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NEW JERSEY REGISTER

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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS*, PAGE 1595.

VOLUME 17 NUMBER 12
June 17, 1985 Indexed 17 N.J.R. 1461–1608
(Includes rules filed through May 28, 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 **July 17, 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.

COMMUNITY AFFAIRS

Proposals numbered PRN 1985-329 and 347 are authorized by John P. Renna, Commissioner, Department of Community Affairs.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Construction Permits: Contractor Seals

Proposed Amendments: N.J.A.C. 5:23-2.15

Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1985-347.

Submit comments by July 17, 1985 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Division of Housing and Development
CN 804
Trenton, N.J. 08625-0804

The agency proposal follows:

Summary

The proposed amendment will require the subcode application to be signed and sealed by electrical and plumbing contractors when they are performing the work. The amendment also provides that released permits belong to the owner of the property being worked on even if the application was made by a contractor or agent.

Social Impact

The proposed amendment will affect electrical and plumbing contractors in that they will be required to sign and seal the subcode application form. The impact will be minimal, however, since both Occupational Boards provide their licensees with seal.

Economic Impact

The proposed amendments will not impose an economic burden on either electrical or plumbing contractors since they are already provided with seals by their respective Occupational Boards.

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

5:23-2.15 Construction permits-application

(a) (No change.)

(b) In addition, the following information shall be required on any application for a construction permit when such information is available but not later than the commencement of work:

1. (No change.)

2. The name and license number of the contractor or subcontractor of plumbing and/or electrical work where such work is proposed.

i. Plumbing and electrical work shall not be undertaken except by persons licensed to perform such work pursuant to law, except in the case of a single family homeowner on his own dwelling.

ii. The seal and signature of the licensed plumbing and electrical contractor shall be affixed to the corresponding subcode application form.

3.-4. (No change.)

(c) (No change.)

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(d) Application for a permit shall be made by the owner, or his agent, a licensed engineer, architect or plumbing, electrical or other contractor employed in connection with the proposed work. If the application is by a person other than the owner in fee, it shall be accompanied by an affidavit of the owner or the authorized person making the application, that the proposed work is authorized by the owner in fee, and that the applicant is authorized to make such application. **All issued permits shall remain the property of the owner even if the application was made by a contractor or authorized agent.**

(e) (No change.)

(a)

DIVISION OF COMMUNITY RESOURCES

Management Assistance Programs Handicapped Person's Recreational Opportunities Act

Proposed Amendment: N.J.A.C. 5:51-1.4 and 1.5

Authority: N.J.S.A. 52:27D-173.
Proposal Number: PRN 1985-329.

Submit comments by July 17, 1985 to:
Ronald W. Bogle, Deputy Director
Division of Community Resources
CN 800
Trenton, New Jersey 08625-0800

The agency proposal follows:

Summary

The Department proposes to delete the requirement that a certificate of appropriated funds be included in the application for funding and require that in its place a resolution adopted in accordance with N.J.S.A. 40A:4-87 be submitted prior to payment. The Department also proposes to delete the requirement that a third party contract be acknowledged by a resolution of the local government and the non-profit agency and in its place require notice to and authorization of a third party contract by the Department.

N.J.S.A. 52:27D-170, et seq., the Handicapped Persons Recreational Opportunities Act, provides for grants to local or county governments to provide special events and recreational services to handicapped individuals. The sections addressed in the proposal govern the application procedures for the obtaining of these grants. The proposed amendments make the application procedure easier.

Social Impact

The proposed amendments are beneficial in that the application process is simplified while providing for the necessary assurances required by the Act. At present, applicants are required to file a certificate of appropriated funds. The proposed amendments would instead require the submission of a resolution providing for the insertion of a special item of revenue in the current year's budget. Moreover, applicants are currently required to provide a resolution accepting a third party contract. This requirement is proposed for deletion, with the substitution of language that will simply require the submission of the name of the agency and a summary of the terms of the agreement.

Economic Impact

The proposed amendments will have a beneficial impact in that grants awards can be submitted and approved more quickly. Due to the simplification of these application procedures, applicants will experience a slight savings in preparation expenses. The cost of administering the program to the Department is expected to remain constant.

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

5:51-1.4 Application procedure

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

[(e) The application must include a certificate of appropriated funds certifying the availability of the $1.00 cash match responsibility of the local government.]

(e) [(f)] A non-profit agency serving handicapped persons will be eligible to participate in the program through a formal agreement with a local government. [The acceptance of a third party to the implementation of a funding project must be acknowledged by a resolution from the local government and a resolution from the non-profit agency serving handicapped persons. These resolutions must be included as attachments to the application.] **The name and address of the non-profit agency and a brief summary of the terms of the agreement shall be submitted as attachments to the proposal application.**

(f) [(g)] The Chief Executive of the local government must affix his signature to the formal application.

(g) [(h)] The proposed third party agreement between the local government and the non-profit agency serving handicapped persons must be completed in compliance with the Local Public Contracts Law as determined by the Divisions.

(h) [(i)] The Department reserves the right to require the non-profit agency to sign any contract offered to the local government, and/or to specify the manner of contractual relationship between the two parties.

5:51-1.5 Application processing and review procedure

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

(d) **Prior to any payment being made, a local government shall submit a copy of the resolution providing for the insertion of a special item of revenue in the current years' budget pursuant to N.J.S.A. 40A:4-87 as approved by the Director, Division of Local Government Services which also indicates that the match requirement of N.J.A.C. 5:51-1.3(c)3 has been met.**

ENVIRONMENTAL PROTECTION

Proposals numbered PRN 1985-331, 332, 333 and 334 are authorized by Robert E. Hughey, Commissioner, Department of Environmental Protection.

