things, the credit worthiness of the mortgage lender submitting loan applications, the adequacy of supply of single family mortgage loans in the areas in which the mortgage lender operates, and the mortgage and deposit activity reported in the loan application. Allocations of loan funds by the Agency shall be conclusive.

5:80-10.4 Award of loans

The amount of loan awarded to each mortgage lender shall be promptly confirmed by the Agency to such Mortgage Lender. Thereupon each such mortgage lender shall be obligated to take such loan in accordance with the terms thereof. The obligations of the Agency to make any loan or loans shall be, in each case, subject to the sale and issuance of bonds of the Agency within the period prescribed by the loan application in an amount sufficient to make the loans which shall be awarded.

5:80-10.5 Interest and other terms of loan

Loans shall bear interest at a rate which shall not exceed the maximum rate of interest specified in, or determined in accordance with the provisions of the loan application. Other terms of the loans shall comply with the loan application, the Act and the provisions of any contract with holders of outstanding bonds of the Agency. Each loan shall be evidenced by a note in the forms prescribed by the Agency.

5:80-10.6 Collateral for loans

(a) As security for the payment of the principal of an interest on each loan to a mortgage lender, collateral in an amount at least equal to the collateral requirement shall be assigned in trust to the Agency and maintained by such mortgage lender, all in accordance with an assignment of collateral and trust agreement in the form prescribed by the Agency which shall be entered into by the mortgage lender with the Agency at such time as the Agency shall require.

(b) The collateral for each loan to a mortgage lender may be held by such mortgage lender in accordance with and subject to the terms of the Act and said assignment of collateral and trust agreement.

(c) Each mortgage lender shall service or cause to be serviced and preserve the collateral securing its loan or loans from the Agency at its own expense in accordance with said assignment of collateral and trust agreement.

(d) The collateral shall be valued periodically by the Agency or a person or institution designated by the Agency in accordance with the provision of the assignment of collateral and trust agreement relating to such collateral.

5:80-10.7 Application of loan proceeds; restriction as to *[new residential loans]* ***single family mortgage loans***

(a) The terms of each loan shall require that the proceeds thereof paid to the mortgage lender be segregated from its other funds, and that such mortgage lender shall, within the time period specified in the loan agreement relating to such loan, make and disburse from such loan proceeds, single family mortgage loans to individuals only. The Agency may require that such new single family mortgage loans be re-

stricted to certain areas of the State if the Agency determines that such areas are in particular need of loan funds.

(b) Each such single family ***Mortgage*** loan shall comply with such terms and conditions as shall be prescribed by the Agency in connection with the loan application therefor.

(c) The aggregate principal amount of such single family mortgage loans made by a mortgage lender from such loan proceeds shall at least equal the amount of such loan proceeds. All such single family mortgage loans shall be made pursuant to written commitments issued subsequent to the date of the submission by the mortgage lender of its loan application. Such written commitments shall specify the maximum interest rate which will be borne by the single family mortgage loan and must state that such loan covered by the commitment is to be funded out of the proceeds of a loan from the Agency. Reports by mortgage lenders as to the application of loan proceeds shall be made at such time and in such manner as shall be provided by the terms of the loan.

(d) Such ***Single Family Mortgage*** Loans may be made by the mortgage lender either directly or through one or more agents. All loans made by a mortgage lender through an agent shall be made pursuant to a written agreement between such mortgage lender and such agent which agreement shall have been approved in writing by the Agency. The Agency may decline to approve any such agreement for any reason which it, in its sole discretion, deems sufficient. The Agency may require any such agreement to provide, among other things, the following:

1. Such agreement shall not take effect until the approval of the Agency is endorsed on an executed copy thereof;

2. All single family mortgage loans made thereunder shall be made in the name of the mortgage lender pursuant to written commitments issued in the name of the mortgage lender subsequent to the date of the Agency's approval of such agreement;

3. The Agency shall have the right to inspect the books and records of the agent appointed pursuant to such agreement at any and all reasonable times;

4. No compensation or fees of any kind shall be paid to or charged by the agent in connection with any single family mortgage loan made pursuant thereto except as therein specifically set forth;

5. All commitments issued by an agent shall be subject to the same requirements as hereinabove set forth for mortgage lenders.

5:80-10.8 Restrictions on return realized by mortgage lenders

The Agency may in the case of loans to be made from any issue of bonds of the Agency establish maximum rates of return which may be realized by any mortgage lender or any agent of any mortgage lender from the single family mortgage loan made from the proceeds of loans and may regulate, limit, restrict, or prohibit the charge or collection of any commitment fee, premium, bonus, points or other fees in connection with the making of any single family mortgage loan.

5:80-10.9 Fees and charges of the Agency; loan account

(a) An initial fee may be established by the Agency in connection with loans to be made from the proceeds of any issue of Agency bonds, and collected by the Agency as and for a discount below par with respect to each such loan. The initial fee shall be for the purpose of reimbursing the Agency for all or part of its reasonably expected administrative costs of issuing such Agency bonds and making the loans.

(b) The Agency may establish such other premiums, penalties, fees and charges, as it in its sole discretion shall determine to be necessary in connection with the prepayment of, or any default on, or any default under any agreements relating to, any loan or loans.

5:80-10.10 Purchase of Agency bonds

No mortgage lender (including any related person thereof, as defined in Section 103(b)(6)(C) of the Internal Revenue Code) shall, pursuant to any arrangement, formal or informal, purchase the bonds of the Agency in an amount related to the amount of the Agency loans to be made to such mortgage lender (or related person, as aforesaid) by the Agency.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. (RESERVED)

SUBCHAPTER 13. MAKING OR PURCHASING ELIGIBLE LOANS FOR SINGLE FAMILY MORTGAGES

5:80-13.1 Authority

[In accordance with]* *This Subchapter is promulgated pursuant to the authority of* N.J.S.A. 55:14K-12c, ***whereby the Agency may make, purchase or participate in the purchase of eligible loans in order to encourage the development, operation, construction, improvement and rehabilitation of affordable housing.**

5:80-13.2 Commitment applications

(a) The Agency shall make available to all mortgage sellers who request a form of commitment application for each proposed program to purchase Single Family ***Mortgage*** Loans at least 14 days in advance of the date all such applications must be submitted to the Agency. The commitment application shall be in the form prescribed by the Agency and shall contain, among other things:

1. Provision for the mortgage seller to state the maximum principal amount of single family mortgage loans which the mortgage seller offers to the Agency;
2. The date by which the commitment application must be submitted to the Agency in order to be considered for an allocation of funds and the date by which commitments will be accepted by the Agency;
3. Forms of the proposed mortgage purchase agreement and mortgage servicing agreement;
4. Provision for the mortgage seller to furnish information regarding its mortgage loan origination and serving activities during a time period to be prescribed by the Agency;
5. Provision for liquidated damages to be paid or other penalties to be incurred by the mortgage seller in the event that it fails to execute or perform under the mortgage purchase agreement for the commitment accepted by the Agency; and
6. Provision for payment by the mortgage seller of a commitment fee in an amount prescribed by the Agency as consideration for the Agency's acceptance of the commitment application and agreement to purchase mortgage loans from the mortgage seller.

5:80-13.3 Allocation of commitments

In allocating funds available to meet the commitments requested by mortgage seller, the Agency shall consider, among other things, the amounts of the commitments requested by the various mortgage sellers, the adequacy of supply of single family mortgage loans in the areas in which the mortgage sellers propose to originate mortgage loans, the financial

strength and stability of the mortgage seller, the mortgage loan originating and servicing activity reported in the commitment application and the ability of the mortgage sellers to originate and/or service single family mortgage loans under the terms and conditions of the mortgage purchase agreement and the mortgage servicing agreement.

5:80-13.4 Execution of mortgage purchase agreement, mortgage servicing agreement; Term Sheet; Notice of Acceptance

The Agency and each mortgage seller will enter into a Mortgage Purchase Agreement and Mortgage Servicing Agreement stating the conditions under which sellers will originate and the Agency will purchase mortgage loans financed under this Section. The Agency will provide a Term Sheet for each mortgage program which shall set forth the terms of all loans, mortgage delivery period and other requirements. ***[; all]* *All*** loans originated under a commitment allocation must conform to the requirements of the Term Sheet ***which shall be incorporated into the Mortgage Purchase Agreement by reference***. The amount of the allocation provided to each mortgage seller for each program shall be set forth in a Notice of Acceptance.

5:80-13.5 Eligible neighborhoods

The Agency may designate special areas of the State in which the purchase of mortgage loans by the Agency will best effectuate the general purposes of the Act and the objectives of expansion of supply of funds in the State available for single family mortgage loans, provision of additional housing needs to remedy the shortage of adequate housing in the State and elimination of substandard dwellings. If the Agency makes such a designation, special allocations and conditions may be imposed or waived for single family mortgage loans in these areas. ***[The Agency may set limitations on the principal amounts of a mortgage loan or upon the incomes of homebuyers in any area to effectuate the purposes of the Act.]***

***5:80-13.6 Limitation on loans**

The Agency may set limitations on the principal amounts of a mortgage loan or upon the incomes of homebuyers in any area to effectuate the purposes of the Act.*

[5:80-13.6]* *5:80-13.7 Regulation of points charged by mortgage sellers

The Agency may regulate, limit, restrict or prohibit the charge or collection of any commitment fee, premium, bonus, points or other fees in connection with the origination of mortgage loans by mortgage seller to be purchased by the Agency.

[5:80-13.7]* *5:80-13.8 Refinancing of pre-existing ***Single Family*** mortgage loans

(a) The Agency shall not acquire any ***Single Family*** Mortgage Loans made for the purpose of refinancing pre-existing ***Single Family*** Mortgage Loans. However, a mortgage loan made by a mortgage seller to finance the substantial rehabilitation of property upon which there is a pre-existing mortgage loan may include the refinancing of the pre-existing mortgage loan and still qualify as a ***Single Family*** mortgage loan under the following conditions:

1. At least 50 percent of the proceeds of the ***Single Family*** Mortgage Loan made by the mortgage seller shall be used to pay for labor and materials used to rehabilitate the property;
2. The ***Single Family*** mortgage loan shall be made only to a person determined in advance by the Agency to be a person of low or moderate income;

3. The economic facts and circumstances of the mortgagor and the property are such that the rehabilitation could not have been financed by other means;

4. The mortgage seller delivers to the Agency a certificate executed by the mortgage seller certifying that it reasonably believes, based upon prior investigation, that the conditions above have been met and that the refinancing of the pre-existing mortgage loan is incidental and necessary to the purpose of accomplishing the rehabilitation of the property and stating the facts and circumstances upon which the determination in 3. above was made; and

5. The executive director of the Agency determines and certifies that the facts and circumstances in the mortgage seller's certificate support the conclusion that the refinancing of the pre-existing mortgage loan is incidental and necessary to the purpose of accomplishing the rehabilitation of the property.

[5:80-13.8]* *5:80-13.9 Purchase of Agency bonds

No mortgage seller (including any related person thereof, as defined in Section (103)(b)(6)(C) of the Internal Revenue Code) shall, pursuant to any arrangement, formal or informal, purchase the bonds of the Agency in an amount related to the amount of the mortgage loans to be purchased from such mortgage seller (or related person, as aforesaid) by the Agency.

[5:80-13.9]* *5:80-13.10 Return on equity for eligible loans

For each eligible loan made for owner-occupied structures of four dwelling units or less, there is no general restriction on the rate of return which the owner may receive on its investment whether from rental of the other units in the structure or on sale of the property. However, the Agency may establish limitations on the rate of return on investment for owner-occupied, one to four family units, either at the time of the making of the original loan or upon the sale, of all or a portion of the property and improvement, upon a finding that such restrictions are necessary to assure the continued use of the property for individuals of low or moderate income.

SUBCHAPTER 14. MAKING OR PURCHASING ELIGIBLE LOANS FOR SINGLE FAMILY HOME IMPROVEMENT

5:80-14.1 Commitment applications

(a) ***Upon request,*** ***[T]*** ***t*he** Agency shall make available to all mortgage sellers ***[who so request a form of single family commitment application for each proposed program to purchase single family home improvement loans]*** ***a single family home improvement loan application form. Such form will be provided*** at least 14 days in advance of the date all such applications must be submitted to the Agency. The single family ***home improvement loan*** ***[commitment]*** application shall ***[be in the form prescribed by the Agency and shall]*** contain, among other things:

1. Provision for the mortgage seller to state the maximum principal amount of ***Single Family*** Home Improvement Loans which the mortgage seller offers to the Agency;

2. The date by which the commitment application must be submitted to the Agency in order to be considered for an allocation of funds and the date by which program commitments will be accepted by the Agency;

3. A form of the proposed note purchase agreement to be executed by the mortgage seller; and

4. Provision for the mortgage seller to furnish information regarding its residential loan origination activities during a time period to be prescribed by the Agency.

5:80-14.2 Allocation of commitments

(a) In allocating funds available to meet the commitments requested by mortgage sellers, the Agency shall consider, among other things:

1. The amounts of the program commitments requested by the various mortgage sellers;

2. The adequacy of supply of affordable single family home improvement loans in the areas in which the mortgage seller proposes to originate single family home improvement loans;

3. The financial strength and stability of the mortgage seller;

4. The residential loan originating activity reported in the commitment application and the ability of the mortgage seller to originate single family home improvement loans under the terms and conditions of the note purchase agreement.

5:80-14.3 Execution of note purchase agreement

Upon notice of acceptance by the Agency to a mortgage seller of all or a portion of the home improvement loan program commitment requested by it, the Agency shall specify the date by which the Agency shall execute the note purchase agreement executed by the mortgage seller.

5:80-14.4 Unsecured ***single family*** home improvement loans

Single Family Home Improvement Loans which are not secured by a mortgage on the property being improved or rehabilitated shall be limited to loans specified in the Term Sheet for each ***Single Family*** Home Improvement Loan Program ***[and for which the payment of the principal and interest thereon is]*** fully insured under the Federal Housing Administration Title I Property Improvement Loan Program.

5:80-14.5 Eligibility requirements

The Agency may designate income and other limitations with respect to persons eligible to receive single family home improvement loans and with respect to the use of proceeds of single family home improvement loans by such persons, which limitations may vary according to geographical area, in order that the purchase of single family home improvement loans by the Agency shall best effectuate the general purposes of the Act and the objectives of expansion and the supply of funds in the State available for single family home improvement loans, provisions of additional housing needed to remedy the shortage of adequate housing in the State and elimination of substandard and energy inefficient dwellings. The Agency may set limitations on the principal amounts of a single family home improvement loan to effectuate the aforesaid purposes of the Act.

5:80-14.6 Regulations of points charged by mortgage sellers

The Agency may regulate, limit or prohibit the charge or collection of any commitment fee, premium, bonus, points or other fees in connection with the origination of single family home improvement loans by Mortgage Seller to be purchased by the Agency.

5:80-14.7 Refinancing of pre-existing debt

The Agency shall not acquire any single family home improvement loans made for the purpose of refinancing pre-existing debt.

5:80-14.8 Purchase of Agency bonds

No mortgage seller (including any related person thereof, as defined in Section 103(b)(6)(C) of the Internal Revenue Code) shall, pursuant to any arrangement, formal or informal, purchase the bonds of the Agency in an amount related to the

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amount of the *Single Family* Home Improvement Loans to be purchased from such mortgage seller (or related person, as aforesaid) by the Agency.

SUBCHAPTER 15. (RESERVED)

SUBCHAPTER 16. (RESERVED)

SUBCHAPTER 17. PREVAILING WAGES (RESERVED)

SUBCHAPTER 18. DEBARMENT AND SUSPENSION FROM NJHFA CONTRACTING

5:80-4.1 through 5:80-4.11 recodified as 5:80-18.1 through 5:80-18.11

(No change in text.)

SUBCHAPTER 19. WAIVERS

5:80-19.1 Waivers

Any party desiring a waiver or release from the express provisions of any of the regulations in this chapter may submit a written request to the Agency to the attention of the Executive Director. Waivers may be granted only by the Agency Board *[where]* *when* such waiver would not contravene the provisions of N.J.S.A. 55:14K-1 et seq. and upon a finding that, in granting the waiver, the Board will be promoting the statutory purposes of the Agency.

Full text of the adopted repeal may be found in the New Jersey Administrative Code at N.J.A.C. 19:1-1 through 19:1-5.

DEFENSE (a)

THE ADJUTANT GENERAL

Leave of Absence for Military Duty for and by Members of the National Guard

Adopted New Rules: N.J.A.C. 5A:2

Proposed: March 18, 1985 at 17 N.J.R. 646(a).

Adopted: April 27, 1985 by the New Jersey Department of Defense, Major General Francis R. Gerard, The Adjutant General.

Filed: April 29, 1985 as R.1985 d.242, **without change.**

Authority: N.J.S.A. 38A:3-6 and 38A:4-4.

Effective Date: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): May 20, 1990.

Summary of Public Comments and Agency Response:

Two comments were received from Mr. Dudley Burdge, Organizer, Communications Workers of America, Local 1038, on behalf of Arthur S. Hughes and by Arthur S. Hughes on his own behalf. They requested that the rule be changed to include New Jersey State Employees, who are members of the National Guard of other states. This type of regulation is properly proposed by the New Jersey Department of Defense for New Jersey Public Employees, who are

members of the New Jersey National Guard, but cannot be extended to those who are members of the National Guard of other states. Military leave for New Jersey State Employees, who are members of other Reserve Component Organizations, is provided in N.J.A.C. 4:1-17.7.

Full text of the adoption follows.

TITLE 5A DEPARTMENT OF DEFENSE CHAPTER 1 (RESERVED)

CHAPTER 2 LEAVES OF ABSENCE FOR MILITARY DUTY FOR AND BY MEMBERS OF THE NATIONAL GUARD

SUBCHAPTER 1. GENERAL PROVISIONS

5A:2-1.1 Scope

(a) This chapter is applicable to members of the National Guard only.

5A:2-1.2 Purpose

(a) The State of New Jersey is committed to the accomplishment of the Federal mission of furnishing trained National Guard units and individuals as an integral part of the first line of defense of this Nation in accordance with Federal and State law.

(b) The purpose of this chapter is to establish policies and procedures to implement the provisions of N.J.S.A. 38A:1-1 et seq. governing the issuance of orders and the granting of leaves of absence for military duty for employees of the private sector and public officials and employees, including those of the State of New Jersey, and of any county, school district, municipality, board, commission, or authority, who are members of the New Jersey National Guard.

(c) The President of the United States, through the respective military service secretaries, and the Governor, through The Adjutant General, New Jersey Department of Defense (NJDD), as defined in N.J.S.A. 38A, are the proponents for the issuance of military orders for the New Jersey National Guard (NJNG) and its members, who enlist, are mobilized, attend military schools, conferences, training exercises, or perform any other duty ordered by the President or the Governor.

(d) The New Jersey Department of Defense must, by law, adhere and conform to State and Federal law and the regulations, forms, precedence, and usages of the United States Department of Defense, the Departments of the Army or the Air Force, and the National Guard Bureau concerning training requirements and other military duty.

5A:2-1.3 Public and private employers

(a) Every public and private employer is obligated to release a member of the New Jersey National Guard who has been ordered to military duty, through either the New Jersey Department of Defense or the service secretaries of the United States Department of Defense. Military duty may be voluntary or involuntary and includes Initial Active Duty Training, Active Duty in State service, Active Duty in Federal service, Inactive Duty Training, and all forms of Active Duty for Training. Employers must grant excused absences from work for military duty without regard to shift or weekend work policies. The rescheduling of work to make up work lost is at the discretion of the employer. Failure to release an employee who has been so ordered may subject the employer to criminal prosecution or other penalties.

SUBCHAPTER 2. NEW JERSEY PUBLIC OFFICIALS AND EMPLOYEES

5A:2-2.1 General policy

(a) The New Jersey Department of Defense recognizes that the calling of members of the National Guard to military service should not arbitrarily interfere with the operation of other New Jersey State, county or municipal agencies, be detrimental to the public interest, or permit salary payment to New Jersey public officials or employees for leaves of absence for military duty which are not authorized by State or Federal law.

(b) It is therefore the policy of the New Jersey Department of Defense that New Jersey public officials and employees, who are members of the New Jersey National Guard, must obtain the written endorsement of their agency's appointing authority, as defined in N.J.A.C. 4:1-2.1, for a leave of absence for military duty prior to the issuance of military orders by the New Jersey Department of Defense. The requirement to obtain a written indorsement does not apply to Initial Active Duty for Training (IADT), Inactive Duty Training (IDT), Federal Mobilization, Active Duty (AD), or other duty ordered by the Governor.

5A:2-2.2 Procedures for requesting orders

(a) Public officials and employees will initiate an appropriate request for orders through military channels. The request for orders will specify the type of military duty to be performed, the necessity for such duty, the name or title of the employing agency, whether or not there will be a conflict with work requirements as a result of the performance of the proposed military duty requested, and whether military leave will or will not be requested of the public employer.

(b) Unit commanders must obtain from the New Jersey public official or employees appointing authority, a completed Notice of Leave of Absence For Military Duty, NJDOD Form 33, (see Appendix A) prior to the issuance of orders and the commencement of military duty to be performed by the New Jersey public official or employee. NJDOD Form 33 is not required for duty exempted in N.J.A.C. 5A:2-2.1(b).

(c) If the public official or employee's appointing authority declines to indorse a leave of absence for military duty, the employer must provide supporting reasons and return the NJDOD Form 33 to the unit commander not later than the date specified on the form. Failure of the appointing authority to return the NJDOD Form 33 will not prevent the issuance of military orders. The unit commander will forward the completed NJDOD Form 33, or the file copy indicating the failure of the appointing authority to return the original form, through military channels for review by The Adjutant General, New Jersey Department of Defense. All requests will be reviewed on a case-by-case basis to determine the impact upon the mission readiness and capability of the unit concerned.

(d) Orders for military duty to be performed by a New Jersey public official or employee will not be issued pursuant to N.J.A.C. 5A:2-2.2(a) by any headquarters without the prior written approval of The Adjutant General contained on the NJDOD Form 33.

(e) To insure that appointing authorities have verification that the military duty to be performed by a public official or employee meets the mandatory criteria for military leave with pay, orders and NJDOD Form 33 will contain statements identifying the military duty in accordance with N.J.A.C. 5A:2-2.3(b).

(f) The Adjutant General, New Jersey Department of Defense may, in his discretion, make a final determination to approve, modify, or disapprove any duty specified in the NJDOD Form 33 and will notify the appointing authority directly by providing a completed copy of that form.

5A:2-2.3 Military leave

(a) Military Leave is authorized in accordance with N.J.S.A. 38A:4-4 and N.J.A.C. 4:1-17.7, for all public officials and employees including those of the State of New Jersey, and of any county, school district, municipality, board, commission or authority, who are members of the New Jersey National Guard.

(b) Pursuant to N.J.S.A. 38A:4-4 and N.J.A.C. 4:1-17.7(e), the following Active Duty and Active Duty for Training in State service are mandatory and require that leaves of absence be granted to New Jersey public officials and employees without loss of pay or time, not to exceed 90 days in the aggregate in any one year, and shall be in addition to the regular vacation allowed such officials and employees.

1. Active Duty (AD), pursuant to N.J.S.A. 38A:1-1(i), is a period of full-time duty in the active State military service other than Active Duty for Training (ADT).

2. Active Duty for Training (ADT), pursuant to N.J.S.A. 38A:1-1(j), is a period of full-time duty in the active State military service for training purposes other than Active Duty (AD). It includes the following types of duty:

i. Annual Training: A period of training duty for members of the National Guard required by Title 10 USC to be performed each training year (usually between October 1 and September 30). It may be accomplished at posts, bases, camps, stations, or at such other places as may be appropriate for gaining or sustaining unit skills. Annual Training may be conducted at any period during the year as authorized by the appropriate commanders and state authorities and approved by Chief, National Guard Bureau. Annual Training may be performed during one consecutive period or on a year-round basis.

ii. Commissioned Officer Basic and Advanced Branch Training Not Available By Correspondence Course: Courses required to qualify officers for retention in the military service. Such courses provide in-depth technical training in the branch to which assigned. Such courses are required in accordance with National Guard Regulation 600-100 and Air National Guard Regulation 36-02.

iii. Duty Military Occupational Specialty (DMOS) or Duty Air Force Specialty Code (DAFSC) Qualification Courses Not Available By Correspondence Course: Courses required to qualify individuals enlisted to accomplish the technical aspects of their assigned duty, when such qualification is not available through correspondence courses or on the job training in accordance with United States Army Regulation 611-201 and United States Air Force Regulations 36-1 & 39-1.

iv. New Jersey Military Academy Faculty and Staff Support: Duty required to support the academic programs that train, qualify, and produce officers and non-commissioned officers of the New Jersey National Guard. States are required by National Guard Regulation 351-5 to provide resources to operate local schools.

v. Training or Other Specified Duty Required to Meet Federal Unit Mission Readiness Standards: Duty required by Title 32 USC in exercises, drills, or evaluation designed to test or demonstrate individual or unit readiness. Such duty is directed by the various major commands of the United States Army or the United States Air Force.

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vi. Professional Development Training Not Available by Correspondence Course Required to Meet Federal or State Promotion or Retention Standards: Training required by National Guard Regulation 350-1 and Air National Guard Regulation 50-01 to maintain proficiency or required level of professional development. Such training qualifies individuals in specialty areas directly related to duty assignments, type of unit or specific individual or unit mission requirements.

vii. Duty Or Other Training Required By Higher Federal Headquarters For the Administration and Management Of The National Guard (NGR 350-1) (ANGR 50-01): Duty or other training scheduled on an irregular or non-recurring basis by higher Federal Military Headquarters for Adjutants General or their designees to facilitate the administration and management of the National Guard.

(c) Pursuant to N.J.S.A. 38A:4-4 and N.J.A.C. 4:17-17.7(b), all other duty ordered by the Governor is mandatory and requires that leaves of absence be granted to New Jersey public officials and employees without loss of pay or time and shall be in addition to regular vacation allowed such officials and employees.

(d) Military leaves of absence with pay are not authorized for New Jersey public officials and employees for periods of Initial Active Duty for Training (IADT), Inactive Duty Training (IDT), or any other military duty not specified in (b) and (c) above.

5A:2-2.4 Military orders for New Jersey public officials and employees

(a) The New Jersey Department of Defense and Army and Air National Guard Administrative Headquarters will issue military orders to authorize the following duty by New Jersey Public Officials and Employees.

1. Active Duty (AD);
2. Active Duty for Training (ADT);
3. Annual Training (AT);
4. Initial Active Duty for Training (IADT);
5. Other duty ordered by the Governor.

(b) Military orders will contain as a minimum the following information:

1. Order Number;
2. Name of Service Member;
3. Social security account number, rank, unit of assignment, location of assigned unit, home address, and other information pertaining to the individual;
4. Type Duty (ADT, AT, FTTD etc.);
5. Assigned to (training duty station);
6. Reporting time;
7. Period of training (number of days);
8. A statement identifying training to be mandatory or non-mandatory citing N.J.A.C. 5A:2-2.3(b).

(c) Subordinate headquarters of the New Jersey Department of Defense are also authorized to issue unit orders, in either order or training schedule format, which require attendance at Inactive Duty Training (IDT) for specified periods of Unit Training Assemblies (UTA).

APPENDIX A: Notice of Leave of Absence For Military Duty (New Jersey Department of Defense Form 33)

Date

SUBJECT: Notice of Leave of Absence for Military Duty

Appointing Authority (as defined in N.J.A.C. 4:1-2.1)

1. The individual listed below, an employee of your agency, is required to perform military duty for the time and purpose indicated below in connection with his assignment as a member of the New Jersey Army/Air National Guard.

Name and Rank _____

Period of Duty _____

Possible Alternate Periods of Duty _____

Location _____

Purpose _____

Authority _____

(Cite a specific portion of or para 3c of N.J.A.C. _____)

2. The New Jersey Department of Defense recognizes that the calling of members of the National Guard to military service should not arbitrarily interfere with the operation of other New Jersey State, county or municipal agencies, be detrimental to the public interest, or permit salary payment to New Jersey public officials or employees for leaves of absence for military duty which are not authorized by state or federal law. It is therefore the policy of the New Jersey Department of Defense that New Jersey public officials and employees, who are members of the New Jersey National Guard, must obtain the written indorsement of their agency's appointing authority, as defined in N.J.A.C. 4:1-2.1, for a leave of absence for military duty prior to the issuance of military orders by the New Jersey Department of Defense.

3. It is requested that you provide your indorsement and/or comments regarding this leave of absence in the space provided below and return this form directly to this headquarters in the envelope provided not later than _____. In some cases, it may be necessary to postpone this duty to another time period due to circumstances beyond our control. Should this occur, the New Jersey Department of Defense will notify you of the date change.

4. You will receive a completed copy of this form by return mail indicating the final action taken by The Adjutant General regarding the issuance of the orders for military duty. Your cooperation in this matter is appreciated.

Signature

Title

Unit

Date

Indorsement and/or comment

Signature

Typed Name

Title

TO: Appointing Authority
SUBJ: Final Action of The Adjutant General, NJDOD
Issuance of orders is

- Approved
Approved for alternate dates as follows:
Disapproved

By: The Adjutant General
New Jersey Department of Defense

ENVIRONMENTAL PROTECTION (a)

DIVISION OF WATER RESOURCES

Surface Water Quality Standards and Treatment of Wastewater Discharged into Surface Waters of the State

Adopted Repeal: N.J.A.C. 7:9-4 and 5
Adopted New Rules: N.J.A.C. 7:9-4 and 5

Proposed: November 19, 1984 at 16 N.J.R. 3080(a).
Adopted: April 29, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: April 29, 1985 as R.1985 d.249, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq., and 58:11A-1 et seq.

Effective Date: May 20, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): May 20, 1990.
DEP Docket No: 069-84-10.

Summary of Public Comments and Agency Responses:

The Proposed Surface Water Quality Standards (N.J.A.C. 7:9-4) and the Proposed Wastewater Discharge Requirements (N.J.A.C. 7:9-5) were circulated in draft form during September and October 1984 to interested persons and groups, and other governmental agencies. Meetings were held on the proposed regulations with the following interest groups:

- Authorities Association of New Jersey
New Jersey Chamber of Commerce—Environment Committee
Industrial Advisory Group
The Clean Water Council
Joint Liaison Consulting Engineers
New Jersey Water Resources Coalition
New Jersey Water Pollution Control Association

Notice of the Proposed Surface Water Quality Standards and Proposed Wastewater Discharge Requirements was published at 16 N.J.R. 3080 on November 19, 1984 as DEP Docket No. C69-84-10. Approximately 1100 copies were mailed to interested parties throughout the State. Copies of the proposed rules were also available at public depositories throughout the State.

Public Hearings concerning the proposed rules were held at the Glassboro State College Student Center on January 3, 1985 from 3:30-8:00 p.m.; the Council Chambers at the Parsippany-Troy Hills Municipal Building on January 8, 1985 from 10:00 a.m.-2:00 p.m.; and the Loree Addition, at Rutgers, The State University (New Brunswick) from 6:30-10:30 p.m. Comments received at those hearings and during the public comment period (November 19, 1984 through January 18, 1985) became part of the official record of the administrative procedure.

In response to the publication of the proposed rules comments were received from:

- Hercules Incorporated
Senator James R. Hurley
Camden County Environmental Agency
Whitehead Brothers Company
Stony Brook Regional Sewerage Authority
New Jersey Institute of Technology
Delaware River Basin Commission
DEP—Division of Fish, Game and Wildlife
New Jersey Builders Association
Stephen L. Gordon, Esq.
Exxon Company, U.S.A.
Public Service Electric and Gas Company
The Ocean County Utilities Authority
Cupsaw Lake Improvement Association
Jersey Central Power & Light Company
New Jersey State Chamber of Commerce
Rahway Valley Sewerage Authority
New Jersey Water Resources Coalition
Sybron Chemicals Inc.
E.I. du Pont de Nemours & Company
N.J. Dept. of Commerce and Economic Dev.-
Office of Business Advocacy
New Jersey Industrial Advisory Group-Water
The Pinelands Commission
Authorities Association of New Jersey
Interstate Sanitation Commission
Passaic River Coalition
Passaic Valley Sewerage Commission
Atlantic Environmental Science, Inc.
Engineering Science, Inc.
Department of the Public Advocate

The Department has carefully reviewed the comments made at the public hearings and submitted during the comment period. The Department prepared a document entitled "Response to Public Comments on the Surface Water Quality Standards & Wastewater Discharge Requirements", which includes statements of the issues raised, the Department's response, and, where necessary, a discussion of the response.

Most comments which were submitted raised issues which required a response by the Department, either in the form of changes to the proposal or an explanation of why no change was necessary. Some comments, however, raised issues which could have been resolved through a more careful reading of the "Basis and Background for the Proposed Surface Water Quality Standards & Wastewater Discharge Requirements" (1984) and/or the proposal itself. This latter type of comment was included in the response document when the issue raised dealt with information carried over from the 1981 Standards or when it was believed that additional discussion of the issue would be helpful to many of the users of the proposed rules. Otherwise, this type of comment was not addressed. Other comments were received that dealt with matters outside the scope of the proposed rules; these comments were not included. Finally, numerous comments were received which commended the Department on improving the format and clarity of the revised regulations, making them more understandable to the general public. None of these comments were included in the response document.

A copy of the response document is being sent to all individuals and organizations which commented on the proposed regulations. Others may request a copy from:

Bureau of Systems Analysis and Wasteload
Allocation
Division of Water Resources
Department of Environmental Protection
CN 029
Trenton, NJ 08625

The major comments requiring changes to the proposed regulations are summarized below, by subject area:

Disinfection Policies—Two major comments were received. The first requested that the Department delay the imposition of the year-round disinfection requirement, for dischargers to the affected waters in the New York Harbor area, until the Interstate Sanitation Commission's year-round disinfection requirement goes into effect for dischargers in both New Jersey and New York. The Department, in order to be equitable to dischargers on the New Jersey side, added subparagraph i to N.J.A.C. 7:9-5.4(b)1 linking the effective date of the year-round disinfection requirement to that imposed by the Interstate Sanitation Commission. The second comment pointed out that the proposed disinfection policy would preclude New Jersey dischargers from participating in the study planned by the Delaware River Basin Commission to assess the impact of seasonal disinfection on the Delaware River Estuary and Bay. In response, subparagraph ii was added to N.J.A.C. 7:9-5.4(b)1, which gives the Department the option of allowing dischargers to participate in certain scientific studies on disinfection practices.

Outstanding National Resource Waters—Several questions led the Department to conclude that commenters were confused about which waterbodies are considered "Outstanding National Resource Waters." As a result, the Department decided to specifically designate these waters and a listing of such waters was incorporated into the regulations as Index G.

Modification of Water Quality Based Effluent Limitations—As a result of a comment, the Department discovered that the wording of this section would have allowed modified limitations to be established for a period in excess of three years, which violates EPA regulations. As a result, the language of N.J.A.C. 7:9-4.8(d) and 4.9(c) was revised to restrict the time period for such modified limitations to three years or less.

Pineland Waters—Several commenters requested a clarification of the application and interaction of the antidegradation policies and the water quality criteria within the Pinelands area. To clarify the Department's intent, the proposed N.J.A.C. 7:9-4.5(d)6ii(3) was relocated to N.J.A.C. 7:9-4.14(b) and extensively rewritten.

Phosphorus Effluent Standard—Several commenters questioned the effectiveness of the effluent standard for phosphorus in areas where major uncontrolled nonpoint source discharges remain. In response, the language of N.J.A.C. 7:9-5.7 was modified to eliminate that requirement if dischargers can demonstrate "that the control of point sources alone, in the absence of effective nonpoint source controls, will not result in a significant reduction of phosphorus loadings to the waterbody."

SE3 Waters—Several commenters questioned a typographic error in the designated uses for SE3 waters. It now reads "Maintenance and migration of fish populations," not "Propagation and migration of fish populations."

Total Residual Chlorine Criteria—Several commenters questioned the applicability of water quality based effluent limits based on the criteria for total residual chlorine in N.J.A.C. 7:9-4.14(c)14, for discharges of non-contact cooling water which are intermittently chlorinated to control condenser biofouling. The Department reviewed the documentation cited by these commenters and added language to N.J.A.C. 7:9-4.6(c)6 granting a limited exemption to these dischargers, under certain conditions.

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 4. SURFACE WATER QUALITY STANDARDS

7:9-4.1 Scope of subchapter

Unless otherwise provided by rule or statute, this subchapter shall constitute the rules of the Department of Environmental Protection governing matters of policy with respect to the protection and enhancement of surface water resources, class definitions and quality criteria, use designation and quality criteria for the main stem of the Delaware River including the Delaware Bay, the classification of surface waters of the State, procedures for establishing water quality based effluent limitations, modification of water quality based effluent limitations, procedures for reclassifying specific segments for less restrictive uses and procedures for reclassifying specific segments for more restrictive uses pursuant to N.J.S.A. 13:1D-1 et seq., the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

7:9-4.2 Construction

This subchapter shall be liberally construed to permit the department and its various divisions to discharge its statutory functions.

7:9-4.3 (Reserved)

7:9-4.4 Definitions

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

"Acute toxicity" means a lethal or *severe* adverse sublethal effect *(for example, immobilization of daphnids)* to an organism exposed to a toxic substance for a relatively short

period of time. Acute toxicity is measure*d* by Short-Term Bioassays*[*]**, generally of 48 or 96 hour duration.*

“Agricultural water supply” means water used for field crops, livestock, horticulture, and silviculture.

“Ambient temperature” means the temperature of a waterbody beyond the portion of the waterbody that is affected by the localized heated waste discharge or discharge complex; or the temperature of a waterbody that would exist without the addition of heated discharges.

“Anadromous fish” means fish that spend most of their life in saline waters and migrate to fresh waters to spawn.

“Application factor” means a number applied to an LC50 or an EC50 to estimate the concentration of a substance that will not be harmful to any life stage(s) of the test organisms in waters of varying quality, or to other organisms within the aquatic environment that may be more sensitive than the test organism.

[“Appropriate sanitary survey” means a survey that will be designed by the Department or its designee on a case-by-case basis to accurately identify bacterial or other related sources of contamination in a cost efficient, timely manner.]

“Aquatic substrata” means soil material and associated biota underlying the water.

“Bioaccumulation” means the *uptake and retention by an organism of toxic substances from the water or from consumption of other organisms.]****increase of the concentration of a substance within the tissues of an organism, to levels in excess of that substance’s ambient environmental concentration, directly from the water or through the ingestion of food (usually other organisms).***

“Bioassay” means a toxicity test using aquatic organisms to determine the concentration or amount of a toxic substance causing a specified response in the test organisms under stated test conditions.

“Biota” means the animal and plant life of an ecosystem; flora and fauna collectively.

“Calculable changes” means changes to water quality characteristics as demonstrated by any acceptable mathematical, predictive method.

“C1” means Category One waters.

“C2” means Category Two waters.

“Category one waters” means those waters designated in Indexes B, C, D, E and F incorporated in this subchapter, for purposes of implementing the Antidegradation Policies in this subchapter, for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resource(s). These waters may include, but are not limited to: 1) Waters originating wholly within Federal, Interstate, State, County, or Municipal parks, forests, fish and wildlife lands, and other special holdings that have not been designated as FW1 in this subchapter; 2) Waters classified in this subchapter as FW2 Trout Production waters and their tributaries; 3) Surface waters classified in this subchapter as FW2 Trout Maintenance or FW2 Nontrot that are upstream of waters classified in this subchapter *[*]**s FW2 Trout Production; 4) Shellfish waters of exceptional resource value; or 5) Other waters and their tributaries that flow through, or border, Federal, State, County or Municipal parks, forests, fish and wildlife lands, and other special holdings.

“Category two waters” means those waters not designated as Nondegradation, Pinelands Waters, or Category One in

this subchapter for purposes of implementing the Antidegradation Policies.

“Chronic toxicity” means death or other adverse impacts that affect the growth, survival, or reproductive success of an organism or its progeny after a relatively long exposure period to toxic substances. Chronic toxicity is measured using Intermediate-Term or Long-Term Bioassays.

“Criteria” means those elements of the Surface Water Quality Standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When the criteria are met, water quality will generally protect the designated use.

“Cumulative substance” means a substance that may be bioaccumulated within an organism to concentrations that exert a toxic effect on that organism or render it unfit for consumption.

“DAC” means a discharge allocation certificate issued pursuant to N.J.A.C. 7:14A-3.3.

“Department” means the New Jersey Department of Environmental Protection.

“Designated use” means those surface water uses, both existing and potential, that have been established by the Department for a waterway or waterbody.

“Diadromous fish” means fish that spend most of their life in one type of water, either fresh or saline, and migrate to the other type to spawn.

“Disinfection” means the removal, destruction, or inactivation of pathogenic and indicator organisms.

“DRBC” means Delaware River Basin Commission.

“EC50” means the median effective concentration of a toxic substance expressed as a statistical estimate of the concentration that has a specified *adverse* effect on 50 percent of the test organisms under specified test conditions*[*]**, based on the results of an acute bioassay.*

“Epilimnion” means the freely circulating upper region of a thermally stratified waterbody extending from the surface to the thermocline.

“Existing uses” means those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included in the Water Quality Standards.

“Flow-through bioassay” means a toxicity test in which the test solutions flow into and out of the test chambers on a once-through basis for the duration of the test*[*]**, in accordance with N.J.A.C. 7:18.*

“Fresh water(s)” means all nontidal and tidal waters generally having a salinity, due to natural sources, of less than or equal to 3.5 parts per thousand at mean high tide.

“FW” means the general surface water classification applied to fresh waters.

“FW1” means those fresh waters that originate in and are wholly within Federal or State parks, forests, fish and wildlife lands, and other special holdings, that are to be maintained in their natural state of quality (set aside for posterity) and not subjected to any man-made wastewater discharges, as designated in Index A incorporated into this subchapter.

“FW2” means the general surface water classification applied to those fresh waters that are not designated as FW1 or Pinelands Waters.

“Heat dissipation area” means a mixing zone, as may be designated by the Department, into which thermal effluents may be discharged for the purpose of mixing, dispersing, or dissipating such effluents without creating nuisances, hazardous conditions, or violating the provisions of this subchapter.

“Hypolimnion” means the lower region of a stratified waterbody that extends from the thermocline to the bottom of

the waterbody, and is isolated from circulation with the upper waters, thereby receiving little or no oxygen from the atmosphere.

"Important species" means species that are commercially valuable (for example, within the top ten species landed, by dollar value); recreationally valuable; threatened or endangered; critical to the organization and/or maintenance of the ecosystem; or other species necessary in the food web for the well-being of the species identified in this definition.

"Industrial water supply" means water used for processing or cooling.

"Intermittent stream" means a stream with a MA7CD10 flow of less than one-tenth (0.1) cubic foot per second.

"Lake, pond, or reservoir" means any impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water, excluding sedimentation control and stormwater retention/detention basins.

"LC50" means the median lethal concentration of a toxic substance, expressed as a statistical estimate of the concentration that kills 50 percent of the test organisms under specified test conditions***[.]****, based on the results of an acute bioassay.*

"Limiting nutrient" means a nutrient whose absence or scarcity exerts a restraining influence upon an aquatic biological population.

"MA7CD10" means the minimum average 7 consecutive day flow with a statistical recurrence interval of 10 years.

"Measurable changes" means changes measured or determined by a biological, chemical, physical analytical method, conducted in accordance with USEPA approved methods as identified in 40 C.F.R. 136 or other analytical methods (for example, mathematical models, ecological indices, etc.) approved by the Department, that might adversely impact***[r]**c*t** a water use (including, but not limited to aesthetics).

"Mixing zones" means localized areas of surface waters, as may be designated by the Department, into which wastewater effluents may be discharged for the purpose of mixing, dispersing, or dissipating such effluents without creating nuisances or hazardous conditions, or violating the provisions of this subchapter.

"Natural flow" means the water flow that would exist in a waterway without the addition of flow of artificial origin.

"Natural water quality" means the water quality that would exist in a waterway or a waterbody without the addition of water or waterborne substances from artificial origin.

"NOEC" means the "no observable effect concentration", which is the highest concentration of a toxic substance that has no adverse effect(s) on survival, growth, or reproduction of species based upon the results of chronic toxicity testing.

"Nondegradation waters" means those waters set aside for posterity because of their clarity, color, scenic setting, other characteristic of aesthetic value, unique ecological significance, exceptional recreational significance, or exceptional water supply significance. These waters include all waters designated as FW1 in this subchapter.

"Nonpersistent" means degrading relatively quickly, generally having a half-life of less than 96 hours.

"Nontrot waters" means fresh waters that have not been designated in this subchapter as trout production or trout maintenance. These waters are generally not suitable for trout because of their physical, chemical, or biological characteristics, but are suitable for a wide variety of other fish species.

["NJPDES"] *NPDES means New Jersey Pollutant Discharge Elimination System.*

["NJPDES"] *NPDES means National Pollutant Discharge Elimination System.

"NT" means nontrot waters.

"Nutrient" means a chemical element or compound, such ***as*** nitrogen or phosphorus, which is essential to and promotes the growth and development of organisms.

"Outstanding National Resource Waters" means high quality waters that constitute an outstanding national resource (for example, waters of National ***[and]* */* State Parks and Wildlife Refuges*[]*** and waters of exceptional recreational or ecological significance ***[, including segments classified as FW1 or PL in this subchapter.]****) **as designated in Index G incorporated into this subchapter.***

"Persistent" means relatively resistant to degradation, generally having a half life of over 96 hours.

"Pinelands waters" means all waters within the boundaries of the Pineland Area, except those waters designated as FW1 in this subchapter, as established in the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq. and shown on Plate 1 of the "Comprehensive Management Plan" adopted by the New Jersey Pinelands Commission in November 1980.

"PL" means the general surface water classification applied to Pinelands Waters.

"Primary contact recreation" means recreational activities that involve significant ingestion risks and includes, but is not limited to, wading, swimming, diving, surfing, and water skiing.

"Public hearing" means a legislative type hearing before a representative or representatives of the Department providing the opportunity for public comment, but does not include cross-examination.

"River mile" means the distance, measured in statute miles, between two locations on a stream, with the first location designated as mile zero. Mile zero for the Delaware River is located at the intersection of the centerline of the navigation channel and a line between the Cape May Light, New Jersey, and the tip of Cape Henlopen, Delaware.

"Saline waters" means waters having salinities generally greater than 3.5 parts per thousand at mean high tide.

"SC" means the general surface water classification applied to coastal saline waters.

"SE" means the general surface water classification applied to saline waters of estuaries.

"Secondary contact recreation" means recreational activities where the probability of water ingestion is minimal and includes, but is not limited to, boating and fishing.

"Shellfish" means those mollusks commonly known as clams, oysters, or mussels.

"Shellfish waters" means waters classified as Approved, Seasonally Approved, Special Restricted, Seasonally Special Restricted or Condemned that support or possess the potential to support shellfish which are within the Coastal Area Facility Review Act (C.A.F.R.A.) zone as delineated in 1973, (excluding: 1—The Cohansey River upstream of Brown's Run; 2—The Maurice River upstream of Route 548; 3—The Great Egg Harbor River upstream of Powell Creek; 4—The Tuckahoe River upstream of Route 50; 5—The Mullica River upstream of the Garden State Parkway) plus the adjacent areas between Route 35 (from its juncture with the C.A.F.R.A. zone just north of Red Bank to its juncture with the C.A.F.R.A. zone just south of Keyport) and the C.A.F.R.A. zone and the area from the C.A.F.R.A. zone on the south northwesterly along Route 35 to the northern shore of the Raritan River, then easterly along the northern shore of the Raritan River to the southeast point of Perth Amboy,

then due east to the New Jersey jurisdictional limit, and seaward along the jurisdictional limit to the Atlantic Ocean.

"Stream temperature" means the temperature of a stream outside of a designated heat dissipation area.

"Surface water classifications" means names assigned by the Department in this subchapter to waters having the same designated uses and water quality criteria (e.g., FW1, PL, FW2-NT, SE1, SC, Zone 1C).

"Thermal alterations" means the increase or decrease in the temperature of surface waters, above or below the natural, that may be caused by the activities of man.

"Thermocline" means the plane of maximum rate of change in temperature with respect to depth.

"Tidal waters" means fresh or saline water under tidal influence, up to the head of tide.

"TM" means trout maintenance.

"TP" means trout production.

"Total residual chlorine" means *[all chemical species of dissolved gaseous chlorine and its oxidation products that can be detected by methods approved by the Department for the analysis of chlorine in waters and wastewaters.]* **the sum of the free and combined chlorine fractions that can be detected by methods approved under N.J.A.C. 7:18.***

"Toxic substances" means those substances, or combination of substances, which upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly through food chains, will, on the basis of the information available to the Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring.

"Trout maintenance waters" means waters *[so]* designated in this subchapter *[because they]* **for the** support **of** trout throughout the year **,**[or have high potential for such use pending the correction of short term environmental alterations.]***

"Trout production waters" means waters designated in this subchapter*[, that are used]* **for use** by trout for spawning or nursery purposes during their first summer**.*** **[or have high potential for such use pending the correction of short term environmental alterations.]***

"USEPA" means the United States Environmental Protection Agency.

"Water quality based effluent limitations" means effluent limitations established so that the quality of the waters receiving a discharge will meet the Water Quality Criteria and Policies of this subchapter after the introduction of the treated wastewaters.

"Zone" means the general surface water classification applied to the mainstem Delaware River and Delaware Bay.

7:9-4.5 Statements of policy

(a) *[The following constitute general policies for this subchapter.]* **General policies are as follows:***

1. These Surface Water Quality Standards apply to all surface waters of the State.

2. Water is vital to life and comprises an invaluable natural resource which is not to be abused by any segment of the State's population or economy. It is the policy of the State to restore, maintain and enhance the chemical, physical and biological integrity of its waters, to protect the public health, to safeguard the aquatic biota, protect scenic and ecological values, and to enhance the domestic, municipal, recreational,

industrial, agricultural and other reasonable uses of the State's waters.

3. Toxic substances in waters of the State shall not be at levels that are toxic to humans or the aquatic biota, or that bioaccumulate in the aquatic biota so as to render them unfit for human consumption.

4. The introduction of substances into the waters of the State in concentrations that are known to be carcinogenic, mutagenic, or teratogenic shall not be permitted. The Department shall direct its control efforts to require the removal of such substances from wastewater discharges which are shown to contain such substances in concentrations that violate this policy.

5. Existing uses shall be maintained and protected. Designated uses shall, as soon as technically and economically feasible, be attained wherever these uses are not precluded by natural conditions. Where existing criteria are inadequate to support the existing or designated uses, the criteria shall be changed to support the existing uses.

6. The restoration of saline waters to levels which permit unrestricted shellfish harvesting is an objective of the Department.

(b) *[The following are interstate waters policies:]* **Interstate waters policies are as follows:***

1. The designated uses and water quality criteria for the fresh and saline waters under the jurisdiction of the Delaware River Basin Commission shall be **as** established in this subchapter, or in accordance with the prevailing "Basin Regulations—Water Quality" adopted by the Delaware River Basin Commission as part of its Comprehensive Plan, whichever are more stringent.

2. The designated uses and water quality criteria for waters under the jurisdiction of the Interstate Sanitation Commission in the New Jersey/New York metropolitan area shall be as established in this subchapter, or in accordance with the prevailing Water Quality Regulations of the Interstate Sanitation Commission, whichever are more stringent.

(c) *[The following are general technical policies:]* **General technical policies are as follows:***

1. The natural water quality shall be used in place of the promulgated Water Quality Criteria of N.J.A.C. 7:9-4.14 for all water quality characteristics that do not meet the promulgated Water Quality Criteria as a result of natural causes.

2. Water quality criteria are expected to be maintained during periods when stream flows are at or greater than the MA7CD10 flow.

3. Water quality criteria are expected to be maintained in intermittent streams during all natural flow conditions. When an intermittent stream does not contain natural flow of sufficient magnitude to determine water quality, the criteria to be maintained in the intermittent stream will be those pertaining to the measurable natural flow immediately downstream of the intermittent stream.

4. Mixing zone policies are as follows:

i. Water quality within a mixing zone may be allowed to fall below applicable water quality criteria provided the existing and designated uses **outside the mixing zone** are not adversely impacted.

ii. Mixing zone requirements will be determined by the Department on a case-by-case basis taking into special consideration the extent and nature of the receiving waters so as to meet the intent and purpose of the criteria and standards.

iii. The total area and volume of a waterway or waterbody assigned to mixing zones shall be limited to that which will not interfere with biological communities or populations of im-

portant species to a degree which is damaging to the ecosystem or which diminishes other beneficial uses disproportionately. Furthermore, significant acute mortality of aquatic biota shall not occur within the mixing zone.

iv. Zones of passage shall be provided for the passage of free-swimming and drifting organisms wherever mixing zones are allowed.

v. Temperature changes in designated heat dissipation areas shall not cause mortality of the aquatic biota nor create conditions which allow the introduction or maintenance of populations of undesirable organisms***[.]*** **at nuisance levels.***

vi. Adjacent heat dissipation areas: Where waste discharges would result in heat dissipation areas in such close proximity to each other as to impair protected uses, additional limitations shall be prescribed to avoid such impairment.

vii. No heat dissipation areas shall be permitted in waters classified as FW2-TP or within 1500 feet of the shoreline in SC waters.

5. All analytical data to be incorporated by the Department in water quality monitoring or other activities shall be from laboratories approved or certified by the Department for the analysis of those specific parameters. If certification is not offered for the specific parameter the laboratory performing the analysis shall, at a minimum hold certification in the category of certification covering that type of parameter.

(d) ***[The following are antidegradation policies:]*** **Anti-degradation policies are as follows:***

1. These antidegradation policies apply to all surface waters of the State.

2. Existing uses shall be maintained and protected. Designated uses shall be maintained or, as soon as technically and economical feasible, be attained wherever these uses are not precluded by natural conditions.

3. No irreversible changes may be made to existing water quality that would impair or preclude attainment of the designated uses of a waterway.

4. No changes shall be allowed in waters which constitute an outstanding National or State resource or in waters that may affect these outstanding resource waters.

5. Where water quality exceeds levels necessary to support the designated uses, including but not limited to, propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Department's continuing planning process as set forth in this subchapter, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

6. These antidegradation policies shall be applied as follows:

i. The quality of Nondegradation waters shall be maintained in their natural state (set aside for posterity) and shall not be subject to any man-made wastewater discharges.

ii. For Pinelands waters, the Department shall not approve any activity which alone or in combination with other activities, might cause degradation in the existing surface water quality characteristics. This policy shall apply as follows:

(1) This policy is not intended to interfere with water control in the operation of cranberry bogs or blueberry production.

(2) Dischargers holding valid NJPDES permits as of the date of promulgation of these regulations shall be allowed to continue discharging under the terms of their existing

NJPDES permits provided that the discharge is not creating any water quality problems and that the designated uses are being attained. If a water quality problem has been created or the designated uses are not being attained the NJPDES permit shall be modified to eliminate the water quality problem or attain the designated uses.

[(3) The water quality criteria for existing discharges are the water quality criteria contained in "Surface Water Quality Standards" as adopted in March 1981 except that the criteria for Phosphorus and Toxic Substances promulgated herein apply instead of the 1981 criteria, as though the freshwater portions of the Pinelands were classified as FW2 and the saline portions were classified as SE1, and for Nitrate Nitrogen a level of 2 mg/l shall be maintained in the surface waters unless it is shown that a lower level must be maintained to protect the existing surface water quality.]

***[(4)]*(3)* Existing dischargers shall be subject to all the provisions of this subchapter when they apply for modification or expansion of their existing discharge.**

iii. Category One waters shall be protected from any measurable changes (including calculable or predicted changes) to the existing water quality***.*** **[that might be detrimental to the maintenance of existing uses or to the attainment or maintenance of the designated uses.]*** Water quality characteristics that are generally worse than the water quality criteria, except as due to natural conditions, shall be improved to maintain or provide for the designated uses where this can be accomplished without adverse impacts on organisms, communities or ecosystems of concern.

iv. For Category Two waters, water quality characteristics that are generally better than, or equal to, the water quality standards shall be maintained within a range of quality that shall protect the existing/designated uses, as determined by studies acceptable to the Department, relating existing/designated uses to water quality. Where such studies are not available or are inconclusive, water quality shall be protected from changes that might be detrimental to the attainment of the designated uses or maintenance of the existing uses. Water quality characteristics that are generally worse than the water quality criteria shall be improved to meet the water quality criteria.

7. Where a lower classification of water (including the different antidegradation waters) may impinge upon a higher classification of water the Department shall ensure that the quality and uses of the higher classification water are protected.

8. A waterway or waterbody from which ***raw*** water is ***[pumped]*** ***transferred*** to another waterway or waterbody shall be treated as a tributary to the waterway or waterbody receiving the ***[pumped]*** ***transferred*** water.

9. Modifications of water quality based effluent limitations established to implement this antidegradation policy may be granted pursuant to N.J.A.C. 7:9-4.8 and 4.9.

(e) ***[The following are water quality based effluent limitation policies:]*** **Water quality based effluent limitation policies are as follows:***

1. Water quality based effluent limitations may be established so as to minimize total expenditures, subject to social and environmental constraints, so that the provisions of the water quality standards (which includes the antidegr***[e]*****a***dation policies) are met. This policy may result in the assignment of different levels of treatment to different dischargers where this proves more beneficial on a study area basis.

2. Levels of treatment established as a result of water quality studies shall take precedence over the Minimum Treatment Requirements of N.J.A.C. 7:9-5.8.

3. The Department may establish seasonal effluent limitations when it determines that such seasonal limitations are necessary due to seasonal variations in treatment performance caused by ambient conditions and, that the seasonal limitations will not cause or contribute to violation of the Water Quality Standards.

4. Whenever discharges of pollutants from a point source or group of point sources, after the application of effluent limitations at least as stringent as those required pursuant to sections 301, 306 and 307 of the Federal Clean Water Act or effluent limitations based upon the provisions of N.J.A.C. 7:9-5.1 et seq. (whichever are more stringent), would interfere with the attainment and maintenance of the water quality standards (which includes the antidegradation policies), the Department shall establish more stringent, water quality based, effluent limitations that will ensure the attainment and maintenance of the water quality standards (which includes the antidegradation policies).

5. Modifications of water quality based effluent limitations established to implement the water quality standards (which includes the Antidegradation Policies) granted pursuant to [section] N.J.A.C. 7:9-4.8 and 4.9, shall provide for effluent limits at least as stringent as those required pursuant to sections 301, 306, and 307 of the Federal Clean Water Act or the Minimum Treatment Requirements of N.J.A.C. 7:9-5.8, where applicable, whichever are more stringent.

6. When a discharge is made to a tidal waterway in the reach where the salinity varies from less than 3.5 ppt. to greater than 3.5 ppt., or the salinity data is inconclusive, the Department shall establish as water quality based effluent limitations the more stringent of the limitations, on a parameter specific basis, required for the upstream, FW, waters or the downstream, SE, waters.

7. Where the effluent limitations developed pursuant to N.J.A.C. 7:9-4.6 are below the level of detectability of the procedures in N.J.A.C. 7:18 the Department will use an effluent limitation of non-detectable in any NJPDES permit or DAC.

(f) ***Bioassay and biomonitoring policies are as follows:***
[The following are bioassay and biomonitoring policies:]

1. Bioassay test species selection ***criteria*** follows:

i. The objective of the Department is to use test species for toxicity testing bioassays that are representative of the more sensitive aquatic biota from the different trophic levels of the waters in question.

ii. Test species need not be indigenous to, nor occur in the waters in question.

iii. When the bioassay test protocol being utilized falls under the scope of N.J.A.C. 7:18 the Department shall designate the approved representative species considered to be the most sensitive to the discharge.

2. Acute definitive bioassay tests, in accordance with N.J.A.C. 7:18, will ***[routinely]* *normally*** be utilized in determining the toxicity of a discharge to the aquatic biota.

3. The Department, in order to further characterize the toxicity of a discharge, may allow or require the use of other procedures including, but not limited to:

i. Chronic bioassay testing;

ii. Bioaccumulation testing;

iii. Mutagenicity testing;

iv. Measures of the structure and function of the aquatic community in the receiving waters.

4. The Department may allow or require the use of alternative application factors based upon acute and chronic toxicity testing of specific discharge-receiving water combinations.

5. Parameter specific water quality criteria for toxic substances in a waterbody may be established by the Department when adequate data, from appropriate bioassays or scientific literature, is available.

i. Appropriate bioassays, for purposes of this policy, shall include both acute definitive and chronic definitive bioassays.

ii. The amount of bioassay data or scientific literature needed to support adoption of a parameter specific criterion in a given waterbody will be determined by the Department on a case-by-case basis.

(g) ***[The following are nutrient policies:]* *Nutrient policies are as follows:***

1. These policies apply to all FW waters of the State.

2. Except as due to natural conditions, nutrients shall not be allowed in concentrations that cause objectionable algal densities, nuisance aquatic vegetation, or otherwise render the waters unsuitable for the designated uses.

3. The Department may establish site-specific Water Quality Criteria for nutrients in lakes, ponds, reservoirs or streams, in addition to or in place of the criteria in N.J.A.C. 7:9-4.14, when necessary to protect existing or designated uses. Such criteria shall become part of these Water Quality Standards.

4. The Department shall establish water quality based effluent limits for nutrients, in addition to or more stringent than, the effluent standard in N.J.A.C. 7:9-5.7, as necessary to meet the quality criteria.

5. Activities resulting in the non-point discharge of nutrients shall implement the best management practices determined by the Department to be necessary to protect the existing or designated uses.

6. The Department may allow or require the use of algal biostimulation assays, to determine the limiting nutrient in a lake, pond, reservoir or stream.

7:9-4.6 Establishment of water quality based effluent limitations

(a) Water quality based effluent limitations ***[are]* *shall be*** established where technology based effluent limitations, established pursuant to Sections 301(b) and 306 of the Federal Clean Water Act, or toxic effluent standards, established pursuant to Section 307 of the Federal Clean Water Act, and/or Minimum Treatment Requirements set out in N.J.A.C. 7:9-5.8, are insufficient to attain, maintain and protect the designated and existing uses, water quality criteria and policies of N.J.A.C. 7:9-4.

(b) The conditions of a Draft NJPDES Permit or a Draft DAC shall include any water quality based effluent limitations developed pursuant to (c) below, in addition to any other appropriate conditions. The water quality based effluent limitations may be modified as a result of hearings held on the Draft NJPDES Permit or Draft DAC provided that the water quality based effluent limitations incorporated into the Final NJPDES Permit or DAC must be consistent with the provisions of N.J.A.C. 7:9-4 (including, but not limited to, 7:9-4.5, 4.6(c), 4.8, and 4.9).

(c) The Department may develop water quality based effluent limitations for a single point source discharger ***[on a case-by-case basis.]* *in response to an application for a DAC or NJPDES permit.*** The procedure to be followed by the Department in developing such effluent limitations shall be as follows:

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1. For Category One Waters, as defined in N.J.A.C. 7:9-4.4, draft water quality based effluent limitations shall be assigned to a point source discharger so as to protect the existing water quality from any measurable or calculable changes. The Department shall establish draft water quality based effluent limitations, as appropriate, for those parameters contained in N.J.A.C. 7:9-4.14, as well as any other parameters the Department believes may have a detrimental effect on the designated or existing uses.

2. For Category Two Waters, as defined in N.J.A.C. 7:9-4.4, draft water quality based effluent limitations shall be assigned to a point source discharge so as to:

- i. Maintain water quality characteristics that are generally better than or equal to the water quality standards at a level that will protect the existing and designated uses, and;
- ii. Bring water quality characteristics that are generally worse than the water quality criteria, except as due to natural conditions, up to the water quality criteria.

3. The following information shall be submitted by the applicant for a water quality based effluent limitation*[:]**, **in addition to any information required pursuant to N.J.A.C. 7:14A.***

- i. Type of waste (domestic or industrial) to be discharged, accompanied by an analysis of the treated and untreated wastewater characteristics.
- ii. Type of treatment process and level of treatment being considered.
- iii. United States Geological Survey Topographic Maps, 7.5 Quadrangle series, showing treatment facility locations, discharge point, and the location of other treatment facilities on the receiving stream within five miles of the proposed discharge.
- iv. Name and classification of receiving stream including a description of the stream's existing beneficial uses.
- v. Stream analysis, which shall include:
 - (1) A flow analysis to determine the MA7CD10 flow, and;
 - (2) A water quality analysis program to be developed in coordination with the Department and to include, at a minimum, sampling stations upstream and downstream of all existing discharges, as well as the proposed discharge.

4. The Department will utilize the following methodologies in the development of chemical specific water quality based effluent limitations for point source discharges:

- i. The Department shall take into consideration the contribution of nonpoint source loading(s) and the need for some reserve capacity in the stream segment. The parameters to be considered will vary with the type of discharge, the existing and designated uses of the waters, and the ambient water quality.
- ii. Scientifically defensible technical approaches, such as, calibrated and verified mathematical water quality models developed or adapted for a particular stream, simplified modelling approaches, as outlined in "Water Quality Assessment" (EPA-600/6-82-004), a simple mass balance, or bioassay procedures, as contained in N.J.A.C. 7:9-18, shall be utilized by the Department in developing water quality based effluent limitations.

5. The following methodologies may be utilized by the Department in developing water quality based whole effluent toxicity limitations for point source discharges.

i. When using acute definitive bioassays as the measure of whole effluent toxicity, the following effluent toxicity limitation formula may be utilized:

$$L_A = 1/F (100)$$

Where: L_A = Toxicity limitation expressed as an acute definitive LC50 or EC50, in percent effluent.

F = Application factor, 0.05 where toxicity is due to non-persistent*[:]** substances or 0.01 where toxicity is known or suspected to be due to persistent substances*[:]**, **or an alternative application factor developed in accordance with N.J.A.C. 7:9-4.5(f)4.***

I = Critical instream waste concentration, determined in accordance with the methods in ii below.

(1) A draft limitation must meet the requirements of the effluent standard for toxic discharges found in N.J.A.C. 7:9-5.7.

(2) If the calculated limit, L_A , is greater than 100 percent effluent, the draft limit shall require that no measurable acute toxicity occur in any bioassay test concentration, including 100 percent effluent, above normal background mortality levels for the test organism population.

ii. The critical instream waste concentration, I, is determined as follows:

(1) For non-tidal streams, or small tidal streams with a cross-sectional area not greater than 1,000 square feet at mean sea level and a freshwater inflow MA7CD10 not greater than 10 cfs:

$$I = \frac{Q_E}{Q_E + Q_S}$$

Where: Q_E = Effluent flow

Q_S = Upstream freshwater MA7CD10 flow

(2) For all other waterbodies the instream waste concentration, I, will be determined on a case-by-case basis utilizing applicable scientific methods, including but not limited to, plume models and the mixing zone concept.

iii. When utilizing chronic bioassays as the measure of whole effluent toxicity, the following effluent toxicity limitation formula may be utilized:

$$L_C = I (100)$$

Where: L_C = Toxicity limitation expressed as a chronic NOEC in percent effluent.

I = Critical instream waste concentration, determined in accordance with the method in ii above.

***6. Water quality based effluent limits for total residual chlorine based on the criteria in N.J.A.C. 7:9-4.14(c)14 are not applicable where:**

i. The aquatic community of a waterbody is exposed to one or more point source discharges of non-contact cooling water, that is intermittently chlorinated to control condenser biofouling, and

ii. The total period of such exposure to chlorinated wastewater is two hours per day or less.

The maximum concentration of total residual chlorine in the effluents of such discharges shall not exceed 200 ug/l.*

7:9-4.7 Water quality based effluent limitations and water quality management planning

(a) Water quality based effluent limitations established under the procedures of N.J.A.C. 7:9-4.6 shall be amendments to appropriate Water Quality Management Plans.

1. ***After adoption of the Statewide Water Quality Management Program Plan, w**[W]*ater quality based effluent**

limitations established as a NJPDES permit condition under N.J.A.C. 7:14A-8.6, *[may]* ***shall*** be adopted as an amendment to the Statewide Plan pursuant to N.J.A.C. 7:15-2.1(c) 4 and 2.2(b)2 without further adoption proceedings as long as proper notice is given with the NJPDES notice.

2. Water quality based effluent limitations established as an amendment to the Statewide or appropriate Areawide Plan under N.J.A.C. 7:15-3.4 and 3.5 must be consistent with all of the provisions of this subchapter, and shall be adopted pursuant to N.J.A.C. 7:15-3.5.

(b) The Department shall not issue any permit for a discharge that conflicts with an Areawide Plan.

7:9-4.8 Procedures for modifying water quality based effluent limitations for individual dischargers to Category One Waters

(a) The criteria for modifying water quality based effluent limitations established on a case-by-case basis are:

1. The applicant must demonstrate, to the satisfaction of the Department, after public notice (including notice to affected municipalities) and a public hearing (where sufficient public interest exists), that:

i. Some change in ambient water quality should be allowed because of necessary and justifiable social or economic development; and

ii. Alternative effluent limitations, at least as stringent as the technology based effluent limitations required by either sections 301, 306, and 307 of the Federal Clean Water Act, or the effluent limitations resulting from application of the minimum treatment requirements in N.J.A.C. 7:9-5.8 (where applicable), whichever are more stringent, will not interfere with nor be injurious to the existing or designated uses; and

iii. Where the requested modified effluent limitations would result in contravention of the water quality criteria or the degradation of the natural water quality, whichever is less stringent;

(1) The water quality criteria are not attainable because of natural background; or

(2) The water quality criteria are not attainable because of irretrievable man-induced conditions; or

(3) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(4) Controls more stringent than those required by Sections 301(b) and 306 of the Federal Clean Water Act would result in substantial and widespread adverse social and economic impact.

(b) It is the responsibility of the applicant to provide the Department with all of the information needed to evaluate the requested modification(s).

(c) In no case shall changes to water quality be allowed in Outstanding National Resource Waters*, such as waters of National and State parks, wildlife refuges and other waters of exceptional recreational or ecological significance.]**.*

(d) Modified effluent limitations may be granted for a time period *[that shall]* not ***to*** exceed *[that of the permit in which the modified effluent limitations appear.]* ***three years or the time period of the permit in which the modified effluent limitations appear, whichever is shorter.***

(e) Modified effluent limitations may be renewed if the discharger demonstrates, to the Department**s satisfaction, after public notice (including notice to affected municipalities) and a public hearing (where sufficient interest exists),

that ***[there has been no adverse effect on water quality and the designated and existing uses.]* ***the basis for issuing the variance still exists and there have been no adverse impacts on the existing uses.*****

(f) Where water quality criteria are not currently met the Department shall not grant a modification, as set forth in this subsection, establishing an effluent limitation less stringent than the limitation(s) in the existing permit, unless the criteria are not met because of natural conditions.

7:9-4.9 Procedures for modifying water quality based effluent limitations for individual dischargers to Category Two Waters

(a) The criteria for modifying water quality based effluent limitations established on a case-by-case basis are:

1. The applicant for modification of effluent limitations for parameters that are currently better than the water quality criteria must demonstrate, to the satisfaction of the Department, after public notice (including notice to affected municipalities) and a public hearing (where sufficient public interest exists), that:

i. Some degradation of water quality parameters currently better than the water quality criteria should be allowed because of necessary and justifiable social or economic development; and

ii. Alternative effluent limitations, at least as stringent as the technology based effluent limitations required by either sections 301, 306, and 307 of the Federal Clean Water Act, or the effluent limitations resulting from application of the Minimum Treatment Requirements (where applicable) in N.J.A.C. 7:9-5.1 et seq., whichever are more stringent, will not interfere with nor be injurious to the existing or designated uses.

2. The applicant for modification of effluent limitations for parameters that are currently equal to or currently do not meet the water quality criteria in this subchapter must demonstrate, to the satisfaction of the Department, after public notice (including notice to affected municipalities) and a public hearing (where sufficient public interest exists), that:

i. The water quality criteria are not attainable because of natural background; or

ii. The water quality criteria are not attainable because of irretrievable man-induced conditions; or

iii. Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the water quality criteria, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

iv. Controls more stringent than those required by Sections 301(b) and 306 of the Federal Clean Water Act would result in substantial and widespread adverse social and economic impact.

(b) Where water quality criteria are not currently met the Department shall not grant a modification, as set forth in this subsection, establishing an effluent limitation less stringent than the limitation(s) in the existing permit, unless the criteria are not met because of natural conditions.

(c) Modified effluent limitations may be granted for a time period *[that shall]* not ***to*** exceed *[that of the permit in which the modified effluent limitations appear.]* ***three years or the time period of the permit in which the modified effluent limitations appear, whichever is shorter.***

(d) Modified effluent limitations may be renewed if the discharger demonstrates, to the satisfaction of the Department, after public notice (including notice to affected municipalities) and a public hearing (where sufficient interest exists),

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that *[there has been no adverse effect on water quality and the designated and existing uses.]* ***the basis for issuing the variance still exists and there have been no adverse impacts on the existing uses.***

7:9-4.10 Procedures for reclassifying specific segments for less restrictive uses

(a) The Department may entertain petitions, sponsored or endorsed by County or Municipal Governing Bodies, for reclassification of specific segments to less restrictive uses, or decide to initiate reclassification proceedings on its own, at any time.

(b) Any reclassification proceeding will include full documentation of the items contained in (d) and (e) below. The documentation will be prepared by either the Department (where the Department has initiated the reclassification on its own) or the petitioner for the reclassification.

(c) The Department shall issue public notice to all interested parties (including affected municipalities) and shall hold public hearing(s) as part of any reclassification proceeding.

(d) The Department or the petitioner, as indicated in (b) above, shall include in the reclassification documentation appropriate water quality studies and analyses, biological studies and analyses, environmental, social, and economic studies as are necessary to demonstrate the satisfaction of *[at least one of the criteria listed in (e) below.]* ***(e)1 and 2 below, in addition to at least one of the remaining criteria in (e) below.***

(e) The Department may establish less restrictive uses than the designated uses only after it has been demonstrated to the satisfaction of the Department that:

1. None of the uses being removed are existing uses; and
2. The uses to be removed will not be attained by implementing effluent limits required by Sections 301(b) and 306 of the Federal Clean Water Act in conjunction with implementation of cost-effective and reasonable best management requirements for nonpoint source pollution control; and
3. The existing designated use is not attainable because of natural background; or
4. The existing designated use is not attainable because of irretrievable man-induced conditions; or
5. Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or
6. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or
7. Controls more stringent than those required by Sections 301(b) and 306 of the Federal Clean Water Act would result in substantial and widespread adverse social and economic impact.

(f) Any reclassification for less restrictive uses, established pursuant to this section shall be reviewed during each review of water quality standards pursuant to Section 303 of the Federal Clean Water Act (at least once every three years). Either the Department or the original petitioner, as indicated in (b) above, shall be responsible for supplying documentation showing that the bases for the reclassification still exist.

(g) In those cases in which a thermal discharge is involved, the procedures for reclassifying segments for less restrictive use shall be consistent with section 316 of the Federal Clean Water Act.

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7:9-4.11 Procedures for reclassifying specific segments for more restrictive uses

(a) The Department will entertain petitions, sponsored or endorsed by County or Municipal Governing Bodies, for reclassification of specific segments, pursuant to (e) below, or may decide to initiate reclassification proceedings on its own, at any time.

(b) The Department may entertain petitions for reclassification of specific segments, pursuant to (f) below, at any time.

(c) Documentation supporting the petition for reclassification for more restrictive use(s) shall be prepared by the petitioner for such reclassification, where one exists, or by the Department, where it decides to initiate such reclassification on its own.

(d) The Department shall issue public notice to all interested parties (including affected municipalities and dischargers) and shall hold public hearing(s) as part of any reclassification proceeding.

(e) A reclassification for more restrictive uses shall be made whenever:

1. It is demonstrated to the satisfaction of the Department that there are existing uses of the specific segment that are not included in the designated uses; or

2. Where a reclassification for less restrictive uses has been granted pursuant to N.J.A.C. 7:9-4.10, the bases for that reclassification no longer exist*[,]**,* or*[:]*

3. It is demonstrated to the satisfaction of the Department that any uses in Section 101 (a)(2) of the Federal Clean Water Act, protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water, which are not included in the designated uses listed in this subchapter are attainable.

(f) A reclassification for more restrictive uses may be made when*[:]**,*

1. It is demonstrated to the satisfaction of the Department that the waters should be set aside *[the]* ***to*** represent the natural aquatic environment and its associated biota, or;

2. It is demonstrated to the satisfaction of the Department that a more restrictive use is necessary to protect a unique ecological system or threatened/endangered species.

(g) In those cases in which a thermal discharge is involved, the procedures for reclassifying segments for more restrictive uses shall be consistent with section 316 of the Federal Clean Water Act.

7:9-4.12 Designated uses of FW1, PL, FW2, SE1, SE2, SE3, and SC waters

(a) In all FW1 waters the designated uses are:

1. Set aside for posterity to represent the natural aquatic environment and its associated biota;
2. Primary and secondary contact recreation;
3. Maintenance, migration and propagation of the natural and established aquatic biota; and
4. Any other reasonable uses.

(b) In all PL waters the designated uses are:

1. Cranberry bog water supply and other agricultural uses;
2. Maintenance, migration and propagation of the natural and established biota indigenous to this unique ecological system;
3. Public potable water supply after such treatment as required by law or regulations;
4. Primary and secondary contact recreation; and
5. Any other reasonable uses.

(c) In all FW2 waters the designated uses are:

1. Maintenance, migration and propagation of the natural and established biota;
2. Primary and secondary contact recreation;
3. Industrial and agricultural water supply;
4. Public potable water supply after such treatment as required by law or regulation; and
5. Any other reasonable uses.

(d) In all SE1 waters the designated uses are:

1. Shellfish harvesting in accordance with N.J.A.C. *[7:9-12]* *7.12*;
2. Maintenance, migration and propagation of the natural and established biota;
3. Primary and secondary contact recreation; and
4. Any other reasonable uses.

(e) In all SE2 waters the designated uses are:

1. Maintenance, migration and propagation of the natural and established biota;
2. Migration of diadromous fish;
3. Maintenance of wildlife;
4. Secondary contact recreation; and
5. Any other reasonable uses.

(f) In all SE3 waters the designated uses are:

1. Secondary contact recreation;
2. *[Propagation]* *Maintenance* and migration of fish populations;
3. Migration of diadromous fish;
4. Maintenance of wildlife; and
5. Any other reasonable uses.

(g) In all SC waters the designated uses are:

1. Shellfish harvesting in accordance with N.J.A.C. *[7:9-12]* *7.12*;
2. Primary and secondary contact recreation;
3. Maintenance, migration and propagation of the natural and established biota; and
4. Any other reasonable uses.

7:9-4.13 Designated uses of mainstem Delaware River and Delaware Bay (Summarized From the DRBC "Administrative Manual; Part III; Basin Regulations; Water Quality; Including Amendments Through June 29, 1983")

(a) The designated uses for Zone 1C, 1D, and 1E are:

1. Agricultural, industrial and public water supply after reasonable treatment;
2. Wildlife;
3. Maintenance and propagation of resident gamefish and other aquatic biota;
4. Spawning and nursery habitat for anadromous fish;
5. Passage of anadromous fish;
6. Primary and secondary contact recreation.

(b) The designated uses for Zone 2 are:

1. Agricultural, industrial and public water supply after reasonable treatment;
2. Wildlife;
3. Maintenance and propagation of resident gamefish and other aquatic biota;
4. Passage of anadromous fish;
5. Primary contact recreation from R.M. 133.4 to R.M. 117.81;
6. Secondary contact recreation from R.M. 133.4 to R.M. 108.4; and
7. Navigation.

(c) The designated uses for Zone 3 are:

1. Agricultural, industrial and public water supply after reasonable treatment;

2. Wildlife;
3. Maintenance of resident fish and other aquatic biota;
4. Migration of anadromous fish;
5. Secondary contact recreation; and
6. Navigation.

(d) The designated uses for Zone 4 are:

1. Industrial water supply after reasonable treatment;
2. Wildlife;
3. Maintenance of resident fish and other aquatic biota;
4. Migration of anadromous fish;
5. Secondary contact recreation; and
6. Navigation.

(e) The designated uses for Zone 5 are:

1. Industrial water supply after reasonable treatment;
2. Wildlife;
3. Migration of anadromous fish;
4. Maintenance of resident fish and other aquatic biota;
5. Propagation of resident fish from R.M. 70.0 to R.M. *[48:2]* *48.2*;
6. Secondary contact recreation;
7. Primary contact recreation from R.M. 59.5 to R.M. 48.2; and
8. Navigation.

(f) The designated uses for Zone 6 are:

1. Industrial water supply after reasonable treatment;
2. Wildlife;
3. Maintenance and propagation of resident fish, shellfish, and other aquatic biota;
4. Migration of anadromous fish;
5. Primary contact recreation;
6. Secondary contact recreation; and
7. Navigation.

7:9-4.14 Surface water quality criteria

(a) Surface water quality criteria for FW1 classification shall be maintained as to quality in their natural state.

(b) Surface water quality criteria for PL classification *[shall be maintained as to quality in their existing state or that quality necessary to attain or protect the designated uses, whichever are more stringent.]* *are as follows*:

1. These waters shall be maintained as to quality in their existing state or that quality necessary to attain or protect the designated uses, whichever *[are]* *is* more stringent.

*i. For Nitrate-Nitrogen a level of 2 mg/l shall be maintained in the surface waters unless it is shown that a lower level must be maintained to protect the existing surface water quality.

ii. A pH level between 3.5 and 5.5 shall be maintained unless it is demonstrated that a pH level outside of that range is necessary to protect the existing/designated uses.

2. The water quality criteria for existing discharges are the water quality criteria contained in "Surface Water Quality Standards" as adopted in March 1981, except that:

i. The criteria for Nitrate-Nitrogen and pH promulgated in N.J.A.C. 7:9-4.14(b)1 for PL waters apply instead of the 1981 criteria, and;

ii. The criteria for Phosphorus and Toxic Substances promulgated in N.J.A.C. 7:9-4.14(c) apply instead of the 1981 criteria, as though the freshwater portions of the PL waters were classified as FW2 and the saline portions were classified as SE1.*

7:9-4.14(c) Surface Water Quality Criteria for
FW2, SE and SC Waters

(Expressed as maximum concentrations unless otherwise noted)

Substance	Criteria	Classifications
1. Bacterial quality (Counts/100 ml)	1. *[Total Coliforms]* <u>Bacterial Indicators</u> * shall not exceed, in all shellfish waters, the standard for approved shellfish waters as established by the National Shellfish Sanitation Program as set forth in its current manual of operations. ii. - iii. (No change from proposal)	Shellfish Waters
2. - 3. (No change from proposal)		
4. Floating, colloidal, color and settleable solids; petroleum hydrocarbons and other oils and grease	1. (No change from proposal.) ii. For "Petroleum Hydrocarbons" the goal is none detectable utilizing the Federal EPA Environmental Monitoring and Support Laboratory Method (Freon Extractable - Silica Gel Adsorption - Infrared Measurement); the present criteria, however, are those of paragraph 1. above.	All Classifications All Classifications
5. (No change from proposal.)		
6. Phosphorus, Total (mg/l)	i. <u>Lakes</u> : Phosphorus as total P shall not exceed 0.05 in any lake, pond or reservoir, or in a tributary at the point where it enters such bodies of water*[,] * <u>except where site-specific criteria are developed pursuant to N.J.A.C. 7:9-4.5(g)3.*</u> ii. <u>Streams</u> : Except as necessary to satisfy the more stringent criteria in paragraph i above*[,] * <u>or where site-specific criteria are developed pursuant to N.J.A.C. 7:9-4.5(g)3,*</u> phosphorus as total P shall not exceed 0.1 in any stream, unless it can be demonstrated that total P is not a limiting nutrient and will not otherwise render the waters unsuitable for the designated uses.	FW2 FW2
7.-1). (No change from proposal.)		

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7:9-4.14(c) Surface Water Quality Criteria for
FW2, SE and SC Waters

(Expressed as maximum concentrations unless otherwise noted)

Substance	Criteria	Classifications
12. Temperature and Heat Dissipation Areas	i. Thermal Alterations (Temperatures shall be measured outside of heat dissipation areas)	
	(1) Streams	
	(i) <u>No thermal alterations which would cause changes in a</u> [*] [A] [*] ambient temperatures [*] [shall prevail] [*] except where properly treated wastewater effluents are discharged. Where such discharges occur, temperatures shall not deviate more than 0.6°C (1°F) from ambient temperature.	FW2-TP
	(ii)-(iv) (No change from proposal.)	
	(2) <u>Lakes*, Ponds or Reservoirs*</u>	
	(i)-(ii) (No change from proposal.)	
	(3) <u>*Coastal Waters -*</u> No direct heat additions within 1500 feet of the shoreline. No thermal alterations which would cause temperatures to deviate from ambient temperatures by more than 2.2°C (4°F) from September through May, nor more than 0.8°C (1.5°F) from June through August, nor which would cause temperatures to exceed 26.7°C (80°F).	SC
	ii. (No change from proposal.)	
13.-15. (No change from proposal.)		
1.-15. (No change from proposal.)		

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INDEX A—FW1 Waters by Tract Within Basins

- (a)-(b) (No change.)
- (c) PASSAIC RIVER, HACKENSACK RIVER, NY HARBOR COMPLEX BASIN

Tract	Waterbody
...	The southern branch of the easterly tributary to Canistear Reservoir Pequannock River and tribu*[r]*
	*t*aries upstream of the confluence with Pacack Brook

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

GUIDE TO USE OF INDEXES B THROUGH F

The Surface Water Classification Indexes give the surface water classifications for the waters of the State. The listing is divided into five indexes by major drainage basin: b) Atlantic Coastal; c) Delaware River; d) Passaic River, Hudson River, and New York Harbor Complex; e) Raritan River; and f) Walkkill River. Within each basin the waters are listed alphabetically and segment descriptions begin at the headwaters and proceed downstream.

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

(c) To find unnamed waterways or waterbodies or named waterways or waterbodies which do not appear in the listing, use the following rules:

- 1.-2. (No change.)

3. Unnamed or unlisted streams which event FW2-TM lakes are classified as FW2-TM only if all of the listed streams in the watershed that flow into the lake are classified as FW2-TM and/or FW2-TP. If none of the streams that flow into the lake are listed, the stream of interest is classified as FW2-TM only if ***all of*** the outlet stream*s* from the lake *[is]* ***are*** classified as FW2-TM or FW2-TP. If the stream is located within the boundaries of the Pinelands Area see 6 below; if it could be a C1 water also see 5 below.

- 4.-5. (No change.)

6. ***[Unnamed and unlisted]* **All** waterways or waterbodies *, or portions of waterways or waterbodies that* **[are classified as PL only for those portions that]* are located within the boundaries of the Pinelands Area*[*] **are classified as PL unless they are listed as FW1 waters in Index A.** A tributary entering a PL stream is classified as PL only for those portions **[where it actually flows within the]* **of the tributary that are within the** Pinelands Area. Lakes are classified as PL only if they are located entirely within the Pinelands Area.****

CLASSIFICATIONS:

FW2-NT/SE1 (or similar designation)—Indicates a waterway in which there may be a salt water/fresh water interface. The exact point of demarcation between the fresh and saline waters must be determined by salinity measurements and is that point where the salinity reaches 3.5 parts per thousand at mean high tide. The stream is classified as FW2-NT in the fresh portions (salinity less than ***or equal to*** 3.5 parts per thousand at mean high tide) and SE1 in the saline portions.

DESIGNATIONS:

- (No change.)

INDEX B—SURFACE WATER CLASSIFICATIONS—Atlantic Coastal Basin

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BARNEGAT BAY

(Barnegat National Wildlife Refuge)—All waters within the boundaries of the Barnegat National Wildlife Refuge	SE1(C1)
(Barnegat Light)—All other waters of the Bay	SE1(C1)
(Island Beach State Park)—All freshwater ponds within the boundaries of Island Beach State Park	FW1
(Island Beach State Park)—All waters in the Park, not classified as FW1 above	FW2-NT/SE1/SC*[1]*(C1)
...	

BRISBANE LAKE

(Allenwood)—The lake*[,]* *and* its tributaries *[and outlet streams]* within the boundaries of Allaire State Park, except *the* tributary described separately below	FW2-NT(C1)
(Allaire)—The easterly tributary to the brook entering Brisbane Lake, located entirely within the Allaire State Park boundaries, downstream to its confluence with the westerly tributary	FW1 *[[tm]]*
...	

CEDAR CREEK

(Cedar Crest)— *[Entire length, except branches described below]* <i>*Source to the boundaries of the Pinelands Protection and Preservation Area at the Garden State Parkway, except branches described separately below*</i>	*[FW2-NT]* <i>*PL*</i>
[Berkeley)—Garden State Parkway to Barnegat Bay	*FW2-NT/SE1* FW1
(Greenwood Forest)—Webbs Mill Branch and tributaries located entirely within the boundaries of Greenwood Forest Tract	FW1
(Greenwood Forest)—Chamberlain's Branch and five tributaries which originate in and are located entirely within the boundaries of the Greenwood Forest Tract upstream of the blueberry farm exception	FW1
(Greenwood Forest)—Other tributaries to Chamberlain's Branch, located within the boundaries of the Greenwood Forest Tract	...

[DAVENPORT BROOK (Berkeley)—Entire length] ***[FW2-NT]***

*DAVENPORT BROOK (Berkeley)—Source to the boundaries of the Pinelands Protection and Preservation Area at the Penn Central railroad tracks	*PL*
(Toms River)—Railroad tracks to confluence with Wrangel Brook*	*FW2-NT*
...	

[FORKED RIVER (Forked River)—Entire length] ***[FW2-NT]***

*FORKED RIVER (Lacey)—River and branches from their sources to the boundaries of the Pinelands Protection and Preservation Area at the Garden State Parkway	*PL*
(Forked River)—Garden State Parkway to Barnegat Bay*	*FW2-NT/SE1*
...	

GREAT EGG HARBOR RIVER

[Berlin)—Source to confluence with Tinker Branch	*FW2-NT*
(Berlin)—Tinker Branch, the River from its confluence with Tinker Branch, and all	PL

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tributaries within the Pinelands Protection and Preservation Area, downstream to the boundary at the Rt. 40 bridge in Mays Landing		*[(Port Jervis)] Unnamed or unlisted direct tributaries that are located within the boundaries of the Pinelands Protection and Preservation Areas and are not FW1 waters]*	*[PL]*
[(Berlin)] *(Winslow)*—All tributaries or segments of tributaries outside of the boundaries of the Pinelands Protection and Preservation Area, downstream to Rt. 40 at Mays Landing	FW2-NT	*[(Pinelands)]—All streams or segments of streams which flow directly into the Delaware River, are within the boundaries of the Pinelands Area and are not classified FW1 waters in this Index.*	*PL*
(Mays Landing)—Rt. 40 bridge to Great Egg Harbor, except those tributaries described separately below	FW2-NT/SE1	...	
(Mays Landing)—All tributaries or segments of tributaries within the boundaries of the Pinelands Protection and Preservation Areas	PL	POHATCONG CREEK	
(Egg Harbor)—Tributaries and all other waters within MacNamara Wildlife Management Area, except tributary described below	FW2-NT/SE1(C1)	*MAIN STEM*	
(Tuckahoe)—Tributary adjacent to and north of Hawkin's Creek from its origin to the point where the influence of impoundment occurs	FW1	(Mansfield)—Source to Karrsville bridge (Pohatcong)—Karrsville bridge to Delaware River	FW2-TP(C1) FW2-TM
...		*TRIBUTARY	
[JAKES BRANCH (Toms River)—Entire length]	*[FW2-NT]*	(New Village)—Entire length*	*FW2-TP(C1)*
*JAKES BRANCH		...	
(Berkeley)—Source to the boundaries of the Pinelands Protection and Preservation Area at the Garden State Parkway	*PL*	*ROWANDS POND (Clementon)—Pond, inlet stream and outlet stream within Rowands Pond Wildlife Management Area*	*FW2-NT(C1)*
(Beachwood)—Garden State Parkway to Toms River*	*FW2-NT/SE1*	...	
...		INDEX D—Surface Water Classifications of the Passaic, Hackensack and N.Y. Harbor Complex Basin	
[OYSTER CREEK (Forked River)—Entire length]	*[FW2-NT]*	...	
*OYSTER CREEK		CANISTEAR RESERVOIR TRIBUTARY	FW1 *[[tm]]*
(Brookville)—Source to the boundaries of the Pinelands Protection and Preservation Area at the Garden State Parkway	*PL*	(Vernon)—The southern branch of the eastern tributary to the Reservoir	
(Forked River)—Garden State Parkway to Barnegat Bay*	*FW2-NT/SE1*	COOLEY BROOK	
...		(W. Milford)—Entire length, except segments *FW2-TP(C1)* described below	*FW2-TP(C1)*
[OYSTER CREEK (Forked River)—Entire length]	*[FW2-NT]*	(Hewitt)—Segments of the brook and all tributaries located entirely within Hewitt State Forest	FW1 [tp]
*OYSTER CREEK		...	
(Brookville)—Source to the boundaries of the Pinelands Protection and Preservation Area at the Garden State Parkway	*PL*	CUPSAW BROOK	
(Forked River)—Garden State Parkway to Barnegat Bay*	*FW2-NT/SE1*	*[(Skylands)]—Entire length, except segment described separately below	*[FW2-TM]*
...		(Skylands)—That segment of Cupsaw Brook within the boundaries of Ringwood State Park]*	*[FW2-TM(C1)]*
INDEX C—Surface Water Classifications—Delaware River Basin		*[(Skylands)]—Source to Cupsaw Lake dam, except segment described below	*FW2-NT*
...		(Skylands)—That segment of Cupsaw Brook above the dam and within the boundaries of Ringwood State Park	*FW2-NT(C1)*
ALMS HOUSE BROOK		(Skylands)—Cupsaw Lake dam to mouth*	*FW2-TM*
[(Andover)] *(Hampton)*—Source to, but not including, County Farm Pond	FW2-TM	...	
(Frankford)—County Farm Pond to Paulins Kill	FW2-NT	PACACK BROOK	
...		(Stockholm)—Source to Pequannock River, excluding Canistear Reservoir, except segments described separately below	FW2-NT
BIG TIMBER CREEK		(Canistear)—Brook and tributaries upstream of Canistear Reservoir located entirely within the boundaries of the Newark Watershed	FW1 *[[tm]]*
(Westville)—Entire length, except segment described below	FW2-NT	...	
[(Rowands Pond)]—Segment within the boundaries of Rowands Pond Wildlife Management Area]	*[FW2-NT(C1)]*	PILES CREEK—Entire length	*[FW2-NT/]*SE3
...		...	
[CRANBERRY LAKE (Byram)—Lake and its outlet stream within Cranberry Lake State Park]	*[FW2-TM(C1)]*	RINGWOOD CREEK	
CRANBERRY LAKE (Byram)	*[FW2-TM(C1)]*	(Ringwood)—Entire length, except segment described below	FW2-TM
*CRANBERRY LAKE OUTLET STREAM		(Sloatsburg)—Creek *[and tributaries]* within *[Ramapo Mountain]* *Ringwood* State Park	FW2-TM(C1)
(Byram)—Entire length within Cranberry Lake State Park	*FW2-NT(C1)*	...	
(Byram)—Stream outside of Cranberry Lake State Park*	*FW2-NT*	...	
...		...	