(b)

OFFICE OF THE COMMISSIONER

County Environmental Health Standards of Administrative Procedure and Performance

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Proposed Readoption: N.J.A.C. 7:1H

Authority: N.J.S.A. 26:3A2-21 et seq. and 13:1D-1 et seq.

Proposal Number: PRN 1985-334.

DEP Docket No. 026-85-05.

Submit comments by July 17, 1985 to:

Michael P. Marotta
Office of Regulatory Services
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:1H will expire on August 5, 1985. The Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

The Department of Environmental Protection proposes to readopt the rules concerning County Environmental Health Standards of Administrative Procedure and Performance (N.J.A.C. 7:1H). The Department finds that the rules, which provide for the administration of environmental health services by county health departments and those municipal and regional health agencies which qualify for certification by the Commissioner of Environmental Protection pursuant to N.J.S.A. 26:3A2-33 continue to be necessary to protect the economy and environment of the State.

While the Department proposes at this time to readopt these rules without change in order to assure that there is no interruption in the program and the services it provides, it will continue to review the standards in light of statutory changes that have occurred. Based upon this review, amendments to the rules will subsequently be proposed which will generally update the County Environmental Health Program.

N.J.A.C. 7:1H-1 sets forth the scope, construction and purpose of the rules and defines specific terminology that is used throughout the Chapter.

N.J.A.C. 7:1H-2 sets forth standards of Administrative procedure and performance to be met throughout each county pursuant to a work program prepared by each county health department or lead agency and approved by the Commissioner. The work program provides a description of program elements, delineates responsibilities for program implementation, identifies personnel and resources required to meet program requirements and provides a time schedule for achieving full program implementation.

N.J.A.C. 7:1H-2.2 sets forth standards and requirements governing the duties and powers of local health agencies with respect to air pollution control, noise control, hazardous substance control, laboratory services, potable water supply, water pollution control and on-site sewage system management. These requirements are to be fulfilled in accordance with the provisions of N.J.A.C. 7:1H-3 which sets specific standards to be met in each area of environmental concern.

N.J.A.C. 7:1H-2.3 require the submission of a work plan to meet the environmental health performance standards. The submittal can be made by a county health department or, in counties without a health department, by a lead agency designated by the county governing body in accordance with N.J.A.C. 7:1H-2.4. The work plan must describe the nature and scope of the environmental health programs, the personnel and resources required to meet program objectives, the delineation of responsibilities in each program area and a schedule for program implementation. The Department uses the information set forth in the work program as the criteria for its decisions regarding agency certification, program content, funding eligibility and future program direction.

The designation and certification of a lead agency are done in accordance with standards and requirements established by these Regulations at N.J.A.C. 7:1H-2.4. Certification may be given to municipal or regional health agencies which are willing to coordinate their environmental health programs so as to be consistent with the county plan. The department has included a 25,000 minimum population criterion as a condition of certification. This requirement is consistent with the criteria for participation in other public health State aid funding programs and is generally recognized as a minimum population level for the efficient and economic delivery of health services.

The personnel standards at 7:1H-2.5 are largely consistent with those established by the Department of Health for persons employed in public health positions.

Social Impact

The proposed readoption of these rules will allow the Department to continue, in full force and effect, the beneficial environmental programs resulting from the promulgation of these rules. This proposed readoption would provide the Department with the regulatory structure to implement the provisions of the County Environmental Health Act (N.J.S.A. 26:3A2-21 et seq.). The on-going implementation of these rules has resulted in a strong cooperative effort between State and local agencies. These rules have, and will continue to improve long range planning, program development and implementation required by Federal and State laws in the control of air, water, solid waste and noise pollution.

Economic Impact

The proposed readoption of these rules would result in a continuation of the existing program. Consequently, the Department foresees no additional economic impact. The present economic impact upon the affected parties will be continued by the readoption. This will include the expenses of compliance with the rule, including formulating and maintaining the work plan and the local environmental health program.

Also available to local agencies, and disbursed as part of the implementation of the County Environmental Health Program generally, are grants which, this year, have amounted to approximately $870,000.00.

Environmental Impact

The proposed readoption of the rules will have the positive environmental impact of continuing the regulatory framework necessary to implement the benefits of the County Environmental Health Act. At present 16 counties have obtained program approval and several more are pending. There is in place, therefore a growing system of local environmental services that supplement and enhance the individual State and local efforts. Spills and other releases into the environment have been investigated by local agencies. These agencies have, among other things, conducted inspections of solid waste and water supply systems and have provided laboratory analysis services and emergency services.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:1H.

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(a)

DIVISION OF COASTAL RESOURCES

Coastal Resource and Development Policies

Proposed Readoption: N.J.A.C. 7:7E

Authority: N.J.S.A. 13:1D-1 et seq., 13:19-1 et seq., 13:9A-1 et seq. and 12:5-3.
DEP Docket No. 027-85-05.
Proposal Number: PRN 1985-333.

Submit comments by July 17, 1985 to:
Robert A. Tudor, Planning Coordinator
Division of Coastal Resources
CN 401
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:7E expires on July 31, 1985. The Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Therefore, N.J.A.C. 7:7E is proposed for readoption.

Simultaneously, in this issue, the Department is proposing for public review and comment a set of revisions to N.J.A.C. 7:7E which is the result of the Department's review of the rules and of discussions with environmental groups, builders and other affected parties who live or do business within the coastal area. The Department will ultimately adopt amendments to these rules in accordance with the proposal and with the public comments received.