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INDEX E—Surface Water Classifications of the Raritan River ***and Raritan Bay*** Basin

...
HOOPSTICK BROOK *[(Oldwick)]* **FW2-NT**
(Bedminster)—Entire length
 ...
[MANALAPAN BROOK—(Jamesburg)—Source to Duhernal Lake dam] ***[FW2-NT]***
MANALAPAN BROOK (Jamesburg)—Source to Duhernal Lake dam, except tributary described separately below** ***FW2-NT
(Tennent)—That portion of the tributary at Tennent along the boundary of Monmouth Battlefield State Park* ***FW2-NT(C1)***
 ...

MIDDLEBROOK EAST BRANCH
[(Bound Brook)]* *(Springdale)—Entire length **FW2-TM**
WEST BRANCH (Martinsville)—Entire length **FW2-NT**
MAIN STEM (Bound Brook)—Confluence of East and West branches to Raritan River **FW2-NT**
 ...

NAVESINK RIVER
(Red Bank)—Source to a line starting at a point at the northeast end of Blossom Cove, bearing approximately 142 degrees T (True North), through navigational aid C23 to the south bank near Riverview Hospital ***[FW2-NT/]* SE1**
(Rumson)—River southeast of the line described above, except segment described below **SE1(C1)**
(Monmouth Beach)—All waters south and east of a line beginning on the northwesternmost point of land on Racoon Island (in the vicinity of the western extent of Highland Ave.) in Monmouth Beach, and bearing approximately 056 degrees T (True North) to the southernmost point of a small unnamed island, and then bearing approximately 091 degrees T to its terminus on the northernmost point of land located at the northern extent of Monmouth Parkway in Monmouth Beach and all waters south of a line beginning on the western shoreline (just east of Monmouth Parkway in Monmouth Beach) and bearing approximately 081 degrees T, intersecting Channel Marker Flashing Red 4 and Channel Marker Flashing Red 2 and terminating on the eastern shoreline of the Galilee section of Monmouth Beach. **SE1**
 ...

SOUTH RIVER
[(Manalapan)—Source]* *(Old Bridge)—Duhernal Lake to intake of the Sayreville Water Department*[, except tributary described below]* **FW2-NT**
[(Tennent)—That portion of the tributary at Tennent along the boundary of Monmouth Battlefield State Park] ***[FW2-NT(C1)***
(Sayreville)—Below the intake of the Sayreville Water Department **SE1**
 ...

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SWIMMING RIVER
(Red Bank)—Source to the intake of the Monmouth Consolidated Water Company at the Swimming River Reservoir dam (Red Bank)—Below the Swimming River Reservoir dam to the Navesink River **FW2-NT**
***FW2-NT/*SE1**
 ...

INDEX F—Surface Water Classifications of the Walkkill River (No change.)

INDEX G—Outstanding National Resource Waters
FW1 Waters
PL Waters

AGENCY NOTE: The complete Indices A through F are available for inspection at the State Library, Trenton, and at various county and municipal libraries throughout the State.

SUBCHAPTER 5. WASTEWATER DISCHARGE REQUIREMENTS

7:9-5.1 Scope of rules
(a) Unless otherwise provided by rule or statute, this subchapter shall constitute the rules of the Department of Environmental Protection concerning matters of policy with respect to the protection and enhancement of surface waters of the State, disinfection, and minimum treatment requirements pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

(b) This subchapter shall apply to effluent limitations and other requirements applicable to discharges into the surface waters of the State.

7:9-5.2 Construction
 These rules shall be liberally construed to permit the Department and its various divisions to discharge its statutory functions.

7:9-5.3 Definitions
 The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

- “BOD” means biochemical oxygen demand.
- “COD” means chemical oxygen demand.
- “Commissioner” means the Commissioner of the Department of Environmental Protection.
- “Department” means the New Jersey Department of Environmental Protection.
- “Discharge” means the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of the State or onto land or into wells from which it might flow or drain into said waters.
- “Discharger” means any person, corporation, municipality, sewerage authority or other legal entity, who causes, suffers, or allows any discharge.
- “Disinfection” means the removal, destruction or inactivation of pathogenic and indicator organisms.
- “EC50” means the median effective concentration of a toxic substance. Generally, this is a statistical estimate of the concentration that has a specified ***adverse*** effect on 50 percent of the test organisms under specified test conditions*[,]**, based on the results of an acute bioassay.*
- “Lake, pond, or reservoir” means any impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water,

excluding sedimentation control and stormwater retention/detention basins.

"LC50" means the median lethal concentration of a toxic substance. Generally, this is a statistical estimate of the concentration that has a specified effect on 50 percent of the test organisms under specified test conditions***[.]****, based on the results of an acute bioassay.*

"Level of treatment" means the degree of waste removal and accompanying residual wastewater effluent to be attained by any discharger.

"MG/L" means milligrams per liter.

"Pollutant" means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, munition, chemical waste, biological material, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, or agricultural waste or other residue discharged or otherwise entering into the waters of the State.

"TOC" means total organic carbon.

"Toxic substance" means those substances, or combination of substances, which upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly through food chains, will, on the basis of information available to the Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformation in such organisms or their offspring.

"Water quality standards" means the designated uses and the physical, chemical, biological and esthetic characteristics of a water body as described by ambient water quality criteria, set forth in N.J.A.C. 7:9-4*[.1 et seq.]*

7:9-5.4 Statements of policy

(a) The following are general statements of policy:

1. It shall be unlawful for any person to discharge any pollutant into waters of the State, except in conformity with a valid permit issued by the Commissioner or by the Administrator of the United States Environmental Protection Agency.

***i. For those portions of the New York Harbor area where seasonal disinfection was allowed under the wastewater disinfection requirements contained in "Treatment of Wastewater Discharged into Surface Waters of the State" as adopted in March 1981, compliance with the provisions of paragraph 1 above is not required until the provisions of Section 2.05(b) of the Interstate Sanitation Commission's Water Quality Regulations (as amended) become effective on July 1, 1986. In the interim the wastewater disinfection requirements of the 1981 regulations, regarding seasonal disinfection, will remain in effect.**

ii. The Department may consider applications to undertake scientific studies for the purposes of evaluating the effectiveness of existing and/or proposed disinfection practices. Such studies, including any participating discharges, must be approved in advance by the Department.*

2. It shall be unlawful for any person to build, install, modify or operate any facility for the collection, treatment or discharge of any pollutant, except after approval by the Department pursuant to regulations adopted by the Commissioner.

3. The protection and enhancement of the quality and function of the waters of this State into which effluents are discharged is a principal concern of the Department when considering the approval of permits to discharge or the designs of proposed facilities for the collection, treatment or discharge of pollutants.

4. The minimum level of treatment required for any wastewater must be such that discharges will meet effluent limitations established pursuant to N.J.A.C. 7:9-5.8 (where applicable) or Sections 301, 306 and 307 of the Federal Clean Water Act, whichever are more stringent, and shall not cause any of the provisions contained in N.J.A.C. 7:9-4.1 et seq. to be contravened.

5. No discharger shall have the privilege of using the entire theoretical capacity of a surface water to receive waste discharges.

6. The policies for interstate waters are:

i. The minimum level of treatment for wastewater treatment facilities that discharge treated wastewater to the Delaware River, including freshwater and saline water tidal tributaries to the Delaware River and Delaware Bay, shall be as established in N.J.A.C. 7:9-5.8 (where applicable) or pursuant to Sections 301, 306 and 307 of the Federal Clean Water Act whichever is more stringent.

ii. The minimum level of treatment for wastewater treatment facilities that discharge treated wastewaters to waters under the jurisdiction of the Interstate Sanitation Commission in the New Jersey-New York Metropolitan area shall be as established in N.J.A.C. 7:9-5.8 (where applicable), or in accordance with the current Interstate Sanitation Commission's Water Quality Regulations (and subsequent revisions), or in accordance with Sections 301, 306 and 307 of the Federal Clean Water Act, whichever is more stringent.

(b) The following are statements of policy concerning disinfection of wastewater:

1. All wastewaters that could contain pathogenic organisms shall receive continuous year round disinfection prior to their discharge into waters of the State.

2. In order to maintain adequate disinfection of all treated wastewaters while protecting both human health and the aquatic biota from the deleterious effects of chlorine and its disinfection by-products, the Department requires the efficient use of chlorine when it is used as a disinfectant.

3. The Department encourages the use of alternatives to chlorination for disinfection provided that the following can be demonstrated:

i. The alternative method is effective in the removal of viable pathogens and indicators of pathogenic organisms; and

ii. The alternative method is safe and will have a less deleterious effect on the health of humans who may ingest or come into contact with waters receiving these discharges than chlorination would; and

iii. The alternative method will have a less deleterious effect on the aquatic environment, including its biota, than chlorination would and will not result in a contravention of prevailing surface water quality standards.

4. Dechlorination may be required to protect or attain the designated uses set forth in N.J.A.C. 7:9-4.12 and 4.13.

5. Unless it can be demonstrated that a disinfectant and its by-products are nonpersistent, the disinfectant and its by-products shall be considered to be persistent for purposes of determining water quality based effluent limitations.

7:9-5.5 Use of indicators of pollution levels

In applying the minimum treatment requirements of N.J.A.C. 7:9-5.8, the Department may use TOC or COD in place of, or in combination with, BOD when, in the Department's judgement, it would be more appropriate to use them as indicators of pollution levels.

7:9-5.6 Dilute industrial process wastewater

For dilute industrial process wastewater, the percent BOD (or other indicator) reduction, as set forth in N.J.A.C. 7:9-

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5.8, may be modified, upon request, provided it has been demonstrated to the satisfaction of the Department that the highest degree of waste treatment determined to be practicable by the Department will be applied.

7:9-5.7 Effluent standards

(a) The effluent standard for toxic discharges is that, at a minimum, no effluent shall be more toxic than an LC50*,* or ***an* EC50 *(based on daphnid immobilization)*** of 50 percent (by volume)*,* as determined by acute definitive bioassay(s) conducted in conformance with N.J.A.C. 7:9-18*[,]**, **using the approved representative species considered to be the most sensitive to the discharge, as designated by the Department.***

(b) The effluent standard for phosphorus discharged to freshwater lakes, ponds, reservoirs, or tributaries to these

ENVIRONMENTAL PROTECTION

waterbodies is that, at a minimum, no effluent shall contain*[, as a monthly average,]* more than 1.0 mg/l total phosphorus (as P), ***as a monthly average,*** unless the discharger*(s)* ***[can demonstrate that it will not result in a violation of Water Quality Standards.]* ***to such a waterbody can demonstrate that a less stringent requirement will not result in a violation of the Surface Water Quality Standards (N.J.A.C. 7:9-4) or that the control of point sources alone, in the absence of effective nonpoint source controls, will not result in a significant reduction of phosphorus loadings to the waterbody.*****

7:9-5.8 Minimum Treatment Requirements

These minimum treatment requirements apply *[in all cases]* *to all discharges* where effluent limitations based upon water quality studies acceptable to the Department have not been developed*[.]* *and are required by N.J.A.C. 7:9-4.5(e)4 *or 4.6(a).*

Watershed	Classifications	% BOD*5* Removal*	BOD*5* Maximum (mg/l)**	Discharge Type
Atlantic Coastal Plain	FW2,SE1	95	15	All
	SC	85	40	Domestic or Domestic in combination with Industrial
	SC	85	--	Industrial
Delaware River Basin	FW2,SE1,SE2	90	25	All
	Main Stem - All Zones	As set forth in Water Quality Standards for the Delaware River Basin;; Resolution 67-7 of the DRBC; April 26, 1967 and subsequent revisions		All
Hackensack River Basin	FW2,SE1	90	25	All
	SE2,SE3	85	40	All
Passaic River Basin (including Newark Bay)	FW2	90	25	All
	SE2,SE3	85	40	All
Raritan River Basin (including Raritan Bay and Sandy Hook Bay)	FW2	90	--	All
	SE1	85	--	All
Wallkill River Basin	FW2	95	15	All
Hudson River, Kill Van Kull, and Arthur Kill Basins	FW2,SE2,SE3	85	--	All

* Minimum percent reduction of BOD*5* at all times including any four-hour period of a day when the strength of the wastes to be treated might be expected to or actually exceeds average conditions.

** Average over any four-hour period of a day, including periods when the strength of the wastes to be treated might be expected to or actually exceeds average conditions.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Endangered and Nongame Wildlife

Adopted Amendments: N.J.A.C. 7:25-4.2, 4.14 and 4.17

Proposed: March 4, 1985 at 17 N.J.R. 516(a).
 Adopted: April 25, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
 Filed: April 29, 1985 as R.1985 d.251, **without change**.
 Authority: N.J.S.A. 13:1B-3 and 23:2A-1 et seq.
 Effective Date: May 20, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): March 25, 1989.
 DEP Docket No: 006-85-01.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

7:25-4.2 Permit required
 (a)-(b) (No change.)
 (c) The department may suspend the permit described in (a) above for up to six months upon the violation of any permit condition or any regulations appearing at N.J.A.C. 7:25-4. The department may revoke the permit described in (a) above upon finding in any five-year period two or more violations of any permit condition or any regulations appearing at N.J.A.C. 7:25-4. No permit shall be issued to the violator within two years from the date of the second violation, or within three years from the date of the third or subsequent violation.

1. The violator may request a suspension or revocation hearing, as the case may be, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1-1 et seq.

2. The request for suspension or revocation hearing must be received in writing by the department within 20 days from the notice of intent to suspend or revoke the permit.

7:25-4.14 Requirements for possession of endangered wildlife species

(a)-(e) (No change.)
 (f) The department may suspend the permit described in (a) above for up to two years upon the violation of any permit condition or any regulations appearing at N.J.A.C. 7:25-4. The department may revoke the permit described in (a) above upon finding in any five-year period two or more violations of any permit condition(s) or any regulations appearing at N.J.A.C. 7:25-4. No permit shall be issued to the violator within two years from the date of the second violation, or within three years from the date of the third or subsequent violation.

1. The violator may request a suspension or revocation hearing, as the case may be, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1-1 et seq.

2. The request for suspension or revocation hearing must be received in writing by the department within 20 days from the notice of intent to suspend or revoke the permit.

7:25-4.17 Defining status of indigenous nongame and endangered wildlife species of New Jersey
 (a) The following table defines the status of indigenous nongame and endangered wildlife species of New Jersey:
 . . .

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Permit to Kill Deer

Adopted New Rule: N.J.A.C. 7:25-23

Proposed: February 19, 1985 at 17 N.J.R. 350(b).
 Adopted: April 25, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
 Filed: April 29, 1985 as R.1985 d.250, **without change**.
 Authority: N.J.S.A. 13:1B-3, 23:4-42 and 23:4-48.

Effective Date: May 20, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): May 20, 1990.
 DEP Docket No.: 003-85-01.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 23. PERMIT TO KILL WILD DEER

7:25-23.1 Scope
 This subchapter shall constitute the rules governing the killing of deer, reasonably believed to be causing damage to crops on lands under cultivation, which, absent these rules, would be proscribed by the State Game Code, N.J.A.C. 7:25-5. Provisions for this exception to the State Game Code appears therein at N.J.A.C. 7:25-5.31.

7:25-23.2 Purpose
 These rules provide the owner or lessee of cultivated lands a permit to kill wild deer reasonably believed to be causing damage to seeded cultivated grasses or planted crops.

7:25-23.3 Construction
 These rules shall be liberally construed to permit the Department and the division to effectuate the purpose of N.J.S.A. 23:4-42.

7:25-23.4 Definitions
 The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Agent” means the person designated on the permit as an authorized agent of the permittee and whose signature is affixed to the permit.

“Department” means the Department of Environmental Protection.

"Division" means the Division of Fish, Game and Wildlife.

"Lands under cultivation" means pasture fields seeded with cultivated grass or land on which planted crops are growing.

"Permit" means the Permit to Kill Wild Deer.

"Permittee" means the owner or lessee of lands under cultivation to whom a permit is issued by the division.

"State Game Code" means the regulations providing for the management of game birds, game animals, and fur-bearing animals promulgated by the Fish and Game Council pursuant to N.J.S.A. 13:1B-30 and appearing at N.J.A.C. 7:25-5.

7:25-23.5 Permit required; authorized permittee; agents

(a) No person shall hunt for, pursue, shoot at, take, kill, wound or attempt to take, kill or wound a deer of any description prohibited by the provisions of the State Game Code N.J.A.C. 7:25-5 or hunt for, pursue, shoot at, take, kill, wound or attempt to take, kill, or wound any wild deer at any time except during the period permitted by the State Game Code, or kill in any one year more than the number of deer permitted by the State Game Code unless having on their person a current, valid permit to kill wild deer issued by the division.

(b) No person shall be issued the permit unless he or she is the owner or lessee of any land, at least five acres of which constitutes lands under cultivation.

(c) No person shall be issued the permit unless and until he or she makes a reasonable showing to the division, confirmed by a field investigation performed by division personnel, of substantial deer-caused damage to seeded cultivated grasses or planted crops. Under exigent circumstances, the permit may be issued for one day only without prior confirmation of necessity by field investigation; provided that within seven days thereafter a field investigation shall be performed by division personnel. Should the division then determine that conditions failed to warrant the issuance of the permit, no permit shall subsequently be issued to the same person without a prior field investigation confirming the necessity therefor.

(d) No person, other than the permittee, shall have on their person the permit unless that person is designated on the permit as the agent of the permittee.

(e) No person convicted of a violation of any provision in N.J.S.A. 23:4-42 to -48 shall, within five years of conviction thereof, lawfully hunt for, pursue, shoot at, take, kill, wound or attempt to take, kill, or wound any wild deer pursuant to the permit.

1. A permittee or agent killing deer under the permit must possess a valid and proper New Jersey firearm hunting license or New Jersey firearm purchaser identification card.

7:25-23.6 Permit conditions

(a) The permittee and the agent shall adhere to the following conditions:

1. Conform with all Federal, State, and local statutes, rules, codes, and ordinances pertaining to the discharge of firearms;

2. Use only 10, 12, 16, or 20 gauge shotguns loaded with rifled slugs or 10 or 12 gauge buckshot to kill wild deer;

3. Firearms shall not be discharged from any vehicle;

4. Hunt or kill deer pursuant to the permit only on those lands of the permittee specified on the permit and only during those hours specified on the permit;

5. Display the permit to any person requesting visual inspection thereof;

6. Dead deer shall be reported to the appropriate district law enforcement office specified on the permit, within 12 hours of killing, by calling the telephone number specified on the permit;

7. Deer killed pursuant to the permit shall not be sold, bartered, or consumed for food by the permittee or the agent;

8. Deer killed pursuant to the permit may be donated by the permittee only as authorized by the division;

9. Dead deer disposal shall be the responsibility of the permittee and shall be effected in compliance with State and local statutes, rules, codes, and ordinances;

10. Dead deer shall be transported for disposal only as authorized by the division;

11. The permit shall expire as specified on the permit; and

12. Within two weeks of the expiration of the permit, the permittee shall file with the division a written report giving the date and sex of every deer killed under the permit.

7:25-23.7 Liability

The permittee shall assume all liability for any damage or injury caused while attempting to kill wild deer under the permit and shall keep, save, and hold the division, the department and the State of New Jersey harmless from loss from all claims, loss, liability, expense or damage in connection with the issuance of, and activities taken pursuant to, the permit.

7:25-23.8 Penalties

Pursuant to N.J.S.A. 23:4-48, any person violating any provision of this subchapter shall be liable to a penalty of not less than \$100.00 nor more than \$500.00 for the first offense and not less than \$300.00 nor more than \$1000.00 for the second and each subsequent offense.

(a)

DIVISION OF WASTE MANAGEMENT

Hazardous Waste Criteria, Identification, and Listing

Hazardous Waste from Non-Specific Sources; Hazardous Constituents

Adopted Amendments: N.J.A.C. 7:26-8.13 and 8.16

Proposed: February 19, 1985 at 17 N.J.R. 354(a).

Adopted: April 29, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: April 29, 1985 as R.1985 d.248, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1E-6 and 13:1D-9.

Effective: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): August 6, 1986.

DEP Docket No.: 005-85-01.

Summary of Public Comments and Agency Responses:
No comments received.

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ENVIRONMENTAL PROTECTION

Summary of Revisions to Proposal:

The Department's proposed amendment to add 3-chloropropene (allyl chloride) was misspelled in the February 19, 1985 issue of the Register and appears corrected in this adoption notice.

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

7:26-8.13 Hazardous Waste from Non-specific Sources

(a)	Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
	Generic
		F024	Wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor cleanout wastes from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent dessicants, wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in 7:26-8.14.)	(T)

7:26-8.16 Hazardous constituents

(a) The hazardous constituents criteria for listing hazardous wastes (see N.J.A.C. 7:26-8.6) are listed below. Test methods approved by the Department shall be used in determining whether the waste in question contains a given hazardous constituent.

...
2-Chloro-1, 3-butadiene (chloroprene)

...
3-Chloropropene (allyl chloride) *[3-Chloro-propene (allyl chloride)*]

(a)

DIVISION OF WASTE MANAGEMENT

Letter of Credit Wording

Adopted Amendment: N.J.A.C. 7:26-9.10, 9.11 and Appendix A

Proposed: February 4, 1985 at 17 N.J.R. 241(a).
Adopted: April 29, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: April 29, 1985 as R.1985 d.247, **without change**.
Authority: N.J.S.A. 13:1E-6.
Effective Date: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): October 8, 1986.
DEP Docket No. 078-85-01.

**Summary of Public Comment and Agency Responses:
No comment received.**

Full text of the adoption follows.

7:26-9.10 Financial requirements for facility closure

- (a)-(e) (No change.)
- (f) The owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from the options, as specified in (f)1 through 5 below, except the option in (f)3 is not available to owners or operators of existing facilities until they have received a permit:
 - 1.-3. (No change.)
 - 4. Closure letter of credit requirements are as follows:
 - i.-iv. (No change.)
 - v. The letter of credit must be irrevocable and issued for a period of at least one year.
 - (1)-(2) (No change.)
 - vi.-x. (No change.)
 - 5.-8. (No change.)

7:26-9.11 Financial requirements for facility post-closure care

- (a)-(c) (No change.)
- (d) The owner or operator of a facility subject to post-closure monitoring or maintenance requirements must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility. He must choose from the following options except that the option in (d)3 is not available to owners or operators of existing facilities until they have received a permit:
 - 1. Post-closure trust fund requirements are as follows:
 - i.-xi. (No change.)
 - xii. The Department will agree to termination of the trust when:
 - (1) (No change.)
 - (2) The Department releases the owner or operator from the requirements of this section in accordance with (d)8 below.
 - 2. (No change.)
 - 3. Requirements for the surety bond guaranteeing performance of post-closure care are as follows:
 - i.-ix. (No change.)
 - x. The owner or operator may cancel the bond if the Department has given prior written consent. The Department will provide such written consent when:
 - (1) (No change.)
 - (2) The Department releases the owner or operator from the requirements of this section, in accordance with (d)8 below.
 - xi. The surety will not be liable for deficiencies in the performance of post-closure care by the owner or operator after the Department releases the owner or operator from the requirements of this section, in accordance with (d)8 below.
 - 4. Post-closure letter of credit requirements are as follows:
 - i.-iv. (No change.)
 - v. The letter of credit must be irrevocable and issued for a period of at least one year.
 - (1) The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or opera-

tor and the Department by certified mail of a decision not to extend the expiration date.

(2) (No change.)

vi.-x. (No change.)

xi. The Department will return the letter of credit to the issuing institution for termination when:

(1) (No change.)

(2) The Department releases the owner or operator from the requirements of this section, in accordance with (d)8 below.

6.-8. (No change.)

Appendix A of N.J.A.C. 7:26-9 was also being amended. Copies of the amended appendix are available for review at:

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

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

(a)

BUREAU OF AIR POLLUTION CONTROL

Ambient Air Quality Standards

Adopted Amendments: N.J.A.C. 7:27-13.1, 13.2, 13.5, 13.6, 13.7 and 13.8

Proposed: July 2, 1984 at 16 N.J.R. 1676(a).

Adopted: April 26, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: April 29, 1985 as R.1985 d.252, **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. 13:1D-5, 13:1D-9 and 26:2C-8.

Effective Date: May 20, 1985.

Operative Date: June 26, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): Exempt under U.S.C. 7401 et seq.

DEP Docket No.: 038-84-06.

Summary of Public Comments and Agency Responses:

The Department heard testimony from three persons at a public hearing on August 2, 1985 at the State Library in Trenton. The Department received written comments from seven persons regarding the proposed amendment. A summary of testimony presented and comments received on major issues and the Department responses thereto, are presented below. The Department has prepared a Report of Public Hearing which summarizes all relevant testimony received and Department responses thereto. **Copies** of the transcript of the hearing, the written comments regarding the proposed amendments, and the Report of Public Hearing are available

for inspection at the Bureau of Air Pollution Control, John Fitch Plaza, Labor and Industry Building, Room 1110, Trenton, New Jersey 08625.

Summary of Revisions to Proposal:

N.J.A.C. 7:27-13.1 Definitions. The Department added definitions of the following terms, which appear in N.J.A.C. 7:27-13.3 through 13.8, to clarify their use: "arithmetic mean", "geometric mean" and "ppm". The Department added definitions of the following terms, which appear in N.J.A.C. 7:27-13.3, 13.4 and 13.5, to explain that the computation of short term concentrations is not restricted to a particular block of time, but may cover any time period (of appropriate length) for which data are available: "eight-hour average concentration", "three-hour average concentration" and "24-hour average concentration."

N.J.A.C. 7:27-13.2 General ambient air quality standards. The Department reinstated the declaration in N.J.A.C. 7:27-13.2(a) that state of the art pollution control devices and methods will be required, to clarify the intent of the Department. N.J.A.C. 7:27-13.6 Ambient air quality standards for ozone. The Department reversed the order of two words in N.J.A.C. 7:27-13.6(a) to clarify the Department's original intent that only the highest one-hour average in each calendar day is considered in determining violations.

The comments on the proposed revisions addressed four general points which are briefly summarized below:

1. Comment: N.J.A.C. 7:27-13.1. Two parties commented on the proposed amendment to replace the phrase "procedures published and adopted" with "methods approved" in the definition of each pollutant. The commenters suggested that either the original language should be retained or that the United States Environmental Protection Agency (EPA) methods should be adopted by reference.

Response: Although the methods and procedures for ambient monitoring have not been formally published, the Department's Quality Assurance (QA) Plan contains the necessary description of procedures for collecting and analyzing the pollutants listed in N.J.A.C. 7:27-13. The QA Plan was submitted to EPA in December 1980. The Department has made the plan available to interested parties. The Department intends, at a later date, to publish the procedures for ambient monitoring in N.J.A.C. 7:27B (Air Test Methods). Until such time as N.J.A.C. 7:27B is so amended, the Department will continue to use the methods and procedures contained in the QA Plan.

2. Comment: N.J.A.C. 7:27-13.3, 13.4 and 13.6. Some commenters suggested that the Department eliminate the ozone secondary standard, the annual and 24-hour secondary SO₂ standards, and the annual secondary standard for particulates.

Response: All of these standards are more stringent than the national ambient air quality standards. However, the Federal Clean Air Act, as amended in 1977, 42 U.S.C. 7401 et seq., allows the State to set standards which are more stringent than Federal requirements. It is the Department's position that more stringent standards are required to protect the welfare of the public. Accordingly, the Department has retained these more stringent secondary standards.

3. Comment: N.J.A.C. 7:27-13.7. One commenter suggested that the Department reconsider its decision to eliminate the hydrocarbon standards.

Response: This standard was originally intended only as a guide for attaining the photochemical oxidant standard and,

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as such, the hydrocarbon standard was found to be technically inadequate.

4. Comment: Several objections were raised concerning the Department's interpretation of the existing N.J.A.C. 7:27-13 as requiring that the calculation of running means be used to determine compliance with the State's ambient air quality standards. The commenters asserted that current regulations, reference methods and background documents do not indicate that the Department has been using running means to determine compliance. These commenters assumed that block averages have been used, i.e. that the calculation of average concentrations has been restricted to particular blocks of time. Commenters further asserted that use of running means makes the State method of determining compliance more stringent than Federal methods.

Response: The Department has been using running means in determining compliance since the early 1970s. Use of the running mean method of calculating air quality levels is indeed slightly more stringent than use of the block average method. However, the State is not prohibited by the Federal Clean Air Act, as amended in 1977, 42 U.S.C. 7401 et seq., from setting standards which are more stringent than those used by EPA. No change was originally proposed in the practice of using running means. However, as a result of the concern expressed by the commenters and in order to clarify the Department's policy, the Department has added definitions in N.J.A.C. 7:27-13.1 which indicate that three-hour, eight-hour and 24-hour average concentrations are not restricted to a particular block of time.

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 13. AMBIENT AIR QUALITY STANDARDS

7:27-13.1 Definitions

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

"Arithmetic mean" means the sum of n numbers divided by n.

"Carbon monoxide (CO)" means a colorless, odorless, tasteless gas at standard conditions, having a molecular composition of one carbon atom and one oxygen atom and which, for purposes of this Subchapter, shall be collected and analyzed using methods approved by the Department.

"Eight-hour average concentration" means an average concentration for any eight consecutive hours for which data are available.

"Geometric mean" means the nth root of the product of n numbers.

"Lead" means the element lead, whether in its elemental state or as part of a chemical compound, and which, for purposes of this Subchapter, shall be collected and analyzed using methods approved by the Department.

"Nitrogen dioxide (NO₂)" means a gaseous compound at standard conditions, having a molecular composition of one nitrogen atom and two oxygen atoms and which, for purposes of this Subchapter, shall be collected and analyzed using methods approved by the Department.

"Ozone (O₃)" means a gas at standard conditions, having a molecular composition of three oxygen atoms and which, for

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purposes of this Subchapter, shall be collected and analyzed using methods approved by the Department.

"ppm" means parts per million by volume under standard conditions.

"Sulfur dioxide (SO₂)" means a colorless gas at standard conditions, having a molecular composition of one sulfur atom and two oxygen atoms and which, for purposes of this Subchapter, shall be collected and analyzed using methods approved by the Department.

"Suspended particulate matter" means any solid or liquid matter dispersed in the outdoor atmosphere which, for purposes of this Subchapter, shall mean the material collected and analyzed using methods approved by the Department.

"Three-hour average concentration" means an average concentration for any three consecutive hours for which data are available.

"24-hour average concentration" means an average concentration for any 24 consecutive hours for which data are available.

7:27-13.2 General ambient air quality standards

(a) Whereas air is vital to life and contamination of it to any degree is a condition to be endured reluctantly; and whereas our knowledge of the long-term harmful effects of low levels of contamination is incomplete and uncertain; therefore, it is the air quality objective of the Department to assure, at all times and throughout the territory of the State, ambient air of the highest purity ***achievable by the installation and diligent operation and maintenance of pollution source control devices and methods consistent with the lawful application of the most advanced state of the art*.**

(b) Furthermore, it is the objective of the Department, by prevention and correction, so to enhance the quality of the outdoor air that as a minimum, and throughout the State, air quality will be in accord with the numerical air quality standards for specific pollutants set forth in subsequent Sections of this Subchapter.

(c) (No change.)

7:27-13.5 Ambient air quality standards for carbon monoxide

(a) The primary and secondary air quality standards are:

1. During any 12 consecutive months, eight-hour average concentrations of carbon monoxide in ambient air may exceed ten milligrams per cubic meter (9 ppm) no more than once; and

2. During any 12 consecutive months, one-hour average concentrations may exceed 40 milligrams per cubic meter (35 ppm) no more than once.

7:27-13.6 Ambient air quality standards for ozone

(a) The primary air quality standard is:

1. During any 12 consecutive months, ***daily*** maximum ***[daily]*** one-hour average concentrations of ozone in ambient air may exceed 0.12 ppm (235 micrograms per cubic meter) no more than once.

(b) The secondary air quality standard is:

1. During any 12 consecutive months, one-hour average concentrations of ozone in ambient air may exceed 0.08 ppm (160 micrograms per cubic meter) no more than once.

- 7:27-13.7 Ambient air quality standards for lead
 - (a) The primary and secondary air quality standards are:
 1. During any three consecutive months, the arithmetic mean of 24-hour averages of lead concentrations in ambient air shall not exceed 1.5 micrograms per cubic meter.
- 7:27-13.8 Ambient air quality standards for nitrogen dioxide
 - (a) The primary and secondary air quality standards are:
 1. During any 12 consecutive months, the arithmetic mean concentration of nitrogen dioxide in ambient air shall not exceed 100 micrograms per cubic meter (0.05 ppm).

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(a)

THE COMMISSIONER

Clinical Laboratory Services

Adopted New Rule: N.J.A.C. 8:45

Proposed: February 4, 1985 at 17 N.J.R. 268(a).
 Adopted: April 29, 1985 by J. Richard Goldstein, M.D., Commissioner, Department of Health.
 Filed: April 29, 1985 as R.1985 d.243, with **technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 45:9-42.30, 26:1A-33.

Effective Date: May 20, 1985.

Operative Date: July 1, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): May 20, 1990.

Summary of Public Comments and Agency Responses:

COMMENT: Morristown Memorial Hospital: The commenter stated that the proposed Department of Health increase in charge for PKU testing from \$4.00 to \$6.00 would have a substantial impact on hospitals with a large number of births. It felt that since the increase was unbudgeted by the hospital and not incorporated in the 1985 DRG rates, it should be deferred until 1986.

RESPONSE: The Department believes that the proposed analytical fee increases are critically necessary to assure quality State laboratory services. In the area of Inborn Errors of Metabolism they are required to help offset the escalating costs of reagents for this test. The Department believes that hospitals in New Jersey have sufficient resources to absorb an increase in this area. Also, the \$6.00 fee for this testing includes not only PKU but also the tests for Hypothyroidism and Galactosemia.

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 1. LICENSURE OF CLINICAL LABORATORIES

8:45-1.1 Initial licensure

(a) Application for an initial license to conduct a clinical laboratory, as required under the provisions of Chapter 166, P.L. 1975, commonly known as the New Jersey Clinical Laboratory Improvement Act, shall be made on forms provided for that purpose by the New Jersey State Department of Health.

(b) Each license to operate a clinical laboratory will specify those laboratory procedures or categories of procedures which the laboratory is authorized to perform.

(c) No license issued under these regulations shall be transferable.

(d) A new license shall be obtained whenever the location, ownership or director of a clinical laboratory is changed.

(e) The license shall be conspicuously displayed by the licensee on the premises of a clinical laboratory.

(f) A separate license shall be required for each location.

8:45-1.2 Annual renewal of licensure

(a) All clinical laboratory licenses shall be issued on or before January 1 in each calendar year and shall expire December 31 in each calendar year.

(b) The Department will provide applications for licensure renewal on or before October 1 of each year to be completed properly and returned to the Department, together with appropriate licensure renewal fee, on or before the succeeding November 1. The Department will mail license renewals to clinical laboratories not later than January 1, of the succeeding year.

8:45-1.3 Licensure fees

(a) Initial and annual renewal licensure fees shall be identical and are prescribed by the following table. Fees noted are per each specialty.

Specialty	Total Number of Employees of Entire Laboratory†								
	1-4	5-9	10-19	20-29	30-39	40-44	50-69	70-89	90 or More
Urinalysis	\$35	\$40	\$45	\$50	\$55	\$60	\$65	\$70	\$75
Bacteriology	\$35	\$40	\$45	\$50	\$55	\$60	\$65	\$70	\$75
Mycobacteriology	\$35	\$40	\$45	\$50	\$55	\$60	\$65	\$70	\$75
Parasitology	\$35	\$40	\$45	\$50	\$55	\$60	\$65	\$70	\$75
Mycology	\$35	\$40	\$45	\$50	\$55	\$60	\$65	\$70	\$75
Virology	\$35	\$40	\$45	\$50	\$55	\$60	\$65	\$70	\$75
Serology	\$35	\$40	\$45	\$50	\$55	\$60	\$65	\$70	\$75
Hematology	\$35	\$40	\$45	\$50	\$55	\$60	\$65	\$70	\$75
Immunohematology	\$35	\$40	\$45	\$50	\$55	\$60	\$65	\$70	\$75
Routine Chemistry	\$35	\$40	\$45	\$50	\$55	\$60	\$65	\$70	\$75
Special Chemistry	\$35	\$40	\$45	\$50	\$55	\$60	\$65	\$70	\$75
Toxicology	\$35	\$40	\$45	\$50	\$55	\$60	\$65	\$70	\$75
Cytology	\$35	\$40	\$45	\$50	\$55	\$60	\$65	\$70	\$75
Cytogenetics and/or Tissue Typing	\$35	\$40	\$45	\$50	\$55	\$60	\$65	\$70	\$75
Collection Station (only)	\$35	\$40	\$45	\$50	\$55	\$60	\$65	\$70	\$75

† Exclusive of director, trainees in approved medical technologist schools, clerical and maintenance employees. Part-time

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employees are to be included, prorated to full-time equivalents.

SUBCHAPTER 2. LABORATORY CHARGES

8:45-2.1 Fees; generally

(a) Commencing *[April 1, 1985]* ***July 1, 1985***, the following changes will be made in the fee-for-service cost structure, Division of Public Health and Environmental Laboratories, New Jersey State Department of Health:

Laboratory Test

Inborn Errors of Metabolism (PKU, T., Galactosemia)	\$ 6.00
RPR Syphilis	\$ 5.00
Toxoplasmosis	\$ 9.00
FTA-ABS (Confirmatory Syphilis)	\$ 5.00
Rubella	\$ 6.00

(b) Commencing *[April 1, 1985,]* ***July 1, 1985***, the following newly established fee for service charges will go into effect:

Bacteriology

Isolation of Special Pathogens	\$25.00
Identification of Problem Cultures (Reference)	\$20.00
Susceptibility Studies (TB)	\$25.00
Mycology	\$25.00
Mycobacteriology (TB)	\$25.00
Parasitology	\$15.00

Serology

Non-syphilis Serology	\$ 6.00
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Virology

Viral Serology	\$20.00/case
Viral Isolation	\$20.00/case

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: January 21, 1985, at 17 N.J.R. 158(a).

Adopted: April 19, 1985 by the Drug Utilization Review Council, Leroy L. Schwartz, M.D., Chairman.

Filed: April 24, 1985 as R.1985 d.234, **with portions** of the proposal **not adopted** and portions not adopted but still **pending**.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

Summary of Public Comments and Agency Responses:

Regarding Vitamin B complex/mineral tabs (Berocca plus formula):

Roche objected to the proposed substitute for their Berocca Plus product, specifying that several ingredients in the proposed product, when assayed by Roche, did not meet potency

standards set by Roche. The Council thus chose to defer action on the proposed Berocca Plus substitute by the Kapital Company.

The following products and their respective manufacturers were **adopted**:

Allopurinol tabs 100, 300 mg	Danbury
Betamethasone Dipropionate cream, oint. 0.05%	Pharmaderm/BYK-Gulden
Betamethasone Dipropionate cream, oint. 0.05%	Fougera/BYK-Gulden
Betamethasone Dipropionate cream, oint. 0.05%	Savage/BYK-Gulden
Bromodiphenhydramine/Codeine Syrup	Bay
Chloral Hydrate caps, 250 mg	Pharmacaps
Chlorpropamide tabs 100, 250 mg	Chelsea, Pharm. Basics, Cord
Chlorpropamide tabs 100 mg	Zenith
Codeine/Pseudoephedrine/Tripolidine Syrup	Bay
Cyclandelate caps 200, 400 mg	Sidmak
Dexchlorpheniramine Syrup	Bay
Dicyclomine HCL 10, 20 mg	Drummer/Phoenix
Diethylpropion HCL tabs 25 mg	Drummer/Phoenix
Doxycycline Hyclate caps 50 mg	PAR
Doxycycline Hyclate caps 50, 100 mg	Superpharm
Furosemide tabs 20 mg	Superpharm
Furosemide tabs 80 mg	Cord
Hydralazine HCL tabs 10, 25, 50 mg	Superpharm
Hydrochlorothiazide tabs 25 mg	Drummer/Phoenix
Hydrochlorothiazide tabs 25, 50, 100 mg	Superpharm
Hydroflumethiazide tabs 50 mg	Chelsea
Hydroxyzine HCL tabs 10, 25, 50 mg	Superpharm
Indomethacin caps 25, 50 mg	Chelsea, Lederle
Isoxsuprine HCL tabs 10, 20 mg	Superpharm
Lindane 1% Shampoo, Lotion	Bay, NPC
Metronidazole tabs 500 mg	Drummer/Phoenix
Metronidazole tabs 250, 500 mg	Sidmak, Superpharm
Nylidrin HCL tabs 6, 12 mg	Sidmak
Nystatin Oral Susp., 100,000 u./ml	Bay, BYK-Gulden
Prochlorperazine Conc. 10 mg/ml	Bay
Sodium Polystyrene Sulfonate Powder	Bay
Thioridazine Oral Conc. 30 mg/ml and 100 mg/ml	Cord

The following products and their manufacturers were **not adopted**:

Deserpidine/Methyclothiazide 0.25/5, 0.5/5	Bolar
Disulfiram tabs 250, 500 mg	Sidmak
Ethaverine HCL E.R. caps 100 mg	Sidmak
Fluoxymesterone tabs 10 mg	Pharm. Basics
Hydrochlorothiazide 50/Reserpine 0.125 tabs	Cord
Hydroflumethiazide 50/Reserpine 0.125 tabs	Pharm. Basics
Labetolol HCL tabs 200, 300 mg	Schering
Medroxyprogesterone Acetate tabs 10 mg	Pharm. Basics
Papaverine HCL E.R. caps 150 mg	Sidmak
Prednisolone tabs 5 mg	Superpharm
Prednisone tabs 5, 10, 20 mg	Superpharm
Tetracycline HCL caps 250, 500 mg	Superpharm
Nitroglycerin E.R. caps 9 mg	Cord
Nitroglycerin E.R. caps 2.5, 6.5, 9 mg	Sidmak

The following products remain **pending**:

Aspirin, caffeine, propoxyphene caps	Phenonix
Amitriptyline tabs 10, 25, 50, 75, 100 mg	Superpharm
Brompheniramine/Phenylephrine Syrup	Bay
Chlorthalidone tabs 50 mg	Drummer/Phoenix

Diphenhydramine caps 25, 50 mg	Superpharm
Diphenoxylate/Atropine tabs	Superpharm
Hydroxyzine HCL tabs 10, 25, 50 mg	Sidmak
Meclizine HCL tabs 12.5, 25 mg	Sidmak
Methyldopa tabs 250, 500 mg	Mylan
Prenatal vits (Stuarnatal 1 + 1)	Par
Sodium Polystyrene Sulfonate susp.	Bay
Vitamin B complex/minerals (Berocca plus Formula)	Kapital

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: June 18, 1984, at 16 N.J.R. 1436(a).
 Adopted: April 19, 1985 by the Drug Utilization Review Council, Leroy L. Schwartz, M.D., Chairman.
 Filed: April 24, 1985 as R.1985 d.235, with portions of the proposal not adopted but still pending.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: May 20, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

Summary of Public Comments and Agency Responses:

Regarding thioridazine:
 Sandoz, manufacturers of Mellaril, objected in extensive detail to the proposed addition of any thioridazine products to the list. No specific negative comments were received from Sandoz within the comment period concerning the Bolar thioridazines. Specifically, Sandoz noted that the generics are not close enough to Mellaril in their blood levels to be clinically equivalent.

The Council, after reviewing Bolar's study on their 150 mg and 200 mg thioridazine, noted that the Bolar study met many of Sandoz's general objections in that the study was a multiple-dose study, and the blood levels achieved are similar to those of Mellaril.

The following product and its manufacturer were adopted:

Thioridazine HCL tabs 150, 200 mg	Bolar
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The following products remain pending:

Amitriptyline HCL tabs 10, 50, 75, 100 mg	Purepac/Kalipharma
Spirolactone tabs 25 mg	Purepac/Kalipharma
Thioridazine HCL tabs 10, 15, 25, 50, 100	Par
Thioridazine HCL tabs 100 mg	Chelsea

OFFICE OF ADMINISTRATIVE LAW NOTE: A related notice of adoption appears at 16 N.J.R. 2672(b) and at 17 N.J.R. 200(a).

(b)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: October 1, 1984, at 16 N.J.R. 2483(a).
 Adopted: April 19, 1985 by the Drug Utilization Review Council, Leroy L. Schwartz, M.D., Chairman.
 Filed: April 24, 1985 as R.1985 d.236, with portions of the proposal not adopted and portions not adopted but still pending.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: May 20, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

Summary of Public Comments and Agency Responses: No comments received.

The following product, with its manufacturer, was not adopted:

Thioridazine HCL tabs 10, 15, 25, 50 mg	Barr
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The following product, with its manufacturer, was adopted:

Clomiphene Citrate tabs 50 mg	Ikapharm
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The following products remain pending:

Hydrochlorothiazide tabs 50 mg	Quantum
Sulfacetamide Sodium Opth 10%, 15%, 30%	Solopak
Sulfasalazine tabs 0.5 g	VIP
Thioridazine HCL tabs 100 mg	Danbury
Thioridazine HCL tabs 100 mg	Barr

OFFICE OF ADMINISTRATIVE LAW NOTE: A related notice of adoption appears at 16 N.J.R. 201(a).

HIGHER EDUCATION

(c)

BOARD OF HIGHER EDUCATION

State Colleges

Policies and Procedures

Adopted Repeals: N.J.A.C. 9:2-1, 2, 3, 8 and 9

Adopted New Rules: N.J.A.C. 9:6

Adopted Amendments: N.J.A.C. 9:6-1.2, 3.1, 3.4, 3.5, 3.6, 3.11, 4.4, 4.7, 5.2 and 5.13

Proposed: August 20, 1984 at 16 N.J.R. 2209(a) (New Rules) and January 21, 1985 at 17 N.J.R. 160(a) (Amendments).

Adopted: April 26, 1985 by Board of Higher Education, T. Edward Hollander, Secretary.

Filed: April 29, 1985 as R.1985 d.244, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 18A:64-6 and 18A:3-14.

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Effective Date: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): May 20, 1990.

Summary of Public Comments and Agency Responses:

Two letters of comments concerning the proposed new rule were received.

Comment: The deletion of a portion of previous N.J.A.C. 9:2-2 as recodified in 9:6-3.1 will result in the exclusion of faculty participation in governance in a systematic, meaningful and formal way.

Response: The language deleted was non-regulatory language and thus not properly included in the rule. New language requiring each board of trustees to establish formal means to assure faculty participation has been added at N.J.A.C. 9:6-3.1(b).

Comment: N.J.A.C. 9:6-3.4 violates the provisions of the Agreement between the State of New Jersey and the Council of New Jersey State College Locals, NJSFT-AFT, AFL-CIO, Article XIII, Section G by allowing initial faculty appointments of more than one year.

Response: The agency believes that this provision would be helpful to State colleges in their recruitment of faculty. Further, the agency rejects the notion that it has no authority to adopt such a rule because of the existing contractual provision. The current state of the law in New Jersey does not prohibit the promulgation of a rule in the face of a contractual provision to the contrary.