The completion of the rule amendments will necessarily be a lengthy process involving public hearings and an intensive review of the comments received. As a result it will extend beyond the July 31, 1985 expiration period. Therefore, the Department proposes to readopt the present Rules Governing Coastal Resources and Development Policies (N.J.A.C. 7:7E) without change so that, pending the adoption of the amended rules, the Coastal Management Program will continue in effect without interruption.

The Department finds that, pending the completion of the amendment process, the regulations continue to be necessary to protect the economy and environment of the State. The existing rules on Coastal Resource and Development Policies define the substantive policies of the Department of Environmental Protection regarding the use and development of coastal resources. They are used by the Division of Coastal Resources in reviewing permit applications under the Coastal Area Facility Review Act (CAFRA, N.J.S.A. 13:19-1 et seq.), the Wetlands Act (N.J.S.A. 13:9A-1 et seq.) and the Waterfront Development Law (N.J.S.A. 12:5-3). The Rules also provide a basis for recommendations by the Division of Coastal Resources to the Tidelands Resource Council in the Department of Environmental Protection on applications for grants, leases or licenses for State-owned tidelands.

The Coastal Area Facility Review Act (CAFRA) gives the Department authority to regulate major development in the Bay and Ocean Shore Segment of the coastal zone, to preserve environmentally sensitive sites and ensure a rational pattern of development. It also requires the Department to prepare a strategy for the management area. This strategy is embodied in the regulations.

The Wetlands Act delegated authority to the Department to delineate and regulate development in all coastal wetlands of the State from the Raritan River Basin southward and along southern portions of the Delaware River.

The Waterfront Development Law applies to all proposed development at or below the mean high water line on navigable waterways throughout the State. In certain areas of the State it includes development between the mean high water line and the first inland cultural feature or property line (in no case will the boundary be less than 100 feet or more than 500 feet from the waterway).

The Rules on Coastal Resource and Development Policies already serve as the substantive basis for decisions of the Division of Coastal Resources on Waterfont Development permits in the State's bay and ocean shore area and throughout the State.

The Rules also contain the standards the Department will use to determine the consistency of actions proposed in the coastal zone by Federal, State, and local agencies and to determine consistency with the approved program of Federal activities, development projects, licenses, permits, and financial assistance to the State and local governments under the Federal Coastal Zone Management Act. The coastal program aids the Department when it is called upon to review Federal domestic financial assistance applications as well as Environmental Impact Statements prepared under the National Environmental Policy Act. From time to time, the Department receives requests for advice or comments on the adequacy or appropriateness of plans and proposals by government agencies and private interests. These regulations provide a basis for offering an informed comment on the consistency of these plans and proposals.

Subchapter 1 sets forth the general purpose of the regulations, describes the decision making process used in the implementation of the standards and defines those terms which are used, generally, throughout the Chapter.

Subchapter 2 entitled "Location Policies" concerns the classification of all land and water locations into either a general area or, as required by specific conditions, one or more special areas. These special areas merit focused attention because they are naturally valuable, important for human use, hazardous, sensitive to impact, or in need of special planning requirements. They are defined and given special consideration in Subchapter 3.

Subchapter 3, which is entitled "Special Areas," divides special areas into special water areas (Section 7:7E-3.2 through 7:7E-3.16), special water's edge areas (7:7E-3.17 through 7:7E-3.31), special land areas (7:7E-3.32 through 7:7E-3.34), and coastwide special areas (7:7E-3.35 through 7:7E-3.45). It also provides specific standards for activities within each special area. The general area is divided into two major groups, general water areas and general land areas.

Subchapter 4, entitled "General Water Areas" defines the area types and establishes standards for activities within each type, while Subchapter 5 ("General Land Areas") provides standards for development of land areas. Three factors, coastal growth rating, environmental sensitivity and development potential, determine the acceptable development intensity for each location within the land area.

Subchapter 6, entitled "General Location Policies" provides additional standards for development within the coastal zone. A project which may comply with specific location

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standards may still be rejected or conditionally approved as may be necessary to protect public health, safety and welfare, protect property and wildlife or preserve and enhance the natural environment. Secondary impacts, which are the effects of the additional development which is likely to be constructed ancillary to the regional project, must also comply with the standards established by this subchapter. Transportation and wastewater treatment systems are the principal types of development that require a secondary impact analysis, but major industrial, energy, commercial, residential, and other projects may also require a secondary impact analysis.

Subchapter 7, entitled "Use Policies" describes the uses which are regulated in the coastal zone and sets forth standards governing each specific use.

Subchapter 8 which is entitled "Resources Policies" concerns the third criterion by which the acceptability of a development project within the coastal zone is determined. It provides for a review of a proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region.

Since the regulations were originally adopted in 1980, amendments have continued to be periodically adopted by the Department pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., as deemed necessary. The Department now finds that the Regulations, in their present form, are necessary for the protection of the State's environment. The Department has determined that the Regulations should continue in effect.

Social Impact

The proposed readoption of the Regulations will allow the Department to continue in full force and effect the beneficial environmental programs resulting from the original promulgation of the Regulations. The proposed readoption of the Regulations would provide the Department with the regulatory structure to enforce its responsibilities mandated and authorized pursuant to the Coastal Area Facility Review Act, The Wetlands Act and the Waterfront Development Law. The effects of these regulations has been to restrict or prohibit certain uses in parts of the coastal zone, while encouraging development and other uses in other parts.

The implementation of these regulations has increased public awareness of the coast and its problems. Issues such as public access to the waterfront, high rise construction, energy facility siting, and the use of urban waterfronts have all been the subject of recent public discussion and debate. The Coastal Management Program has not been the only cause of this concern, but it has sponsored, and will continue to promote, educational programs and publications, research, pilot projects, and revisions to State policies to increase public awareness and use of the coast.

The Regulations Governing Coastal Resource and Development Policies will continue to be a major tool by which policy decisions are made in the coastal zone.

Economic Impact

Since the proposed readoption of the Regulations would only promulgate the existing regulatory program, the Department foresees no additional economic impact. However the present economic impact on the regulated parties will be continued by the readoption. This will include the expenses of compliance with the rule, including the cost of formulating and submitting permit applications and the costs of implementing the permit requirements and conditions which may be imposed upon the project.

Additionally, as long as there is in effect in New Jersey a program managing and a regulating coastal development, the State is eligible to receive implementation funds under Section 306, 306A and 309 of the Federal Coastal Zone Management Act. The Department received $966,000 in Federal grants in fiscal year 1984 and expects to receive an additional $21,000,000 in August of this year. During fiscal 1984 the Department made available over $600,000 of this implementation money to selected county and municipal governments included within the Bay and Ocean Shore Segment boundary for planning projects which would help to fulfill the objectives of the coastal program.

Environmental Impact

The proposed readoption of the Regulations will have the positive environmental impact of continuing the regulatory framework necessary to implement the environmental protection benefits of the State and Federal Coastal Zone Management, Wetlands and Waterfront Development legislation.

The coastal ecosystem is fragile and special, and is characterized by a combination of beaches and the ocean, tidal and inland wetlands, flood plains, estuarine areas, bays, streams and stream corridors, vegetation communities and wildlife habitats. These natural features make the area a desirable place to visit, which in turn fosters the State's tourist industry. The same features make the coastal region a productive area for agriculture and commercial and recreational fishing. If the ecosystem is not protected, these natural resources and processes will be harmed.

These regulations have provided a balanced means of protecting the coast while allowing careful development within the area.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:7E.

(a)

Coastal Resources and Development

Proposed Amendments: N.J.A.C. 7:7E

Authority: N.J.S.A. 13:19-1 et seq.; 13:9A-1 et seq.; and 12:5-3.

DEP Docket No.: 029-85-05.

Proposal Number: PRN 1985-331.

Public hearings concerning the proposal will be held on the following dates:

July 15, 1985, 11:00 A.M.
Court Room, City Hall
33 Mechanic Avenue
Cape May Court House, N.J.

July 16, 1985, 11:00 A.M.
Council Chambers
1 Municipal Plaza
Asbury Park, N.J.

July 17, 1985, 11:00 A.M.
Council Chambers
City Hall, 2nd Floor
Jersey City, N.J.

July 15, 1985, 7:00 P.M.
206 Council Chambers
City Hall, 2nd Floor
Atlantic City, N.J.

July 18, 1985, 11:00 A.M.
Room 702
Labor & Industry Bldg.
Trenton, N.J.

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Submit comments by July 17, 1985 to:
Robert A. Tudor, Planning Coordinator
Division of Coastal Resources
CN 401
Trenton, New Jersey 08625
609-292-9762

The agency proposal follows:

Summary

The rules on Coastal Resources and Development Policies (N.J.A.C. 7:7E are the standards which the Division of Coastal Resources uses to make permit decisions under The Coastal Area Facility Review Act, (CAFRA) N.J.S.A. 13:19-1 et seq.; the Wetlands Act, N.J.S.A. 13:9A-1 et seq.; and the Waterfront Development Act, N.J.S.A. 12:5-3. The rules govern all DEP planning and regulatory actions in the coastal zone. They are also an element of New Jersey's Federally approved Coastal Management Program.

The rules were adopted on September 28, 1978 for the Bay and Ocean Shore Segment (generally, the Coastal Area under CAFRA) of New Jersey's Coastal Zone, and were extensively amended on September 26, 1980, at which time they became applicable throughout the Coastal Zone. Since September, 1980, they have been amended four times, but never in a comprehensive fashion. In 1983 and 1984, the Division of Coastal Resources undertook its first comprehensive review of the rules since September, 1980. Based upon comments from environmentalists, developers, and the general public, experience of project review officers in applying the rules and upon changing conditions in the Coastal Zone, the DEP now proposes to amend these rules.

The process by which the Department will amend these regulations will be lengthy. Several public hearings will be held in order to give all interested parties an opportunity to present their comments and concerns. Additionally, the Department expects to receive extensive written testimony. Prior to the adoption of amendments, the Department will review and respond to the information received. The amendments which are ultimately adopted will reflect the Department's review.

Pursuant to Executive Order 66(1978), the present Rules Governing Coastal Resource and Development will expire on July 31, 1985. Because the amendment process will extend beyond that date, the Department is, concurrently with this proposal, proposing to readopt, without change, the present regulations so that the Department's programs regulating the activities in the coastal areas of the State will continue uninterrupted (see proposal in this issue). The Department has reviewed the present regulations and has found they continue to be reasonable and necessary pending the adoption of the amendments. Once the Department has adopted the amendments to these regulations, they will supersede the present regulatory program.

On balance, these amendments would constitute neither a strengthening nor weakening of the degree of the overall regulatory control exercised by the Department. Rather, the proposed amendments represent a refinement of the rules to make them more responsive to actual coastal issues.