Comment: Assistant professors should not be required to obtain their doctorate prior to reappointment to a fourth year, as required by N.J.A.C. 9:6-3.5, as three years is not enough time to complete such a degree while teaching a full-time academic load.

Response: The agency rejected this suggestion as it believes that the movement of the State colleges toward academic excellence requires that faculty in the professional ranks be terminally qualified. Further, N.J.A.C. 9:6-3.5(a)2 allows for the waiver of this requirement by each board of trustees in exceptional circumstances.

Comment: N.J.A.C. 9:6-3.5(a)3 and 4 which stipulates that persons wishing promotion to the associate and full professor ranks must demonstrate evidence of excellence in achievement and service beyond the level of persons in their current rank is language which is vague, unenforceable and subject to discriminatory application.

Response: All promotion recommendations are made on judgments regarding the quality of the contributions of the applicant. Whenever quality judgments enter an equation, there is the possibility of error. Nevertheless, the agency believes that excellence requires that the senior faculty ranks be reserved for the best faculty. It is wholly consistent with the goal of excellence to have the faculty member interested in promotion to or within the senior ranks to demonstrate accomplishments beyond that expected of a person in his or her current rank.

Comment: Waiver of the requirement of a terminal degree prior to reappointment to a fourth year as allowed under N.J.A.C. 9:6-3.5(a)2 is vague and susceptible to discriminatory application.

Response: The agency understands that in any such judgment, a possibility of error exists. However, the agency believes that in rare circumstances, reappointment without the

terminal degree could be warranted. The agency believes it is in the best interests of the State colleges to give each board of trustees discretion in this area.

Comment: In fairness to the faculty, the effective date of the fourth year terminal degree requirement set forth in N.J.A.C. 9:6-3.5(a)2 should be modified to allow adequate notice for new hires.

Response: The agency agrees and has amended N.J.A.C. 9:6-3.5(a)2 accordingly.

Comment: N.J.A.C. 9:6-3.8 which grants the Board of Higher Education to set salary schedules should be eliminated as this is a subject which should be negotiated.

Response: The agency is granted statutory authority to set salary schedules for State college employees. Further, not all State college employees are members of a bargaining unit.

Comment: Current language of N.J.A.C. 9:6-3.11 would prohibit an adjunct faculty member from teaching more than two credits in a semester if this load were in the form of two one-credit classes and is thus too restrictive.

Response: The agency agrees and has amended the language of N.J.A.C. 9:6-3.11 to allow adjuncts to teach no more than eight credit hours in any one semester.

Comment: N.J.A.C. 9:6-3.13 is too vague and does not establish which faculty ranks are eligible for appointment to emeritus status.

Response: The agency believes that the language of N.J.A.C. 9:6-3.13 is clear. Of the faculty ranks, only a full professor is eligible to receive emeritus status.

Comment: The reference to procedural standards in Louis Joughin, ed., "Academic Freedom and Tenure," 1967 should not be deleted in the recodification of N.J.A.C. 9:2-2.22 into 9:6-3.14.

Response: The agency deleted this language as non-regulatory language which was not proper for inclusion in the rule.

Comment: Use of the word "shall" in N.J.A.C. 9:6-4.1 to 4.4 should be replaced with the word "should" to provide greater flexibility in tenure determinations.

Response: The agency has used the word "shall" in these areas to reflect the mandatory nature of those provisions. Use of the word "should" would not require the adherence to those provisions by the colleges but would only be discretionary.

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]*).

CHAPTER 6 STATE COLLEGES

SUBCHAPTER 1. ADMISSIONS POLICIES

9:6-1.1 General policies

(a) Students seeking admission to New Jersey State Colleges as freshmen shall submit:

1. An official transcript showing graduation from an accredited secondary school, courses attempted, completed or in process, and rank in class; or a high school equivalency certificate (G.E.D.). The courses completed or in process must total a minimum of 16 units of college preparatory subjects, including four units of English, three units of mathematics, one of which must be algebra, two units of social studies, and two units of laboratory science. (For students who matriculate

prior to July 1, 1987, the mathematics requirement shall be two units and the science requirement one unit). The five additional units of academic electives shall be selected from courses in the above college preparatory subjects and foreign languages; and

2. Examination scores of the Scholastic Aptitude Test of the College Entrance Examination Board or the American College Testing Program.

(b) The colleges shall notify the prospective student of his or her acceptance or rejection at any time after the candidate's file is complete. The student shall not be required to accept or reject the offer of admission before May 1 of the year of entering college, except when the application is made as part of an early admission process. This subsection shall not preclude any college from establishing a procedure for early decisions and commitments by students. In reaching admissions decisions, institutions shall apply the same standard for students applying for regular admission or late consideration (after May 1).

(c) The policies set forth in this section are minimum standards and may be raised at the discretion of individual colleges.

9:6-1.2 Standards

(a) The Board of Higher Education believes that one key to high standards in the state colleges is adherence to sound admission requirements. As such, the aforementioned policies apply without exception to all regularly admitted students. However, the board recognizes that admissions standards must be administered flexibly in order to meet the specific educational objectives of each institution and in order to provide equitable educational opportunity. Therefore, the state colleges are authorized to make exceptions to the requirements for high school graduation and course distribution, as stated in N.J.A.C. 9:6-1.1(a)1, for students admitted through a college's special admissions program. In accordance with Board of Higher Education policy, students admitted under the Educational Opportunity Fund program shall constitute a minimum of ten percent of the New Jersey residents in the entering freshman class, and students admitted through the colleges special admissions program shall not exceed ten percent of the entering freshman class or other proportion approved by the Board of Higher Education.

(b) While discretion in the administration of these standards does and should rest with the colleges, it is the Board's belief that the intention of such exceptions is to strengthen the quality and diversity of the student body. The Board further wishes to underscore its conviction that academic excellence is inseparable from well-prepared and well-motivated students, and that the intent of these regulations is to provide flexibility, not a weakening of standards.

SUBCHAPTER 2. BACCALAUREATE DEGREE STANDARDS

9:6-2.1 Baccalaureate degree holder

(a) A baccalaureate degree holder should be able to deal creatively and realistically with personal, community, national and international concerns. A college graduate should be able to think logically, to act rationally, and to make appropriate decisions about the future based on past and present conditions and circumstances. He or she should also possess an understanding of ethics and aesthetics as a foundation for the development of a value system that can be translated into effective participation in society.

(b) To qualify for the baccalaureate degree, a student must:

1. Achieve mastery in the use of the English language;
2. Understand and be able to apply the scientific method and basic scientific and mathematical concepts;
3. Have gained a perspective of the social sciences, knowledge about the interaction of human groups, about world and United States history and institutions, and about comparative economic systems;
4. Have acquired basic knowledge and competencies in the humanities, such as literature, philosophy, and the arts, and a knowledgeable appreciation of the value of the humanities to the individual and to society; and
5. Have achieved mastery of a subject of inter-disciplinary field and be aware of his or her specialty's relationship to a career or graduate school experience.

(c) The competencies of (a) and (b) above must be carefully and appropriately evaluated by the faculty.

9:6-2.2 Distribution standards for the baccalaureate degree

(a) Baccalaureate programs at the State Colleges comprise general education, major concentration, and elective coursework.

(b) The Board of Higher Education considers that the role of an institution of higher education is to provide broad knowledge of the world in which we live by study of the major divisions into which man's accumulated knowledge has traditionally been organized. This would imply some substantial exposure to several disciplines before a student may be awarded a baccalaureate degree. Approximately one-half of the student's time during a baccalaureate program shall be devoted to acquiring a solid base of understanding of the accumulated store of knowledge. An exception may be made for specialized degree programs as hereinafter indicated. In all cases, this broad general educational base can be established through survey courses, inter-disciplinary programs which relate major fields or bodies of knowledge, and depth courses in the various disciplines taught by specialists and carefully chose because of the insight these particular courses can provide into the nature of the larger discipline.

(c) A student shall pursue a discipline or course of study in sufficient depth to be acquainted with both the basic body of knowledge therein and the frontiers to which it reaches. The credit requirements for major areas of concentration will vary according to type of program:

1. Within a Bachelor of Arts program, major courses shall represent one-quarter to one-third of the degree program.

2. Within a Bachelor of Science program, up to one-half of the degree may be taken in major or required collateral courses.

3. Within specialized degree programs, such as the B.F.A., the B. Mus. and programs in the regulated professions, major course requirements may exceed one-half of the total required for the degree. While the major component of some specialized degree programs requires a heavy commitment, in no case shall the curriculum be so specialized that the aims of a liberal undergraduate education are relegated to a position of secondary importance.

(d) Within the remaining portion of the curriculum the student's time shall be devoted to elective subjects.

9:6-2.3 Basic skills for college level work

(a) All students matriculating as freshmen, whether admitted through the regular or exceptional procedure at each institution, must take the New Jersey Basic Skills Placement Test. All students found deficient in any of the basic skills according to the standard of the institution are to be placed in the appropriate remedial classes in the first semester.

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(b) Remediation of skills deficiencies shall occur no later than by the completion of the freshman year. Prior to pursuing an academic curriculum in depth, those students who entered the college with unacceptable preparation in the basic skills must have raised their performance to a level deemed appropriate by the college. The college may wish to use satisfactory course performance or some standardized assessment technique to make such judgments. The college must also ensure that graduates have mastered reading, written English, and mathematical concepts.

(c) In the administration of these policies, no credit toward a baccalaureate degree may be awarded for basic skills courses. Colleges may grant credit toward the baccalaureate for satisfactory performance in college-level academic courses that have an additional skills component.

SUBCHAPTER 3. ACADEMIC PERSONNEL POLICIES

9:6-3.1 Academic freedom

(a) Academic freedom derives from the nature of the quest for knowledge. It is essential to the full search for truth and its free exposition, applies to both teaching and research, and shall not be abridged or abused. Academic freedom does not relieve the employee of those duties and obligations which are inherent in the employer-employee relationship.

(b) Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it responsibilities correlative with rights.

1. Employees are entitled to full freedom in research and in the publication of results.

2. An employee is entitled to freedom in the classroom in discussing his or her subject.

3. Employees are citizens and members of a learned profession. When the employee speaks or writes as a citizen, he or she is free from institutional censorship or discipline, but should not represent himself as a spokesperson for the institution.

(c) Closely related to the matter of academic freedom is meaningful and systematic involvement of faculty in the governance of the college. Each board of trustees shall establish formal means to assure that faculty views are taken into account regarding such matters as academic policy, curriculum development, faculty and other academic personnel decisions.

9:6-3.2 Definitions

The following words and terms, when used in the State and county college tenure law, N.J.S.A. 18A:60-6 et seq., shall have the following meanings unless the context clearly indicates otherwise.

"Academic year" means the period from September 1 through June 30.

9:6-3.3 Appointments

(a) Appointments to the faculty of a New Jersey State College are made by the board of trustees as provided by law.

(b) In making appointments, the board of trustees acts upon the nomination by the president, which is made after appropriate consultation with faculty and administrative officials.

(c) Appointments are subject to the availability of funds and proper recording.

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9:6-3.4 Period of appointment

(a) An initial appointment may be made for up to three years and shall be made in conformance with one or all of the following criteria:

1. To secure the employment of a highly desirable prospective faculty person in a subject area of high demand/low availability of qualified faculty;

2. To attract highly qualified faculty to programs identified by the Board of Trustees as priority programs;

3. To insure employment of a highly qualified prospective faculty person for whom other institutions outside the state may be competing;

4. To attract faculty who may hold tenure or long-term appointments at other institutions;

5. In circumstances where the desired prospective faculty person must relocate across a substantial geographic distance in order to accept the position.

(b) Reappointments shall be for one year until the faculty member attains tenure.

9:6-3.5 Qualifications for rank

(a) The academic attainment level and professional experience requirements for college faculty academic rank are set forth below. Conditions concerning promotion or appointment to such rank are defined in N.J.A.C. 9:6-3.6 (Criteria for promotions):

1. (No change.)

2. Assistant Professor: An earned doctorate or other appropriate terminal degree or its equivalent from an accredited institution in an appropriate field of study or completion of all requirements for the doctorate in an accredited institution except for the dissertation. For persons hired after January *[1985]* *1, 1986* who do not hold the appropriate terminal degree or its equivalent, no reappointment shall be made to the fourth year unless the board of trustees of the college determines that for rare and exceptional reasons reappointment is necessary to support the mission of the college.

3. Associate Professor: An earned doctorate or other appropriate terminal degree from an accredited institution in an appropriate field of study and five years of professional experience. Evidence of excellence in teaching, scholarly achievement, and service beyond the level of accomplishment of those holding the assistant professor rank.

4. Professor: An earned doctorate or other appropriate terminal degree from an accredited institution in an appropriate field of study and eight years of professional experience. Evidence of excellence in teaching, scholarly achievement and service beyond the level of accomplishment of those holding the associate professor rank.

5. Distinguished Professor: As established by the board of trustees of each college, this rank is intended to provide for the individual who has demonstrated outstanding scholarship, teaching ability, or distinction in a field.

(b) The Board of Higher Education recognizes that on rare occasions individuals may present qualification as to education and experience that their peers will recommend to the board of trustees to be the equivalent of the above qualifications although not corresponding to them to the letter. The requirement of an earned doctorate or other appropriate terminal degree or its equivalent for promotion to the rank of Assistant Professor shall not apply to faculty members employed in the colleges prior to February 22, 1974.

(c) The academic attainment level and professional experience requirements for librarians are as follows:

1. Librarian III: A master's degree in Library Science or its historical antecedent from a then ALA accredited library school. Previous professional library experience is desirable, but not required.

2. Librarian II: A master's degree in Library Science or its historical antecedent from a then ALA accredited library school and three years' professional library experience. A second master's degree in another subject area and/or a reading competence in one foreign language is desirable, but not required.

3. Librarian I: A master's degree in Library Science or its historical antecedent from a then ALA accredited library school, a second master's degree in another subject area or ABD status in an approved doctoral program and five years' professional library experience, with demonstrated and/or potential administrative and coordinating ability. Reading competence in one foreign language is desirable, but not required. A minimum of five additional years' professional library experience may be considered in substitution for the second master's degree or ABD status in an approved doctoral program depending upon the quality of the experience.

4. The requirement for a master's degree in Library Science or its historical antecedent from a then ALA accredited library school may be met by substituting a master's degree in a related field relevant to an individual's duties. The Library Personnel Committee, where appropriate, may consider and make recommendations on whether such other master's degrees should be so substituted.

(d) The academic attainment level and professional experience requirements for the A. Harry Moore School Faculty are as follows:

1. Demonstration Teacher: New Jersey Certification in Special Education and a master's degree and two years' teaching experience in special education; or a bachelor's degree and five years' teaching experience in special education; or a master's degree and two years' teaching experience in a specialized vocational area; or a master's degree and two years' appropriate experience in a specialized vocational area; or a bachelor's degree and five years' teaching experience in a specialized vocational area; or possession of appropriate credentials in such fields as, but not limited to, occupational therapy, physical therapy and learning disabilities and a master's degree and five years' experience in an appropriate field.

2. Teacher: New Jersey Certification in Special Education and a bachelor's degree and proficiency in a specialized vocational area or possession of appropriate credentials in such fields as, but not limited to, occupational therapy, physical therapy and learning disabilities.

9:6-3.6 Criteria for promotions

(a) Criteria for granting academic rank are set forth in N.J.A.C. 9:6-3.5 (Qualification for rank). These criteria are important indicators of academic achievement. Such achievement is usually accompanied by intellectual growth and maturity. Most important, the academic achievement record is a reasonable objective measure. While this objective measure should be given weight in promotion decisions, it should not necessarily be the dominant factor. Decisions about promotions shall be governed by at least three broad and interrelated factors:

1. Effective teaching;
2. Scholarly achievement; and
3. Contributions to college and community.

(b) Regarding librarians, the major criteria upon which the Personnel Committee will make promotion recommendations are as follows:

1. High quality of performance in the area of assigned responsibility;
2. Professional contributions and scholarly activity;
3. Additional academic preparation as evidenced by advanced degree or other relevant course work;
4. Administrative and/or coordinating ability; and
5. Participation in library, college and community affairs.

9:6-3.7 Limitations for professorial classification

(a) The following guidelines shall apply to academic personnel at the State Colleges:

1. Not more than 30 percent of a teaching faculty at any college shall be professors and distinguished service professors.

2. Not more than 60 percent of a teaching faculty at any college shall be professors and associate professors.

3. Paragraphs 1 and 2 above should not be interpreted as providing quotas for any department or other division within a college.

9:6-3.8 General provisions: Salary schedule

(a) All appointments and reappointments shall be made in accordance with provisions of the salary schedule and the salary schedule regulations.

(b) All salary schedules of New Jersey State colleges may be amended or revised by the Board of Higher Education.

9:6-3.9 Transfer

With consent of the presidents and boards of trustees of both colleges, a faculty member may transfer from one college to another without loss of rights.

9:6-3.10 Retirement

Conditions of retirement are set forth in the statutes governing the Public Employment Retirement System, the Teachers Pension and Annuity Fund and the Alternate Benefits Program.

9:6-3.11 Adjunct faculty

(a) The Board of Higher Education shall establish salary rates for adjunct faculty teaching at the state colleges.

(b) Adjunct faculty shall not teach more than the equivalent of half-time (12 teaching credit hours) during any academic year, nor shall teach any more than *[two courses]* ***eight teaching credit hours*** in any one semester.

9:6-3.12 Visiting specialist

A visiting specialist who may be appointed to a State College with a rank such as artist- or poet- or composer-in-residence shall be one who has achieved distinction in a field such as the arts, the humanities, the sciences, or public life. While the attainment of academic excellence in a given field is desirable, such appointment shall be made principally on the basis the distinction the person has achieved in his or her chosen field. Such an appointment is to be in excess of faculty positions established in the faculty-student ratio. A visiting specialist may serve at a State College for a period not exceeding three years of consecutive, full-time service.

9:6-3.13 Emeritus

The board of trustees upon the recommendation of the president may provide emeritus status for a retiring president, academic vice president, dean, or professor, should it desire to recognize meritorious performance. Such a faculty member shall have the right to attend and to speak at all faculty meetings.

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9:6-3.14 Faculty dismissals

No faculty member on tenure may be dismissed except as provided in N.J.S.A. 18A:6-18.

9:6-3.15 Career development; evaluation criteria

(a) The following criteria shall be used for the purposes of the evaluation of professional staff as mandated by N.J.S.A. 18A:60-10:

1. Teaching effectiveness;
2. Effectiveness of performance of other assigned duties and responsibilities;
3. Scholarly achievement;
4. Contributions to college and community;
5. Effectiveness of performance of other responsibilities; and
6. Changing institutional needs do not constitute personal professional deficiencies.

9:6-3.16 Merit award

(a) The merit award program is intended to recognize outstanding professional contributions by members of the faculty, librarians and non-teaching professionals.

(b) The college's promotional procedure constitutes the normal method of recognizing the highly satisfactory performance of general professional responsibilities over a period of years. The merit award presumes that eligible candidates have demonstrated at least satisfactory performance in all areas of professional responsibility and, in addition, during the two years immediately preceding the award, have made one or more outstanding professional contributions that confer distinction upon the individual and upon the college.

(c) Regarding faculty, the merit award is intended to recognize at least satisfactory performance in all areas of responsibility and one or more noteworthy professional contributions. Meritorious contribution(s) may be in any of the following areas:

1. Teaching: Since teaching is the primary mission of the State Colleges, outstanding performance as a teacher is the primary focus for merit award consideration. Examples of meritorious achievements in teaching could include a teacher who has had great influence on his or her students, or one who has made a significant contribution to the improvement of teaching in his or her Department or the college.

2. Scholarly/creative activity; research: With regard to scholarly/creative activity and research, outstanding contribution(s) should be verified by recognized authorities in the appropriate field and the significant impact of these accomplishments upon the candidate's field or discipline clearly indicated;

3. Professional activity: Significant success in professional activity would normally require that a person have served in a key role with policy implications in the major professional organization in his or her field and have been instrumental in the formulation and implementation of major decisions which affect the discipline.

4. Service to the college: Service to the college could include the chairmanship of a key committee whose work resulted in critical changes or improvement in major college programs; the development of an outstanding course or program which enables the institution to answer an important need of the public or student body or which enhances the Department.

(d) Regarding non-teaching professionals, the merit award is intended to recognize at least satisfactory performance in all areas of responsibility appropriate to an individual's assignment and one or more noteworthy professional contributions

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which confers distinction upon the individual and upon the college. Noteworthy contribution(s) may be in any of the following areas:

1. Service to the college: Since the non-teaching professional's primary responsibilities are to provide academic and administrative support services, a meritorious service to the college that extends beyond the satisfactory performance of assigned professional responsibilities is the primary criterion for merit award consideration. Noteworthy contributions could include more effective delivery of academic and administrative services; initiation of more cost-effective techniques within an office unit, division or within the college generally; chairmanship of a key committee whose work resulted in critical changes or improvements in major college programs or services; enhancement of the college's relationships with the general public; initiation and implementation of a noteworthy grant funded activity.

2. Professional activity: With regard to professional activity, a significant contribution(s) made by an individual in meeting professional responsibilities beyond the campus could be cited for merit award consideration. Noteworthy contributions of professional activity could include serving in a leadership role with policy implications in the major professional organization in an individual's field; making a significant and identifiable contribution to system-wide committees established by the higher education community that deal with issues falling within the individual's areas of professional expertise; pursuing advanced study, the results of which have a significant impact on the individual's field that extend beyond his or her regular professional responsibilities.

SUBCHAPTER 4. TENURE AND MULTIYEAR CONTRACT RULES

9:6-4.1 Preparation of an academic plan

Each college board of trustees shall prepare an academic plan for its institution indicating the steps it plans to take to achieve a future balance of faculty in which no more than a reasonable proportion are ultimately tenured. The Board of Higher Education believes that by limiting the proportion of tenured faculty, the institution maintains the flexibility to respond to changing educational needs of future generations of students. Accordingly, the academic plan established by each institutional trustee board shall include the proportion of tenured faculty projected each year during the plan's life.

9:6-4.2 Establishment of internal policies on tenure

(a) Each college board of trustees shall establish internal policies which indicate either that it will impose specific restrictions or more intensive and rigorous review procedures for any reappointment conferring tenure which brings the proportion of individuals in a department (or other academic submit) or in the college as a whole above its present level. Reappointments conferring tenure which raise the tenure rate above that level shall be made only as an unusual action when judged by the college board of trustees as being in the best interest of the college.

(b) Tenure shall be awarded only to individuals whose performance during their probationary period gives clear evidence of the ability and willingness to make a significant and continuing contribution to the institution's growth and development. Furthermore, tenure shall be awarded after presentation of positive evidence of excellence in teaching, scholarly achievement, contribution to college and community, and fulfillment of professional responsibilities.

9:6-4.3 Terminal degree requirements

A reappointment conferring tenure may be offered only to faculty members who possess an appropriate terminal degree or its equivalent, except under unusual circumstances when the granting of tenure to an individual not having these qualifications is judged by a college board of trustees as being in the best interest of the institution.

9:6-4.4 Evaluation of tenured faculty

(a) Each college board of trustees shall establish a procedure which the college will employ to evaluate the performance of tenured faculty members.

(b) Such evaluation shall occur not less frequently than every five years.

(c) These evaluations, which should include student input, shall include such factors as continued teaching competence, professional preparation and attainments which are directly related to teaching or administrative assignments, contributions to campus life beyond formal, assigned instructional activity and significant research, scholarly or community activity.

9:6-4.5 Academic rank for non-teaching personnel

(a) Professional staff who meet appropriate qualification requirements for academic rank and serve as presidents, vice presidents for academic affairs, and academic deans are eligible for concurrent academic rank. Nothing shall be construed herein to require a concurrent academic rank appointment, by a board of trustees, to an eligible professional staff member.

(b) Librarians who meet appropriate qualification requirements and hold State payroll titles of librarian I, librarian II, and librarian III are eligible for concurrent academic rank. Concurrent academic rank equivalencies for librarians I, II, and III shall be the following:

State Payroll Title	Concurrent Academic Rank
1. Librarian I:	Assistant professor in the library;
2. Librarian II:	Assistant professor in the library;
3. Librarian III:	Instructor in the library.

(c) Professional staff holding concurrent rank appointments may be reassigned by a president to any college position within his or her area of professional competence and appropriate qualifications for rank.

(d) Employees holding concurrent academic rank appointments shall not be eligible for multi-year contracts or administrative appointment for a term of more than one year, although reappointments may be made without limit.

(e) Under no circumstances may tenure be earned in any administrative position.

9:6-4.6 Non-teaching professionals

Those members of the professional staff who are not eligible for concurrent academic rank or continuation of concurrent academic rank under the provisions of these regulations shall be eligible for multiyear contracts.

9:6-4.7 Contracts for professional staff (non-faculty)

(a) Members of the professional staff not holding faculty rank may be appointed for one-year terms concurrent with the academic year. After completion of five years of probationary service, such employees may be eligible for a multiyear contract. For professional staff who are members of the state college negotiating unit, each initial appointment of a multi-year contract shall be for three academic years in length. Subsequent reappointments shall be for four years, and then

five years. All subsequent contracts shall be for five academic years in length.

(b) For the purposes of this section the academic year shall be from July 1 to June 30. Contracts for professional staff members shall be concurrent with the academic year. In order for the initial term of employment to qualify as a full academic year for purposes of the multi-year contract probationary period, employment under the contract must begin no later than December 31st.

(c) Eligible professional staff members must be notified by the president no later than December 15 in their fifth academic year of service of their reappointment or nonreappointment to a contract of from two to five academic years in length.

(d) Notwithstanding (a) above, professional staff members serving under multiyear contracts who are promoted in title shall, at minimum, serve one year in his or her new position before becoming eligible for consideration of a multiyear contract in that new position.

(e) Professional staff members serving under a multiyear contract may be assigned by the president to any professional position within their area of competence and qualifications during the term of the contract, but their salary may not be reduced during the duration of the contract below that which they would have received had they continued in their original position, and they may be dismissed from the college during the term of the contract only for cause consistent with appropriate statutory provisions.

(f) Prior to the implementation of these guidelines, the board of each college shall establish a formal procedure for considering and approving the offering of multiyear contract. This procedure should, at minimum, encompass a thorough review of all personnel records including the reports of regular, systematic, and formal evaluations conducted during the employment of the individual.

SUBCHAPTER 5. REDUCTION IN FORCE POLICIES

9:6-5.1 Scope and purpose

This subchapter governs the procedures to be used by the State Colleges when it becomes necessary to reduce the number of employees of a college due to a fiscal crisis. The rules also address the rights of non-civil service employees at the State Colleges of New Jersey under such circumstances. Rights and procedures for civil service employees are contained in the regulations of the Department of Civil Service, N.J.A.C. 4:1.

9:6-5.2 Declaration of fiscal exigency

The board of trustees of any state college may declare a state of fiscal exigency for the state college by a majority vote of the appointed members of the board.

9:6-5.3 Plans and recommendations

Once a state of fiscal exigency is declared, the board of trustees shall direct the president to develop a plan and formulate recommendations to deal with the state of fiscal exigency. Such a plan shall consider a full range of alternatives, from the curtailment of college operations and programs to the layoff of employees.

9:6-5.4 Consultation with college community

The president shall consult with the college community in developing the plan and recommendations to be presented to the board of trustees.

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9:6-5.5 Affirmative action

The president's plan and recommendations shall be developed in accordance with the State's commitment to affirmative action. The affirmative action officer of the college shall prepare an analysis of the affirmative action impact of any recommended personnel layoffs to assist the president in development of the recommendations.

9:6-5.6 Review of recommendations

(a) The board of trustees shall review the president's recommendations, which shall include the affirmative action officer's assessment of their impact, and may accept, reject, or modify such recommendations.

(b) If such recommendations as noted in (a) above include the layoff of employees, the board shall notify the representative of the negotiating unit and fulfill such obligations as are indicated in the agreement between the State and the negotiating unit.

1. The determination by the board of trustees as to which teaching, library or administrative areas are to be reduced shall be based on academic or administrative considerations.

2. The board shall request an affirmative action analysis of its proposed action.

3. Every effort must be made to protect those programs and functions which are of major instructional or administrative significance at the college.

4. Layoff units need not be coincident with established departments or other subdivisions or units, but may include identifiable programs or further subdivisions or specialties within academic programs as appropriate.

5. Each teaching, library or administrative area to be reduced shall constitute a layoff unit.

6. To the extent it is not inconsistent to the preservation of the institution's academic integrity and educational purpose, layoffs within a faculty layoff unit shall be made in order of years of service, laying off faculty with the fewest years of service first.

9:6-5.7 Notice requirements; time period

In the event that the board determines it must implement layoffs, it shall give notice to the academic community of all individuals subject to the proposed layoff at least two weeks prior to the formal board action on said layoffs.

9:6-5.8 Employee notice

The board of trustees shall notify each employee who is to be laid off of such fact as soon as possible.

9:6-5.9 Reemployment lists; generally

(a) With respect to reemployment rights, the college president shall establish a reemployment list, including the names and qualifications of all tenured or multi-year contract employees on layoff status. The college shall not fill a vacancy in an administrative, library or teaching area without first making a written offer of reemployment by certified mail to those employees on the reemployment list who the president believes, as a result of his or her academic judgment, are qualified to fill the position. In the event that two or more employees on the reemployment list have accepted an offer of reemployment for a single vacancy, the college shall give reemployment preference in faculty positions and non-teaching positions in reverse of the order in which they were laid off; that is, last laid off, first rehired.

(b) Employees offered reemployment shall have two weeks from receipt to respond to an offer, which shall be sent via certified mail, return receipt requested, after which it shall be deemed to have expired. Employees on a reemployment list

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shall have the obligation to keep the college president informed of current addresses.

9:6-5.10 Reemployment lists; time period

Non-tenured or non-multi-year contract employees shall remain on the reemployment list until the end of the annual contract pursuant to which they were employed on the date of lay off. Employees who are tenured on the date of lay off shall remain on the reemployment list for a period of five years from the date of lay off. Employees serving under a multi-year contract on the date of lay off shall remain on the reemployment list for the duration of the multi-year contract.

9:6-5.11 Reappointment of laid-off employees

Any employee on layoff status who is reemployed after lay off shall be reappointed with a rank and salary at least equivalent to his or her rank and salary step when laid off.

9:6-5.12 Other colleges

Rights established under this subchapter for employees pertain only to the college at which they are employed. Therefore, an employee who is laid off at one college has no rights to reemployment at another college. Nevertheless, colleges shall share lay off lists with each other, and laid off employees shall be given consideration for any vacancies for which they may be qualified.

9:6-5.13 Reduction in force for financial or programmatic reasons

Reductions in force of tenured faculty or employees on a multiyear contract for financial or programmatic reasons will be implemented at the colleges in accordance with relevant contractual notice requirements.

9:6-5.14 Reduction in force for reasons of natural diminution of students

Reduction in force for reasons of natural diminution of students will be implemented in accordance with N.J.S.A. 18A-60-3.

(a)

BOARD OF HIGHER EDUCATION

Independent College and University Assistance

Readoption as New Rules: N.J.A.C. 9:14

Proposed: January 7, 1985 at 17 N.J.R. 25(a).

Adopted: April 26, 1985 by Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Filed: April 29, 1985 as R.1985 d.245, **without change**.

Authority: N.J.S.A. 18A:72B-22.

Effective Date: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): May 20, 1990.

**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. 9:14.

Full text of the adopted amendments to the readoption follows.

9:14-1.1 Definitions

The following words and terms, when used in the Act pursuant to which these regulations are promulgated, shall have the following meanings, unless the context clearly indicates otherwise.

“Credit hours” means the number of credits (For the purpose of this Act one credit hour shall be equal to one regularly scheduled contact hour of classroom instruction or the equivalent, or three contact hours of laboratory instruction per week per semester, or as consistent with institutional practice as of July 1979, or the equivalent as recognized by the Department of Higher Education. The total number of credit hours generated shall be counted at the time the institution takes its official census.) generated by full-time and part-time undergraduate New Jersey students who have received instruction offered on the main New Jersey campus or at other locations approved by the Board or Chancellor of Higher Education and who were:

1. Enrolled in associate or baccalaureate programs in eligible institutions chartered by the Legislature;
- 2.-3. (No change.)
- ...

HUMAN SERVICES

(a)

DIVISION OF MENTAL RETARDATION

Licensed Community Residences for the Developmentally Disabled Supportive Living Programs

Adopted Amendments: N.J.A.C.

10:44A-1.1-1.5, 2.2-2.4, 3.1, 3.3, 4.3 and 5.2

Adopted New Rule: 10:44A-9

Proposed: June 18, 1984 at 16 N.J.R. 1438(a).

Adopted: April 26, 1985 by George J. Albanese, Commissioner, Department of Human Services.

Filed: April 29, 1985 as R.1985 d.258, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:4-1 et seq.

Effective Date: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): February 7, 1988.

Summary of Public Comments and Agency Response:

The Department received several comments from the Division of Advocacy for the Developmentally Disabled within the Department of the Public Advocate and three agencies

licensed to operate Community Residences for the Developmentally Disabled.

The Public Advocate and a licensed agency suggested that more specific criteria to define “a high degree of self-sufficiency . . .” be provided in N.J.A.C. 10:44A-2.2. The Public Advocate also suggested that N.J.A.C. 10:44A-9.2 be modified to require that apartments have a means of summoning emergency assistance and that “emergency drills” be performed. The Department sees merit to these suggestions and has developed changes in the text of the regulations to be more detailed and specific, thus reflecting this agreement.

Several suggestions were offered by licensed agencies with respect to N.J.A.C. 10:44A-9.1. In sum, it was recommended that the experience requirement for staff be modified. As these suggestions were not compatible with each other, some exceptions had to be made. However, the Department sees merit in these suggestions and has developed changes in the text of the regulation in order to broaden the scope of required experience.

A licensed agency offered several suggestions with respect to N.J.A.C. 10:44A-2.3(b)1 and 2, and (c). In sum, it was recommended that language be modified to delete certain staffing requirements. In response, deletions to this section are not considered necessary. Since 1 and 2 are subsections of (b), it should be clear that they do not apply to the Supportive Living Program. Although the third suggested deletion does apply to Supportive Living Programs, the Department perceives the licensed agency’s comment as having been prompted by a misunderstanding of the implications of requiring a written staff schedule. A written staff schedule does not inhibit appropriate response to a client in crisis; rather, the staff person responsible to respond is clearly delineated. Additionally, standard N.J.A.C. 10:44A-2.3(c) refers to the specific requirements of the Supportive Living Program included in subchapter 9. The wording of this standard has been changed to clarify the requirements. A written staff schedule is required in order to ensure that staff are available to respond to client needs.

Suggestions were offered by a licensed agency with respect to N.J.A.C. 10:44A-3.3. In sum, it was recommended that certain standards relating to menus be deleted or modified. In response, modifications are not considered necessary. One agency suggested that it should be stated that the use of menus does not apply to Supportive Living Programs. This is delineated in 3.3(i)2. The same agency suggested that computerized shopping lists should be acceptable if the receipt listed all items. The Department believes that copies of shopping lists are required in order to ensure a balanced diet. A computerized register tape does not provide for this planning.

Several suggestions were offered by one licensed agency with respect to N.J.A.C. 10:44A-5.2. In sum, it was recommended that several requirements be deleted. In response, the suggested deletions are not considered necessary. The Department perceives that two of these comments may have been prompted by a possible misunderstanding of the true implications of modification of this section. The medication requirements are intended to be applicable to Group Homes and Supervised Apartments. Additionally, any client to whom these requirements pertain clearly does not meet the eligibility requirements of the Supportive Living Program. The third requirement of storage of medication in a locked box is necessary in order to ensure the safety of anyone sharing an apartment under the scope of the Supportive Living Program.

A question was raised by one licensed agency with respect to N.J.A.C. 10:44A-9.2. The agency suggested that limiting

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programs to the first six floors of a building is arbitrary. In response, the Department offers that these standards were developed after consultation with the State Fire Marshal and reflect reasonable caution with respect to the availability of specialized fire fighting equipment and current fire safety practices.

One question was raised regarding the placement of smoke detectors in respect to N.J.A.C. 10:44A-9.2. The Department sees merit to this question and has developed changes in the text in order to clarify this issue.

One agency raised two specific questions with respect to N.J.A.C. 10:44A-1.1, the definition of Personal Care Counselor. In response, changes in the wording are not considered necessary. The terminology suggested is clearly synonymous with the proposed language. The agency suggested that supportive services for medical and counseling needs be included in the definition. These services would be included in health and nutrition and social matters which are included. The agency asked whether supportive services included providing transportation when public transportation is not available or appropriate. The Department does not believe that this regulation is the appropriate mechanism to detail specific operational issues such as transportation.

Finally, some commenters raised questions which related neither to the amendments nor to the new rule. Rather, these comments related to interpretations of existing regulations and, therefore, do not appear appropriate for inclusion. Individual responses were provided for these questions.

Summary of Changes Between Proposal and Adoption:

The Department wishes to modify or add language in certain sections of the regulations to reflect concurrence with some of the suggestions submitted, viz., those which relate to client eligibility for the Supportive Living Program addressed in N.J.A.C. 10:44A-2.2, staff coverage addressed in N.J.A.C. 10:44A-2.3, staff experience requirements addressed in N.J.A.C. 10:44A-9.1, and client safety requirements addressed in N.J.A.C. 10:44A-9.2.

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

10:44A-1.1 Definitions

...
"Personal care counselor" is an individual who provides direct support services to residents of supportive living programs in the following areas: money management, job counseling, skills of daily living, health and nutrition, social and emotional matters, recreation and leisure time activities, and community integration.
...

...
"Supportive living program" means a variant of the supervised apartment program model which provides the necessary supportive services to permit mentally retarded/developmentally disabled men and women to reside, semi-independently, in their own apartments. This program requires eligible individuals to possess a pre-determined level of proficiency in basic living skills prior to enrollment in the program. Although 24 hour supervision is not required, regular staff visits will be made as defined in the client's IHP. This program shall provide a less restrictive living arrangement than a supervised apartment while still providing support to individuals who are not yet prepared for complete independence.
...

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10:44A-1.2 Background

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

(d) Group homes, supervised apartments, and supportive living programs shall offer a warm, supportive environment. Clients must be provided the opportunity for a total array of appropriate services and programs to meet their various needs and levels of capability. Such programs and services will promote a complete life for these individuals in the community setting.

10:44A-1.3 Application for license

(a) All inquiries related to group homes, supervised apartments, and supportive living programs should be made to:

The Coordinator of Community Operations
N.J. Division of Mental Retardation
Capital Place One
222 South Warren Street-CN 700
Trenton, New Jersey 08625

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

10:44A-1.4 License and inspection

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

(d) A License shall be issued if all requirements have been met and all inspections are satisfactory.

1.-6. (No change.)

7. The group home, supervised apartment, or supportive living program is subject to inspection by the Division of Mental Retardation at least annually, but without limitation or prior notice.

8.-11. (No change.)

12. A licensee shall not deny access to a group home, supervised apartment, or supportive living program to any individual or group with statutory authority or court appointment to protect the rights of, and advocate on the behalf of, the developmentally disabled.

13.-14. (No change.)

10:44A-1.5 Options of non-compliance of standards

(a)-(f) (No change.)

(g) The standards found in this chapter will apply to supervised apartments and supportive living programs as well as group homes, unless otherwise noted in the standard. N.J.A.C. 10:44A-8 provides specific standards for the staffing and physical plant requirements in supervised apartments. N.J.A.C. 10:44A-9 provides specific standards for supportive living programs.

10:44A-2.2 Admission and release

(a) (No change.)

(b) All admissions or discharges of private clients must be reported in writing to the Division of Mental Retardation, Bureau of Operations, within five days.

1.-3. (No change.)

4. All clients admitted to supportive living programs shall be evaluated, prior to enrollment, to ensure that they meet the following criteria:

i. Capable of self-preservation in emergencies,

ii. Capable of self-administration of medication,

iii. *[Have a high degree of self-sufficiency in most areas of daily living,]* ***Able to demonstrate self-sufficiency in:***

(1) safety at home, including fire safety and minor first aid,

(2) personal hygiene,

(3) telephone use,

(4) basic shopping skills.

iv. *[Are self-sufficient in most areas of daily living,]* ***If not already self-sufficient, are willing to learn:***

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(1) menu planning,

(2) meal preparation,

(3) use of public transportation.

v. Demonstrate no significant behavior problems,
vi. Are willing to cooperate in learning to budget money*[*]*,* and

vii. Attend an established day program *[*]* ***or are employed.***

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

10:44A-2.3 Personnel standards

(a) (No change.)

(b) Twenty-four hour staff coverage shall be approved by the Division of Mental Retardation, reviewed at each annual inspection, and not altered without the written approval of the Bureau of Operations. (Does not apply to supportive living programs).

1. (No change.)

2. Staff are not required to be on-site at the group home when all clients are in a weekday program outside the residence, but paid agency staff must be available for emergencies.

(c) A written staff schedule for at least a two week period shall be available in the residence *[for supportive living program]*. The employee in charge should be designated on the schedule for each shift*.* ***A schedule of staff available for emergency response is required for supportive living programs.*** (See N.J.A.C. 10:44A-8 regarding staff coverage for supervised apartments or N.J.A.C. 10:44A-9 for supportive living programs. N.J.A.C. 10:44A-2.3(b), (d), (e) are related to group homes.)

(d)-(l) (No change.)

10:44A-2.4 Records and reports

(a) Individual records shall be kept on all clients living at the residence and shall include the following:

1.-14. (No change.)

15. Documentation of pre-enrollment assessments for residents of supportive living programs.

(b) (No change.)

(c) All active records shall be maintained on the premises and be complete, current, and readily available for review by representatives from the Division of Mental Retardation or other authorized persons. Records for residents of supportive living programs may be stored in the licensee's office.

(d) (No change.)

10:44A-3.1 Staff-client relationships and activities

(a) (No change.)

(b) Clients shall be assigned responsibilities/chores in the residence in order to enhance feelings of self-respect and to develop skills in independent living.

1. A written chore schedule shall be available in the group home (does not apply to supportive living programs).

2. (No change.)

(c)-(i) (No change.)

10:44A-3.3 Food and food service

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

(e) Food returned from clients' plates shall be discarded (does not apply to supportive living programs).

(f)-(h) (No change.)

(i) Menus, to include all means shall be dated, prepared at least one week in advance, and retained on file for a period of 30 days.

1. (No change.)

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2. In the case of supportive living programs, copies of shopping lists may be substituted for specific menus.

(j)-(m) (No change.)

10:44A-4.3 Ancillary services

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

(f) In addition to the IHP goals, residence staff shall provide training for all clients, commensurate with their abilities and potential. Staff of supportive living programs shall provide guidance in these areas, as needed, and specific training in accordance with the contract between the licensee and the Division of Mental Retardation. These training areas include but are not limited to:

1.-12. (No change.)

10:44A-5.2 Medication and drugs

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

(c) If a client is capable of taking medication without assistance, no daily medication record is required. The determination of whether a particular client is capable of self-administering medication should be made jointly by the casemanager and residence staff. For clients in supportive living programs, the determination must be made prior to admission and annually thereafter concurrent with development of the client's IHP.

1. (No change.)

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

(j) The licensee or his designee shall supervise the use and storage of prescription medicines and drugs, except that only 4, 5, 6, 7, and 9 below apply to supportive living programs.

1.-9. (No change.)

Full text of the proposed new rule follows.

SUBCHAPTER 9. SUPPORTIVE LIVING PROGRAMS

10:44A-9.1 Personnel standards

(a) Staff counsellor shall provide a minimum of two hours of personal contact with each client every week.

1. Documentation of such visits shall be contained in client's record.

(b) The licensee shall ensure that staff are available 24 hours per day in order to respond to emergencies.

1. A written procedure detailing the provision of emergency services must be developed and available on-site for review.

(c) Paid agency staff *[servicing]* ***serving*** as personal care counsellors shall have either a Master's Degree in Education, Adult Education, Special Education, Vocational Education or a related field; or a Bachelor's Degree in ***one of*** the above areas and two years *[paid]* ***full-time*** experience with ***[mentally retarded]* *developmentally disabled and/or mentally ill*** people (documentation of staff qualifications shall be maintained in the licensee's office).

10:44A-9.2 Physical plant and safety

(a) Supportive living programs shall not be located in the home of the licensee or their designee.

(b) No more than three clients may be housed in a single apartment.

(c) No more than two clients shall be housed in a bedroom.

(d) A single license may be issued for a maximum of eight apartment units, provided the number of clients to be housed does not exceed a total of sixteen.

(e) No client apartment shall be located above the sixth floor.

(f) A single station, battery-powered smoke detector shall be located in the following areas ***[:]* *of each apartment unit utilized by clients:***

1. One unit at the top of each indoor stairway;
2. One unit in the living room and all indoor recreation areas;

3. One unit in each hallway.

(g) There shall be one fire extinguisher, with a minimum rating of 1A 10B/C, mounted in the kitchen.

(h) Fire extinguishers shall be checked quarterly by staff. They shall be serviced at least annually, or whenever necessary, by a qualified service person or company and have a valid service tag attached.

(i) All clients shall be trained in the use and operation of the fire extinguisher.

(j) Only clients capable of independent evacuation in 90 seconds or less may be housed in supportive living programs.

(k) Fire drills involving all clients in each apartment shall be held at least once a month at various times. Records of these drills shall be maintained by the licensee and shall include the date and time of the drill, the time required for evacuation, and the number of persons involved.

*** (l) Every apartment shall have a telephone.***

*** (m) The following emergency telephone numbers shall be prominently posted by each telephone in each apartment;***

i. local police department,

ii. local fire department,

iii. local ambulance,

iv. licensee's emergency line, and,

v. client's doctor.

*** (n) Drills utilizing these phone numbers shall be conducted quarterly. Records of these drills shall be maintained by the licensee and shall include the date of the drill, the number(s) utilized, and a statement of the client's performance.***

10:44A-9.3 General requirements

(a) Non-skid surfaces, to reduce or prevent slipping, shall be used on all stairs or where slippery surfaces present a hazard.

(b) All stairways or hallways shall be kept free and clear of obstructions at all times.

(c) Every habitable room shall have at least one operable window opening directly to the outside.

(d) From May through October, all openable windows and doors used for natural ventilation shall be provided with easily-removable insect screening in good condition.

(e) Every apartment shall have an adequate heating system.

(f) Space heaters, including but not limited to electrical, kerosene, and quartz heaters, shall be prohibited.

(g) Every apartment shall be provided with a safe supply of potable water meeting the standards as set forth in the New Jersey Safe Drinking Water Act Regulations (see N.J.A.C. 7:10).

(h) Every apartment shall have an adequate water heating system.

(i) All electrical wiring and equipment shall comply with local or municipal requirements.

10:44A-9.4 Physical accommodations

(a) Client occupancy shall be limited to floors above grade. However, under certain conditions, partially below grade occupancy may be permitted.

(b) There shall be at least one toilet, sink, and bath or shower for each apartment.

(c) All bathrooms shall include:

1. Hot and cold running water;
2. Non-slip surfaces in the shower and/or bathtub;
3. Toilet accessories;
4. Mirrors securely fastened to the wall.

(d) Every bathroom door lock shall be designed to permit the opening of the locked door from the outside in case of an emergency.

1. Keys shall be maintained both in the apartment and by the employed staff of the licensee.

(e) There shall be a minimum of 70 square feet per client in each bedroom.

(f) In bedrooms with slanted ceilings, the usable room size shall be determined by measuring from a point on the ceiling that is five feet from the floor to a point across the room that is also five feet from the floor.

(g) A living room of sufficient size to contain enough furnishings to permit adequate seating from all residents shall be provided.

(h) All furniture must be clean, in good repair, and in usable condition.

(i) Bedrooms shall not be a means of access to any other room.

(j) Bedrooms shall be furnished with:

1. A standard bed, box spring, mattress and a pillow for each client.

2. A chest of drawers for each client and sufficient closet space for hanging clothes.

3. Adequate lighting.

4. Two sets of bed linen, including mattress cover, pillowcase, two sheets, at least one blanket, and bedspread for each client.

(k) Living room and dining area furnishings shall be adequate for the number of clients residing in the apartment.

10:44A-9.5 Maintenance and sanitation

(a) The apartment shall be maintained in a safe and sanitary manner.

(b) Combustible materials shall be stored in non-combustible containers.

(c) Floors, walls, ceilings, and other surfaces shall be kept clean and in good repair.

(d) Chimneys, flues, and vent attachments shall be structurally sound, free from defects, and cleaned and maintained as necessary.

(e) Exterminator services shall be provided immediately when there is evidence of past infestation.

(f) The accumulation of garbage or waste shall be prevented. All waste containers shall be provided with tight-fitting covers and be sufficient in size and number to contain the accumulated waste.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

**Administration Manual
General Provisions**

Readoption: N.J.A.C. 10:49-1

Adopted Amendments: N.J.A.C. 10:49-1.1 through 1.5, 1.7, 1.9, 1.10, 1.12, 1.16, 1.17, 1.20, 1.22, 1.24, 1.25

Proposed: March 4, 1985 at 17 N.J.R. 532(a).
 Adopted: April 26, 1985 by George J. Albanese, Commissioner, Department of Human Services.
 Filed: April 29, 1985 as R.1985 d.246, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:4D-3, 6, 7, 17, 17.1; 42 CFR 431.51, 107, 301; 42 CFR 435; 42 CFR 440.

Effective Date of Readoption: April 29, 1985.

Effective Date of Concurrent Amendments: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 29, 1990.

Summary of Public Comments and Agency Responses:

There was one comment submitted by the New Jersey Speech-Language-Hearing Association. The commentator requested a separate fee for speech and language evaluations. The Division's response is that this proposal was designed to readopt the Administration Manual which contains general provisions of the Medicaid program, and is not specifically concerned with fee schedules.

Summary of Changes Between Proposal and Adoption:

The text of N.J.A.C. 10:49-1.1(e) is being restored to its original language. The phrase "other than by exceptional circumstances" should not have been deleted when the rule was originally proposed.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:49-1.

Full text of the amendments to the readoption follows (additions to proposal shown in boldface with asterisks ***thus***).

SUBCHAPTER 1. GENERAL PROVISIONS

10:49-1.1 Who is eligible for Medicaid

(a) Medical and health services will be available to the following general groups. The groups are not all inclusive:

1.-2. (No change.)

3. Persons who are eligible to receive financial assistance as determined by the county welfare agency. Such persons are:

i. Families with dependent children including children 18 through 21;

ii. Cuban/Haitian Entrant Program refugees;

iii. Refugee Resettlement Program refugees.

4. (No change.)

5. Persons 65 years of age and above who do not meet eligibility standards of the categorically-related assistance programs, but whose medical needs qualify them under the New Jersey State Medical Assistance to the Aged Continuance Program (MAA) (New recipients are no longer accepted in this program);

6.-7. (No change.)

8. Persons who would be eligible for financial assistance under one of the above programs except for a requirement that is specifically prohibited by Federal law or regulations, such as execution of a reimbursement agreement.

(b) Although both the mother and newborn infant may be eligible recipients on the date of delivery, the newborn infant is not immediately assigned a person number. In order to expedite payment to practitioners and hospitals for in-hospital services rendered to newborns during the mother's con-

finement, allowance has been made to reimburse providers using the mother's Health Services Program (Medicaid) Case Number and patient Person Number. When the mother is discharged from the hospital, services to the newborn may no longer be claimed by the practitioner and/or hospital under the mother's Person Number. The mother must contact the county welfare agency to obtain a person number for the newborn. It is the duty of the practitioner or the hospital to contact the county welfare agency to obtain the newborn's Person Number for billing purposes.

(c) If a patient has not applied for benefits, is unable to pay for services rendered and appears to meet the requirements for eligibility for the New Jersey Medicaid Program, the provider should encourage the patient or his/her representative to apply for benefits through the county welfare agency or Social Security Administration, which will process the application and notify the patient of the resulting determination.

1. (No change.)

(d) Persons applying for Medicaid benefits will be asked if they have unpaid medical bills incurred within the three month period immediately prior to the month of application for Medicaid. Persons indicating that they do have such bills may complete an "Application for Retroactive Medicaid Eligibility" (FD-74) and forward the application with all outstanding unpaid bills to the Medicaid Retroactive Eligibility Unit. An application for retroactive eligibility may be obtained by the applicant or his/her authorized agent from the county welfare agency, the Medicaid district office or the Retroactive Eligibility Unit, Medicaid Central Office, Trenton.

1. If the New Jersey Medicaid Program determines that the person was eligible for Medicaid at the time the service was rendered or item supplied, providers will be notified directly that the unpaid bills for any service/item covered by the New Jersey Medicaid Program may be reimbursable in accordance with standard Medicaid reimbursement procedures. The provider will then complete the appropriate Medicaid claim form and submit it to the Retroactive Eligibility Unit for consideration and authorization of payment.

(e) It is in the best interest of the provider to review monthly the eligibility of patients receiving continuing services. There is no reimbursement for services performed after termination of eligibility ***other than by exceptional circumstances***.

10:49-1.2 How to identify a covered person

Delete the current text in its entirety and add the following:

All eligible persons as described below have an HSP (Medicaid) Case Number, which includes a two-digit individual Person Number. This identification number appears on the validation of eligibility form which must be presented to providers of services as a proof of eligibility.

(a) An HSP (Medicaid) Case Number, as currently assigned, consists of twelve digits.

1. The first two digits designate the county of residence of the individual at the time of eligibility.

i. For an individual in a long-term care facility, the first two digits of the HSP (Medicaid) Case Number reflect the county of residence when the application was made but not necessarily the location where the patient is institutionalized nor the agency/county responsible for supervision of services. The Medicaid district office in the county designated by the first two digits may supply more information in these instances.

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ii. County Welfare Agencies:

- | | | |
|---------------|---------------|-------------|
| 01-Atlantic | 08-Gloucester | 15-Ocean |
| 02-Bergen | 09-Hudson | 16-Passaic |
| 03-Burlington | 10-Hunterdon | 17-Salem |
| 04-Camden | 11-Mercer | 18-Somerset |
| 05-Cape May | 12-Middlesex | 19-Sussex |
| 06-Cumberland | 13-Monmouth | 20-Union |
| 07-Essex | 14-Morris | 21-Warren |

2. For an individual in a State or county institution, the first two digits of the HSP (Medicaid) Case Number reflect the institution where the individual resides.

i. State and county institutions:

- 31-Greystone Park Psychiatric Hospital
- 32-Trenton Psychiatric Hospital
- 33-Marlboro Psychiatric Hospital
- 34-Ancora Psychiatric Hospital/Ancora Developmental Center
- 35-North Princeton Developmental Center
- 36-Arthur Brisbane Child Development Center
- 37-Bergen Pines County Hospital
- 38-Essex County Psychiatric Geriatric Center
- 39-Camden County Psychiatric Hospital
- 41-Vineland Developmental Center
- 42-North Jersey Developmental Center
- 43-Greenbrook Regional Center
- 44-Woodbine Developmental Center
- 45-New Lisbon Developmental Center
- 46-E.R. Johnstone Training and Research Center
- 47-Woodbridge Developmental Center
- 48-Hunterdon Developmental Center
- 90-Community/Special Residential Services (Family Care)

3. The third and fourth digits of the 12-digit HSP (Medicaid) Case Number designate the category under which a person is determined eligible for the New Jersey Medicaid Program.

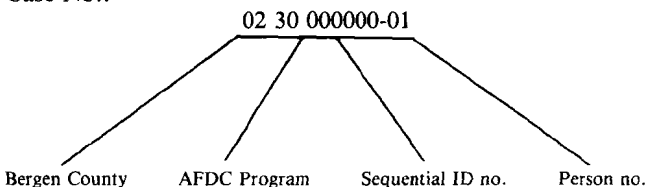
- 10-Aid to the Aged
- 20-Aid to the Disabled
- 30-Aid to Families with Dependent Children
- 50-Aid to the Blind
- 60-Children in Foster Care
- 70-Medical Assistance for Aged—A New Jersey State Program
- 80-Refugee Program

4. The next six digits (5 through 10 of the 12-digit HSP (Medicaid) Case Number) designate the sequential identification number of the recipient(s).

5. The last two digits designate the specific person number assigned to each individual.

- 01-09 Adult (any age)
- 10-19 Essential Person (any age)
- 20-49 Children under 21

6. Example of an HSP (Medicaid) Case Number: An Aid to Families with Dependent Children (AFDC) recipient from Bergen County could have the following HSP (Medicaid) Case No.:



(b) Forms used for validation of eligibility: A New Jersey Medicaid provider may verify the client's Medicaid eligibility by means of the Department of Human Services "Medicaid

I D" (FD-152), "Medicaid Eligibility Identification Card" (FD-73/178), "DYFS 16-36" or "Validation of Eligibility" (FD-34).

1. Department of Human Services "Medicaid I D" (FD-152) (See Exhibit I at the end of this section): This validation form is issued by the appropriate county welfare agency to recipients of Aid to Families with Dependent Children, and to eligible persons under the Refugee and Medicaid Only programs. The form indicates that the individual(s) is/are currently eligible for coverage for the month shown on the form. The validation form must be retained by the eligible person to whom it is issued.

i. This form is the sole indicator of Medicaid eligibility for person(s) listed on the form.

ii. Be sure to enter the name, HSP (Medicaid) Case Number, including the Person Number, exactly as it appears on the FD-152 form when requesting authorization for services or submitting a claim form.

iii. One of the following five messages may be printed on the top line of the FD-152 form issued by the county welfare agencies. Only one message will appear on the form. If more than one applies, the message printed is chosen in the order of priority listed below. Providers are requested to take the specific action listed as given below for whichever one of the five messages appears on the FD-152 form:

(A) Message One: "NOT VALID FOR MEDICAID"—Do not honor invalidated Medicaid ID Stubs. This recipient is enrolled in the Medicaid Special Status Program. The recipient and others on his/her grant must produce a valid FD 73/178, "Medicaid Eligibility Identification Card" (see Subparagraph 2, v. below).

(B) Message Two: "RESTRICTED USE HMO-CALL NUMBER LISTED"—This recipient (and any member of his/her family on the AFDC grant) is enrolled in OMNISCARE/the hmo. Call the telephone number listed to determine whether the service or the item you are being asked to provide is provided by the HMO. If you provide a service available through OMNISCARE/the hmo, you risk being denied reimbursement by the Medicaid Program except in medical emergencies. (See Newsletter #P-390/BC-279, dated June 1, 1984 at the end of this Chapter.)

(C) Message Three: "HMO COVERAGE"—There will be an asterisk (*) before the name of the recipient(s) enrolled in an HMO other than OMNISCARE/the hmo. Determine which HMO the recipient(s) is covered by and contact the HMO to determine what services are covered. If you provide a service available through the HMO, you risk being denied reimbursement by the Medicaid Program except in medical emergencies.

(D) Message Four: "OTHER COVERAGE"—There will be an asterisk (*) before the name of the recipient(s) covered by another health insurer. Determine the insurer and the policy number. (See N.J.A.C. 10:49-1.7 for information about third party insurance.)

(E) Message Five: "VALID ONLY WITH MP PLAN CARD." (See Newsletter #P-362/BC-260, dated July 15, 1983.)

2. "Medicaid Eligibility Identification Card" (FD-73/178) (see Exhibit II at the end of this section): This card is issued monthly or quarterly depending on the basis of the recipient's eligibility. The FD-73/178 is issued monthly to individuals (aged, blind and disabled) determined by the Social Security Administration to be eligible for Supplemental Security Income (SSI) and monthly to individuals in the Special Status Program (see Subparagraph v. below). It is issued quarterly

for Medicaid-eligible children under the supervision of the Division of Youth and Family Services.

i. The "Medicaid Eligibility Identification Card" (FD-73/178) usually identifies eligibility for only one person. However, the Special Status Program restrictions apply to all eligible persons listed on a Medicaid Special Status Card, which identifies all eligible persons in the family.

ii. The FD-73/178 is valid only when signed by the eligible person or his/her representative payee/legal guardian.

iii. The FD-73-178 includes an address, date of birth, social security account number and the availability of any third party health insurance. If the Medicaid client has health insurance, the name of the other insurer will be printed together with a corresponding policy number. Additionally, the type of Medicare coverage (Part A, Part B or Part A and B) and the HIC (Medicare) Number will be included for all Medicare/Medicaid eligibles.

iv. The FD-73-178 will also indicate the cardholder's enrollment in any special programs (HMO, Medicaid Personal Physician Plan, Community Care for the Aged and Disabled, and Special Status Program). (For information about these special programs see newsletters at the end of this Subchapter: For HMO—Newsletter #P-390/BC-279, dated June 1, 1984; for Medicaid Personal Physician Plan—Newsletter #P-362/BC-260, dated July 15, 1983; for Community Care for the Aged and Disabled—Newsletter #P-371/BC-266 dated December 5, 1983.)

v. The "Special Status Program" restricts the Medicaid client to a single provider of pharmaceutical services. It is issued to clients determined by New Jersey Medicaid to have misused, abused or overused their Medicaid benefits. The name and address of the pharmacy to which the client is restricted will be printed on the top of the "Medicaid Eligibility Identification Card". A recipient is permitted to change the designated provider every three months or sooner upon demonstration of good cause and may request a hearing if such a change is denied or unduly delayed or if the recipient otherwise objects to being included in the "Special Status Program". In an effort to discourage misuse or card lending in certain instances, a message will be printed on the card alerting the provider to ask the Medicaid client for additional identification.

3. "DYFS—16-36" (See Exhibit III at the end of this section): This validation form is issued monthly by the Division of Youth and Family Services to eligible children. This form indicates eligibility for covered health services during the month shown on the form itself.

i. The validation form must be retained by the person to whom it is issued.

ii. The form is the sole indicator of eligibility for this group of children.

iii. The HSP (Medicaid) Case Number must be entered exactly as it appears on the validation form on all requests for authorization of services and when submitting claim forms.

4. "Validation of Eligibility" (FD-34) (See Exhibit IV at the end of this section): This validation form identifies an individual who resides in a State or county institution.

i. The validation form is prepared and completed by the authorized Medicaid representative at the State/county institution. It is valid for a period of up to 31 days from the date of issue to an eligible Medicaid patient/resident in a State/county psychiatric hospital or an institution for the developmentally disabled, and is used to obtain Medicaid covered services outside of the institutional setting. The form must be returned with the patient.

ii. Form FD-34 requires the signature, title and telephone number of the authorized representative at the institution.

iii. The resident or patient of a State/county institution receiving covered health services in the community is identified by the 12-digit HSP (Medicaid) Case Number in which the first two digits identify the institution.

iv. The Medicaid program has designated specific Medicaid district offices (see Appendix A for list of MDO's) to handle the prior authorization requests for services for patients/residents from each institution and the family care residents who are under the jurisdiction of the Division of Mental Retardation. If the patient/resident's HSP (Medicaid) Case Number begins with any of the following numbers, contact the Medicaid district office (MDO) indicated.

- (1) 31 Morris MDO
- (2) 32 Mercer MDO
- (3) 33 Monmouth MDO
- (4) 34 Camden MDO
- (5) 36 Monmouth MDO
- (6) 41 Cumberland MDO
- (7) 42 Passaic MDO
- (8) 44 Atlantic MDO
- (9) 45 Burlington MDO
- (10) 47 Middlesex MDO
- (11) 48 Hunterdon MDO
- (12) 90 Ocean MDO

EXHIBITS 1 THROUGH IV: VALIDATION FORMS

The following exhibits reproduce the content only of each validation form; for actual samples, write to the Division of Medical Assistance and Health Services, CN-712, Trenton, New Jersey 08625.

Delete the current text of Exhibits I through V in its entirety and add Exhibits I through IV listed below:

EXHIBIT I

DEPARTMENT OF HUMAN SERVICES

MEDICAID-ID

Valid Only for the Month Of

Medicaid HSP #

Eligible Persons Person #

NOTICE TO PROVIDER: Request personal identification if you do not know the patient.

Please report the case name, case number and person number ACCURATELY on all claim forms and other communications relating to the claim.

NOTICE: Federal law makes it a crime and sets punishment for persons who have been found guilty of making any false statement or representation of a material fact to receive any benefit or payment under the medical assistance program. This Department is required to make you aware of this law and to warn you against making any false statement in an application or in a fact used in determining the right to a benefit, or converting a benefit to the use of any person other than one for whom it was intended.

NON-TRANSFERABLE UNDER PENALTY OF LAW.

CARRY THIS CARD AT ALL TIMES: Present it to the pharmacy, hospital, physician or other providers for medical services rendered in behalf of eligible persons.

.....
Recipient's signature required

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EXHIBIT II

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE &
HEALTH SERVICES
MEDICAID ELIGIBILITY IDENTIFICATION CARD

Additional Health Insurance*
HSP (Medicaid) Case No. Person No.

VALID: From:
To:

Soc. Sec. Acct. No. Date of Birth

Name
Street Address
City, State Zip Code

Use this card when you need medical
services

.....
Recipient's Signature

FD-73/178
(Rev. 10/83)

IMPORTANT NOTICE: You must sign the front of this card on the line above the Recipient's Signature. If you are unable to sign the card, the individual representing you must sign your name, initial the card and explain his/her relationship to you.

Immediately notify the Medicaid District Office or the Division of Youth and Family Services case manager or the County Welfare Agency (as appropriate):

- 1. if you have Medicare Coverage or other health insurance not listed or incorrectly listed; or
- 2. if any changes are necessary to the front of this card; or
- 3. if you have any questions regarding the use of this card; or
- 4. if this card is lost or stolen. (Unless the report of the loss or theft can be documented at the appropriate agency, you may be liable to repay Medicaid for any benefits obtained through its unauthorized use.)

FEDERAL and STATE LAW make it a crime and set the punishment for persons who have been found guilty of making any false statement or representation of a material fact to receive any benefit or payment under the Medicaid Program. The Department of Human Services is required to make you aware of this law and to warn you against making any false statement in an application or in a fact used in determining the right to a benefit, or converting a benefit to the use of any person other than one for whom it was intended.

THIS CARD IS NON-TRANSFERABLE UNDER PENALTY OF LAW

NOTICE TO PROVIDERS:

The printed name which appears directly above the line for Recipient's Signature on this card is the MEDICAID eligible person. This name identifies that person ONLY (except AFDC can include spouse/child(ren) listed with PERSON NUMBERS) as being eligible for MEDICAID benefits within the time period shown. If the name of a "REPRESENTATIVE PAYEE" appears on this card, that individual is not eligible for Medicaid benefits.

*Ask the cardholder if there is Medicare coverage or other health insurance not listed. Please indicate this information in the appropriate area on the claim form. You are to bill MEDICAID only AFTER receiving denial or partial payment from the other insurance company.

EXHIBIT III

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

VALIDATION OF ELIGIBILITY

.....
Last Name/First Name/M.I./Health Servs. Prog. Case No./Person No.

NOTICE TO PROVIDERS

This form identifies the person listed above as eligible for authorized services under the New Jersey Health Services Program (Medicaid).

This form also serves as a validation of eligibility for up to 31 days from date of issue. All policies and procedures specified in the appropriate New Jersey Health Services Program Provider Manual are to be followed by providers when rendering services to this person.

The signature, title and telephone number of an authorized representative of the State Institution listed below must be included to validate this form.

THIS FORM IS THE PROPERTY OF THE STATE OF NEW JERSEY AND MUST BE RETURNED WITH THE PATIENT.

.....
Signature and Title of State Institutional Representative Date of Issue

.....
Name of Institution Telephone No.

FD-34 (Rev. 5/83)

EXHIBIT IV

Child's No. Name Case No.

VALID ONLY FOR MONTH OF

PLACEMENT REFERENCE

STATE OF NEW JERSEY
DIVISION OF YOUTH AND FAMILY SERVICES

VALIDATION FOR HEALTH SERVICES PROGRAM

DYFS 16-36
(Rev. 3/73)

NOTICE TO CLIENT: This validation form indicates eligibility for authorized health services provided under the New Jersey Health Services Program.

This validation must be presented to the provider of medical services along with the plastic identification card.

NOTICE TO PROVIDER OF MEDICAL SERVICES: The case number and name on this form must be compared to that

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shown on the plastic identification card issued to the bearer. The claim for payment of health services is to be submitted to the appropriate contractor for the State of New Jersey on the required vendor claim form.

Please report the case name, case number and person number ACCURATELY on all claim forms and other communications relating to the claim.

10:49-1.3 Eligible providers

(a) An eligible provider of services is any individual, partnership, association, corporation, institution or any other public or private entity designated below, meeting applicable requirements and standards for participation in the New Jersey Medicaid Program; and, where applicable, holding a current valid license. Providers are required to complete a provider application form (FD-20), to sign a provider participation agreement (FD-62) (see Exhibits V and VI at the end of this section) or a specialized agreement, depending on the nature of the provider. All provider applicants and reapplicants defined as disclosing entities (all Medicaid providers other than an individual partitioner and/or a group of practitioners) are required to complete a HCFA form 1513, Ownership and Control Interest Disclosure Statement. Providers prior to 1973 were not required to utilize provider agreement forms; however, they must comply with all applicable State and Federal Medical laws, policies, rules and regulations.

1. As a condition of continued participation in the New Jersey Medicaid program, a provider may, from time to time, be required to:

- i. (No change.)
- ii. Complete a disclosure of ownership and control interest information statement on forms prescribed by the New Jersey Medicaid Program. This requirement is applicable only to providers who are disclosing entities.

2. A provider who is surveyed annually, by the State survey agency (New Jersey State Department of Health), is required, upon request, to furnish ownership and control interest information. The New Jersey Medicaid Program will not approve any provider agreement and will terminate any existing agreement or contract if the provider fails to disclose information required by this subsection.

3. Enrollment documentation requested by the New Jersey Medicaid Program must be furnished within 35 days of the date of the written request.

(b) Providers eligible to participate in the New Jersey Medicaid Program are:

- 1. Chiropractors and/or chiropractic groups;
- 2. Clinics (independent outpatient health care facilities);
- 3. Clinical Laboratories (independent, certified);
- 4. Dentists and/or dental groups;
- 5. Hearing aid dealers;
- 6. Home health agencies (certified licensed);
- 7. Homemaker Agencies (proprietary and voluntary non-profit);
- 8. Hospitals (general);
- 9. Hospitals (special);
- 10. Long-term care facilities (limited to skilled nursing facilities, intermediate care facilities, and intermediate care facilities for the mentally retarded);
- 11. Medical and surgical supply dealers;
- 12. Medical Day Care Centers;
- 13. Nurse-midwives (certified);
- 14. Opticians;
- 15. Optometrists;
- 16. Orthotists (certified);
- 17. Pharmacies;

- 18. Physicians and/or physician groups;
- 19. Podiatrists and podiatric groups;
- 20. Prosthetists (certified);
- 21. Psychologists and/or psychology groups;
- 22. Transportation Providers (limited to ambulance and invalid coach);
- 23. State and county agencies which have agreed to provide personal care assistant services.
- (c) (No change in text.)
- (d) (No change in text.)

EXHIBIT V

**STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
CN-712
TRENTON, NEW JERSEY 08625
MEDICAID PROVIDER APPLICATION**

1. Legal and/or Trade Name of Organization	2. Type of business or Facility
3. Address Street City County State Zip Code	
4. SSA and/or Employer ID No.	5. Telephone No.
	6. Length of time at Above Address

7. Billing Address, If Different	8. Name of Administrator, Chief Executive Officer, Director or Other Official
----------------------------------	---

9. List the specific service(s) for which you are requesting approval for reimbursement under the Medicaid Program.

10. Do you operate from more than one location? [] Yes [] No

If yes, list all other subsidiary or affiliated organization below: (Name and address)

- 1.
- 2.
- 3.

Please attach additional sheet if necessary

11. Please indicate your preference to receive central or local reimbursement: [] Reimbursement to each Satellite Location [] Reimbursement to Central Location

Billing through a central location is allowable and left to the provider's discretion. However, if the provider chooses to bill centrally, pre-addressed claims MUST be utilized since they reflect the proper address and provider number for that location.

12. Do you require a Certificate of Need under the Health Facilities Planning Act from the New Jersey Department of Health? [] Yes [] No If yes, have you applied for the Certificate?

Attach copy of Certification of Need. If no, explain why you don't require a Certificate.

13. If your business or facility requires a license(s), list type of license(s), license number(s), effective date of license(s), and attach a non-returnable copy.

14. CERTIFICATION, ACCREDITATION OR APPROVAL—Specify type and attach copy. For Example JCAH (Hospitals); New Jersey Department of Health (Clinics); Office of Community Services (Mental Health Clinics); State Board of Dentistry (Dental Clinics); State Board of Pharmacy (Providers offering Pharmaceutical Services); American Board for Certification in Orthotics and Prosthetics (Prosthetist and/or Orthotist) See also question 15.

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15. Approved by Medicare? [] Yes [] No If yes, attach copy of your approval, if applicable. If no, have you applied for Medicare approval? [] Yes [] No attach documentation

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16. Are you currently or have you ever been an approved provider of services under the New Jersey Medicaid (Title XIX) Program? If yes, list type of service(s) provided and current status. If you were approved at one time and no longer participate, explain the reason(s).

17. Indicate legal status of your organization: Profit Corporation [], Non-Profit Corporation [], Partnership [], Sole Proprietor [], Government [], Other []. If other please specify:

18. Do you or does your organization have any legal or professional relationships with any other health care organization(s) or facility(ies)? [] Yes [] No If yes, list all such relationships below:

19. Does any member of your organization have a ten percent or greater financial interest in any other organization or practice of an individual providing services under the New Jersey Medicaid Program? If yes, list name of individual and/or organization.

20. Do you charge for goods and/or services? TO ALL [], TO NONE [], TO CERTAIN GROUPS ONLY []. If you charge to all or only certain groups, please explain your arrangements and attach copy of your fee schedule.

21. List days and hours of operation.

22. List the Names, SSA Number, License Number and Degree(s) for all Professional Staff in the Organization. Include Physicians, Dentists, Psychologists, Registered Physical Therapists, Optometrists, etc. If more space is needed attach additional sheets.

23. FOR THE PURPOSE OF ESTABLISHING ELIGIBILITY TO RECEIVE DIRECT PAYMENT FOR SERVICES TO RECIPIENTS UNDER THE NEW JERSEY MEDICAID (TITLE XIX) PROGRAM: I CERTIFY THAT THE INFORMATION FURNISHED ON THIS APPLICATION IS TRUE, ACCURATE, AND COMPLETE.

24. Signature of Provider Title Date

EXHIBIT VI

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

NEW JERSEY HEALTH SERVICES PROGRAM
TITLE XIX (MEDICAID)

PROVIDER AGREEMENT
BETWEEN

NEW JERSEY DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

AND

PROVIDER

PROVIDER AGREES:

- 1. To comply with all applicable State and Federal "Medicaid" laws and policy, and rules and regulations promulgated pursuant thereto;
- 2. To keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving assistance under the Medicaid Program;

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3. To furnish the Division of Medical Assistance and Health Services, the Secretary of Health and Human Services and the State Medicaid Investigation Unit with such information as may be requested from time to time, regarding any payments claimed for providing services under the Medicaid Program.

4. To comply with the requirements of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 and any amendments thereto; and Section 1909 of P.L. 92-603, Section 242(c) which makes it a crime and sets the punishment for persons who have been found guilty of making any false statement or representation of a material fact in order to receive any benefit or payment under the Medical Assistance Program. (The Department of Human Services is required by Federal regulation to make this law known and to warn against false statements in an application/agreement or in a fact used in determining the right to a benefit, or converting a benefit to the use of any person other than one for whom it was intended.) The provider may, on thirty days written notice to the Division, terminate this Agreement.

.....

Date

.....

Signature of Provider

.....

Title

FD-62 Rev. 5-81

Medicaid 3031-M Ed. 7-81

10:49-1.4 Authorized services for covered persons

(a) The items and services provided to covered persons are not normally limited in duration or amount. Any limitation imposed will be consistent with the medical necessity of the patient's condition, as determined by the attending physician or other practitioner, in accordance with standards generally recognized by health professionals and promulgated through the New Jersey Medicaid Program. The following items and services, more specifically defined in subsequent sections of the appropriate provider manual, are authorized under the program:

1. Inpatient hospital services.

i. In General Hospitals: Service is unlimited except for exclusion of elective cosmetic surgery and diet therapy for exogenous obesity. The admitting (attending) physician is required to certify concerning the reasons for admission. All inpatient stays must be approved through the utilization review mechanism to be eligible for reimbursement.

ii.-iii. (No change.)

iv. Non-Approved Hospital emergency services: Limited to emergency services with a maximum of 20 days payment allowed. No requirements for prior authorization.

2. Outpatient hospital services: There are no limitations, except for exclusion of elective cosmetic surgery and prior authorization required for certain dental services (See N.J.A.C. 10:56). Prior authorization is also required for partial hospitalization after the first 30 calendar days (See N.J.A.C. 10:52-1.7). Take home drugs dispensed by the hospital pharmacy are included.

3. Care and services in Christian Science sanatoria: The same limitations are required as outlined in 1. and 2. above.

4. Clinical laboratory and x-ray services: There are no limitations. Services must be ordered by the attending practitioner.

5. Long-term care (skilled and intermediate care) nursing services—general: Available for persons of all ages. There are no durational limitations. Prior authorization from the Medicaid district office is required for admission, except where patient is transferred to facility direct from an acute care hospital, private or public psychiatric hospital or class A special hospital. Also, recertification of continued need for long term care must be done periodically.

6. (No change in text.)

7. Physician's services (M.D. and D.O.): There are no limitations. Prior authorization is required for elective cosmetic surgery and for mental health services when payment for services rendered to any single patient by any single provider exceeds \$300.00 in a 12-month period. The \$300 limit does not apply to boarding homes or long-term care facilities. Authorization is required after the initial visit in these facilities.

8. Dental services.

i. Comprehensive services: A comprehensive spectrum of dental services are provided. Services defined as "routine" do not require prior authorization. Other services ("non-routine") and routine services in conjunction with "non-routine" services require the authorization of dental consultants in the Dental Claims Review Unit.

ii. Dentures: Partial or complete dentures are provided only when masticatory deficiencies are likely to impair general health of the patient. Replacement is limited to once every 7½ years. Prior authorization is required for initial or replacement request.

9. Services of licensed other practitioners.

i. Podiatrists: Routine care must be qualified by medical necessity of professional treatment. Treatment of flat feet and subluxation conditions are not covered, with exceptions:

(1) Where treatment is an integral part of postfracture or postoperative treatment plan.

(2) Where supportive devices (i.e., arch supports, specific additions to shoes, etc.) are prescribed to palliate pain and other symptoms associated with the conditions.

(3) Where the talo-crural joint is involved.

(4) Where there may be attachment of a supportive device to a bar or brace.

ii. (No change.)

iii. Psychologists: Prior authorization is required when payment for services rendered to any single patient by any single provider exceeds \$300.00 in a given 12-month period. Mental health services for recipients in boarding homes or long-term care facilities require prior authorization after the initial visit (See N.J.A.C. 10:67).

iv. Chiropractors: Services are limited to manual manipulation of the spine provided personally by the chiropractor. It includes services furnished in the office, the patient's home, skilled nursing facility, intermediate care facility, sheltered boarding home and in hospitals where privileges have been granted. It is not a covered out-of-State service.

v. (No change.)

10. Home care services. Prior authorization is required from the Medicaid district office, except for the initial visit to evaluate the need for home health care services or personal care assistant services.

i. Home health care services are limited to those services provided directly by a home health agency (certified/licensed) approved to participate in the New Jersey Medicaid Program or through arrangement of that agency for other services.

ii. Personal care assistant services are furnished by both a home health agency (certified/licensed) and a homemaker agency (proprietary and voluntary non-profit). Medicaid re-

ipients may not simultaneously receive home health care services and personal care assistant services (See N.J.A.C. 10:60).

11. Medical supplies and equipment: Medical supplies, equipment and appliances are provided, including purchase or rental of hospital beds, wheelchairs and other durable medical equipment; bandages, surgical dressings, catheters and other medical supplies. Prior authorization by the Medicaid district office is required for medical supplies and durable medical equipment for which the charge to the program exceeds \$30.00.

12. Clinic services (independent outpatient health care facilities) (other than hospital): Services are provided in facilities meeting standards of New Jersey State Department of Health or other agencies to qualify as an independent outpatient health facility. Prior authorization is required for certain clinic services.

13. Rehabilitative services.

i. Physical therapy: An initial evaluation visit for physical therapy made by a licensed therapist does not require prior authorization. For all therapy treatment visits prior authorization is required when provided by a home health agency, independent clinic, long-term care facility or in a physician's office. Services may also be provided in a hospital outpatient department. The reimbursement fee for the initial visit will be the same as the allowance for the treatment visits. No payments are made to privately practicing therapists. There are no other limitations.

ii. Occupational therapy: An initial evaluation visit for occupational therapy made by a qualified therapist does not require prior authorization. For all therapy treatment visits prior authorization is required when provided by a home health agency, independent clinic or long-term care facility. Services may also be provided in a hospital outpatient department. The reimbursement fee for the initial visit will be the same as the allowance for the treatment visits. No payments are made to privately practicing therapists. There are no other limitations.

iii. Speech-Language Pathology Services: An initial evaluation visit for speech-language pathology services made by a licensed therapist does not require prior authorization. For all treatment visits prior authorization is required when provided by a home health agency, independent clinic or long-term care facility. Services may also be provided in a hospital outpatient department. The reimbursement fee for the initial visit will be the same as the allowance for the treatment visits. No payments are made to privately practicing therapists. ***There are* no other limitations.**

iv. Audiology: Limited to such services when provided in the office of a licensed specialist in otology or otolaryngology or as part of clinic or hospital outpatient services. No payment is made to privately practicing audiologists.

14. Prescribed drugs: Both legend and non-legend drugs are provided with exceptions.

15. Prosthetic and orthotic devices.

i. Optical appliances: Optical appliances are provided with certain limitations. Prior authorization is required for artificial eyes, subnormal vision devices and contact lenses. Contact lenses are granted only for specific ocular pathological conditions or for patients who cannot achieve vision of 20/70 with regular lenses. Prior authorization is required for optical appliances prescribed in excess of one every two years for individuals ages 19 to 59 and one per year for all others.

ii. Hearing aids: Hearing aids and accessories are provided. Audiologic and otologic examinations are required. Prior authorization is required except for batteries.

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iii. Other prosthetic and orthotic devices: This includes devices to replace all or part of an internal organ; artificial limbs, braces, abdominal and other supports. Orthopedic shoes are provided under certain conditions. Prior authorization is required for limbs, braces, supports and orthopedic shoes.

iv. Repairs or replacements: Prior authorization is required for the repair or replacement of any of the above items, when the cost exceeds \$20.00.

16. (No change in text.)

17. Transportation.

i. Ambulance: Services are provided when use of any other method of transportation is medically contraindicated.

ii. Invalid coach: Invalid coach specifically designed for medical transportation is provided when patient does not need ambulance service but is physically unable to be transported by any lower mode of transportation. Prior authorization is required except in emergency conditions.

iii. Other transportation: Contact the county welfare agency.

10:49-1.5 General exclusions

(a) The items listed here are general exclusions from New Jersey Medicaid coverage. There are certain additional specific exclusions and limitations which are detailed in the appropriate provider manual sections. Payment is not made for:

1. (No change.)

2. Any services or items furnished in connection with elective cosmetic procedures;

Note: There are certain exceptions to this rule. A written certification of medical necessity and a treatment plan must be submitted by the physician to the Medicaid district office for consideration, as prior authorization is required.

3.-12. (No change.)

13. Any claim submitted by a provider for services(s) rendered to a recipient whose Medicaid Eligibility Identification Card (FD-73/178) has a printed message restricting the recipient to another provider of the same service(s). (See N.J.A.C. 10:49-1.2.)

10:49-1.7 Utilization of insurance benefits

(a) Medicaid benefits are last-payment benefits. All health and accident insurance benefits, including Medicare, workers compensation and no-fault auto insurance shall be used first and to the fullest extent in meeting the medical needs of the covered person. Since Medicare covers aged and certain disabled persons, providers should inquire about Medicare eligibility when rendering Medicare covered services to a person with program code 10, 20 or 50. Supplementation of available benefits shall be as follows:

1. Title XVIII (Medicare): For those individuals who are covered under Medicare, responsibility for payment by the New Jersey Medicaid Program will be limited to the unsatisfied deductible to the extent that the combined total of payments do not exceed the maximum allowable under the program in the absence of other coverage. (Exception: Co-insurance is reimbursable for hospital billings, long-term care facility billings, durable medical equipment and supplies, and prosthetic and orthotic devices to the extent that the combined total of payments do not exceed the maximum allowable under the program in the absence of other coverage.)

2.-6. (No change.)

10:49-1.8 Prior and retroactive authorization (general)

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

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(c) Retroactive authorization will not be granted under the following circumstances:

1. Services the provider identified as medically emergent are determined, following the medical review by the fiscal agent, to be non-emergent.

2.-3. (No change.)

10:49-1.9 Policy on out-of-State medical care and services

(a) Prior authorization is required for all inpatient and outpatient hospital services provided outside the State of New Jersey except in the following situations:

1. Care provided in an emergency;

2. Transfer from in-State to out-of-State hospital if the delay results in a significant risk to life or health or unduly prolongs a hospitalization of the recipient.

3. Care provided to Medicaid recipients residing out-of-state at the discretion of the New Jersey Department of Human Services.

(b) (No change.)

10:49-1.10 Fiscal Agents

(a) (No change.)

(b) Contracts have been negotiated on behalf of the State of New Jersey with the Hospital Service Plan of New Jersey (Blue Cross of New Jersey) and The Prudential Insurance Company of America to function as its fiscal agents.

(c) Blue Cross of New Jersey is responsible for the processing and payment of hospital inpatient, hospital outpatient and hospital-based home health agency claims for those providers who have selected Blue Cross as their intermediary under Title XVIII (Medicare). In addition, Blue Cross processes pharmaceutical services claims and claims for out-of-State hospitals and out-of-state hospital based home health agencies. Hospitals who have not participated in Title XVIII are assigned to Blue Cross of New Jersey.

(d) The Prudential Insurance Company of America handles the processing and payment of hospital inpatient, outpatient and certain hospital-based home health agency claims for those providers who have selected Prudential as their intermediary under Title XVIII (Medicare), and free standing home health agency claims. In addition, The Prudential Insurance Company processes claims for all other health services covered by the program, with the exception of pharmaceutical services, SNFs, ICFs, ICFs/MR, State and some county psychiatric hospitals.

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. (No change.)

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. (No change.)

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 and State and county 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. (No change.)

10:49-1.14 Use of service bureau and/or management agency

(a)–(d) (No change.)

(e) Standard Medicaid hard-copy claim forms, available from the Medicaid fiscal agents, must be used unless the provider has been authorized to submit claims via an automated data exchange billing system for all instances except where hard-copy claims are required as detailed in the appropriate provider manual.

1. (No change.)

2. In order to obtain prior authorization the provider/agent must submit a printers prototype of an exact replica of the Medicaid claim form and the programming instructions for completion of the form to the appropriate fiscal agent, The Prudential Insurance Company (P.O. Box 1900, Millville, New Jersey 08332) or Blue Cross of New Jersey (33 Washington St., Newark, New Jersey 07102).

3. (No change.)

(f) The New Jersey Medicaid Program, in authorizing/approving any provider/agent agreement, assumes no responsibility for the performance of the provider or agent. In the event that any error of the provider/agent requires special programming to be made by the Medicaid fiscal agent in order to have claims paid correctly the provider/agent must assume the entire cost of the special programming.

10:49-1.16 Provisions for appeals; fair hearings

(a)–(c) (No change.)

(d) In order to obtain a fair hearing, the provider or the eligible person should submit a request in writing to the Director, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625, outlining the reason for the request.

(e) (No change.)

10:49-1.17 Program participation

(a)–(b) (No change.)

(c) Definitions, as used in these regulations, include the following:

1.–8. (No change.)

9. "Fiscal Agents" means the Hospital Service Plan of New Jersey (Blue Cross of New Jersey) and The Prudential Insurance Company of America, or their successors.

10. (No change.)

(d) Any of the following, among other things, shall constitute a good cause for debarment, suspension or disqualification of a person engaged in State contracting, as defined herein, by the Division of Medical Assistance and Health Services:

1.–21. (No change.)

22. Submission of a false or fraudulent application for provider status to the division or to its fiscal agents;

23.–26. (No change.)

(e)–(g) (No change.)

(h) Scope of debarment rules are:

1.–2. (No change.)

3. Debarment, by the director, of any provider of service shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association to the Division of Medical Assistance and Health Services or its fiscal agents for any services or supplies he has provided under the New Jersey Medicaid Program, except for services or supplies provided prior to the debarment. No clinic, group, corporation or other association which is a provider of services shall submit claims for payment to the division or its fiscal agents for any services or supplies provided by a person within such organization who has been debarred by the director, except for services or supplies provided prior to the debarment.

4. (No change.)

(i)–(l) (No change.)

(m) (Scope of suspension rules are:

1. (No change.)

2. Suspension, by the director, of any provider of service shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association to the Division of Medical Assistance and Health Services or its fiscal agents for any services or supplies he has provided under the New Jersey Medicaid Program, except for services or supplies provided prior to the suspension. No clinic, group, corporation or other association which is a provider of services shall submit claims for payment to the division or its fiscal agents for any services or supplies provided by a person within such organization who has been suspended by the director, except for services or supplies provided prior to the suspension.

3. (No change.)

(n)–(q) (No change.)

10:49-1.20 Free choice by covered person and by provider

The concept of freedom of choice applies to both provider and recipient. An eligible person is free to choose providers of service who meet program standards and who elect to participate. It is understood that when a provider has accepted an individual for care he will accept the program's policies and reimbursement for all covered services and/or items which he provides or delivers during that period when, by mutual agreement, the recipient is under the provider's care. In the provision of professional services, it is considered automatic that the provider will be bound by the code of ethics governing his profession. The Medicaid district office will assist covered persons in obtaining services if the eligible person cannot locate a provider.

10:49-1.22 Confidentiality of records

(a) All information concerning applicants and recipients acquired under this program shall be confidential and shall not be released without the written consent of the individual or his authorized representative. If, because of an emergency situation, time does not permit obtaining consent before release, the program shall notify the individual, his family or authorized representative immediately after releasing the information. The restriction on the disclosure of information shall not preclude the release of statistical or summary data or information in which applicants or recipients are not, and cannot, be identified; nor shall it preclude the exchange of information between providers furnishing services, fiscal

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agents of the program and State or local government agencies for purposes directly connected with administration of the program. Disclosure without the consent of the applicant or recipient shall be limited to purposes directly connected with the administration of the program in accordance with Federal and State law and regulations.

(b) The types of information about applicants and recipients that will be safeguarded by the program includes but is not limited to:

1. Names and addresses;
2. Medical services provided;
3. Social and economic conditions or circumstances;
4. Program evaluations of personal information; and
5. Medical data, including diagnosis and past history of disease or disability.

(c) Purposes directly connected with the administration of the program includes but is not limited to:

1. Establishing eligibility;
2. Determining the amount of medical assistance;
3. Providing services for recipients; and
4. Conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the program.

10:49-1.24 Reserved

10:49-1.25 Reserved

APPENDIX A

MEDICAID DISTRICT OFFICES

County	Address	Telephone No.
Atlantic	1 So. New York Ave. Atlantic City, 08401	609-441-3620
Bergen	50 Main St. Hackensack, 07601	201-488-5667
Burlington	50 Rancocas Road Mt. Holly, 08060	609-261-0448
Camden	P.O. Box 1089 Parkade Bldg. 519 Federal St. Camden, 08101	609-757-2870
Cumberland (Cape May)	108 Landis Ave. Vineland, 08360	609-696-6560
Essex	155 Washington St. Newark, 07102	201-648-2470
Gloucester (Salem)	251 N. Delsea Drive Woodbury Plaza, Suite B Deptford, 08096	609-845-7185
Hudson	2815 Kennedy Blvd. Jersey City, 07306	201-433-8011
Hunterdon (Somerset)	84 Park Ave. Flemington, 08822	201-782-1130
Mercer	28 West State Street Trenton, 08608	609-292-7315
Middlesex	75 Paterson St. New Brunswick, 08903	201-246-0653
Monmouth	1200 Memorial Drive Asbury Park, 07712	201-775-5700
Morris (Sussex and Warren)	10 Park Place Morristown, 07960	201-267-1700
Ocean	1861 Hooper Ave. Toms River, 08753	201-255-6226
Passaic	100 Hamilton Plaza Paterson, 07505	201-977-4077

HUMAN SERVICES

Union 125 No. Broad St. 201-820-3135
6th Floor
Hersh Towers
Elizabeth, 07201

(a)

**DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

**Manual for Special Hospital Services
Admission and Billing Procedures**

Readoption: N.J.A.C. 10:53-2

**Adopted Amendments: N.J.A.C. 10:53-2.3,
2.6, 2.10, 2.13**

Proposed: March 4, 1985 at 17 N.J.R. 544(a).

Adopted: April 26, 1985 by George J. Albanese, Commissioner, Department of Human Services.

Filed: April 29, 1985 as R.1985 d.257, **without change.**

Authority: N.J.S.A. 30:4D-6a(1) (2), 7, 7a, 7b.

Effective Date of Readoption: April 29, 1985.

Effective Date of Concurrent Amendments: May 20, 1985. . .

Expiration Date pursuant to Executive Order No. 66(1978): April 29, 1990.

**Summary of Public Comments and Agency Responses:
No comments received.**

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:53-2.

Full text of the amendments to the readoption follows.

10:53-2.3 Inpatient Hospital Claim form; services covered (a)-(b) (No change.)

(c) Reimbursement for covered services furnished by unlicensed physicians employed directly or indirectly by a hospital shall not be made unless said unlicensed physician is lawfully practicing medicine and/or surgery pursuant to a specific statutory exemption under the laws of the State of New Jersey, and reimbursement in such instances is limited to reasonable costs which are made part of the facilities rate. All other reimbursement for services rendered by unlicensed physicians is specifically prohibited.

10:53-2.6 (Reserved)

10:53-2.10 (Reserved)

10:53-2.13 Medicare/Medicaid coverage

(a) When the patient is covered under both Medicare and Medicaid programs, only a Medicare form should be completed, with Item 57 showing the Health Services Program case and person number on that Medicare form (UB-82).

(b) Where benefits have been exhausted under Medicare, the charges to be billed to the program must be itemized for the non-covered period and the case and person number must be shown on the Medicare form.

(c) Where prior authorization is required for program purposes it must be obtained and submitted with the Medicare billing form.