A summary of the specific significant changes follows:

(All rule citations listed below refer to existing N.J.A.C. citations.)

Subchapter 1. Introduction

In N.J.A.C. 7:7E-1.6(c) the following changes are proposed:

The definition of "prohibited" would be amended to allow DEP discretion to approve "prohibited" projects where the proposed use is essential to meet the mandate of another New Jersey State environmental program, provided that mitigating measures are taken to ensure that there is a net gain in quality and quantity of the coastal resource of concern.

The definition of "discouraged", in the provision for mitigation as part of DEP permitted projects, would be amended to require a net gain in quantity as well as quality of the coastal resource of concern.

The definition of encouraged contains language which has proved to be vague and therefore would be deleted. The definition would be further amended by the replacement of an "or" by an "and" to clarify that design, purpose, effect, or location alone are not sufficient to make a development "encouraged". All factors must be present.

The definition of "water dependent" is proposed to be further clarified. Economic viability is often cited as the reason a particular use is water dependent. Economic considerations would be removed from the definition, and it would be based, instead, on functional considerations.

A provision for water-oriented uses is proposed to be incorporated into the Filled Water's Edge standard. The following definition of water-oriented is proposed. "Water-oriented" means development that serves the general public and derives economic benefit from direct access to the water body along which it is proposed.

N.J.A.C. 7:7E-1.6(d), (e), (f) address pre-application conferences, project review procedures and information requirements and are redundant with procedural rules found at N.J.A.C. 7:7-1 and would be deleted.

A new policy (N.J.A.C. 7:7E-1.7) is proposed to address requirements for mitigation when wetlands or subtidal and intertidal shallows are destroyed.

Subchapter 2. Location Policies

The Division of Coastal Resources has reviewed this subchapter and has determined that no changes are necessary.

Subchapter 3. Special Areas

The rule concerning Shellfish beds at N.J.A.C. 7:7E-3.2 would be amended to allow destruction of presently productive shellfish beds only when development is of national interest and no prudent and feasible alternative sites exist. It would also be amended to require a resurvey of the shellfish bed and possible mitigation measures in every case in which development does not occur within one year of permit issuance.

Atlantic Sturgeon and Shortnose Sturgeon would be added to the list of species of concern at N.J.A.C. 7:7E-3.5 Finfish migratory pathways.

The language of N.J.A.C. 7:7E-3.10 (Marina moorings) would be strengthened to prevent the loss of marina slips and moorings open to the general public.

As amended, N.J.A.C. 7:7E-3.13 (Shipwrecks and artificial reefs) would be concerned with shipwrecks as a fisheries resource, whereas the historic and archeological resource special area policy would be concerned with shipwrecks as a cultural resource.

N.J.A.C. 7:7E-3.14 (Estuarine or marine sanctuaries) is proposed for deletion because there are no estaurine or marine sanctuaries in New Jersey, nor are any presently contemplated.

In N.J.A.C. 7:7E-3.16 (Intertidal and subtidal shallows) there is presently no rule that comprehensively addresses the protection of non-vegetated shallow water habitat as the wetland policy addresses vegetated shallow water areas. This pro-

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posed amended to the present intertidal flats policy would rectify this deficiency.

N.J.A.C. 7:7E-3.17 (Filled water's edge) would be clarified and strengthened based on the recommendations of "Filled Water's Edge Policy Assessment," June, 1983, and "Marina Conversions: An Analysis Based on Nine Approved CAFRA Projects," NJDEP—Division of Coastal Resources, November, 1983.

N.J.A.C. 7:7E-3.18 (Existing lagoon edge) has been amended to specify that reconstruction of retaining structures may not extend outshore more than 18 inches and that new retaining structures must be consistent with the acceptability conditions for filling (N.J.A.C. 7:7E-4.11(i)).

A proposed amendment to N.J.A.C. 7:7E-3.19 (Natural water's edge) would allow recreational uses which do not reduce flood dissipating value of the flood plain. The intent is to have a policy in which development is more acceptable here than in wetlands, but less acceptable than in the filled water's edge.

The definition of dunes at N.J.A.C. 7:7E-3.22 would be clarified by specifying that it applies to man-made dunes and dikes. This would afford protection to such dikes as those created by the U.S. Army Corps of Engineers after the March, 1962 storm and those created by municipalities.

In N.J.A.C. 7:7E-3.23 (Overwash fans) the landward limit of this special area would be defined as the inland limit of sediment transport and no longer the first public road if the road comes first. The revised definition would include the entire hazardous area indicated by an overwash fan, and no longer exclude areas arbitrarily due to post-storm clean-up or to the presence of a road, which offers no shore protection. This section would also be amended to include provision for dune creation/expansion as a mechanism to mitigate storm hazards and minimize the potential of future overwash.

The definition of erosion hazard areas in N.J.A.C. 7:7E-3.24 has been amended to delete reference to shore protection techniques as a means of decreasing the extent of the hazard area. Erosion control structures offer only short term protection. They do not change or abate the factors causing the extreme erosion at the site such as rising sea level, wave, tide and wind patterns, and the effect of other shore protection devices in the reach. Erosion control structures have been known to fail, resulting in loss of private and public property at great expense to the taxpayer.

In N.J.A.C. 7:7E-3.25 the definition of "Island corridor" has been broadened to include all islands in tidal waterways rather than barrier islands alone. Oceanfront barrier islands would be treated as an extension region for the purpose of determining the maximum acceptable intensities of development.

The standard for non-oceanfront islands (including filled portions) would be more restrictive. Non-water dependent development would be prohibited and water dependent development discouraged where the bay island corridor did not abut a paved public road and sewage system. On bay islands which abut a paved public road and sewage system, water dependent and low intensity development would be permitted.

Mitigation requirements in N.J.A.C. 7:7E-3.26 (Wetlands) would be recodified at N.J.A.C. 7:7E-1.7 and the rule would be amended to identify specific activities which could adversely affect wetlands.

The rule addressing coastal bluffs at N.J.A.C. 7:7E-3.30 would be amended to delete the provision for reclassifying the site based on incorporation of shore protection measures. With or without a shore protection device, a coastal bluff is still steep, unstable and eroding and development on it is inappropriate.

The scope of N.J.A.C. 7:7E-3.32 (Farmland conservation) would be expanded to apply to the entire coastal area. It also would be amended to delete reference to forested areas and remove ambiguous language about urban-agricultural conflicts. Agriculture would be the only permitted use in Farmland Conservation Areas unless it can be demonstrated by the applicant that agriculture is not economically feasible.

Conditions for the salvage of historic shipwrecks would be added to N.J.A.C. 7:7E-3.35 (Historic and archeological resources).

N.J.A.C. 7:7E-3.37 (Endangered or threatened wildlife or vegetation species habitat) has been amended to delete the option of providing off site habitat for endangered or threatened species and to require consideration of potential secondary impacts. Based on past Division experience, the only way to assure survival of the species within the region surrounding the site is to prevent further destruction of its habitat. The list of endangered or threatened species would be modified based on a proposed amendment to the January 17, 1984 list published by the Division of Fish, Game and Wildlife.

The critical wildlife habitat rule at N.J.A.C. 7:7E-3.38 would be amended to expand the scope of review to include consideration of potential secondary impacts to critical habitat.

Areas where hazardous materials are used or disposed of would be added to the examples of special hazard areas at N.J.A.C. 7:7E-3.40.

N.J.A.C. 7:7E-3.42 (Special urban areas) would be amended to explicitly state that housing and mixed use development is acceptable only over large rivers where water dependent uses are deemed infeasible. It also provides greater latitude in reconfiguring existing piers or rebuilding piers.

Amendments to N.J.A.C. 7:7E-3.44 Hackensack Meadowlands District (HMDC) are proposed to clarify the relationship between HMDC plans and policies and the New Jersey Coastal Management Program.

A new section, N.J.A.C. 7:7E-3.46 (Geodetic control reference marks) would be added to the list of Special Areas.

Subchapter 4. General Water Areas

In N.J.A.C. 7:7E-4.11(a) which addresses aquaculture, the use would be encouraged rather than conditionally acceptable.

Docks and piers for commercial fisheries would be moved from the recreational category at N.J.A.C. 7:7E-4.11(d) to the less restrictive category of docks and piers at N.J.A.C. 7:7E-4.11(c).

The section would be further amended at N.J.A.C. 7:7E-4.11(d) to require minimization of dock size and maximization of space between planking to maximize the amount of light reaching benthic vegetation. This amendment would be consistent with present permit practice.

The standards for turbidity control at N.J.A.C. 7:7E-4.11(e), (f) and (g) would be amended to conform with Division of Water Resources rules (N.J.A.C. 7:9). The maintenance dredging policy would be substantially amended to define the Division's review strategy and to limit testing and monitoring requirements to specific instances of particular environmental concern. The standards for new dredging would be amended to take into consideration the fact that by its nature, new dredging will significantly disturb intertidal and subtidal shallows.

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N.J.A.C. 7:7E-4.11(i) (Filling) has been clarified to address the issue of bulk-heading along lagoon edges. In addition, mitigation requirements would be moved to Section 1.7, and a policy would be established for the removal of unauthorized fill.

Changes to N.J.A.C. 7:7E-4.11(s) would provide that except as otherwise specified, all non-water dependent uses would be discouraged in all water areas.

Subchapter 5. General Land Areas

The proposed amendment to N.J.A.C. 7:7E-5.1 (General land areas) would not change existing policy but would emphasize the fact that in upland special areas both the Land Area and Special Area rules must be complied with. This statement is presently made at the introduction to the special area rules.

Three changes are proposed for N.J.A.C. 7:7E-5.3 (Coastal growth rating). The Barrier Island Region would be redefined to include back bay islands. The oceanfront barrier islands would be classified an Extension Region for purposes of applying the Water's edge housing use rules. The Urban Areas Region would be redefined to clarify that it is the same as the Special Urban Areas Special Area (see 7:7E-3.42).

The presence of Agricultural Capability Class I lands are to be eliminated from N.J.A.C. 7:7E-5.4 (Environmental sensitivity) as a factor determining high environmental sensitivity because:

1. The land area rules often reduce the acceptable intensity of development on high environmental sensitivity sites, but seldom totally prohibit development. Therefore, they do not protect Class I lands for future agricultural use.

2. The current land area rules may preserve or reduce acceptable densities on scattered portions of Class I soils in a random fashion, without protecting portions large enough for future agricultural use.

3. Class I lands are a small percentage of all lands which are suitable for agriculture.

4. Class I lands differ from Class II lands only in slope. The current rule tends to encourage higher densities on prime agricultural lands which have a slight slope than on prime agricultural lands which are flat.

The presence of high permeability wet soils as a factor determining high environmental sensitivity would be replaced by the presence of wet or high permeability moist soils to make this rule consistent with the revised Wet and high permeability moist soils rule (see N.J.A.C. 7:7E-8.20).