(a)

**DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

**Independent Laboratory Services
State, County and Municipal Laboratories**

Adopted Amendments: N.J.A.C. 10:61-1.2

Proposed: November 19, 1984 at 16 N.J.R. 3162(a).
Adopted: April 25, 1985 by George J. Albanese, Com-
missioner, Department of Human Services.
Filed: April 25, 1985 as R.1985 d.237, **without change**.

Authority: N.J.S.A. 30:4D-6a(3), 7 and 7b; 42 CFR
440.30; 42 CFR 447.325.

Effective Date: May 20, 1985.
Expiration Date pursuant to Executive Order 66(1978):
May 8, 1986.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:61-1.2 Definitions and qualifications

(a) Independent laboratory services means professional and technical laboratory services ordered by a physician or other licensed practitioner within the scope of his practice as defined by the laws of the state in which he practices.

(b) To qualify for participation as an independent laboratory under the New Jersey Health Services Program, the following requirements must be met:

1. Licensure and/or approval by the New Jersey State Department of Health and the State Board of Medical Examiners. This includes meeting certificate of need and licensure requirements, when required, and all applicable laboratory provisions of the New Jersey State Sanitary Code;

2. Certification as an independent laboratory under the Title XVIII Medicare program;

3. Make a charge to all patients for services provided, except as provided by legislation. The charge made to Medicaid patients must not be more than that made to any other patient; and

4. Approval for participation as an independent laboratory provider by the New Jersey Health Services Program.

(c) Medicare-Medicaid relationship rules are:

1. Upon approval as an independent laboratory provider for Title XIX Medicaid participation and reimbursement, the requirements for independent laboratory services under the Title XVIII Medicare program are to be followed.

2. A laboratory approved for Medicaid participation shall only provide services and be reimbursed for the specialties and subspecialties specifically approved for Medicare participation.

(d) State, county and municipal laboratories located in New Jersey may qualify for Medicaid reimbursement provided they meet the criteria specified in (a), (b) and (c) above.

(e)-(g) (No change.)

(b)

**DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

**Pharmaceutical Assistance for the Aged and
Disabled (PAAD)**

Eligibility Procedures

Adopted Amendments: N.J.A.C.

**10:69A-1.2, 2.1, 5.3, 5.6, 6.1, 6.4, 6.6,
6.10 and 6.11**

Proposed: February 19, 1985 at 17 N.J.R. 367(a).
Adopted: April 26, 1985 by George J. Albanese, Com-
missioner, Department of Human Services.
Filed: April 29, 1985 as R.1985 d.259, **without change**.

Authority: N.J.S.A. 30:4D-21, 22, 23, 24.

Effective Date: May 20, 1985.

Expiration Date pursuant to Executive Order No.
66(1978): April 26, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:69A-1.2 Legal authority

(a) The New Jersey Program of Pharmaceutical Assistance to the Aged and Disabled (PAAD) was established by Chapter 194, Laws of 1975, as amended by:

1. Chapter 194, Laws of 1975, effective August 21, 1975. Amended by Chapter 312, laws of 1975, effective February 19, 1976;

2. Chapter 268, Laws of 1977, effective January 1, 1978; and

3. Chapter 171, Laws of 1978, effective December 22, 1978; and

4. Chapter 27, Laws of 1979, effective March 1, 1979; and

5. Chapter 499, Laws of 1981, effective March 1, 1982.

(b) These Statutes supplement the New Jersey Medical Assistance and Health Services Act (P.L. 1968, c.413).

10:69A-2.1 Definitions

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

“Calendar year” means a year beginning January 1 and ending on December 31. It is the base period utilized to determine annual income and PAAD eligibility.

“Current year” means the calendar year in which a person applies or reapplies for PAAD.

“Expiration date” means the date when a beneficiary’s PAAD eligibility ends.

“Legend Drug” means any approved drug product which by Federal Law cannot be dispensed without a prescription and bears the statement on the Label: “Caution: Federal law prohibits dispensing without a prescription”.

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“Reasonable cost” means the maximum allowable cost of prescription drugs plus a dispensing fee as determined by the Commissioner of the Department of Human Services.

“Resident” means “one legally domiciled within the State (of N.J.) for a period of 30 days immediately preceding the date of application for inclusion in the PAAD Program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile.” (See N.J.A.C. 10:69A-6.4 for residence requirements.)

“Tenants Lifeline Assistance Program” means a utility assistance program that offers a benefit in the form of a check issued to tenants whose utilities are included in their rent and do not have a separate utility bill.

10:69A-5.3 Eligibility effective date

(a) The PAAD eligibility effective date for an initial PAAD applicant, who meets all of the PAAD eligibility criteria, is the date when processing of a valid and complete eligibility application is completed by the PAAD Bureau.

(b) A PAAD beneficiary must renew his/her eligibility every year unless his/her annual income is below \$9,000 for single persons or \$12,000 for married persons. In that case, he/she would renew every two years. Approximately four months prior to his/her expiration date, PAAD will advise the beneficiary if he/she is eligible for biennial eligibility, or if he/she will be required to complete a renewal form.

1. Those eligible for the biennial process will be mailed an eligibility card for the second year automatically.

2. Those beneficiaries required to renew annually must submit a valid renewal application 45 days prior to their renewal date in order for PAAD benefits to continue uninterrupted. If the renewal application is not submitted prior to the renewal date, the eligibility effective date will be the date when processing of a valid and complete renewal application is completed by the PAAD Bureau.

10:69A-5.6 Responsibilities in the application process

(a) (No change.)

(b) The Bureau of Pharmaceutical Assistance to the Aged and Disabled has responsibility in the application process to:

1.-4. (No change.)

5. Automatically mail reapplication forms approximately four months prior to the eligibility expiration date;

6. (No change.)

(c) The applicant has the responsibility to:

1. Complete the PAAD eligibility application/renewal application form(s) legibly and accurately:

i.-v. (No change.)

2.-5. (No change.)

6. Complete his/her renewal application in person if selected as part of a sample group by PAAD. PAAD eligibility will not be renewed if the beneficiary refuses an in-person eligibility review.

(d) The beneficiary has the responsibility to:

1. (No change.)

2. Return eligibility card to the Bureau of Pharmaceutical Assistance to the Aged and Disabled whenever becoming ineligible due to one of the following:

i.-iii. (No change.)

iv. He/she was determined eligible based on his/her disability and he/she stops receiving Social Security Disability benefits.

3. Repay the State of New Jersey, upon request, for the cost of benefits incorrectly paid on his/her behalf.

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10:69A-6.1 Age

(a) To be eligible for PAAD, the applicant must be 65 years of age or older or must be under 65 and over 18 years of age and receive Social Security Title II disability benefits. The applicant must be able to document his or her age upon request by the Division of Medical Assistance and Health Services. The Division will require that the applicant submit a photocopy of his or her birth certificate or other acceptable proof of age if over 65 years of age.

(b) The following are acceptable proofs of age:

1. Primary proof: The applicant is required to submit a photocopy of one of the following documents:

i.-iv. (No change.)

v. Railroad retirement;

vi. Third Party Query Form (can be obtained from local Social Security Office.)

2. (No change.)

(c) If under age 65, the following are acceptable proofs of disability.

1. A copy of a Social Security award certificate issued in the last six months.

2. An SSA-2458 Form or Third Party Query Form indicating disability.

10:69A-6.4 Residence

(a) The statute provides that “any . . . resident of this State . . . shall be eligible for PAAD. “Resident” means one legally domiciled within the State for a period of 30 days immediately preceding the date of application for inclusion in the program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile. Absence from this State for a period of 12 months is prima facie evidence of abandonment of domicile. The burden of establishing legal domicile within the State is upon the applicant.”

1.-5. (No change.)

10:69A-6.6 PAAD eligibility application and renewal application forms

(a) (No change.)

(b) The only acceptable form to be utilized in determining the beneficiary’s continuation of eligibility will be the PAAD eligibility renewal application form (AP-12). This form is automatically mailed to the beneficiary approximately four months prior to the eligibility expiration date.

10:69A-6.10 Eligibility period

(a) A PAAD eligibility card is effective for one year. The PAAD beneficiary must renew his/her eligibility every year unless his/her income is below \$9,000 for single persons or \$12,000 for married persons. In that case, he/she would receive an updated eligibility card automatically for the second year, and would complete a renewal application every two years.

(b) Approximately four months prior to his/her expiration date, PAAD will notify the beneficiary if he/she is eligible for biennial eligibility or if he/she must complete a renewal form. Renewal applications must be returned to the PAAD Bureau by the beneficiary at least 45 days prior to the renewal date to ensure continuous coverage.

10:69A-6.11 Confidentiality and disclosure of information

(a) (No change.)

(b) (No change.)

(c) The prohibition of (a) above against unauthorized disclosure shall not be construed to prevent:

1.-6. (No change.)

7. The release of information or files to County Welfare Agencies for the purpose of determining eligibility for Medicaid benefits or for subsequent verification of Medicaid eligibility.

LAW AND PUBLIC SAFETY (a)

BOARD OF DENTISTRY

Announcement of Practice in a Specialty Area; Professional Advertising

Readoption as New Rules: N.J.A.C. 13:30-8.4 and 8.6

Proposed: February 19, 1985 at 17 N.J.R. 378(a).

Adopted: April 10, 1985 by New Jersey State Board of Dentistry, Arthur Yeager, D.D.S., President.

Filed: April 29, 1985 as R.1985 d.253, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 45:6-1 et seq., N.J.S.A. 45:6-19.4.

Effective Date: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 15, 1990.

Summary of Public Comments and Agency Responses:

On March 13, 1985 the State Board of Dentistry at its regular meeting conditionally adopted a proposed readoption as new rules, said proposed readoption appearing at 17 N.J.R. 378. The Board's adoption was contingent upon not receiving additional public comments on the proposal. Prior to adoption, two comments were received and were addressed in the Board's Notice of Adoption of N.J.A.C. 13:30-8.1 to 8.3, -8.5, and -8.7 to -8.13 at 17 N.J.R. 972(a). On March 19, 1985 the Board received comments from the Federal Trade Commission (FTC) and OraCare Dental Health Center (OC). Said comments were limited to N.J.A.C. 13:30-8.4 (specialty practice rules) and 8.6 (professional advertising) and addressed no other aspect of the original proposal. In view of its prior action, the Board withheld final adoption of subsections 13:30-8.4 and 8.6 pending consideration of the FTC and OC's comments.

On April 10, 1985, after thoroughly reviewing and considering the FTC and OC's comments in accordance with the Administrative Procedure Act, the Board adopted the proposed readoption of N.J.A.C. 13:30-8.4 and -8.6 as new rules with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Price Information

In reference to N.J.A.C. 13:30-8.6(c)12, both the FTC and OC object to the prohibition of the offering of gratuitous services. They both feel that the offer of free services is of benefit to the consumer and is a valuable marketing tool. The Board suggests that both the FTC and OC fail to understand that there is a substantial difference between the marketing of consumer products and services as in dentistry. A manufacturer who overproduces a product such as clothing may sell

out his excess stock to a retailer to clear the way for summer production at an extremely low price enabling the retailer to resell at a fraction of the original cost. No such situation applies to the practice of dentistry. There is no oversupply of X-rays, Amalgam, or full dentures. These services are professional, labor intensive, and have costs built into them. They cannot be offered free, because their costs are spread among other services rendered to both the patient offered the gratuitous service and all other patients at that facility. An additional abuse addressed by the rule is the "bait and lure" wherein a free service, such as a "consultation," is advertised but when the patient requests that service he or she is advised that a thorough treatment cannot be performed without additional (often unnecessary) procedures. See, for example, *In re Blum*, 109 N.J. Super. 125 (App. Div. 1970). The FTC is aware of the inherent problems for they admit in their comments of, ". . . a potential for deceptive schemes in the use of such (gratuitous) services."

Regarding N.J.A.C. 13:30-8.6(g), both the FTC and OC object to the requirement that discounts when offered must indicate the fixed or stated range of fees against which said discounts are made. They feel that the consumer will be harmed by the unavailability of across-the-board discounts. OC does not feel that an advertisement is misleading if the reference price is included, "So long as the discount offered is a discount from its *regular* price. . . ." (emphasis added). This is precisely the Board's concern. A percent off is a great source of deception to the consumer and may be widely abused. If a particular group (Senior Citizens, Union Members, Ladies Club, Coupon Holders) is offered a percent off subject to identification prior to fee discussion, the fee may then be raised to cover the percent. The Board can see no benefit to the consumer in such a situation. Further, nothing in the regulations prohibit the negotiation or reduction of fee by any dentist to any patient or any patient with any dentist. The Board is aware of numerous permitted advertisements stating normal range of fees. Example: X-rays, Examination and Cleaning regularly \$50.00 with this coupon \$25.00. Such an advertisement is bonafide, verifiable, represents a saving to the patient and is clearly in the consumer interest.

The FTC questions the use of the word "routine" in N.J.A.C. 13:30-8.6(f), limiting advertising to routine services. The FTC questions the possible effect on new techniques. To date, the Board has had no problem with this regulation being readopted without change. Further, in its wording the Board was following the mandate of the Supreme Court in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), in which the majority made clear that a brief factual statement of fees charged for specific relatively routine services were permitted.

Non-Price Information

Both FTC and OC object to N.J.A.C. 13:30-8.6(c)2, prohibiting claims of superiority, because they feel that this will restrict comparative advertising and will reduce competition. They allege that identifiable and factual claims are prohibited by this section. They are not correct. The regulation will only prohibit statements that services and materials are superior to others without qualification. Nothing in this regulation prohibits, for example, information regarding additional training, post graduate degrees, or experience residencies as part of an advertisement so long as it is true. What is prohibited is the unqualified statement of superiority. Essentially dental services depend on the skill of the operator. Further, while an individual practitioner might be more skilled in one phase of dentistry he may be less adept at another. The Board does not

perceive that the consumer is benefited by a statement that a particular dentist does the "finest" fillings or the "best" extractions.

Both the FTC and OC object to prohibition of testimonials contained in N.J.A.C. 13:30-8.6(c)5 and feel that such advertising is a proper reflection of consumer experience. The Board has carefully considered the merits of such statements and their informational potential against their potential for abuse. As OC correctly points out, testimonials regarding the quality of care *cannot* be properly regulated. OC argues that testimonials regarding the experiences of patients at their office may be helpful to consumers. The Board must differ. The Board questions whether such testimonials are prompted, solicited, edited, paid for and who can and will verify their claims as truthful.

The FTC objects to the requirement in N.J.A.C. 13:30-8.6(d) which provides that the Board may require the substantiation to *ANY* claim for its truthfulness and suggests that the requirement be for *material* claims only. The Board finds the FTC question one of semantics in this case and as a matter of practice only questions material claims for truthfulness.

The FTC objects to the requirement in N.J.A.C. 13:30-8.4 that advertising of specialties be limited to light recognized specialties and that their permit number be listed in advertisements. The FTC contends that this regulation prevents dentists with "other" specialties from advertising and that listing their names and permit numbers in advertisements is burdensome. The Board must point out to the FTC that there are in fact only light bona fide specialties in dentistry. These specialties are clearly identifiable, with set qualifications, and the Board is able to certify only those areas. As noted above, should a dentist have additional, post graduate training in any phase of the practice of dentistry he may so state in an advertisement. In this situation, however, the characterization of specialist as suggested by the FTC is inappropriate and conveys misleading information to the public.

Since the Board has jurisdiction over the licensee and not the place of practice, the names and specialty numbers are required to be included in the advertisements. The FTC infers that in large volume practices that the names of *all* the dentists employed are required to be in the advertisement. The required listing of names applies only to the owners who are responsible for the advertisement, and the specialists and their certificate numbers who are practicing at that facility. In its experience, the Board has often encountered advertisers who have falsely claimed the availability of specialists, without, in fact, these specialists being associated with the facility and the specialty services, in fact, being rendered by general practitioners, or the specialists are unavailable when the consumer is in need of the specialist's services. The purpose of this provision is to eliminate this deceptive practice.

Vague and Subjective Standards

The FTC and OC argue that the requirements of N.J.A.C. 13:30-8.6(b) that advertising be in a dignified manner is vague and subjective. The Supreme Court in *Bates* agrees that advertising is "subject to restraint" and that "there may be reasonable restriction(s) in the time, place and manner of advertising". Initially, it should be noted that this standard, while currently being challenged, is virtually identical to that adopted by the Supreme Court of New Jersey in regulating attorney advertising. See R.P.C.7.2(a). Furthermore, the Board is convinced that advertising may be done in an undignified manner in a variety of formats which are non-informational and do not foster the public interest. The FTC and OC also object to prohibition of non-informational advertising

which is used primarily to gain attention. It should be clear that this regulation is in conformity with the *Bates* mandate that the advertising be factual.

Solicitation and Referrals

The Board of Dentistry is in agreement with the FTC on its recommendation for 13:30-8.6(e) wherein the prior subsection has been revised to read as suggested: "A board licensee shall not engage in uninvited, in person solicitation of actual or potential patients, who, because of their particular circumstances are vulnerable to undue influence."

Both FTC and OC object to prohibition of payment for third party referral contained in N.J.A.C. 13:30-8.6(c)7. In the Board's experience in New Jersey, patients are referred by word of mouth, by referral by dentists, by government agencies, by local dental societies and by advertising. The Board has great difficulty understanding the FTC and OC assertion of how the steering of a patient to a particular office for a fee can in any way be construed as beneficial to that patient or the consuming public. The Board is aware of no difficulties in New Jersey of prospective patients finding dentists to treat them at the present time. The FTC should be aware that generally parties involved in the solicitation of patients who may be referred (steered) to a particular practice, do so for the profit motive. This practice adds costs to the patient's treatment program, and at the same time opens avenues for potential abuses. In addition, the local dental societies maintain emergency service phones with impartial lists of qualified practitioners to serve the needs of the consumer. When requested, lists of qualified certificated specialists are also made available on an impartial basis.

Advertising Recordkeeping

The FTC feels that the requirement of N.J.A.C. 13:30-8.6(1) of retaining records of all advertisements for three years would be burdensome. The Board disagrees. Should questions arise, the copy must be available. Three years is not an inordinate period when considering patient treatment which may span several years. Many consumer complaints are based upon treatment rendered several years prior to the contacting of the Board. Advertisements may be valuable evidence in such cases. The same advertisement retention rule exists for attorneys. See R.P.C. 7.2(b). For example, orthodontia often requires years of treatment. If a patient were lured by an advertisement guaranteeing a maximum cost of total treatment (for example \$1,500), but the total fees paid over the course of treatment proved to be greater (for example \$2,000), requiring preservation of the original advertisement would enable the patient to substantiate a charge of deceptive advertising. Furthermore, there may be a period of delay before regulatory review and action can be taken and the Board may find it necessary to review a pattern of advertisements over a period of time to evaluate a licensee's history of rule compliance.

Conclusion

These regulations are the result of careful study based on experience with advertising and patient complaints which span the period prior to and after *Bates* and other judicial decisions concerning professional advertising. The Board is cognizant of the changes which have been imposed, and is eager to assist and in fact does advise potential advertisers to help keep advertising truthful and factual, and to increase competition, and conform with the rules and decisions promulgated in this area.

The Board also recognizes that advertising is expensive and can add substantially to the cost of treatment to the consumer. So long as good standards of practice are maintained, and the patients are properly informed by the advertiser, the Board has no concern with such advertisements.

The Board appreciates the comments of both the FTC and OraCare and has carefully considered them. The FTC and OC must understand that the role of the Board in promulgating these regulations is to achieve a considered balance between the rights of advertisers to commercial free speech and the Board's obligation to protect the consumer from false, misleading and deceptive advertising.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks, ***thus***; deletions from proposal shown in brackets with asterisks, *[thus]*).

13:30-8.4 Announcement of practice in a special area of dentistry

(a)-(i) (No change in text from Code.)

(j) All advertisements and public representations of a licensee granted a permit of announcement of limited practice or specialization in a special area of dentistry shall contain the licensee's name and permit number.

(k) A licensee advertising or publicly representing that his or her practice specializes in or is limited to one or more area(s) of dental practice listed in (b) above shall list the name and permit number of the Board licensee(s) rendering dental services in said special area(s) in all advertisements and public representations.

(l) Noncompliance with these rules for announcement of limitation of practice may subject the licensee to suspension or revocation of his or her license to practice dentistry.

(m) Applications may be obtained by writing to the Office of the Board of Dentistry, 1100 Raymond Boulevard, Newark, New Jersey 07102.

13:30-8.6 Professional advertising

(a) Definitions:

1. The term "advertisement" shall refer to the attempt directly or indirectly by publication, dissemination, solicitation, endorsement or circulation or in any other way to attract directly or indirectly any person to enter into an express or implied agreement to accept dental services or treatment thereto.

2. The term "routine professional service" shall refer to a service which the advertising licensee, professional association or institution providing dental care routinely performs.

3. The term "print media" shall refer to newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers and other similar documents or comparable publications, the content of which is disseminated by means of the printed word.

4. The term "electronic media" shall include radio and television, but shall not include communications made by sound equipment from a motor vehicle.

5. The term "range of fees" shall refer to an expressly stated upper and lower limit on the fee charged for a professional service.

(b) A licensed dentist who is actively engaged in the practice of dentistry in the State of New Jersey may provide information to the public by advertising in print or electronic media in a dignified manner.

(c) A licensee who engages in the use of advertising which contains the following shall be deemed to be engaged in professional misconduct:

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

2. Claims that the service performed or the materials used are professionally superior to that which is ordinarily performed or used.

3. Promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform.

4. Techniques of communication which appear to intimidate, exert undue pressure or undue influence over a prospective patient.

5. The use of any personal testimonial attesting to the quality or competence of a service of treatment offered by a licensee.

6. The communication of personally identifiable facts, data, or information about a patient without first obtaining written consent.

7. Offers to give, receive or accept a fee or other consideration to or from a third party for the referral of a patient.

8. The use of any misrepresentation.

9. The suppression, omission or concealment of any material fact under circumstances which a Board licensee knows or should know that the omission is improper or prohibits a prospective patient from making a full and informed judgment, on the basis of the information set forth in the advertisement.

10. Any print, language or format which directly or indirectly obscures a material fact.

11. Any format which appears to be essentially non-informational in nature and used primarily to gain attention.

12. Any statement offering gratuitous services or the substantial equivalent thereof, provided, however, nothing herein contained shall be deemed to prohibit the rendering by a Board licensee of professional services for which no fee is charged.

(d) The Board may require a licensee to substantiate the truthfulness of any assertion or representation set forth in an advertisement. Failure of a licensee to provide factual substantiation to support a representation or assertion shall be deemed professional misconduct.

(e) ***[A Board licensee shall not engage either directly or indirectly or through the use of any agent, employee or representative in in-person solicitation with a prospective patient or consumer.]*** ***A Board licensee shall not engage in uninvited, in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence.*** This subsection shall not prohibit the offering of services by a Board licensee to any bona fide representative of prospective patients including, but not limited to employers, labor union representatives, or insurance carriers.

(f) Advertising making reference to setting forth a fee shall be limited to that which contains a fixed or a stated range of fees for a specifically described routine professional service.

1. A licensee who advertises shall disclose all the relevant variables and considerations which are ordinarily included in such a service so that the fees will not be misunderstood. In the absence of such a disclosure, the stated fees shall be presumed to include everything ordinarily required for such a service. No additional charges shall be made for an advertised service unless the advertisement includes the following disclaimer: "Additional charges may be incurred for related services which may be required in individual cases". The disclaimer cannot be used for treatment where related services are ordinarily required.

(g) Offers of discounts or fee reductions shall indicate the fixed or stated range of fees against which said discount is to be made.

(h) All licensee advertisements and public representations shall contain the name and address or telephone number of the licensee, professional service corporation or trade name under which the practice is conducted and shall also set forth the names of all licensees who are principals, partners, or officers in the professional service facility identified in the advertisement and/or public representation.

(i) A licensee shall be presumed to have approved and shall be personally responsible for the form and contents of an advertisement which contains the licensee's name, office address, or telephone number. A licensee who employs or allows another to employ for his benefit an intermediary source or other agent in the course of advertising shall be personally responsible for the form and contents of said advertisement.

(j) The effective period during which a fee or discount shall remain in effect shall be set forth on the face of the advertisement. In the absence of such disclosure and solely for the purposes of enforcement, the effective period shall be deemed to be 30 days from the date of the advertisement's initial publication.

(k) A video or audio tape of every advertisement communicated by electronic media shall be retained by the licensee and made available for review upon request by the Board or its designee.

(l) A licensee shall be required to keep a copy of all advertisements for a period of three years. All advertisements in the licensee's possession shall indicate the accurate date and place of publication.

(a)

BOARD OF OPTOMETRISTS

Fee Schedule

Readoption as a New Rule: N.J.A.C. 13:38-5.1

Proposed: March 18, 1985 at 17 N.J.R. 677(a).
 Adopted: April 23, 1985 by New Jersey State Board of Optometrists, Maxwell M. Kaye, O.D., President.
 Filed: April 29, 1985 as R.1985 d.254, **without change**, but with **portion** of the proposal not adopted but still **pending**.

Authority: N.J.S.A. 45:12-4; 45:1-3.2.

Effective Date: May 20, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): May 20, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption follows.

13:38-5.1 Fee schedule

- (a) The following fees shall be charged by the Board:
1. Biennial renewal fee—active certificate: \$100.00;
 2. Biennial renewal fee—non-active certificate: \$70.00;

3. Biennial renewal fee—branch office certificate: \$200.00;
4. Change of address fee—active or non-active: \$15.00;
5. Transfer fee—non-active to active: \$50.00;
6. Application for examination: \$225.00;
7. Application for reexamination: \$125.00;
8. New branch office certificate \$100.00;
9. Penalty for late renewal of any certificate: \$100.00;
10. Certification by endorsement—Reciprocity: \$200.00;
11. Duplicate wall certificate: \$25.00;
12. Wall certificate—new registrants: \$100.00;
13. Letter of certification:
 - i. License: \$25.00;
 - ii. Continuing education credit: \$25.00;
14. Preceptorship certificate: \$25.00.

(b)

DIVISION OF CONSUMER AFFAIRS

Merchandise Advertising

Readoption: N.J.A.C. 13:45A-9

Proposed: March 18, 1985 at 17 N.J.R. 678(a).
 Adopted: April 26, 1985 by Division of Consumer Affairs, James J. Barry, Jr., Director.
 Filed: April 29, 1985 as R.1985 d.256, **without change**.

Authority: N.J.S.A. 56:8-4.

Effective Date: April 29, 1985.
 Expiration Date pursuant to Executive Order No. 66(1978): April 29, 1990.

Summary of Public Comments and Agency Responses:

The New Jersey Division of Consumer Affairs ("DCA") held a 30-day written comment period from March 18, 1985 to April 18, 1985 concerning the proposed readoption of the Rule governing Merchandise Advertising, N.J.A.C. 13:45A-9.1 to 9.4. The DCA received five written comments: three from major business associations; one from a major retail store chain; and one from a New Jersey municipal consumer affairs office.

Comment:

One commenter described three "economic disadvantages" it believes had been produced by the rules:

- (1) discouragement of business expansion in New Jersey due to regulations more stringent than Federal or other State standards;
- (2) onerous and costly burdens imposed on national and regional retailers to comply with State standards; and
- (3) elimination of cost savings from use of centrally prepared and/or cooperative advertising.

The commenter also made reference to the Federal Trade Commission's 1964 Advertising Guidelines, which were cited as adequate for addressing concerns with respect to advertisements for reduced prices, special sales, and the definition of "former price."

Response:

DCA is unaware of any documentation that would demonstrate that business expansion has been restricted in New

Jersey due to the rules governing merchandise advertising. If anything, as indicated by the number of complaints and the number of subject firms addressed by consumer complaints, DCA has observed a considerable expansion of retail businesses in New Jersey since the rules were initially adopted. With respect to alleged burdens imposed on national and regional retailers who must comply with the New Jersey Rules, DCA has observed that a relatively small proportion of national and regional retailers have in fact exhibited a difficulty or inability in complying with the requirements of the Rule. Likewise, no documentation has been presented to DCA which would sustain the contention that in complying with the New Jersey Rules businesses incur excessive extra costs for advertising.

The reference to the Federal Trade Commission's 1964 Advertising Guidelines relates to informal standards, drafted in the retail environment which existed over 20 years ago. The New Jersey rules were carefully considered, with input from a number of relevant sources, upon its initial adoption in 1974, as well as upon adoption of the amended Rule in 1980. The vast majority of retail advertisers in New Jersey have been in compliance with the clear and reasonable standards set forth in the New Jersey Rules during those periods.

Comment:

Another commenter maintained that there is no distinction between intentional conduct and inadvertent error in the New Jersey Consumer Fraud Act or its attendant regulations. The commenter also claims that the DCA has failed to enforce the regulations on an equal basis, among various types of retailers. Additional technical objections have been raised by this commenter with regard to: the definitions of "advertisement" and "price reduction advertisement"; the determination of what constitutes "reasonable anticipated consumer demand"; requirements relating to the issuance of rainchecks, if ordered; and desired amendment to the section concerning the pricing of advertised items, specifically that actual purchase should be required prior to a determination that this section has been violated.

Response:

The commenter is inaccurate in stating that neither the Consumer Fraud Act nor its attendant regulations distinguish in any way between intentional conduct and inadvertent error. Under the Consumer Fraud Act, its regulations, and related legal precedents, proof of intent is not necessary to establish a violation of the Act or the regulations.

The DCA has consistently enforced the regulations on an equal basis among the retailers who are subject to this regulation. The number of violations, enforcement efforts and legal actions that have resulted have been numerous and represent a broad range of the retail marketplace.

With regard to the objection concerning the various definitions, rainchecks and pricing of advertised items, no persuasive objections were raised which would outweigh the perceived consumer protection benefits, as reflected in DCA's field inspections, consumer complaint records and other investigative activities. The proposed requirement that advertised items be purchased as a condition precedent to the determination of a violation would be burdensome, unnecessary and contrary to timely and efficient consumer protection mandates of the DCA.

Comment:

A commenter requested that the DCA extend the rules for a period of no longer than one year, on the grounds that the

existing regulations fail to take into account recent technological changes, for example, computerized inventory and pricing systems, and optical price scanning devices. Other areas of concern involved the reference price requirement, the 60-day duration of limitation (concerning sale offerings) and good faith defenses.

Response:

DCA, as exhibited by the 1980 revision of the rules, remains flexible and willing to consider any pertinent and substantive documentation supportive of perceived needs for revisions and amendments in the rule at any time. However, readoption for a period less than five years would be disruptive to DCA's reasonable efforts for consistent enforcement, and would negatively affect the retailers' ability to plan advertising for any extended period of time.

No specific substantive comment has been currently presented with regard to the reference price, 60-day sale duration, and good faith defense comments. However, applications of the rules and challenges to same, with regard to these provisions have upheld DCA's position and the validity of the rules to date.

Comment:

The commenter has found the rules to be in the best interests of the consumer. Specifically, consumer difficulties were detailed with regard to attempts to determine percentage savings claims in advertising. The rules were specified as essential to assist clarification for consumers in this regard.

Response:

The DCA has determined similar clarification and assistance in consumer understanding of the sections of the rules pertaining to percentage savings claims, among many other topics.

Comment:

The commenter opposed readoption of the rules on the ground that the 1964 Federal Trade Commission Advertising Guidelines were adequate for the protection of the consuming public against unfair advertising. The commenter maintained that retailers with large or national trade areas have encountered insurmountable problems, particularly with regard to the "reference" or "former" price requirements of the New Jersey Rules. Comment was also made that the advertising of reference prices tends to increase the pressure on some manufacturers to seek to mandate minimal retail prices for their goods, resulting in price fixing detrimental to the consumer. It was claimed that the rules unduly restrict the advertisement of sales, and thus results in consumer ignorance of available lower prices. Consequently, the rules cause consumers to pay higher prices than they would have paid in the absence of the New Jersey Rules. It was further claimed that the printing of separate ads would add a minimum of \$500,000 per year to the advertising costs of a major national retailer. Finally, in the alternative, a request was made that the New Jersey Rules be amended to exempt national retailers from its provisions.

Response:

A response has been made above setting forth DCA's position with regard to the rules in relation to the 1964 Federal Trade Commission Advertising Guidelines. The reference price requirements of the New Jersey Rules have been followed by the vast majority of local, regional, and national retailers who advertise in New Jersey. No documentation has been presented which supports the contention that additional advertising costs have been incurred in order to comply with

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the New Jersey Rules. However, the response stated above has indicated that during the period in which the rules have been in effect, there appears to have been an expansion of retail business in New Jersey. Finally, the commenter has failed to raise adequate grounds justifying an exemption from these rules for national retailers.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:45A-9.

(a)

DIVISION OF CONSUMER AFFAIRS

Home Improvement Practices

Readoption as New Rules: N.J.A.C. 13:45A-16

Proposed: March 18, 1985 at 17 N.J.R. 679(a).
Adopted: April 26, 1985 by Division of Consumer Affairs, James J. Barry, Jr., Director.
Filed: April 29, 1985 as R.1985 d.255, **without change**.
Authority: N.J.S.A. 56:8-4.

Effective Date: May 20, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): May 20, 1990.

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. 13:45A-16.

TRANSPORTATION

(b)

LOCAL AID

**Federal Aid Urban System Substitution Program
County and Municipal Aid**

Adopted Amendment: N.J.A.C. 16:20A-4.4, Appendix I

Proposed: March 4, 1984 at 17 N.J.R. 565(b).
Adopted: April 10, 1985 by Jack Freidenrich, Assistant Commissioner for Engineering and Operations.
Filed: April 24, 1985 as R.1985 d.233, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13.1 et seq., 27:7-47, and the 1984 New Jersey Transportation Trust Fund Authority Act.

TRANSPORTATION

Effective Date: May 20, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): December 17, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:20A-4.4 Cost of right-of-way acquisition
(a)-(m) (No change.)

APPENDIX I

Municipalities Qualified for Depressed Rural Centers Aid

County	Municipality
Hunterdon	Lambertville City
Middlesex	Jamesburg Borough
Monmouth	Allentown Borough

APPENDIX II

Municipalities Qualified for Urban Aid Funding
(No change.)

(c)

CONSTRUCTION AND MAINTENANCE UNIT

Outdoor Advertising Tax Act Permit Fees

Adopted Amendment: N.J.A.C. 16:41A-6.1

Proposed: February 19, 1985 at 17 N.J.R. 385(a).
Adopted: March 25, 1985 by Jack Freidenrich, Assistant Commissioner for Engineering and Operations.
Filed: April 19, 1985 as R.1985 d.230, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 52:14B-1.1 et seq; and 54:40-50 et seq., Chapter 191 Laws of 1959, specifically 54:40-56.

Effective Date: May 20, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): February 19, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:41A-6.1 Basis of permit fees

The fee¹ for each permit or conditional permit is based upon the size of the space, (that is the advertising surface) to be used for outdoor advertising, and is as follows:

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Over	Area in Square Feet Not more than	Annual Fee Rate*	Semi-Annual Fee Rate**
—	50	\$ 2.00	\$ 1.00
50	100	4.00	2.00
100	150	6.00	3.00
150	200	8.00	4.00
200	250	10.00	5.00
250	300	12.00	6.00
300	350	15.00	7.50
350	400	20.00	10.00
400	450	25.00	12.50
450	500	30.00	15.00
500	550	35.00	17.50
550	600	40.00	20.00
600	650	45.00	22.50
650	700	50.00	25.00
700	750	60.00	30.00
750	800	70.00	35.00
800	850	80.00	40.00
850	900	90.00	45.00
900	950	100.00	50.00
950	1000	110.00	55.00
1000	—	125.00	62.50

* Annual Fee: For permit issued between April 1 and September 30.

** Semi-Annual Fee: For permit issued between October 1 and March 31.

Double-Faced, Back to Back or V-Type Signs: Twice the permit fee.

¹ Based upon surface area of sign. For maximum size limitation, see N.J.A.C. 16:41A-3.2(a)10.

Statutory Reference
N.J.S.A. 54:40-56.

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Facsimile Signatures

Adopted New Rule: N.J.A.C. 19:25-2.6

Proposed: March 18, 1985 at 17 N.J.R. 683(b).

Adopted: April 26, 1985 by Election Law Enforcement Commission, Frederick M. Herrmann, Executive Director.

Filed: April 26, 1985 as R.1985 d.238, **without change**.

Authority: N.J.S.A. 19:44A-6.

Effective Date: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): August 6, 1989.

Summary of Public Comments and Agency Response: No comment received.

Full text of the adoption follows.

19:25-2.6 Signatures

(a) Whenever authorized by the commission by resolution, the signature of the chairman of the commission on final decisions, orders or other determinations issued by the commission pursuant to N.J.S.A. 19:44A-22 may be a facsimile signature.

(b) Whenever authorized by the commission by resolution, the executive director, or such employee of the commission as may be from time to time designated in writing by the executive director, shall be authorized to sign final decisions, orders or other determinations of the commission pursuant to N.J.S.A. 19:44A-22 in the name of the chairman of the commission, or to affix to such final decisions, orders or other determinations pursuant to N.J.S.A. 19:44A-22 the facsimile signature of the chairman.

(b)

ELECTION LAW ENFORCEMENT COMMISSION

Continuing Political Committees

Adopted Amendments: N.J.A.C. 19:25-15.3, 15.12, 16.3 and 16.10

Proposed: March 18, 1985 at 17 N.J.R. 684(a).

Adopted: April 26, 1985 by Election Law Enforcement Commission, Frederick M. Herrmann, Executive Director.

Filed: April 26, 1985 as R.1985 d.239, **without change**.

Authority: N.J.S.A. 19:44A-38.

Effective Date: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): Subchapter 15, February 13, 1986; Subchapter 16, March 12, 1989.

Summary of Public Comments and Agency Responses: No comment received.

Full text of the adoption follows.

19:25-15.3 Definitions for this subchapter

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

...

“Political committee” means any two or more persons acting jointly, or any corporation, partnership or any other incorporated or unincorporated association which is organized to, or does aid to promote the nomination, election or defeat of a candidate for the office of Governor, but shall not mean a duly constituted State, county, or municipal committee of a political party. When used in this subchapter, “political committee” shall include “continuing political committee” as defined in N.J.S.A. 19:44A-3(n)(2).

...

19:25-15.12 Who may or may not contribute; generally

(a) No person or political committee, other than a candidate contributing his or her own funds to his or her campaign, shall make any contribution to any candidate, the candidate's campaign treasurer or deputy campaign treasurer, or to any other person or committee, in aid of the candidacy of or in behalf of a candidate, whether or not participating in public funding, for election to the office of Governor in a general election, in the aggregate in excess of \$800.00. Any such contribution in excess of \$800.00 must be promptly returned to the contributor, and evidence of repayment shall be submitted to the commission. Notwithstanding the provision of N.J.S.A. 19:44A-3(i) and N.J.A.C. 19:25-1.7 excluding "continuing political committees" from the meaning of "political committees", the term "political committee" as it appears in N.J.S.A. 19:44A-29(a) and herein shall include "continuing political committees" as defined in N.J.S.A. 19:44A-3(n)(2).

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

19:25-16.3 Definitions for this subchapter

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

...

"Political committee" means any two or more persons acting jointly, or any corporation, partnership or any other incorporated or unincorporated association which is organized to, or does aid or promote the nomination, election, or defeat of a candidate for nomination for the office of Governor, but shall not mean a duly constituted State, county or municipal committee of a political party. When used in this subchapter, "political committee" shall include "continuing political committee" as defined in N.J.S.A. 19:44A-3(n)(2).

...

19:25-16.10 Who may or may not contribute; generally

(a) No person or political committee, other than a candidate contributing his or her own funds to his or her campaign, shall make any contribution to any candidate, the candidate's campaign treasurer or deputy campaign treasurer, or to any other person or committee, in aid of the candidacy of or in behalf of a candidate, whether or not participating in public funding, for nomination for election to the office of Governor in a primary election, in the aggregate in excess of \$800.00. Any such contribution in excess of \$800.00 must be promptly returned to the contributor, and evidence of the repayment shall be submitted to the commission. Notwithstanding the provision of N.J.S.A. 19:44A-3(i) and N.J.A.C. 19:25-1.7 excluding "continuing political committees" from the meaning of "political committees," the term "political committee" as it appears in N.J.S.A. 19:44A-29(a) and herein shall include "continuing political committees" as defined in N.J.S.A. 19:44A-3(n)(2).

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

(a)

CASINO CONTROL COMMISSION

**Accounting and Internal Controls
Patron Credit**

Adopted Repeal and New Rule: N.J.A.C.

19:45-1.27

Proposed: January 21, 1985 at 17 N.J.R. 181(a).

Adopted: April 18, 1985 by the Casino Control Commission, Walter N. Read, Chairman.

Filed: April 18, 1985 as R.1985 d.229, 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. 5:12-63(c), 5:12-69, 5:12-70(g) and (l) and 5:12-101.

Effective Date: May 20, 1985.

Operative Date: December 1, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): April 7, 1988.

Summary of Public Comments and Agency Responses:

The Division of Gaming Enforcement (DGE) and the Atlantic City Casino Association (ACCA) filed written comments relevant to the proposal on or before February 20, 1985. The following summarizes the significant comments received and provides the Commission's responses to these comments.

1. Comment: Section 1.27(a)6ii—The ACCA proposes a revision which would permit corporate and partnership checking accounts to be considered as personal checking accounts for the purpose of obtaining credit if all partners/shareholders consented to such use.

Response: The Commission specifically suggested that partnership and corporate checking accounts should not be considered as personal checking accounts for the purpose of providing credit to any individual. This was done in order to preclude a partner or shareholder from diverting business funds for personal use. In addition, the ACCA's recommendation is almost impossible to comply with and enforce. Cage cashiers cannot be responsible for reviewing legal documents such as corporate and partnership consent forms. Therefore, the Commission disagrees with ACCA's proposal and has not revised the sub-paragraph.

2. Comment: Section 1.27(a)8—The ACCA proposes deleting the requirement that a prospective credit patron provide information concerning his credit history at other casinos because this information will be obtained by each casino from a casino credit bureau. The ACCA believes that requiring this information from the patron is burdensome, redundant and would not likely result in accurate or complete information.

Response: A patron's credit history should be generally known by him. Thus, it should not be burdensome to the patron to provide this information to the casino. Furthermore, this requirement may deter the patron from requesting more credit that he can handle. However, the Commission recognizes that many patrons will not necessarily be able to recall with exactness, while at the casino, the details of their gaming credit history with all other casinos. Therefore, they may be hesitant to sign the statement certifying the accuracy of all information provided. Also, if the information provided by the casino credit bureau, during the verification process, does not agree in every detail with the information provided by the patron, the casino licensee will be faced with a dilemma. For these reasons the Commission has modified this paragraph rather than deleting the requirement as suggested by the ACCA.

3. Comment: Section 1.27(a)11—The ACCA recommends revising the wording of the patron's acknowledgement statement to make it more appropriate and less harsh than the Commission's proposed language.

Response: The Commission agrees with ACCA's comment and had modified this paragraph. However, it has not used the language recommended by the ACCA.

4. Comment: Section 1.27(b)3—The ACCA proposes that casino credit executives be allowed to manually record the date and time of their signatures as an acceptable alternative to the requirement that the information should be provided only by mechanical means. Requiring the signatures of credit personnel to be mechanically dated and time stamped will cause the installation of a multitude of date/time stamp machines throughout the casinos. These machines will require additional inspection, approvals and verifications as to their calibration and accuracy.

Response: The Commission agrees and has modified this paragraph in addition to all other paragraphs which address this specific requirement. See sub-section (d) and sub-section (f) paragraph 4.

5. Comment: Section 1.27(c)2iii—The ACCA proposes revising the definition of derogatory credit information. It is the ACCA's view that a check returned by a patron's bank due to an administrative error should not be considered a derogatory item for purposes of this regulation.

Response: Although the Commission agrees with the ACCA's concept, it does not agree that the definition of derogatory credit information should be revised. Appropriate revisions have been made in other areas of this section. Other provisions of the regulation provide a mechanism whereby casino licensees may continue to extend credit to a patron who has had a check returned for administrative reasons. However, there is no reason to expose the casino industry to additional bad credit during the time it is unaware why the check has been returned.

6. Comment: Section 1.27(d)1—The DGE suggests that the casinos' ability to utilize an alternative source to verify the address of the patron's residence should be clarified to expressly state that the alternative source must be independent of any identification credentials or other documentation presented by the patron at the casino.

Response: The Commission agrees and has modified this paragraph.

7. Comment: Section 1.27(d)2—The ACCA proposes a revision which would allow casinos to request written documentation of the verification process but which would not hold the casinos responsible for obtaining the written documentation since they have no control over non-related companies.

Response: The Commission agrees with the ACCA's position and has modified the applicable portions of this regulation but not exactly as suggested by the ACCA. See paragraphs (d)3 and (d)4 and sub-section (j).

8. Comment: Section 1.27(d)3—The ACCA suggests adding a general provision which exempts foreign patrons from any verification requirements.

Response: The Commission believes the present wording in sub-section (d) provides the casino industry with enough flexibility to provide alternative verification procedures for foreign patrons. The Commission will not provide the general exemption as requested by ACCA. However, a modification was made to this paragraph which provides some relief to the casinos when they attempt to comply with the requirement to verify the credit history of foreign patrons with a consumer credit bureau and no such credit bureau is known to exist.

9. Comment: Section 1.27(f)—The Commission proposes two (2) non-substantive modifications to this sub-section to:

- Add the job position of "credit executive" to the list of licensed key individuals who are authorized to approve credit;

- Delete the sentence which suggests that only the casino manager, assistant casino manager, or casino shift manager can have input to the credit limit decision. Although this language is in the existing regulation, the Commission has always interpreted this provision to allow input by any person. The purpose for deleting the language is in the interest of clarification. It should be noted, however, that any information supplied by a person which is not otherwise recorded in the credit file must be recorded pursuant to the provisions of N.J.A.C. 19:45-1.27(f)1.

10. Comment: Section 1.27(f)1—It is ACCA's position that a regulation which requires a credit or casino executive to write an explanation of how a patron's credit worthiness is determined is redundant, unduly burdensome, time consuming and of no additional value to the credit process. The ACCA also objects to the wording which requires casinos to maintain files detailing the reasons patrons are denied credit. All files of patrons who have been denied credit, according to the ACCA, should be destroyed immediately.

Response: While the Commission agrees that some clarification of the language is necessary it will not delete this paragraph. It is necessary that credit executives provide a brief explanation of the key factors relied upon when approving a patron's credit limit. However, the Commission does agree with the ACCA that there is no reason to maintain a credit file for patrons whose credit applications have either not been approved or denied. The Commission has modified this paragraph.

11. Comment: Section 1.27(g)2—The ACCA recommends that credit limit increases be permitted without additional verification of the patron's current casino credit limits if such verification had been performed within the three prior gaming days. The Commission's proposal requires that such verification procedures be performed unless a prior verification had been performed earlier that same gaming day. It is the ACCA's belief that credit executives can handle credit limit increase requests reasonably and prudently without the necessity of reverifying all required information relating to a patron's credit status.

Response: The ACCA has offered no substantiation to support its position. A casino credit bureau is open 24 hours a day, 7 days a week and maintains direct telephone contact with all New Jersey casino licensees. The small amount of time required to reverify a patron's casino credit history should not unnecessarily inconvenience the patron or the casino. However, this procedure does provide additional time in which the patron could change his mind and avoid a decision he may later regret. Because a patron's casino gaming debts change much more quickly than his address, income or commercial credit history, it appears prudent to verify this information prior to making any decision concerning an increase. The Commission believes the ACCA's response has no merit and sees no reason that this regulation cannot be complied with. Therefore, this section has not been modified.