These amendments would have little net change on the amount of land acceptable for development, but would generally prevent the situation in which small pockets of land must be developed at lower densities than surrounding land.

At N.J.A.C. 7:7E-5.5(a) (Acceptable intensity of development) the Department has attempted to apply the acceptable intensity of development tables to land uses for which they were not intended, e.g., landfills, and obtained inappropriate requirements. Limitations on the use of these tables would be established.

Subchapter 6. General Location Policies

The definition of "secondary impacts" at N.J.A.C. 7:7E-6.3 would be amended to indicate that additional development can also include traffic increases, increased recreational demand, and any other offsite impacts generated by onsite activities which affect the site and surrounding region.

Subchapter 7. Use Policies

N.J.A.C. 7:7E-7.2(b)1(ii) (Water's edge housing) would be changed to remain consistent with revised filled water's edge and special urban area standards and to provide criteria for determining the acceptable intensity of development on filled water's edge sites.

A new use standard is proposed at N.J.A.C. 7:7E-7.2(c) to prohibit floating homes because they are not water dependent, they compete with recreational and commercial boats for limited marina space and have adverse water quality impacts.

N.J.A.C. 7:7E-7.2(e) (Affordable housing) would be amended in response to the Supreme Court's decisions in Southern Burlington County N.A.A.C.P. v. Mount Laurel Township, 92 N.J. 158, 465 A.2d 390 (1983) (Mount Laurel II) and In Re Egg Harbor Associates (Bayshore Center), 94 N.J. 358, 464 A.2d 1115 (1983). Specific changes to the policy are as follows:

"Income" and "monthly carrying costs" have been defined.

The standard would be applied to all residential construction of 100 units or more without a test for need, but the Urban Areas Region, the Delaware River Region, and the Northern Waterfront Region would be exempt from the policy; and

The required amount of affordable housing is defined as enough so that at least 10 percent of the units to be built will be offered at prices affordable by low income households and at least 10 percent of the units will be affordable by moderate income families. This housing may be built on or off site, or through rehabilitation of existing housing. Applicants demonstrating that on or off-site development of affordable housing is not feasible or that the objectives of the policy would be better fulfilled in another way, may make a contribution to a housing agency. The size of the contribution would be determined by a formula based on the number and affordability of the housing to be built.

At N.J.A.C. 7:7E-7.2(h) the (High rise housing) standards would be expanded into a high rise structures policy at N.J.A.C. 7:7E-7.19. The use of this rule was reviewed in an October, 1982 BCPD study entitled "A Summary of All CAFRA Projects under the High Rise Policy." Proposed amendments would:

Clarify that this rule be applied to all high rise structures;

Specify the minimum distance between a high rise and coastal waters as one public road or 34 feet (the standard width of the right-of-way of a two land road);

Specify when high rises must not overshadow beaches; and

Require that for a high rise which is not consistent with surrounding densities to be approved, it must be in conformance with a municipal comprehensive development scheme which is consistent with all applicable Coastal Resource and Development Policies.

The definition of "large-scale residential development" would be amended at N.J.A.C. 7:7E-7.2(i) to require that development be multi-use in addition to free standing developments of 500 units or more. The rule would be strengthened by inclusion of a provision for a perimeter buffer of sufficient size to preclude scattered infill development.

At N.J.A.C. 7:7E-7.3(b) (Recreation priority) resort and recreation uses would no longer be given priority in Cumberland and Salem Counties in recognition of the importance of industry, agriculture, mining and commercial fisheries in these two counties. Commercial fisheries would be given equal priority with resort and recreation uses in Monmouth, Ocean, Atlantic and Cape May counties in recognition of the fact that $96.5 million worth of fishery products are processed in New Jersey annually (1979).

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It is proposed to clarify N.J.A.C. 7:7E-7.3(e) by defining "recreation areas" and "to the maximum extent practicable."

The proposed amendment to N.J.A.C. 7:7E-7.3(d) (Marinas) would establish a rule to encourage marina development on the filled water's edge and discourage it on wetlands.

At N.J.A.C. 7:7E-7.3(d)(ii) the rule encouraging facilities that provide primarily for sail and oar boating would be amended to include rental boats and N.J.A.C. 7:7E-7.3(d)(iii) would be deleted because this issue is addressed at N.J.A.C. 7:7E-3.10.

Social and economic impact of coastal energy facility developments would be evaluated as part of siting procedures at N.J.A.C. 7:7E-7.4(c).

N.J.A.C. 7:7E-7.5(b) (Public transportation) is proposed to be expanded to address the issue of abandonment of rail rights-of-way.

Revisions to N.J.A.C. 7:7E-7.8 would address the issue of mining/agricultural conflicts through emphasis on reclamation.

N.J.A.C. 7:7E-7.10(a) and (c) (Commercial facility use policies) would be changed to remain consistent with revised filled water's edge and special urban area standards.

At N.J.A.C. 7:7E-7.11(b), the desirability of vegetation as a shore protection technique would be emphasized, and criteria for determining the effectiveness of non-structural techniques would be set forth.

The rule on "short retaining structures" would be deleted from N.J.A.C. 7:7E-7.11(e) (Structural shore protection) because the acceptability of this use would now be comprehensively addressed in the Water Area Filling Policy. Short retaining structures would be generally acceptable only along lagoon edges. Sloped concrete revetments are stated to be preferred construction method, along with rip-rap. The policy would also be amended to require that public access be required to publicly funded shore protection projects and land created thereby. The rule would also be revised to remain consistent with the revised Erosion Hazard Area Policy (N.J.A.C. 7:7E-3.24).