12. Comment: Section 1.27(g)5—The DGE recommends requiring casino licensee's to document, in the patron's credit file, the patron's player rating indicated at the time the credit limit increase was approved.

Response: The Commission agrees and has modified this paragraph.

13. Comment: Section 1.27(h)—The ACCA objects to the Commission's published revision of the TTO (this trip only) concept. It is the ACCA's opinion that the proposed shortened periods for depositing gaming checks and the LIFO (last in, first out) method of redeeming gaming checks will alleviate the major basis for past criticism of TTO's.

Additionally, it is the ACCA's belief that the Commission's proposed revision, added to the additional burdens involved in obtaining permanent credit limit increases, will cause credit patrons to request higher permanent credit lines, then they might have otherwise requested.

In place of the Commission's proposal, the ACCA recommends implementation of administrative credit limits for each credit patron. Pursuant to the ACCA's recommendation, at such time as a patron requests credit, a casino would make two credit decisions:

1. one in response to the patron's request; and
2. one based upon the patron's credit worthiness (the maximum amount of credit a patron would be entitled to).

The credit limit described in 2. above would be known as the patron's "administrative credit limit" and could not be raised absent reverification. At the same time, the "administrative credit limit" would serve as the ceiling for any subsequent patron requests, as justification for the requested amount of credit would have been previously documented in the credit file.

Absent a request for an increase by the patron, an "administrative credit limit" would accommodate only items in transit or for immediate deposit and the patron's credit limit itself would not change. The ACCA's reasons for an "administrative credit limit" are as follows:

1. to recognize the belief on the part of a patron that when he "pays" by personal check, he has "paid" his obligation;
2. to reinforce to the patron that he is playing on current funds and not credit in such circumstances;
3. to assure that the credit worthiness of the patron has been predetermined to accommodate whatever level of credit is extended;
4. to prevent any encouragement to the patron to request more credit than he otherwise would normally utilize in order to "accommodate" the requirements of the Commission's regulations.

If this concept were endorsed by the Commission and implemented, ACCA believes that it would not be necessary to address the question of TFO's any longer, and that proposed 19:45-1.27(h) or a variation thereof, would no longer be needed.

Response: The Commission is opposed to the concept offered by the ACCA. The Commission believes the patron should be aware of his financial exposure before participating in gaming activities. Pursuant to the ACCA's proposal, this would not be accomplished. Therefore, the Commission will adopt the sub-section as originally proposed.

14. Comment: Section 1.27(j)—The ACCA proposes minor modifications to this sub-section. In addition, it suggests suspending the credit limit of a patron whose checks have been returned for reasons other than clerical or administrative problems not caused by the patron.

Response: The Commission agrees with the ACCA's proposal. However, it has chosen to modify this sub-section by using language which is less flexible than that proposed by the ACCA. At the time a check is returned to a casino unpaid by the patron's bank, all New Jersey casinos will have to suspend the patron's credit limit because it would be premature to assume that the check was returned due to clerical or administrative error. The patron's credit account must be suspended until:

- the returned check has been paid in full; or
- the reasons for the derogatory information have been satisfactorily explained; and,

- the casino licensee records the explanation for its decision to continue extending the patron's credit limit.

15. Comment: Section 1.27(j)—The DGE proposes modifying the last sentence of this section because the DGE believes that it negates any benefits derived from that which precedes it. It contends that the present language allows casino licensees to continue granting credit to "bad risk" patrons.

Response: The Commission has purposely allowed casino licensees the ability to extend credit to patrons who have had checks returned unpaid if the casino licensees document the reasons and explanation for their actions before continuing any further credit. Any casino offering a weak or unsubstantiated reason for continuing credit in spite of a derogatory item would be doing so at its own risk and may be the subject of a complaint by the DGE.

NOTE: The ACCA recommended delaying the operative date of N.J.A.C. 19:45-1.27 until December 1, 1985. The ACCA indicated it would need additional time primarily to retrain employees, redesign casino forms, educate patrons, contact banks and financial service bureaus and revise internal control procedures. The Commission has agreed to delay the operative date of N.J.A.C. 19:45-1.27 until December 1, 1985.

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

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed, or consolidated

(a) A credit file for each patron shall be prepared by a general cage cashier or credit department representative with no incompatible functions either manually or by computer prior to the casino licensee's approval of a patron's credit limit. All patron credit limits and changes thereto shall be supported by the information contained in the credit file. Such file shall contain a credit application form upon which shall be recorded, at a minimum, the following information provided by the patron:

1. The patron's name;
2. The address of the patron's residence;
3. The number of years at that address;
4. The telephone number at the patron's residence;
5. Employment information including:
 - i. The name of the patron's employer, or an indication of self employment or retirement;
 - ii. Type of business;
 - iii. The patron's position;
 - iv. Number of years employed;
 - v. The patron's business address; and
 - vi. The patron's business telephone number.
6. Banking information including:
 - i. The name and location of the patron's bank; and
 - ii. The account number of the patron's personal checking account upon which the patron is individually authorized to draw and upon which all Counter Checks and all checks used for substitution, redemption or consolidation will be drawn. Checking accounts of sole proprietorships shall be considered as personal checking accounts. Partnership or corporate checking accounts shall not be considered personal checking accounts.
7. The credit limit requested by the patron;
8. The name of each casino where the patron has a casino credit limit and the amount of the credit limit and outstanding balance;

9. *[The amount and source of all other outstanding indebtedness;]* ***The approximate amount of all other outstanding indebtedness;***

10. The amount and source of income and assets *[sufficient to]* ***in*** support ***of*** the requested credit limit; and

11. The patron's signature indicating acknowledgement of the following statement, which shall be included at the bottom of every credit application form containing the information required to be submitted by the patron pursuant to this subsection: "I certify that I have reviewed all of the information provided above and that it is true and accurate. I authorize (insert the name of the casino licensee) to conduct such investigations pertaining to the above information as it deems necessary for the approval of my credit limit. I am aware that ***this application is required to be prepared by the regulations of the Casino Control Commission and*** I may be subject to ***civil or*** criminal ***[prosecution]*** ***liability*** if any ***[of the]*** ***material*** information provided by me is willfully false."

(b) A general cage cashier or credit department representative with no incompatible functions shall record the following information in the credit file prior to the casino licensee's approval of a patron's credit limit:

1. A physical description of the patron which shall include, but not be limited to, the following:

- i. Date of birth;
- ii. Height;
- iii. Weight;
- iv. Hair color; and
- v. Eye color.

2. The type of identification credentials examined containing the patron's signature and whether said credentials included a photograph or general physical description of the patron; and

3. The signature of the general cage cashier or credit department representative with no incompatible functions indicating that the signature of the patron in the credit file appears to agree with the signature on the identification credentials presented by the patron and that the physical description of the patron appears to agree with the patron's actual appearance. The ***date and time of the*** signature of the general cage cashier or credit department representative with no incompatible functions shall be ***[dated and time stamped]*** ***recorded either mechanically or manually contemporaneously with the transaction***.

(c) Prior to the casino licensee's approval of the patron's credit limit, a credit department representative with no incompatible functions shall:

1. Verify the address of the patron's residence;
2. Verify the patron's current casino credit limits and outstanding balances which shall include the following:
 - i. The date the patron's credit account was established;
 - ii. The amount of the current approved credit limit at each casino; and
 - iii. The current balance and status of the patron's credit account at each casino including checks deposited by New Jersey casinos that have not yet cleared the bank and derogatory information. ("Derogatory" is defined as patron credit accounts partially or completely uncollectible, checks returned unpaid by the patron's bank, settlements, liens, judgments, and any other credit problems of the patron);
3. Verify the patron's outstanding indebtedness; and
4. Verify the patron's personal checking account information which shall include, but not be limited to, the following:
 - i. Type of account (personal or sole proprietorship);
 - ii. Account number;

iii. Date the account was opened;

iv. Average balance of the account for the last twelve months, if available (if this information is not available, then this shall be noted in the credit file);

v. Current balance in the account if available (if this information is not available then this shall be noted in the credit file);

vi. Whether the patron can sign individually on the account; and

vii. Name and title of the person supplying the information.

(d) All verifications performed by the credit department in (c) above together with accurate and verifiable information received from the security and surveillance departments pursuant to N.J.A.C. 19:45-1.11(c) shall be recorded in the credit file and accompanied by the signature of the credit department representative who performed the required verifications or filed the relevant information. The ***date and time of the*** signature of the credit department representative shall be ***[dated and time stamped]*** ***recorded either mechanically or manually contemporaneously with the transaction***. The casino licensee's credit department shall fulfill the requirements of (c) above as follows:

1. Verification of the address of the patron's residence, as required by (c)1 above, shall be satisfied by confirming the patron's address with a credit bureau or bank. If neither of these sources has the patron's address on file or will not provide the information, the licensee may use an alternative source ***which shall not include any identification credentials required in (b) above or other documentation presented by the patron at the casino***. The casino licensee shall record the source of verification and the method by which such verification was performed in the patron's credit file. Verification of the patron's address may be performed telephonically.

2. Verification of the patron's current casino credit limits and outstanding balances, as required by (c)2 above, shall be performed through a casino credit bureau and, if appropriate, through direct contact with other casinos. The casino licensee shall record the source of verification and the method by which such verification was performed in the patron's credit file. If no casino credit information relating to the patron is available from these sources, this shall be noted in the patron's credit file. The verification may be performed telephonically prior to the credit approval provided the casino licensee ***[obtains]*** ***requests*** written documentation of all such information as soon as possible and includes such written documentation in the patron's credit file. ***All requests for written documentation shall be maintained in the patron's credit file until such documentation is obtained.***

3. Verification of the patron's outstanding indebtedness, as required by (c)3 above, shall be performed by contacting a consumer credit bureau ***which is reasonably likely to possess information concerning the patron, to the extent such consumer credit bureau is available,*** and a casino credit bureau to determine whether the applicant has any liabilities or if there is any derogatory information concerning the applicant's credit history. Such contact shall be considered a verification of the outstanding indebtedness provided by the patron. The casino licensee shall record the source of verification and the method by which such verification was performed in the patron's credit file. If either one or both of these sources do not have information relating to a patron's outstanding indebtedness this shall be recorded in the patron's credit file. The verification may be performed telephonically prior to the credit approval provided the casino licensee ***[ob-**

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tains]* **requests*** written documentation of all information obtained as soon as possible and includes such written documentation in the patron's credit file. **All requests for written documentation shall be maintained in the patron's credit file until such documentation is obtained.***

4. Verification of the patron's personal checking account information, as required by (c)4 above, shall be performed with the patron's bank. If such information is not immediately available, the casino licensee may use an alternative source. The casino licensee shall record the source of verification and the method by which such verification was performed in the patron's credit file. **The* [V]**v*erification* [of the patron's personal checking account information]* may be performed telephonically *prior to the credit approval provided the casino licensee requests written documentation of all information obtained as soon as possible and includes such written documentation in the patron's credit file. All requests for written documentation shall be maintained in the patron's credit file until such documentation is obtained.*** **[Written verification of the patron's personal checking account information, or a statement that the patron's bank has indicated that such written verification is not available, shall be recorded in the patron's credit file.]***

(e) Any New Jersey casino licensee requesting information from another New Jersey casino licensee concerning a credit patron shall represent to the requested casino licensee that the patron has a credit line or has applied for credit and shall provide the **[information required by (a)1, (a)2 and (a)6i above]* patron's name, address of the patron's residence and the name and location of the patron's bank***. Upon receipt of this information, the requested New Jersey casino licensee shall be required to furnish to **[other]* the requesting* New Jersey casino*[s]* any information in its possession concerning a patron as required by (c)1, (c)2 and (c)4 above.**

(f) The credit limit, and any changes thereto, must be approved by any one or more of the individuals holding the job positions of vice president of casino operations (or an equivalent executive of a casino licensee that is either a partnership or sole proprietorship), credit manager, assistant credit manager, credit shift manager*[s]*, **credit executive*** or a credit committee composed of casino key employees with no incompatible functions which may approve credit as a group but whose members may not approve credit individually unless such person is included in the job positions referenced above. **[The casino manager, assistant casino manager, or casino shift manager may contribute to the credit limit decision but shall not have approval authority.]*** The approval shall be recorded in the credit file and shall include:

[3]* *1*. Any other information used to support the credit limit and any changes thereto, including the source of the information*, **if such information is not otherwise recorded pursuant to this section***; **[and]***

[1]* *2*. **[An explanation of how the patron's credit worthiness was determined or the reason for denying]* *A brief summary of the key factors relied upon in approving* or reducing the requested credit limit **and any changes thereto***;**

[2]* *3*. **[A]* *The* reason [as to why]* credit was approved if derogatory information was obtained during the verification process; **and*****

4. The signature of the employee approving the credit limit. **[Such]* *The date and time of the* signature shall be **[dated and time stamped]* *recorded either mechanically or manually contemporaneously with the transaction*.****

(g) Prior to approving a credit limit increase, a representative of the casino licensee's credit department shall:

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1. Obtain a written request from the patron which shall include*[, but not be limited to]*:

i. Date and time of the patron's request;

ii. Amount of credit limit increase requested by the patron; and

iii. Signature of the patron.

2. Verify the patron's current casino credit limits and outstanding balances, as required by (c)2ii and (c)2iii above, unless such verification has been performed earlier that same gaming day;

3. Verify the patron's outstanding indebtedness and personal checking account information, as required by (c)3 and (c)4 above, unless such procedures have been performed within the previous six months;

4. Consider the patron's player rating based on a continuing evaluation of the amount and frequency of play subsequent to the patron's initial receipt of credit. The patron's player rating shall be readily available to representatives of the casino licensee's credit department prior to their approving a patron's request for a credit limit increase. The information for the patron's player rating shall be recorded on a player rating form by casino department supervisors **or put directly into the licensee's computer system pursuant to an approved submission*** and shall include, but not be limited to, the following:

i. Patron's name;

ii. Game and table number;

iii. Average bet;

iv. Approximate length of time played;

v. Rating as determined by supervisor **or approved computer system***;

vi. **[Rater's signature and license number]* *Signature and license number of the casino supervisor responsible for providing the patron's player rating information***; and

vii. Date of observations.

5. Include the information and documentation required by paragraphs 1 through 3 above **and the patron's player rating indicated at the time the credit increase is approved*** in the patron's credit file.

(h) Credit limit increases may be approved without performing the requirements of (g)2 and (g)3 above if the increases are temporary and are noted as being for this trip only (TTO) in the credit file. Temporary increases shall be limited to two during any thirty day period and the total amount of the temporary increases during that period shall not exceed ten percent of the currently approved credit limit.

(i) **[The casino licensee's credit department shall verify the patron's address, current casino credit limits, outstanding balances, outstanding indebtedness, and personal checking account information, as required by (c)1 through (c)4 above every six months for each credit patron or shall reduce the patron's credit limit to zero. If an approved credit limit has been reduced to zero, the required procedures shall be performed before the credit limit is reinstated.]* *Reserved***

(j) Any patron having a check returned to any casino unpaid by the patron's bank shall have his credit **[limit]* *privileges* [reduced to zero]* *suspended*** at all New Jersey casinos until such time as the returned check has been paid in full **or the reason for the derogatory information has been satisfactorily explained***. All derogatory information concerning a patron's credit **[limit]* *account*** shall be reported by each casino licensee on a daily basis to a casino credit bureau used by New Jersey casinos. **[All]* *Each* New Jersey casino*[s]* **licensee*** shall **[obtain]* *request written documentation of* any derogatory information **pertaining to******

its patrons to be reported to that casino* on a daily basis *[from]* *by* *[the]* *a* casino credit bureau *[and shall record such information]* *used by New Jersey casinos. All documentation obtained from the casino credit bureau shall be maintained* in the patron's credit file. *[Notwithstanding the fact that a check has been returned unpaid, a casino licensee may continue the patron's credit limit]* *Any casino licensee desiring to continue the patron's credit privileges on the basis of a satisfactory explanation having been obtained for the returned check may do so* if the licensee records the explanation for its decision in the credit file before accepting any further checks from the patron *along with the signature of the credit department representative accepting the explanation*.

(k) All transactions affecting a patron's outstanding indebtedness to the casino licensee shall be recorded in chronological order in the patron's credit file and credit transactions shall be segregated from the safekeeping deposit transactions. The following information shall be included:

1. The date, amount and check number of each Counter Check initially accepted from the patron;
2. The date, amount and check number of each consolidation check and the check numbers of the checks returned to the patron;
3. The date, method, amount and check number of each redemption transaction and the check number of the redeemed check returned to the patron;
4. The date, amount and check number of each substitution transaction and the check number of the check returned to the patron;
5. The date, amount and check number of each check deposited;
6. The date, amount and check number of each check returned to the casino licensee by the patron's bank and the reason for its return; and
7. The outstanding balance after each transaction.

(l) A log of all Counter Checks exchanged and of all checks received for redemption, consolidation or substitution shall be prepared, manually or by computer, on a daily basis, by check cashiers and such log shall include, at a minimum, the following:

1. The balance of the checks on hand in the cashiers' cage at the beginning of each shift;
2. For checks initially accepted and for checks received for consolidation, redemption or substitution;
 - i. The date of the check;
 - ii. The name of the drawer of the check;
 - iii. The amount of the check;
 - iv. The Counter Check serial number(s) for Counter Check(s) received; and
 - v. An indication as to whether the check was initially accepted or received in a redemption, consolidation or substitution.
3. For checks deposited, redeemed by patrons for cash or cash equivalents, gaming chips and plaques, or any combination thereof, consolidated or replaced;
 - i. The date on which the check was deposited, redeemed, consolidated or replaced;
 - ii. The name of the drawer of the check;
 - iii. The amount of the check;
 - iv. The Counter Check serial number(s) for Counter Check(s) deposited, redeemed, consolidated or replaced; and
 - v. An indication as to whether the check was deposited, redeemed, consolidated or replaced.
4. The balance of the checks on hand in the cashiers' cage at the end of each shift.

(m) A list of all Counter Checks on hand, and of all checks received for redemption, consolidation or substitution shall be prepared, manually or by computer, on a monthly basis, at a minimum, and shall include the following:

1. The date of the check;
2. The name of the drawer of the check;
3. The amount of the check; and
4. The Counter Check serial number(s) for Counter Check(s) received.

(n) At the end of gaming activity each day, at a minimum, the following procedures shall be performed:

1. The daily total of the amounts of checks initially recorded as described in (l)2 above shall be agreed to the daily total of Counter Checks issued;
2. The daily total of the checks indicated as deposited on the log required by (l)3 above shall be agreed by employees with no incompatible functions to the bank deposit slips corresponding to such check; and
3. The balance required by (l)4 above shall be agreed to the total of the checks on hand in the cashiers' cage.

(o) All information recorded in the credit file shall be in accordance with the licensee's system of internal accounting control submitted to the Commission.

(a)

CASINO CONTROL COMMISSION

Rules of the Games

Opening of the Tables for Gaming in Blackjack, Baccarat-Punto Banco and Baccarat-Chemin de Fer

Adopted Amendments: N.J.A.C. 19:47-2.4, 3.4 and 4.3

Proposed: January 7, 1985 at 17 N.J.R. 61(a).

Adopted: April 18, 1985 by New Jersey Casino Control Commission, Walter N. Read, Chairman.

Filed: April 18, 1985 as R.1985 d.228, **without change**.

Authority: N.J.S.A. 5:12-63(c), -69(a) and -70(f).

Effective Date: May 20, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): May 4, 1988.

Summary of Public Comments and Agency Responses:

Comment: A comment was received from the Division of Gaming Enforcement fully supporting the adoption of the amendments and indicating that such amendments are necessary "In order to retain consistency between the regulation(s). . ."

Response: The Commission agrees.

Full text of the adoption follows.

19:47-2.4 Opening of table for gaming

(a) After receiving the one or more decks of cards at the table, the dealer shall sort and inspect the cards and the floorperson assigned to the table shall verify the inspection in accordance with N.J.A.C. 19:46-1.18(f).

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

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19:47-3.4 Opening of table for gaming

(a) (No change.)

(b) Following the inspection of the cards by the dealer and the verification by the floorperson assigned to the table, the cards shall be spread out face upwards on the table for visual inspection by the first participant or participants to arrive at the table. The cards shall be spread out in columns by deck according to suit and in sequence. The cards in each suit shall be laid out in sequence within the suit.

(c) (No change.)

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19:47-4.3 Opening of table for gaming

(a) (No change.)

(b) Following the inspection of the cards by the dealer and the verification by the floorperson assigned to the table, the cards shall be spread out face upwards on the table for visual inspection by the first participants to arrive at the table. The cards shall be spread out in columns by deck according to suit and in sequence. The cards in each suit shall be laid out in sequence within the suit.

(c) (No change.)

EMERGENCY**ADOPTIONS****ENVIRONMENTAL
PROTECTION****(a)****BUREAU OF MARINE FISHERIES****General Net Regulations****Adopted Emergency New Rule and
Concurrent Proposal: N.J.A.C. 7:25-18.5**

Emergency New Rule Adopted: April 17, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): April 25, 1985.

Emergency New Rule Filed: April 26, 1985 as R.1985 d.240.

Authority: N.J.S.A. 23:2B-6, 23:5-24.2 and P.L. 1985, c.108.

Emergency Adoption Effective Date: April 26, 1985.

Emergency New Rule Expiration Date: June 25, 1985.
DEP Docket No. 022-85-04.

A **public hearing** concerning the concurrent proposal will be held on:

June 11, 1985 at 6:30 P.M.
Room CC-103
Stockton State College
Pomona, New Jersey

Submit comments by June 19, 1985 to:

Paul E. Hamer, Chief
Bureau of Marine Fisheries
Division of Fish, Game and Wildlife
CN 400
Trenton, New Jersey

This new rule was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see: N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency new rule are being proposed for 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 for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The concurrent proposal is known as PRN 1985-240.

The agency emergency adoption and concurrent proposal follows:

Summary

The new rule, N.J.A.C. 7:25-18.5, implements P.L. 1985, c.108 (S-1305), which was adopted April 9, 1985, and which, unlike the prior legislation, requires the Commissioner of Environmental Protection to establish license fees within the statutorily established license fee ranges. The rule also provides for implementation of other provisions of the Act, in-

cluding establishing nonresident license fees at a level of up to ten times that of a resident fee (N.J.A.C. 7:25-18.5(f) and (g)).

The rule simplifies the regulatory provisions concerning the use of drifting, staked, and anchored gill nets by eliminating the requirement that a separate license be obtained for the use of these nets in shad fishing or run around gill netting. This rule makes minor changes to the dates when gill nets may be used in certain waters and establishes a maximum length for a series of joined gill nets (N.J.A.C. 7:25-12.5(b) and (f)).

The new rule also simplifies the provisions concerning the use of fyke nets and special fyke nets by eliminating the requirement that a separate license be obtained for a special fyke net. The area of placement, length, and fee for the use of parallel nets are established. This rule would permit a person to use two miniature fykes or pots for the harvest of killifish or eels as bait without having to obtain a license (N.J.A.C. 7:25-18.5(b) and (f)).

This rule permits the use of a shrimp trawl to provide bait shrimp to the recreational rod and reel fishery. The use of this type of gear to collect bait has been standard practice for people living near coastal waters but was not technically legal prior to the effective date of this rule (N.J.A.C. 7:25-18.5(f)10).

The rule establishes a general prohibition from taking fish from the marine waters of the State except by angling or as specifically provided for by statute or regulation. Finally, the rule also establishes an area within the Delaware Bay where the use of gill nets is more restrictive from May 15 through June 15 to reduce the conflicts which have occurred between recreational and commercial fishermen over the past several years (N.J.A.C. 7:25-18.5(a) and (f)).

Social Impact

Adoption of this rule will minimize the social impacts resulting from the enactment of P.L. 1985, c.108. Commercial fisheries net regulations have been modified only slightly from the prior legislation, and these changes were accomplished only after meeting with the involved commercial fishermen. The modifications permitting certain types of gear to harvest bait should have little social impact because these methods have traditionally been used.

The general prohibition against the taking of fish from the marine waters, except by angling with hand line or rod and reel or as specifically provided for by statute or regulation, may have some positive social impacts. This provision is very similar to existing law in the fresh waters of the State and should further clarify the law regarding the harvest of fish in marine waters, thereby facilitating enforcement efforts. Increased enforcement efficiency in marine waters is recognized as essential by both sport and commercial fishermen.

The establishment of the Brandywine Shoal Restricted Area within Delaware Bay and the 100-foot minimum to be maintained between netting and angling activities should reduce conflicts between commercial and recreational fishermen.

Economic Impact

Economic impacts brought about by this rule will be confined to the commercial net fisheries. It is anticipated that adoption of this rule will minimize the economic impacts resulting from the enactment of P.L. 1985 c.108. Gear specifications and seasons provided for in this rule reflect only a slight modification from the prior statutory scheme and

should not affect harvest potential nor have any economic impact. The special fyke net license, which cost \$4.00 per net prior to this rule, has been combined with the fyke net license, which cost \$30.00 prior to this rule, into a single license. The fee for a resident fyke net license set by this rule is \$12.00. The license fees for the 10 individuals holding special fyke net licenses in 1982 would increase while the license fees for the 11 individuals holding fyke net licenses in 1982 would decrease. This rule sets a \$10.00 fee for a resident parallel net and a \$12.00 fee for a resident shrimp trawl license. Although these license fees are new, they are set at a very low level, affect only a few fishermen who utilize this gear, and should, therefore, have minimal economic effect.

Another possible source of economic impact may result from a reduction in the number of gill nets allowed to be used by each vessel within the Brandywine Shoal Restricted Area of the Delaware Bay. This portion of the rule was designed to reduce conflicts between netters and anglers in the spring weakfish season in Delaware Bay, and was the result of a series of meetings with commercial and recreational fishermen from the area. Again, the economic impact will be minimized because commercial fishing activities will be permitted, although somewhat reduced, within the Restricted Area and will not be affected at all outside of this Area.

Nonresidents wishing to fish in New Jersey's waters may also be impacted by the change in N.J.S.A. 23:5-24.2. P.L. 1985, c.108 establishes a separate license fee schedule for nonresidents. This statutory change stipulates that nonresident license fees shall be the same as resident fees if a resident of New Jersey may obtain a license to fish for similar species of fish with similar gear in the nonresident applicant's state for the same fee as a resident. Otherwise, the license fee for a nonresident is ten times the license fee charged to a resident.

The economic impact to nonresidents is, however, expected to be minimal because of the low fees charged and the small number of nonresidents (less than 75) involved. The license for which there is the greatest number of nonresident applicants is the drifting gill net license. The maximum nonresident fee for this license is \$200.00, which would normally represent no more than that profit made from one day's harvest.

Environmental Impact

By placing the gear specification, seasons, and species permitted for harvest under regulatory, instead of statutory direction, future regulatory changes can be expedited. Adoption of the rule, pursuant to P.L. 1985 c.108, will enable more efficient fishery resource management in response to environmental and other changes. This rule incorporates the technical requirements currently deemed necessary to promote more efficient fishery resource management.

Full text of the emergency new rule and concurrent proposal follows.

7:25-18.5 General net regulations

(a) No person shall take, catch, kill or attempt to take, catch or kill any fish within the marine waters of the State by any means except in the manner common known as angling with hand line or with rod and line unless specifically permitted by statute or regulation.

(b) All stakes used in fyke nets, pound nets, parallel nets or gill nets shall be marked with at least one of the following which shall be placed at least two feet above mean high water and be visible from all sides:

1. Reflectors of not less than two inches in diameter;
2. Reflecting tape not less than two inches in width;

3. Light colored flags not less than two square feet; or
4. Light colored jugs or buoys not less than 12 inches in diameter.

(c) It shall be illegal to catch fish or attempt to catch fish by means of a rod and line or hand line, commonly called angling, within 100 feet of a set (operating) fish net as licensed pursuant to this section.

(d) It shall be illegal to set a fish net as licensed pursuant to this section within 100 feet of any person actively fishing with a rod and line or hand line, commonly called angling.

(e) All nets licensed pursuant to this section must be legibly and indelibly marked with the gear identification number of the owner.

(f) Persons intending to take fish with a net in the marine waters of this State pursuant to N.J.S.A. 23:5-24.2 shall, as required, apply to the commissioner for a license. Upon receipt of the application and the prescribed license fee, the commissioner may, in his discretion, issue single season licenses as specified for each net type for the taking of fish with nets only as follows:

1. Haul seines shall have a mesh not smaller than 2.75 inches stretched and shall not exceed 70 fathoms in length, whether used singly or in series. Haul seines may be used for all species except those specifically protected.

i. The haul seine season shall begin on November 1 and end on April 30;

ii. The haul seine resident fee shall be \$25.00 per net.

2. Fykes shall have a length, including leaders, which shall not exceed 30 fathoms and no part of the net or leaders shall have a mesh larger than five inches stretched. Fykes may be used for all species except those specifically protected.

i. The fyke season shall begin on November 1 and end on April 30;

ii. The fyke resident fee shall be \$12.00 per net.

3. Miniature fykes or pots shall only be used for the taking of catfish, suckers, killifish (Cyprinodontidae) and eels. This net type shall not exceed 16 inches in diameter in any of the marine waters of this State.

i. The miniature fyke or pot season shall begin on January 1 and end on December 31;

ii. The miniature fyke or pot resident fee shall be \$100.00 regardless of the number of miniature fykes or pots employed;

iii. One or two miniature fykes or pots may be used for the taking of killifish or eels only for bait without application for or granting of a license; provided, however, that killifish or eels taken without having a valid license in possession may not be sold or used for barter.

4. Bait seines shall have a length over 50 feet but not exceeding 150 feet and the mesh shall not be larger than 2.5 inches stretched.

i. The bait seine season shall begin on January 1 and end on December 31;

ii. The bait seine resident fee shall be \$3.00 per net.

5. Drifting gill nets shall be used only in the Atlantic Ocean, Delaware Bay, and the tributaries of Delaware Bay. The smallest mesh of any drifting gill net shall be not less than five inches stretched beginning February 1 through February 29 and not less than 2.75 inches stretched beginning March 1 through December 15. These nets shall not individually exceed 200 fathoms in length. Individual drifting gill nets shall not be fastened together to form a series of nets exceeding 400 fathoms in length beginning February 1 through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15. Drifting gill nets may be used for all species except those specifically protected.

i. Separate drifting gill nets or a series of joined drifting gill nets shall not be set or fished closer than 100 fathoms from any other net or series of nets;

ii. Separate drifting gill nets or a series of joined drifting gill nets shall be marked at each end with a fluorescent orange float at least 12 inches in diameter or a fluorescent orange flag at least 12 inches square and suspended at least two feet above the water;

iii. Drifting gill nets shall be used in the Atlantic Ocean only from February 1 through December 15. Drifting gill nets shall not be used in the Atlantic Ocean within one-half mile of any inlet;

iv. Drifting gill nets shall be used in the tributaries of the Delaware Bay only for the season extending from February 1 through May 15 and July 15 through December 15;

v. Drifting gill nets shall be used in the Delaware Bay only from February 1 through December 15. For the purpose of this section, that portion of the Delaware Bay defined by the New Jersey-Delaware boundary on the west, Loran C27180 on the east, and Loran C42830 on the north, during the period from May 15th through June 15th, shall be known as the Brandywine Shoal Restricted Area.

(1) No more than two drifting gill nets shall be permitted to be set or operated within the Brandywine Shoal Restricted Area by any vessel.

(2) No more than one drifting gill net shall be permitted to be set or operated, nor shall any net be left unattended, within the Brandywine Shoal Restricted Area by any vessel at night (from sunset to sunrise) or on any public holiday as specified at N.J.S.A. 36:1-1 or weekend. For the purpose of this section, "unattended" means that set of circumstances where the operator is more than 100 feet from the nearest portion of his net.

vi. The drifting gill net resident fee shall be \$20.00 per net.

6. Staked and anchored gill nets shall be used only in the Atlantic Ocean, Raritan Bay, Sandy Hook Bay, and the Delaware Bay and its tributaries. Staked or anchored gill nets shall not be fastened together to form a series of nets exceeding 400 fathoms in length beginning February 1 through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15.

i. Separate staked or anchored gill nets or a series of joined staked or anchored gill nets shall not be set closer than 20 fathoms from any other net or series of nets;

ii. Separate staked or anchored gill nets or a series of joined staked or anchored gill nets shall be marked at each end with a fluorescent orange float at least 12 inches in diameter or a fluorescent orange flag at least 12 inches square and suspended at least two feet above the water;

iii. Staked and anchored gill nets may be used in the Atlantic Ocean for any species except those specifically protected only beginning February 1 through December 15, where individual gill net length shall not exceed 50 fathoms. The smallest mesh of any such net used in the Atlantic Ocean shall not be less than five inches stretched beginning February 1 through February 29 and not less than 2.75 inches stretched beginning March 1 through December 15. Staked or anchored gill nets shall not be used in the Atlantic Ocean within one-half mile of any inlet;

iv. Staked and anchored gill nets shall be used only for shad in the Raritan Bay or Sandy Hook Bay and only beginning February 1 through May 15, where individual gill net length shall not exceed 30 fathoms. The smallest mesh of any such net used in Raritan Bay or Sandy Hook Bay shall not be less than five inches stretched;

v. Staked and anchored gill nets may be used in the tributaries of Delaware Bay for any species except those specifically protected only beginning February 1 through May 15 and July 15 through December 15, where individual gill net length shall not exceed 30 fathoms. The smallest mesh of any such net used in the tributaries of Delaware Bay shall not be less than five inches stretched beginning February 1 through February 29 and not less than 2.75 inches stretched beginning March 1 through May 15 and July 15 through December 15. No net shall be set across any tributary or mouth of any tributary, nor shall any net be set in a manner that impedes navigation;

vi. Staked and anchored gill nets may be used in the Delaware Bay for any species except those specifically protected only beginning February 1 through December 15, where individual gill net length shall not exceed 30 fathoms. The smallest mesh of any such net used in the Delaware Bay shall not be less than five inches stretched beginning February 1 through February 29 and not less than 2.75 inches stretched beginning March 1 through December 15. Stakes and anchored gill nets shall not be used in that portion of the Delaware Bay known as the Brandywine Shoal Restricted Area as defined in 5v above;

vii. The staked and anchored gill net resident fee shall be \$3.00 per net.

7. Pound nets shall have a mesh not smaller than two inches stretched and may be used for all species except those specifically protected. These nets shall be used only in Raritan Bay, Sandy Hook Bay, Delaware Bay and the Atlantic Ocean.

i. The pound net season shall begin on February 15 and end on May 15 in the Delaware Bay and begin on January 1 and end on December 31 in all other areas;

ii. The pound net resident fee shall be \$100.00 per net.

8. Wire pound nets shall not extend into the Delaware Bay further than 300 feet from the mean low water mark nor 300 feet from the outside of the flats which fall bare at low water and may be set and used in the Delaware Bay only.

i. The wire pound net season shall begin on March 1 and end on December 31.

ii. The wire pound net resident fee shall be \$25.00 per net.

9. Parallel net which may be used for all species except those specifically protected shall be used only in the Delaware Bay and its tributaries. Parallel nets shall have a mesh not smaller than 3.5 inches stretched and not exceed 100 fathoms in length. They shall be set approximately parallel to the shore and only at the low water mark. No net shall be set across any tributary or mouth of any tributary, nor shall any net be set in a manner that impedes navigation.

i. The parallel net season shall begin on September 1 and end on May 31;

ii. The parallel net resident fee shall be \$10.00 per net.

10. Shrimp trawls shall be used for the taking of grass shrimp (*Palaemonetes* spp.) or sand shrimp (*Crangon* spp.) only. Any organisms other than these shrimp taken with a shrimp trawl shall immediately be returned to the waters from which such organisms were taken. The internal opening of the trawl shall have a maximum width of 60 inches and a maximum height of 12 inches. The full length of the bottom bar of a shrimp trawl must ride on top of, or be attached to, a grass comb that has teeth at least 18 inches in length and not more than six inches apart. The grass comb must precede the trawl net and slide horizontally across the bottom. The mesh of the net shall not be greater than one-half inch stretched. No boat shall have more than two trawls working at the same time, and each trawl shall be independently and separately attached to the vessel by a single cable or tow line.

i. The shrimp trawl season shall begin on April 15 and end on December 15;

ii. The shrimp trawl resident fee shall be \$12.00 per net.

11. Lobster or fish pots may be used for the taking of all species except those specifically protected and shall be used only in the Atlantic Ocean, Delaware Bay, Raritan Bay, and Sandy Hook Bay.

i. Any fish or lobster pot license holder shall have priority in retaining the same license number previously issued to him or her provided that he or she has submitted a license application requesting the previously issued license number prior to March 1 of the current year and that the license number applied for was assigned to an active license not more than two years prior to the application;

ii. Effective January 1, 1986, each fishing vessel subject to this regulation must display its license number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be visible from above. The license number affixed to each vessel subject to this paragraph must be of block Arabic numerals at least 10 inches in height and of a color contrasting the background;

iii. Effective January 1, 1986, all lobster or fish pots or traps and associated buoys and other gear deployed in the salt waters of this State and not permanently attached to the vessel must be legibly and indelibly marked with one of the following codes of identification:

(1) The State lobster or fish pot gear identification number; or

(2) The full name and address of the State lobster or fish pot license holder.

iv. No person other than the license holder shall remove fish or lobsters from any pot or trap. Anyone tending fish or lobster pots or traps after January 1, 1986, shall have in his or her possession the numbered license which corresponds to the gear identification number on the vessel and the gear identification number or name and address affixed to the pots and buoys being tended. The license must be displayed for inspection upon request of any authorized officer. No one shall cut or break the lines or otherwise tamper with or damage any pot, trap, or buoy which he or she does not own;

v. Effective January 1, 1987, all lobster traps must be constructed to include one of the following escape vents in the parlor section of the trap located in such a manner that it would not be blocked or obstructed in normal use by any portion of the trap, associated gear, or the sea floor:

(1) A rectangular portal with an unobstructed opening not less than 1.75 inches (44.5 mm) by six inches (152.5 mm); or

(2) Two circular portals with unobstructed openings not less than 2.25 inches (57.2 mm) in diameter.

vi. The use of spears, gigs, gaffs or other penetrating devices as a method of capture of lobsters is prohibited;

vii. The lobster or fish pot season shall begin on January 1 and end on December 31;

viii. The resident fee for lobster or fish pots shall be \$100.00 regardless of the number of pots employed.

(g) Nonresident license fees shall be the same as resident fees established in this section if a resident of this State may obtain a license to fish for similar species of fish with similar gear in the nonresident applicant's state for the same fee as a resident of that state. Otherwise, the license fee for a nonresident is ten times the license fee charged to a resident.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Weight Limit

Route 45 in Gloucester County

Adopted Emergency New Rule and Concurrent Proposal: N.J.A.C. 16:30-6.4

Emergency New Rule Adopted: April 26, 1985 by John P. Sheridan Jr., Commissioner, Department of Transportation.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): April 26, 1985.

Emergency Rule Filed: April 30, 1985 as R.1985 d.260.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:3-84.1, 39:4-197.3.

Emergency Rule Effective Date: April 30, 1985.

Emergency Rule Expiration Date: June 30, 1985.

Submit comments by June 19, 1985 to:

Charles L. Merers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

These rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency rules are being proposed for re-adoption in compliance with the normal rule making requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted rules become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The concurrent proposal in known as PRN 1985-298.

The emergency adoption and concurrent proposal follows:

Summary

The Township Committee of Harrison Township, Gloucester County, under the provisions of N.J.S.A. 39:4-197.3 by emergent resolution established the need to restrict trucks in excess of four tons gross weight from traveling on certain portions of High Street and Route 45, while reconstruction is in progress for the purpose of the safety of the work force and the general public.

The implementation of the revised stage construction will require that the available roadway width for the two-way traffic be reduced to 19 feet (two, nine and one-half foot lanes.) The narrow lane width will require the prohibition of vehicles over four tons gross weight, except for the pick up and delivery of materials from the section of the roadway under construction. This prohibition is vital and necessary for the enhancement of the safety of the work force at the construction site and the general public.

TRANSPORTATION

The adoption of this rule on an emergency basis is necessary to ensure that enforcement of the vehicle size and weight are continued without placing the work force and general public in a perilous situation which could result in a serious or life-threatening injury.

The Department therefore adopts and concurrently proposes emergency New Rule N.J.A.C. 16:30-6.4 concerning "Weight Limit" along Route 45 in Harrison Township, Gloucester County.

Social Impact

This rule will preclude trucks with a gross weight over four tons from using Route 45 (beginning at U.S. Route 77 and Route 45 Intersection north to Route 45 and U.S. Route 322 Connector) in Harrison Township, Gloucester County for the safety of the work force and the general public while reconstruction is in progress. This restriction does not apply to trucks picking up or delivering materials to the construction site. Appropriate signs will be erected detouring the traffic during the period of construction.

Economic Impact

This rule will preclude trucks over four tons gross weight from using a certain portion of Route 45 during the period of reconstruction, thus causing drivers to use an alternate route

EMERGENCY ADOPTIONS

other than that normally travelled in their regular course of business which may or may not affect time of arrival at destinations. The rule will not have any major impact on businesses since there are no businesses in the area undergoing reconstruction. The Department and local officials will experience direct and indirect costs for their work force for mileage, personnel and equipment. The local officials will bear the costs for the installation of signs detouring traffic within their area of responsibility and the Department will bear the costs for signs along Route 45. Motorists who violate the rules will be assessed the appropriate fine.

Full text of the emergency adoption and proposed new rule follows.

16:30-6.4 Route 45

For the improvement in maintenance, repair and extensive reconstruction of the South portion of Route 45 (beginning at Route U.S. 77 and Route 45 Intersection north to Route 45 and U.S. Route 322 Connector) in Harrison Township, Gloucester County, there is hereby established a weight limit of four tons gross weight for trucks, except for the pick up and delivery of materials.

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF THE COMMISSIONER

Exemption from Certain Provisions of P.L. 1985, c.38 (C.13:1E-136 et al.)

Public Notice: Availability of Guidelines

Take notice that the Department of Environmental Protection (department) has prepared guidelines to facilitate implementation of Section 31 of P.L. 1985, c.38. The act, which was formerly known as Assembly bill 1778, and which was adopted on February 4, 1985, provides an alternative to existing permitted procurement processes by which governmental units may contract for the design, construction, operation and maintenance of resource recovery facilities or for resource recovery services. Section 31 provides for exemptions from certain portions of the alternative procurement process, subject to approval by the department.

The guidelines describe the procurement process, the exemptions provided for in subsections a and b of section 31 of the act, the department's objectives and criteria which will be considered in reviewing petitions for exemptions, and submission requirements. Governmental contracting units which intend to comply with the alternative procurement process authorized by the act and which had initiated that process prior to the adoption of the act, and/or which entered into negotiation with a vendor prior to March 6, 1985, may petition for an exemption from having to repeat those steps of the process.

Copies of the guidelines may be obtained from:

Robin O'Malley
Office of the Commissioner
Department of Environmental Protection
CN 402
Trenton, NJ 08625

HUMAN SERVICES

(b)

DIVISION OF PUBLIC WELFARE

General Assistance Manual Payments for Inpatient Hospital Care

Notice of Correction: N.J.A.C. 10:85-5.2

Take notice that an error appears in the New Jersey Administrative Code at 10:85-5.2 concerning Inpatient hospital care. The proposal for this rule was published in the July 9, 1981 New Jersey Register at 13 N.J.R. 433(b). The adoption notice

was published in the November 2, 1981 Register at 13 N.J.R. 768(a). N.J.A.C. 10:85-5.2 should have appeared as follows:

10:85-5.2 Inpatient hospital care

(a) The Director of Welfare may authorize payment for inpatient care and services in an approved hospital if such has been prescribed by a fully licensed physician, dentist or podiatrist for medical, surgical or psychiatric treatment, diagnosis, and/or rehabilitation. When an eligible person is hospitalized in a county of the first class, the Director of Welfare of the municipality of residence, wherever in New Jersey that municipality may be located, must authorize the payment. Currently the counties of the first class are Essex and Bergen.

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

(c)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Governmental Psychiatric Hospital Services Payment for Patients Requiring Nursing Level Care

Authority: N.J.S.A. 30:4D-6(a)(1), 4(a)b(11)(13), 7, 7a, 7b.

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.

The purpose of this notice is to comply with the provisions of the federal regulations (42 CFR 447.205) requiring public notice for significant proposed changes in the methods and standards for setting payment rates for services.

The Division of Medical Assistance and Health Services will reduce payments to public psychiatric hospitals for "administrative days" only by one-third for the 12 month period beginning July 1, 1985 and ending June 30, 1986; and by an additional one-third for the period beginning July 1, 1986 and ending June 30, 1987. The term "administrative days" refers to a patient in a governmental psychiatric hospital who is receiving services at an inappropriate level of care. If a patient does not meet, at a minimum, the standards for skilled and/or intermediate level of care as defined in Medicaid regulations (N.J.A.C. 10:63-1.2, entitled "Definitions"), then no payment will be made.

The Division's proposed method of calculating the one-third reduction for a patient requiring a skilled level of care will be to take one-third of the difference between the provider's rate for inpatient (psychiatric) services and the statewide average SNF (Skilled Nursing Facility) rate. The same method will be used to determine the ICF (Intermediate Care Facility) rate.

The legal basis for this reduction is Section 2366 of the Medicare and Medicaid Budget Reconciliation Act of 1984 (commonly called DEFRA—Deficit Reduction Act).

It is estimated the reduction in payments for patients who do not require the maximum level of care will decrease Medicaid payments by approximately 5 to 6 million dollars for the first year (July 1, 1985 to June 30, 1986).

TREASURY-GENERAL

A copy of this notice has been forwarded to the sixteen Medicaid District Offices and is available for public review at these locations.

Written comments may be submitted by June 5, 1985 directly to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
Quakerbridge Plaza, Building 7
Quakerbridge Road
CN-712
Trenton, NJ 08625

Any comments submitted may be reviewed at the above address.

If additional information is needed regarding the application of the formula, please write directly to:

Charles O'Donnell, Chief
Bureau of Planning and Management
Division of Medical Assistance
and Health Services
CN-712
Trenton, NJ 08625

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Bulk Commodities Application

Public Notice

Take notice that Clifford W. Snedeker, Director, Division of Motor Vehicles pursuant to the authority of N.J.S.A. 39:5E.11, hereby lists the names and addresses of applicants who have filed an application for a common carrier's Certificate of Public Convenience permit to engage in the business of transporting bulk commodities in intrastate commerce.

COMMON CARRIER (NON-GRANDFATHER)

B C Transport, Inc.
250 Mack Place
South Plainfield, N.J. 07080

Protests in writing and verified under oath may be presented by interested parties to the Director of Motor Vehicles within 20 days following the publication date of an application.

TREASURY-GENERAL

(b)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection

Notice of Assignments: April 16, 1985

MISCELLANEOUS NOTICES

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, prequalified New Jersey consulting firms. (For information on DBC's prequalification and assignment procedures, call (609) 984-6979.

Last list dated March 14, 1985.

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
H801	Design Criteria Development & Review Commission on Science & Technology Dept. of Higher Education	John M. Kenney, Architect	\$ 20,000 Services
A481	Interlocking Doors Installation Health & Agriculture Building Trenton, NJ	Joseph N. Wirth, AIA	\$ 40,000
F001	Facility Consultant Montclair State College Upper Montclair, NJ	The Mylan Architectural Group	\$ 20,000 Services
F002	Facility Consultant Montclair State College Upper Montclair, NJ	London, Kantor, Umland & Associates	\$ 10,000 Services
F003	Facility Consultant Montclair State College Upper Montclair, NJ	A.D. Jilajian & Associates	\$ 10,000 Services
F004	Facility Consultant Jersey City State College Jersey City, NJ	Turek Associates	\$ 50,000 Services
F005	Facility Consultant Jersey City State College Jersey City, NJ	Thomas E. Torricelli, AIA	\$ 50,000 Services
F006	Facility Consultant Wm. Paterson College of NJ Wayne, NJ	Architects Di Geronimo	\$ 25,000 Services
F007	Facility Consultant Stockton State College Pomona, NJ	Bernard De Annuntis & Associates	\$ 20,000 Services
F008	Facility Consultant Kean College of NJ Union, NJ	Kruger, Kruger, Albenberg	\$ 10,000 Services
F011	Facility Consultant Wm. Paterson College of NJ Wayne, NJ	Jansen & Rogan, Engineers	\$ 25,000 Services
H777	Boiler and Tank Repairs Wm. Paterson College of NJ Wayne, NJ	A.D. Jilajian & Associates	\$ 40,000
H778	Miscellaneous Road Repairs Wm. Paterson College of NJ Wayne, NJ	Raimondi Assoc., P.A.	\$ 40,000
H779	New Exterior Lighting Wm. Paterson College of NJ Wayne, NJ	A.D. Jilajian & Associates	\$ 40,000
A311	Review of Foundation Alternates State Commerce Building Trenton, NJ	Storch Engineers	\$ 9,200 Services
A485	Document Control Center Trenton, NJ	The Hillier Group, P.A.	\$1,900,000
H775	Roof Replacement Hunziker Hall Wm. Paterson College of NJ Wayne, NJ	Architects Di Geronimo	\$ 160,000

MISCELLANEOUS NOTICES

TREASURY-GENERAL

H776	Repairs to Shea Auditorium Wm. Paterson College of NJ Wayne, NJ	Barnickel Engineering	\$ 110,000	S184	Division of Motor Vehicles Inspection Station Randolph Township, NJ	Armstrong, Jordan & Pease	\$1,200,000
S195	New Roof Millville Motor Vehicle Inspection Station Millville, NJ	Glen A. Kahley, AIA	\$ 60,000	M631	Employee Day Care Center North Princeton Developmental Center Skillman, NJ	Joseph N. Wirth, AIA	\$ 150,000
A486	Computer Room Air Conditioning Department of Health Health & Agriculture Building-5th Floor Trenton, NJ	Frank R. Holtaway & Son	\$ 35,000	M588	Fire Safety Improvements & Lightning Protection Marlboro Psychiatric Hospital Marlboro, NJ	John C. Morris Associates, Inc.	\$ 815,000
F012	Facility Consultant Wm. Paterson College of NJ Wayne, NJ	Tighe Firtion & Carrino	\$ 10,000 Services				
H759 (Added Addition- al Proj- ect)	Removal/Installation of Canopies Various Buildings/Staircase Replacement Kean College of NJ Union, NJ	Thomas E. Torricelli, AIA	\$ 69,000 Total	H771	Repair/Replace Roofs of Four Non-Dormitory Buildings Ramapo College of NJ Mahwah, NJ	Thomas E. Torricelli, AIA	\$ 400,000
P456	Site Analysis Caven Point Pier Liberty State Park Jersey City, NJ	Sidney M. Johnson & Associates	\$ 22,000 Services				
					Competitive Proposals		
					John C. Morris Associates, Inc.	5.95%	
					O'Connor, Jeffrey & Kallaur	12.8%	
					Jansen & Rogan, Engineers	No Proposal Submitted	
					Competitive Proposals		
					Thomas E. Torricelli, AIA	7.00%	
					Goldberg Associates, P.A.	8.20%	

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 changes proposed in this issue will be entered in the Index of the next 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 date of the latest 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 March 4, 1985 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 timely adopt a proposed rule 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.1984 d.300 means the three hundredth rule adopted in 1984.

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 verifying 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 quickly find the issue of publication of a rule proposal or adoption.

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
16 N.J.R. 1131 and 1294	May 21, 1984	16 N.J.R. 3241 and 3336	December 3, 1984
16 N.J.R. 1295 and 1406	June 4, 1984	16 N.J.R. 3337 and 3518	December 17, 1984
16 N.J.R. 1407 and 1634	June 18, 1984	17 N.J.R. 1 and 140	January 7, 1985
16 N.J.R. 1635 and 1832	July 2, 1984	17 N.J.R. 141 and 236	January 21, 1985
16 N.J.R. 1833 and 2026	July 16, 1984	17 N.J.R. 237 and 338	February 4, 1985
16 N.J.R. 2027 and 2184	August 6, 1984	17 N.J.R. 339 and 502	February 19, 1985
16 N.J.R. 2185 and 2318	August 20, 1984	17 N.J.R. 503 and 634	March 4, 1985
16 N.J.R. 2319 and 2390	September 4, 1984	17 N.J.R. 635 and 762	March 18, 1985
16 N.J.R. 2391 and 2474	September 17, 1984	17 N.J.R. 763 and 858	April 1, 1985
16 N.J.R. 2475 and 2708	October 1, 1984	17 N.J.R. 859 and 1006	April 15, 1985
16 N.J.R. 2709 and 2864	October 15, 1984	17 N.J.R. 1007 and 1158	May 6, 1985
16 N.J.R. 2865 and 3066	November 5, 1984	17 N.J.R. 1159 and 1358	May 20, 1985
16 N.J.R. 3067 and 3240	November 19, 1984		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1, 1:2	Readopt General Hearing and Summary Proceedings rules	17 N.J.R. 2(a)		
1:1-11.2, 11.3	Discovery and countervailing factors	17 N.J.R. 1008(a)		
1:2-2	Civil Service cases: readopt conference hearings	16 N.J.R. 3338(a)	R.1985 d.77	17 N.J.R. 569(a)
1:2-3	Motor Vehicle cases: readopt hearings on the papers	16 N.J.R. 3339(a)	R.1985 d.78	17 N.J.R. 569(b)
1:10	Public welfare hearings	16 N.J.R. 3068(a)	R.1985 d.79	17 N.J.R. 569(c)
1:10-17.1	Division of Public Welfare cases	16 N.J.R. 945(a)		
1:11-1.1, 15.1	Insurance filing cases	16 N.J.R. 2866(a)	R.1985 d.76	17 N.J.R. 572(a)
1:21	Trade secret claims	17 N.J.R. 1009(a)		

(TRANSMITTAL 10, dated December 17, 1984)

AGRICULTURE—TITLE 2				
2:16-2	Seed certification standards	17 N.J.R. 636(a)		
2:16-4	Field corn standards (commercial hybrids)	17 N.J.R. 638(a)		
2:16-5	Sweetcorn standards (inbred lines)	17 N.J.R. 639(a)		
2:16-6	Sweetcorn standards (single cross hybrids)	17 N.J.R. 639(b)		
2:16-7	Small grain standards	17 N.J.R. 640(a)		
2:16-9	Soybean standards	17 N.J.R. 641(a)		
2:16-10	Vegetable standards	17 N.J.R. 641(b)		
2:16-13	Turfgrass sod standards	17 N.J.R. 642(a)		
2:16-15	Vegetatively propagated grass standards	17 N.J.R. 643(a)		
2:16-16	Asparagus seed standards	17 N.J.R. 643(b)		
2:16-17	Asparagus crown standards	17 N.J.R. 644(a)		
2:16-19	Flatpea certification standards	17 N.J.R. 644(b)		
2:24-1.1, 1.2	Bee diseases: acarine mite quarantine	17 N.J.R. 118(a)	R.1985 d.107	17 N.J.R. 573(a)
2:24-1.1, 1.2	Disease of bees: repeal Acarine mite quarantine	17 N.J.R. 860(a)		
2:24-1.3, 1.4, 1.5	Bee diseases: Tracheal mite quarantine	Emergency	R.1985 d.197	17 N.J.R. 985(a)
2:32-2	Sire Stakes Program	17 N.J.R. 3(a)	R.1985 d.108	17 N.J.R. 573(b)
2:32-2.7	Sire Stakes Program	17 N.J.R. 3(a)	R.1985 d.135	17 N.J.R. 686(a)
2:52-2, 3, 4.1, 7	Readopt rules concerning milk processors, dealers and subdealers	17 N.J.R. 1011(a)		
2:52-2.1, 3.1	Notice of intent to change milk supplier	16 N.J.R. 3071(a)	R.1985 d.75	17 N.J.R. 576(a)
2:52-2.1, 3.1	Sale of yogurt	17 N.J.R. 1012(a)		
2:53-4	Milk processors, dealers and subdealers	17 N.J.R. 1011(a)		
2:53-4.1	Notice of intent to change milk supplier	16 N.J.R. 3071(a)	R.1985 d.75	17 N.J.R. 576(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
2:53-4.1	Sale of yogurt	17 N.J.R. 1012(a)		
2:69-1.11	Commercial values of fertilizers and soil conditioners	17 N.J.R. 764(a)		
2:70-1	Liming materials: readopt fineness classification	17 N.J.R. 765(a)		
2:71-2.2-2.7	Jersey Fresh Logo program	17 N.J.R. 765(b)		
2:90-2.24	Cost share rates for soil and water conservation projects	17 N.J.R. 861(a)		
2:90-3	Water conservation project cost sharing	17 N.J.R. 7(a)	R.1985 d.158	17 N.J.R. 807(a)
2:90-3.6	Soil and water conservation management problems	17 N.J.R. 861(b)		

(TRANSMITTAL 28, dated January 21, 1985)

BANKING—TITLE 3

3:1-9.2-9.5	Home mortgage disclosure	16 N.J.R. 2872(a)	R.1985 d.98	17 N.J.R. 577(a)
3:2-1	Readopt rules on Advertising by Financial Institutions	17 N.J.R. 238(a)	R.1985 d.183	17 N.J.R. 904(a)
3:22-1.1	Premium finance agreement			17 N.J.R. 990(a)
3:30-2.1	Savings associations and Federal reserve requirements	17 N.J.R. 142(a)	R.1985 d.172	17 N.J.R. 904(b)

(TRANSMITTAL 25, dated December 17, 1984)

CIVIL SERVICE—TITLE 4

4:1-6.8	Nondiscriminatory titles	17 N.J.R. 1012(b)		
4:1-12.12	Restorations to promotional lists	17 N.J.R. 645(a)		
4:1-12.15	Appointment of eligible certified	17 N.J.R. 10(a)	R.1985 d.227	17 N.J.R. 1257(a)
4:1-14.7	Emergency appointments	16 N.J.R. 2191(a)	R.1985 d.124	17 N.J.R. 686(b)
4:1-18.3	Compensation for holidays	16 N.J.R. 1421(a)		
4:1-21.3	Prohibition against political activity	17 N.J.R. 1013(a)		
4:2-6.1, 6.2	Nondiscriminatory titles	17 N.J.R. 1012(b)		
4:2-7.13	Ninth step salary maximum	17 N.J.R. 1014(a)		
4:2-18.1, 18.2, 18.3	Compensation for holidays	16 N.J.R. 1421(a)		
4:3-6.2, 6.3	Nondiscriminatory titles	17 N.J.R. 1012(b)		
4:3-14.1	Seasonal positions	17 N.J.R. 1015(a)		
4:3-15.1	Repeal rule concerning transfer of county caseworkers	16 N.J.R. 3073(a)	R.1985 d.125	17 N.J.R. 686(c)

(TRANSMITTAL 23, dated February 19, 1985)

COMMUNITY AFFAIRS—TITLE 5

5:12	Homelessness Prevention Program	16 N.J.R. 3497(a)	R.1985 d.74	17 N.J.R. 577(b)
5:18-1.1, 1.3, 1.4, 1.5, 2.4, 2.5, 2.7, 2.8, 2.12, 3.1, 3.2	Uniform Fire Code	17 N.J.R. 1015(b)		
5:18A-2.1—2.4, 2.6, 3.2, 3.3, 4.1, 4.3, 4.4	Fire Code Enforcement	17 N.J.R. 1015(b)		
5:18B-3.2	High Level Alarms	17 N.J.R. 1015(b)		
5:23-1.4, 2.14, 4.18, 4.20	Uniform Construction Code: annual permits	17 N.J.R. 1029(a)		
5:23-2.15, 2.21	UCC: engineers and architects	17 N.J.R. 645(b)		
5:23-2.15, 2.1	UCC: engineers and architects	17 N.J.R. 1033(a)		
5:23-2.15, 5.7	UCC: applying for construction permit; renewal of enforcement license	17 N.J.R. 1031(a)		
5:23-3.14, 3.20	Building and mechanical subcodes	17 N.J.R. 239(a)	R.1985 d.154	17 N.J.R. 810(a)
5:23-3.14, 3.21	One and two-family dwelling construction subcode	17 N.J.R. 862(c)		
5:23-4.5	UCC: duties of construction officials	17 N.J.R. 340(a)	R.1985 d.232	17 N.J.R. 1257(b)
5:23-4.21, 5.4	UCC: private enforcing agency fees; trainees	17 N.J.R. 1032(a)		
5:23-5.4	UCC: trainee suspension, fire protection trainees	16 N.J.R. 3372(a)	R.1985 d.85	17 N.J.R. 579(a)
5:23-5.4	UCC: private enforcing agencies and trainee positions	17 N.J.R. 341(a)	R.985 d.231	17 N.J.R. 1258(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:23-8	Asbestos hazard abatement subcode	17 N.J.R. 767(a)		
5:27	Readopt rules on Rooming and Boarding Houses	17 N.J.R. 341(b)		
5:27-1.6	Rooming and boarding houses: owner and operator training	17 N.J.R. 777(a)		
5:31-7.5	Local authorities: audit reports	17 N.J.R. 504(a)		
5:71	Readopt County Offices on Aging rules	17 N.J.R. 342(a)	R.1985 d.176	17 N.J.R. 904(c)
5:80	Rules of the Housing and Mortgage Finance Agency	17 N.J.R. 505(a)	R.1985 d.241	17 N.J.R. 1258(b)
5:80-7	Housing and Mortgage Finance Agency projects: Tenant Selection Standards	16 N.J.R. 954(a)	R.1985 d.106	17 N.J.R. 580(a)

(TRANSMITTAL 27, dated February 19, 1985)

DEFENSE—TITLE 5A

5A:2	Leaves of absence for members of National Guard	17 N.J.R. 646(a)	R.1985 d.242	17 N.J.R. 1267(a)
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EDUCATION—TITLE 6

6:3-1.2	Board of school estimate	17 N.J.R. 143(a)	R.1985 d.151	17 N.J.R. 811(a)
6:3-1.10	Standards for determining seniority	17 N.J.R. 1033(b)		
6:3-1.17, 1.23	School facility planning services	17 N.J.R. 650(a)		
6:8-6.2	Evaluation and certification of school districts	17 N.J.R. 143(b)	R.1985 d.149	17 N.J.R. 811(b)
6:11-4.3	Emergency certification: operative date			17 N.J.R. 687(a)
6:20-3	Readopt rules on Tuition Public Schools	17 N.J.R. 144(a)	R.1985 d.157	17 N.J.R. 811(c)
6:20-3.1	Tuition public schools: determining rates	17 N.J.R. 119(a)	R.1985 d.91	17 N.J.R. 583(a)
6:20-5.3, 5.4	State facility pupil assignments: district of residence	17 N.J.R. 344(a)	R.1985 d.208	17 N.J.R. 1076(a)
6:20-5.5	Asbestos removal and encapsulation reimbursement	17 N.J.R. 863(a)		
6:20-6	Readopt rules on Purchase and Loan of Textbooks	17 N.J.R. 148(a)	R.1985 d.150	17 N.J.R. 814(a)
6:20-8	Readopt rules on Public School Contracts	16 N.J.R. 3372(b)	R.1985 d.88	17 N.J.R. 584(a)
6:21-5	Standards for school buses	17 N.J.R. 1035(a)		
6:22	School facility planning services	17 N.J.R. 650(a)		
6:28-3.2, 3.6, 6.1, 6.3, 8.3	Special Education	17 N.J.R. 345(a)	R.1985 d.209	17 N.J.R. 1077(a)
6:29-6.4	Athletics procedures	17 N.J.R. 659(a)		
6:29-7.1	Readopt Family Life Education Programs	16 N.J.R. 3377(a)	R.1985 d.185	17 N.J.R. 906(a)
6:68-2	Library assistance: readopt Incentive Grant Program rules	17 N.J.R. 346(a)	R.1985 d.207	17 N.J.R. 1078(a)

(TRANSMITTAL 28, dated February 19, 1985)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1C-1	90-day construction permits	16 N.J.R. 3243(a)		
7:1E	Readopt rules on Discharges of Petroleum and Other Hazardous Substances	17 N.J.R. 865(a)		
7:1F	Industrial Survey Project rules: waiver of Executive Order No. 66	17 N.J.R. 866(a)		
7:1F	Industrial Survey Project rules: new expiration date	_____	_____	17 N.J.R. 1139(b)
7:1G	Right to Know Act: Federal district court ruling	_____	_____	17 N.J.R. 1139(c)
7:2-2.14, 3.4, 3.5	Use of State Park lands	17 N.J.R. 778(a)		
7:2-12	Open lands management	17 N.J.R. 866(b)		
7:7E-7.2	Correction to Administrative Code: Coastal Resource and Development Policies	_____	_____	17 N.J.R. 1140(a)
7:7F-1, 3	Shore Protection Program; local government grants	16 N.J.R. 2881(a)	R.1985 d.184	17 N.J.R. 907(a)
7:9-4, 5	Surface water quality and treatment of wastewater discharges	16 N.J.R. 3080(a)	R.1985 d.249	17 N.J.R. 1270(a)
7:11-2.3, 2.5, 2.8-2.12	Delaware and Raritan Canal water supply system	17 N.J.R. 11(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:12-1.3, 1.4	Shellfish-growing water classifications	17 N.J.R. 661(a)		
7:13-1.11(c)27	Floodways along Pequest River in Sussex and Warren counties	16 N.J.R. 1306(a)	R.1985 d.218	17 N.J.R. 1080(a)
7:13-1.11(d)49	Floodway delineations in Union County	16 N.J.R. 1146(a)		
7:13-1.11(d)51	Floodways along North Branch Raritan (Project U)	16 N.J.R. 1307(a)		
7:13-7.1(c)17	Redelineation of Delaware River in Harmony Township, Warren County	17 N.J.R. 151(a)		
7:13-7.1(c)30	Floodway delineation along Paulins Kill	16 N.J.R. 2397(a)	R.1985 d.217	17 N.J.R. 1080(b)
7:13-7.1	Paulins Kill floodway delineation: public hearing	16 N.J.R. 2885(a)		
7:13-7.1(d)50	Floodway delineation along North Branch Foulerton's Brook	16 N.J.R. 2398(a)		
7:13-7.1(d)52	Supplemental Project I floodway delineations in the Passaic River Basin	16 N.J.R. 1865(b)	R.1985 d.130	17 N.J.R. 687(b)
7:14A-1.8	Fee schedule for NJPDES permits and applicants	17 N.J.R. 13(a)		
7:19-5	Small water company takeover	16 N.J.R. 3380(a)	R.1985 d.182	17 N.J.R. 910(a)
7:19-6	Water Supply Management Act Rules	16 N.J.R. 2399(a)	R.1985 d.133	17 N.J.R. 687(c)
7:20	Dam Safety Standards	16 N.J.R. 790(a)	R.1985 d.214	17 N.J.R. 1081(a)
7:25-2	Readopt rules on Use of Land and Water Areas under DEP control	16 N.J.R. 1309(a)		
7:25-4.2, 4.14, 4.17	Possession of endangered and nongame species	17 N.J.R. 516(a)	R.1985 d.251	17 N.J.R. 1289(a)
7:25-4.13, 4.17	Status of the osprey	17 N.J.R. 350(a)	R.1985 d.215	17 N.J.R. 1091(a)
7:25-7.10, 7.11	Taking of oysters and mussels	16 N.J.R. 3385(a)		
7:25-7.13	Crab dredging in Atlantic coast section	16 N.J.R. 3216(a)	R.1985 d.131	17 N.J.R. 697(a)
7:25-12.1	Preservation of sea clams	16 N.J.R. 2885(b)	R.1985 d.132	17 N.J.R. 698(a)
7:25-12.1	Increase of sea clam quota			17 N.J.R. 990(b)
7:25-12.1	Close of sea clam season			17 N.J.R. 1142(a)
7:25-16.1	Readopt freshwater fishing license lines	16 N.J.R. 2044(a)		
7:25-18.5	Marine fisheries: general net rules	Emergency	R.1985 d.240	17 N.J.R. 1343(a)
7:25-22.2	Purse seine fishing of menhaden	16 N.J.R. 1668(a)		
7:25-23	Permit to kill wild deer	17 N.J.R. 350(b)	R.1985 d.250	17 N.J.R. 1289(b)
7:25A	Oyster management	17 N.J.R. 352(a)	R.1985 d.216	17 N.J.R. 1092(a)
7:26	Solid and hazardous waste collector-haulers: Disclosure Statement Forms	16 N.J.R. 1425(a)		
7:26-1.7	Waste management: on-site disposal of construction debris	17 N.J.R. 1040(a)		
7:26-3	Waste management: readopt Collection and Haulage rules	17 N.J.R. 1041(a)		
7:26-6.5	Solid waste flow: Atlantic County	17 N.J.R. 517(a)		
7:26-6.5	Solid waste flow: Hunterdon County	17 N.J.R. 517(b)		
7:26-7.4, 8.3, 8.15, 9.2, 10.6, 10.8	Restriction of land disposal of hazardous waste	17 N.J.R. 779(a)		
7:26-8.13, 8.16	Hazardous waste from non-specific sources; hazardous constituents	17 N.J.R. 354(a)	R.1985 d.248	17 N.J.R. 1290(a)
7:26-8.13	Correction: Hazardous waste from non-specific sources			17 N.J.R. 842(b)
7:26-8.15	Hazardous waste management: warfarin and zinc phosphide	17 N.J.R. 356(a)		
7:26-9.10, 9.11, App. A.	Hazardous waste facilities: closure letters of credit	17 N.J.R. 241(a)	R.1985 d.247	17 N.J.R. 1291(a)
7:26-10.5	Tank storage containment requirements	17 N.J.R. 152(a)		
7:26-14	Resource Recovery grants and loans	16 N.J.R. 3385(b)		
7:26-14	Resource recovery grants and loans: extension of comment period	17 N.J.R. 242(a)		
7:26-16.4	Solid and hazardous waste: transporters and facilities	17 N.J.R. 518(a)		
7:27	Air quality standards: State Implementation Plan for lead	16 N.J.R. 1669(a)		
7:27-8	Air pollution control: permits and certificates	16 N.J.R. 1671(a)	R.1985 d.96	17 N.J.R. 587(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:27-13.1, 13.2, 13.5-13.8	Ambient air quality standards	16 N.J.R. 1676(a)	R.1985 d.252	17 N.J.R. 1292(a)
7:27-14.3	Diesel-powered motor vehicles: idle standard	16 N.J.R. 2887		
7:27-15.4	Air pollution and gas-fueled motor vehicles	17 N.J.R. 781(a)		
7:27-15.6	Gas-fueled motor vehicle: idle standard	16 N.J.R. 2889		
7:27B-4.6	Air pollution and gas-fueled motor vehicles	17 N.J.R. 781(a)		
7:28-24	Readopt Nuclear Medicine Technology rules	17 N.J.R. 22(a)	R.1985 d.140	17 N.J.R. 699(a)
7:29-1.1-1.5	Noise control	16 N.J.R. 1682(a)	R.1985 d.129	17 N.J.R. 699(b)
7:29-1.1-1.5	Noise control: extension of comment period	16 N.J.R. 2405(a)		
7:30	Pesticide Control Code	17 N.J.R. 242(b)		
7:36	Green Acres Program	16 N.J.R. 2405(b)		

(TRANSMITTAL 28, dated February 19, 1985)

HEALTH—TITLE 8

8:19	Readopt Newborn Hearing Screening rules	17 N.J.R. 869(a)		
8:20-1	Birth Defects Registry	16 N.J.R. 3118(a)	R.1985 d.92	17 N.J.R. 591(a)
8:21A	Good drug manufacturing practices	16 N.J.R. 3248(a)	R.1985 d.141	17 N.J.R. 815(a)
8:21A-2.55	Drug manufacturing: medical gas lot or control numbers	16 N.J.R. 1685(a)		
8:31-26.3, 26.4	Health care facilities: employee physicals; child abuse	16 N.J.R. 3249(a)		
8:31-26.5	Health care facilities: licensure fees	17 N.J.R. 664(a)		
8:31A	Readopt SHARE Guidelines	16 N.J.R. 2898(a)	R.1985 d.121	17 N.J.R. 702(a)
8:31B-2, 3, 4	Hospital Rate Setting rules: temporary waiver of expiration	16 N.J.R. 2733(a)		
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	16 N.J.R. 2848(b)		
8:31B-3.23	Correction: Hospital reimbursement	16 N.J.R. 2733(b)		
8:31B-3.23, 3.24, 3.43, 3.75	Hospital rate setting; outpatient dialysis reimbursement hospital-based physician costs	16 N.J.R. 669(a)	Expired	
8:31B-3.26, App. II	Hospital reimbursement: economic factor	17 N.J.R. 153(a)	R.1985 d.189	17 N.J.R. 914(a)
8:31B-3.72	Hospital reimbursement: periodic rate adjustments	17 N.J.R. 872(a)		
8:31B-3.79	Hospital reimbursement: post-acute care patients	17 N.J.R. 873(a)		
8:31B-5.2	Diagnosis Related Groups: outliers	16 N.J.R. 3119(a)	R.1985 d.122	17 N.J.R. 704(a)
8:33A-1.1	New and expanded surgical services: deferral of need applications	16 N.J.R. 2734(a)		
8:33A-2	Surgical facilities: planning and need review	17 N.J.R. 154(a)	R.1985 d.188	17 N.J.R. 915(a)
8:33E-2.1-2.5, 2.10, 2.12, 2.13	Cardiac surgical centers: need review	16 N.J.R. 2196(a)		
8:33F-1.4	Renal disease services: acute hemodialysis standards	17 N.J.R. 874(a)		
8:40	Licensure of invalid coach and ambulance services	16 N.J.R. 3127(a)	R.1985 d.192	17 N.J.R. 919(a)
8:42-1	Home health agencies: readopt licensure standards	16 N.J.R. 3250(a)	R.1985 d.117	17 N.J.R. 704(b)
8:42-1.2	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.118	17 N.J.R. 705(a)
8:43A	Licensure of ambulatory care facilities	16 N.J.R. 3254(a)		
8:43B-1	Licensure of hospital facilities	16 N.J.R. 3275(a)	R.1985 d.115	17 N.J.R. 705(b)
8:43B-1.7	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.116	17 N.J.R. 705(c)
8:43B-1.14	Hospital facilities: psychiatric patient rights	17 N.J.R. 665(a)		
8:43B-8.33-8.44	Newborn care services: physical plant standards	17 N.J.R. 519(a)		
8:43F	Medical day care facilities: readopt licensure standards	16 N.J.R. 3277(a)	R.1985 d.120	17 N.J.R. 706(a)
8:43F-2.1	Certificate of need approval letter	16 N.J.R. 3125(a)	R.1985 d.119	17 N.J.R. 706(b)
8:45	Clinical laboratory services	17 N.J.R. 268(a)	R.1985 d.243	17 N.J.R. 1294(a)
8:57-1	Readopt Reportable Diseases rules	17 N.J.R. 784(a)		
8:57-4.15	Immunization of school children: mumps vaccine	17 N.J.R. 358(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:57-4.16	Emergency Powers of Commissioner	17 N.J.R. 483(a)	R.1985 d.195	17 N.J.R. 955(a)
8:60-1-5, 7	Asbestos licenses and permits	17 N.J.R. 788(a)		
8:60-2, 6	Asbestos training courses	Emergency	R.1985 d.144	17 N.J.R. 741(a)
8:65-5	Controlled dangerous substances: records and reports of registrants	17 N.J.R. 524(a)		
8:65-6	Controlled dangerous substances: Federally-required order forms	17 N.J.R. 528(a)		
8:65-7.3	Controlled dangerous substances: issuing of prescriptions	17 N.J.R. 876(a)		
8:65-10.1, 10.2	Controlled dangerous substances: rescheduling of Sufentanil	16 N.J.R. 2900(a)	R.1985 d.83	17 N.J.R. 592(a)
8:65-10.4	Controlled dangerous substances: add Triazolam to Schedule IV	16 N.J.R. 2901(a)	R.1985 d.191	17 N.J.R. 956(a)
8:65-10.4	Controlled dangerous substances: additions to Schedule IV	16 N.J.R. 3390(a)	R.1985 d.190	17 N.J.R. 957(a)
8:65-10.8	Controlled dangerous substances: exempt chemicals	16 N.J.R. 3280(a)	R.1985 d.84	17 N.J.R. 592(b)
8:65-11.2	Narcotic treatment programs: registration fee	17 N.J.R. 359(a)		
8:71	Generic drug list additions (see 16 N.J.R. 2672(b), 17 N.J.R. 200(b), 957(b))	16 N.J.R. 1436(a)	R.1985 d.235	17 N.J.R. 1296(a)
8:71	Generic drug list additions (see 17 N.J.R. 201(a), 957(c))	16 N.J.R. 2483(a)	R.1985 d.236	17 N.J.R. 1296(b)
8:71	Additions to generic drug list	17 N.J.R. 158(a)	R.1985 d.234	17 N.J.R. 1295(a)
8:71	Generic drug list additions	17 N.J.R. 1043(a)		

(TRANSMITTAL 25, dated February 19, 1985)

HIGHER EDUCATION—TITLE 9

9:2-1, 2, 3, 8, 9	Repeal (See 9:6)	16 N.J.R. 2209(a)	R.1985 d.244	17 N.J.R. 1296(c)
9:2-4, 5, 6, 7, 12, 13	Readopt Administrative Policies for colleges and universities	16 N.J.R. 2216(a)		
9:2-11	Recodify as 9:7-7	16 N.J.R. 2218(a)		
9:2-12.2	Teacher education: curriculum	17 N.J.R. 22(b)		
9:6	State College: policies and standards	16 N.J.R. 2209(a)	R.1985 d.244	17 N.J.R. 1296(c)
9:6-1.2, 3.1, 3.4, 3.5, 3.6, 3.11, 4.4, 4.7, 5.2, 5.13	State Colleges: policies and standards	17 N.J.R. 160(a)	R.1985 d.244	17 N.J.R. 1296(c)
9:7-2.4, 2.9	Student assistance programs: eligibility; award combinations	17 N.J.R. 787(a)		
9:7-3.1	Tuition Aid Grant Award Tables	17 N.J.R. 23(a)	R.1985 d.155	17 N.J.R. 815(b)
9:7-4.1, 4.7, 4.8	Distinguished Scholars Program	17 N.J.R. 787(b)		
9:7-4.2	Garden State Scholars: award amounts	16 N.J.R. 3281(a)	R.1985 d.153	17 N.J.R. 816(a)
9:7-5.1, 5.4, 5.10	Public Tuition Benefits Program	17 N.J.R. 24(a)	R.1985 d.156	17 N.J.R. 816(b)
9:7-7	Readopt Veteran's Tuition Credit Program	16 N.J.R. 2218(a)		
9:9-1.6	Student loan applications: prohibited fee	16 N.J.R. 3281(b)		
9:9-1.16	Defaulted student loans: interest liability	16 N.J.R. 1012(a)		
9:9-9.2	PLUS Program: direct loan prerequisites	16 N.J.R. 1012(b)		
9:14	Readopt Independent College and University Assistance rules	17 N.J.R. 25(a)	R.1985 d.245	17 N.J.R. 1303(a)

(TRANSMITTAL 24, dated December 17, 1984)

HUMAN SERVICES—TITLE 10

10:44A-1.1-1.5, 2.2, 2.4, 3.1, 3.3, 4.3, 5.2, 9	Community residences for developmentally disabled; Supportive Living Programs	16 N.J.R. 1438(a)	R.1985 d.258	17 N.J.R. 1304(a)
10:44B	Skill development homes and family-based respite care homes	17 N.J.R. 359(b)	R.1985 d.181	17 N.J.R. 958(a)
10:47	Private Licensed Facilities for Developmentally Disabled	16 N.J.R. 2902(a)		
10:48	Division of Mental Retardation: appeal procedures	17 N.J.R. 876(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:49-1	Administration Manual: readopt General Provisions	17 N.J.R. 532(a)	R.1985 d.246	17 N.J.R. 1307(a)
10:49-1.1	Medicaid eligibility	16 N.J.R. 2219(a)		
10:49-1.27	Long-term care facilities: completion of field audit	16 N.J.R. 2413(a)	R.1985 d.177	17 N.J.R. 966(a)
10:51-1.17, 3.15	Pharmaceutical services: dispensing fee and capitation rates	17 N.J.R. 1044(a)		
10:52-1.1, 1.20	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:52-1.2, 1.3	Covered and non-covered inpatient hospital services	16 N.J.R. 483(a)	R.1985 d.87	17 N.J.R. 593(a)
10:53-1.1, 1.16	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:53-1.2, 1.3	Covered and non-covered inpatient hospital services	16 N.J.R. 483(a)	R.1985 d.87	17 N.J.R. 593(a)
10:53-2	Special Hospital Services: admission and billing	17 N.J.R. 544(a)	R.1985 d.257	17 N.J.R. 1317(a)
10:54-3	Procedure Code Manual: immunizations	17 N.J.R. 546(a)	R.1985 d.211	17 N.J.R. 1094(a)
10:55-1	Prosthetic and orthotic services	17 N.J.R. 26(a)	R.1985 d.152	17 N.J.R. 817(a)
10:55-1.5, 1.8, 3.1	Shoes and shoe appliances: provider reimbursement	17 N.J.R. 162(a)	R.1985 d.167	17 N.J.R. 967(a)
10:59-1.2, 1.4, 1.9, 1.12	Medical Supplier Manual: recycling of durable medical equipment	16 N.J.R. 2048(a)		
10:60	Readopt Home Care Services Manual	17 N.J.R. 28(a)		
10:60-3	Community Care Waiver Program for Elderly and Disabled	16 N.J.R. 3161(a)		
10:61-1.2	Medicaid participation by State, county and municipal labs	16 N.J.R. 3162(a)	R.1985 d.237	17 N.J.R. 1318(a)
10:63-1.6	Changes in level of long-term care	16 N.J.R. 2049(a)		
10:63-1.22	Long-term care facilities: completion of field audit	16 N.J.R. 2413(a)	R.1985 d.177	17 N.J.R. 966(a)
10:66-1.1, 1.2, 1.3, 1.6, 1.7, 1.9	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:67-1, 2.6	Readopt Psychologist's Services Manual	16 N.J.R. 3163(a)	R.1985 d.114	17 N.J.R. 706(c)
10:69A-1.2, 2.1, 5.3, 5.6, 6.1, 6.4, 6.6, 6.10, 6.11	Pharmaceutical Assistance for Aged and Disabled	17 N.J.R. 367(a)	R.1985 d.259	17 N.J.R. 1318(b)
10:81-3.9, 3.17, 3.40	PAM: support rights; continued absence	16 N.J.R. 3282(a)	R.1985 d.99	17 N.J.R. 594(a)
10:81-3.27	PAM: transmission of data to receiving county	17 N.J.R. 878(a)		
10:81-3.34	PAM: temporary absence of children from home	17 N.J.R. 163(a)		
10:81-11.1, 11.4, 11.12	PAM: continuing IV-D services for families that lose AFDC	17 N.J.R. 164(a)	R.1985 d.210	17 N.J.R. 1094(b)
10:81-11.7, 11.9	PAM: child support and health benefits	17 N.J.R. 165(a)	R.1985 d.219	17 N.J.R. 1095(a)
10:81-11.9	PAM: reimbursement by counties to State	17 N.J.R. 369(a)		
10:81-11.18	PAM: weekly second family adjustment	17 N.J.R. 879(a)		
10:82-1.2, 2.13, 3.11, 5.11	ASH: AFDC payment standards	17 N.J.R. 880(a)		
10:82-2.2	ASH: initial grant computation	17 N.J.R. 546(b)		
10:82-2.19	ASH: recovery of overpayments	16 N.J.R. 2055(a)		
10:82-2.19, 3.2	Correction to Administrative Code: Assistance Standards Handbook	_____	_____	17 N.J.R. 1143(b)
10:82-4.11, 4.12	ASH: income from apartments, rooms, or housekeeping units	17 N.J.R. 1045(a)		
10:85-3.1	GAM: household size	17 N.J.R. 37(a)	R.1985 d.168	17 N.J.R. 968(a)
10:85-3.2	GAM: determination of unemployability	17 N.J.R. 547(a)		
10:85-3.2, 10.6	GAM: willingness to work and penalty period	16 N.J.R. 2741(a)		
10:85-3.3	GAM: monthly assistance payment for residential health care	16 N.J.R. 2742(a)		
10:85-3.3	General Assistance rate in residential health care facilities	_____	_____	17 N.J.R. 485(c)
10:85-3.3, 12	GAM: medical care eligibility; repeal income standards rules	16 N.J.R. 3165(a)	R.1985 d.81	17 N.J.R. 595(a)

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10:85-3.4	GAM: suits and claims	17 N.J.R. 548(a)		
10:85-4.1, 9.4	General Assistance payment levels	17 N.J.R. 882(a)		
10:85-8	GAM: readopt Referral to Other Agency Programs	16 N.J.R. 3166(a)	R.1985 d.80	17 N.J.R. 596(a)
10:85-App. A	Expiration of List of Forms			17 N.J.R. 616(a)
10:87-1.14	Food Stamps: release of case file information	17 N.J.R. 166(a)	R.1985 d.179	17 N.J.R. 968(b)
10:87-2.16, 2.17, 8.2	Food Stamps: quality control case review	17 N.J.R. 167(a)	R.1985 d.180	17 N.J.R. 969(a)
10:87-2.19, 3.17-3.20	Food Stamp Program: work registration and voluntary quit		R.1985 d.145	17 N.J.R. 818(a)
10:87-2.21, 2.24, 2.28, 2.31, 2.35, 9.7, 11.29	Food Stamp Program revisions	17 N.J.R. 883(a)		
10:87-5.7	Food Stamp Program: treatment of moneys used to repay overpayments	Emergency	R.1985 d.178	17 N.J.R. 986(a)
10:90-4.8	Correction to Administrative Code: Monthly Reporting Policy Handbook	_____	_____	17 N.J.R. 1143(c)
10:94-3.16	Medicaid district offices	17 N.J.R. 38(a)		
10:94-5.6	Medicaid Only: health insurance premiums	17 N.J.R. 39(a)	R.1985 d.169	17 N.J.R. 969(b)
10:122-2.3, 2.6, 3.2, 3.3, 4.1, 4.3, 4.6, 6.8, 6.9	Child care centers	17 N.J.R. 548(b)		
10:123-3.2	Residential health care: personal needs allowance	17 N.J.R. 39(b)	R.1985 d.134	17 N.J.R. 707(a)
10:129-2	Confidentiality of child abuse records	17 N.J.R. 885(a)		

(TRANSMITTAL 26, dated February 19, 1985)

CORRECTIONS—TITLE 10A

10A:32	County juvenile detention centers	17 N.J.R. 40(a)	R.1985 d.97	17 N.J.R. 598(a)
10A:71	State Parole Board rules	16 N.J.R. 3391(a)	R.1985 d.213	17 N.J.R. 1096(a)

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INSURANCE—TITLE 11

11:1-2.5-2.8	Property-liability: rate counsel participation	16 N.J.R. 2918(a)		
11:1-16	Request for rate decrease	16 N.J.R. 3169(a)		
11:1-18	Approval of business names	17 N.J.R. 41(a)		
11:1-19	Uniform registration of branch offices	17 N.J.R. 42(a)		
11:2-19	Approval of insurance schools and company training programs	16 N.J.R. 2920(b)		
11:2-20	License renewal: continuing education requirement	16 N.J.R. 2922(a)		
11:2-21	Property and casualty coverage: underwriting guidelines	16 N.J.R. 2924(a)		
11:2-23	Advertisement of life insurance and annuities	16 N.J.R. 2926(a)		
11:3-7	Automobile Reparation Reform Act rules: 90-day waiver of expiration	16 N.J.R. 2414(a)		
11:3-7	Automobile Reparation Reform Act rules	16 N.J.R. 3417(a)		
11:3-7	Readopt Automobile Reparation Reform Act rules	17 N.J.R. 43(a)	R.1985 d.109	17 N.J.R. 707(b)
11:3-8	Nonrenewal of auto insurance policies	16 N.J.R. 2930(a)		
11:3-10	Auto physical damage claims	16 N.J.R. 3170(a)		
11:3-16	Private passenger automobile rate filings	16 N.J.R. 2934(a)		
11:3-17	Automobile rate filings	16 N.J.R. 2936(a)		
11:3-18	Filing review procedures	16 N.J.R. 2937(a)		
11:3-20	Reporting excess profits	17 N.J.R. 370(a)		
11:3-21	Reduced PIP premium charges	16 N.J.R. 3286(a)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 887(a)		
11:4-8	Charitable annuities	16 N.J.R. 3172(a)	R.1985 d.94	17 N.J.R. 598(b)
11:4-9	Annuity and deposit fund disclosure	16 N.J.R. 2939(a)		
11:4-16, 17, 18	Readopt health insurance standards	17 N.J.R. 554(a)	R.1985 d.221	17 N.J.R. 1129(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:4-20	Insuring of handicapped	17 N.J.R. 168(a)	R.1985 d.161	17 N.J.R. 820(a)
11:4-21	Readopt Limited Death Benefit Forms	17 N.J.R. 891(a)		
11:4-25	Social security disability offset	16 N.J.R. 3287(a)		
11:5-1.15, 1.25	Advertising of real estate; sale of interstate property	17 N.J.R. 666(a)		
11:5-1.19	Real estate branch offices	16 N.J.R. 2228(a)	R.1985 d.187	17 N.J.R. 970(a)
11:5-1.24	Closing or transfer of real estate brokerage	16 N.J.R. 2228(b)	R.1985 d.186	17 N.J.R. 970(b)
11:5-1.28	Approved real estate schools: requirements	17 N.J.R. 376(a)		
11:5-1.32	Residential rental referral agencies	16 N.J.R. 2952(a)	R.1985 d.93	17 N.J.R. 600(a)
11:10-1	Dental plan organizations	16 N.J.R. 2230(a)		
11:10-2	Employees' dental benefit plans	17 N.J.R. 45(a)	R.1985 d.220	17 N.J.R. 1129(b)
11:14-1.3, 2.1, 2.4, 3.1, 3.3, 4.1, 4.2	Auto body repair facilities	16 N.J.R. 2235(a)		
11:15-2.15	Payment of joint fund assessments by local governments	17 N.J.R. 218(a)	R.1985 d.128	17 N.J.R. 709(a)
11:16	Provider verification of services	17 N.J.R. 47(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	17 N.J.R. 1045(b)		

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LABOR—TITLE 12

12:15-1.1	Unemployment Compensation: contributions, records and reports	16 N.J.R. 2488(b)		
12:16	Contributions, records, reports	16 N.J.R. 2488(b)	R.1985 d.147	17 N.J.R. 820(b)
12:19	Contributions, records, reports	16 N.J.R. 2488(b)	R.1985 d.147	17 N.J.R. 820(b)
12:35	Readopt Workfare rules	17 N.J.R. 1048(a)		
12:120-1-5, 7	Asbestos licenses and permits	17 N.J.R. 788(a)		
12:120-2, 6	Asbestos training courses	Emergency	R.1985 d.144	17 N.J.R. 741(a)

(TRANSMITTAL 19, dated December 17, 1984)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1984 d.421	16 N.J.R. 2683(a)
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LAW AND PUBLIC SAFETY—TITLE 13

13:1-4.6	Police Training Commission: radar instructor certification	17 N.J.R. 377(a)	R.1985 d.226	17 N.J.R. 1130(a)
13:2-4	ABC: readopt rules on Issuance or Transfer of Municipal Retail Licenses	17 N.J.R. 1052(a)		
13:2-20	ABC: readopt rules on Transportation by Licensees; Transit Insignia	17 N.J.R. 1054(a)		
13:2-23.16, -24, -35	ABC preproposal: industry marketing and sales practices	16 N.J.R. 3292(a)		
13:2-33	ABC: readopt Brand Registration rules	17 N.J.R. 794(a)		
13:3-3.5, 3.6, 7.9	Amusement games control	17 N.J.R. 1058(a)		
13:13	Discrimination against handicapped persons	16 N.J.R. 838(a)		
13:13	Discrimination against handicapped persons	17 N.J.R. 671(a)		
13:18-6.1	DMV: notification of liability coverage termination	16 N.J.R. 3174(a)	R.1985 d.162	17 N.J.R. 831(a)
13:19-13.1, 13.2, 13.3	Motor vehicle insurance surcharges	17 N.J.R. 893(a)		
13:20-26.5, 26.12, 26.16	State inspection of certain trucks and truck tractors	17 N.J.R. 270(a)	R.1985 d.174	17 N.J.R. 971(a)
13:20-28	Readopt rules on Inspection of New Motor Vehicles	17 N.J.R. 1059(a)		
13:20-32.16	Motor vehicle reinspection centers	17 N.J.R. 676(a)		
13:20-33.6	Glazing inspection standards for motor vehicles	17 N.J.R. 894(a)		
13:20-34	Motor vehicle registration identifying marks	16 N.J.R. 2743(a)	R.1985 d.101	17 N.J.R. 601(a)
13:20-37	Motor vehicles with modified chassis height	16 N.J.R. 2501(a)	R.1985 d.100	17 N.J.R. 603(a)
13:21-1.3, 1.4, 1.5	Driver's licenses and social security numbers	16 N.J.R. 2746(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:21-4	Readopt rules on Motor Vehicle Titles	17 N.J.R. 377(b)	R.1985 d.200	17 N.J.R. 1131(a)
13:21-14	Readopt rules on licensing of bus drivers	17 N.J.R. 556(a)	R.1985 d.205	17 N.J.R. 1131(b)
13:21-15.6	Auto dealers: acceptance of altered title documents	17 N.J.R. 169(a)		
13:25-3.15, 3.16, 3.17	Motorized bicycle operator license	17 N.J.R. 48(a)	R.1985 d.112	17 N.J.R. 709(b)
13:27-8	Certified landscape architects	17 N.J.R. 169(b)	R.1985 d.163	17 N.J.R. 833(a)
13:28-1	Readopt Beauty Culture Industry rules	17 N.J.R. 49(a)	R.1985 d.139	17 N.J.R. 709(c)
13:28-2	Readopt rules on Beauty Culture Schools	17 N.J.R. 172(a)	R.1985 d.160	17 N.J.R. 835(a)
13:29-1.1-1.6, 1.8-1.12	Board of Accountancy general rules	17 N.J.R. 557(a)		
13:29-2.1, 2.2, 2.3	Registered municipal accountants	17 N.J.R. 559(a)		
13:29-3	Accountancy: readopt rules of professional conduct	16 N.J.R. 3418(a)	R.1985 d.104	17 N.J.R. 604(a)
13:30-8	Readopted Board of Dentistry general provisions	17 N.J.R. 378(a)	R.1985 d.196	17 N.J.R. 972(a)
13:30-8.1	Board of Dentistry: fee schedule	17 N.J.R. 378(a)		
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13:33-1.38	Eyeglass standards and tolerances	16 N.J.R. 3288(b)	R.1985 d.113	17 N.J.R. 710(a)
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