Subchapter 8. Resource Policies

At N.J.A.C. 7:7E-8.4 (Water quality), the requirement of consistency with the Clean Water Act (33 U.S.C. 1251 et al.) would be revised but not substantively changed.

The rule at N.J.A.C. 7:7E-8.6 governing groundwater use would be amended to include other groundwater diversions in the region as part of a development's groundwater withdrawal impact assessment.

N.J.A.C. 7:7E-8.7 (Stormwater runoff) would be amended to conform with the general standards under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

The Department is proposing to delete N.J.A.C. 7:7E-8.8 (Soil erosion and sedimentation) because activities regulated under coastal laws must be certified by local Soil Conservation Districts pursuant to the Soil Erosion and Sediment Control Act, N.J.S.A. 4:2-1 et seq.

N.J.A.C. 7:7E-8.12 would be deleted because the Department has little control over the provision of public services which are primarily a municipal function.

Amendments are proposed to N.J.A.C. 7:7E-8.13 (Public access) based on the Department's Ocean Beachfront Access Strategy (1984), to clarify that the rule applies to access to all coastal waterfronts, to prevent unreasonable fee discrimination between residents and non-residents, to ensure equal access to coastal waters which are subject to the public trust doctrine regardless of race, religion, ethnic background, sex, or sexual preference, to ensure access to publicly funded shore protection projects and to waterfronts created by public projects, and to require development along the Hudson River to conform with Hudson River Walkway and Design Guidelines, prepared for the Department.

The scope of N.J.A.C. 7:7E-8.14 (Scenic resources and design) would be narrowed to apply only to facilities, which by their size, location or design could have a significant adverse effect on the scenic resources of the coastal zone.

The definition of solid waste would be amended at N.J.A.C. 7:7E-8.16 to exclude liquid waste, because liquid waste is, by definition, distinguished from solid waste, and is addressed by either the New Jersey Pollutant Discharge Elimination System (NJPDES) program or the runoff policy N.J.A.C. 7:7E-8.7. Wastes collected by swine producers would not be exempted, since this use of waste is addressed by the rule. Further amendments would require resource and energy recovery where not infeasible and would require residential developments of over 99 units and all commercial and industrial facilities which generate identifiable recyclable waste products to implement a source separation and recycling plan, if feasible. This section would also be amended to make it explicit that wetlands are not an acceptable site for sanitary landfills.

A number of changes are proposed to clarify N.J.A.C. 7:7E-8.17 (Energy conservation). Only high rise and major commercial and industrial developments would be required to prepare an energy plan or audit. Most residential development will be required only to incorporate energy conservation techniques to the maximum extent practicable. If N.J. Department of Energy (NJDOE) serves as a review agency, they will advise the Division whether such techniques are incorporated to the maximum extent practicable. If NJDOE does not serve as a review agency, the Division of Coastal Resources will make this determination. Standards would be set for maximum acceptable shadowing of existing solar collectors and these standards would no longer be limited to high rise buildings. Municipalities with energy conservation ordinances consistent with NJDOE standards would be exempted from this requirement.

The Department would delete N.J.A.C. 7:7E-8.18 (Neighborhoods and special communities) as its use has been limited because the site plan review process does not lend itself to influencing the specific planning of neighborhoods and special communities to any significant extent.

Three specific requirements at N.J.A.C. 7:7E-8.19 (Traffic) would be placed on new development: it must be designed and located in a manner to cause the least possible disturbance to traffic systems; when traffic systems are disturbed by an approved development, the necessary design modifications must be prepared and implemented in conjunction with the coastal development; and new development must not generate traffic in excess of specific capacity levels.

Two standards (Wet and high permeability moist soils) have been combined at N.J.A.C. 7:7E-8.20 to enhance consistency and simplicity.

At N.J.A.C. 7:7E-8.22 (Flood hazard areas) references to specific requirements under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-1 et seq.) have been replaced by a general reference to the Act and rules adopted thereunder because of ongoing amendments to the rules. In addition, the rule would be strengthened to prohibit residential development in coastal high hazard areas and require setbacks from oceanfront shore parallel structures.

The Department has proposed to delete the standards dealing with decommissioning of projects, N.J.A.C. 7:7E-8.23,

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because it has been replaced by Resource Conservation and Recovery Act (RCRA) (42 USC 6901 et seq.) and because of its limited application in the past.

The standard dealing with barrier free design, N.J.A.C. 7:7E-8.25, would be reduced in scope and incorporated as part of the public to the waterfront policy. Division application of barrier free design standards have, in the past, duplicated efforts of other State agencies. State law (N.J.S.A. 52:32-1 and 52:32-5) requires that barrier free design be included in all buildings and areas used by the general public. Additionally, all curb ramping, sidewalks and grade changes on public property or on private property for public use shall be constructed according to State law (N.J.S.A. 52:32-14 et seq.).

A bibliography of reports relating to the proposed amendments follows:

1. New Jersey Department of Environmental Protection, Bureau of Coastal Planning and Development, "Filled Water's Edge Policy Assessment," June 1983.

2. New Jersey Department of Environmental Protection, Bureau of Coastal Planning and Development, "Marina Conversions: An Analysis Based on Nine Approved CAFRA Projects," November, 1983.

3. New Jersey Department of Environmental Protection, Bureau of Coastal Planning and Development, "Ocean Beachfront Access Strategy," April, 1984.

4. Wallace, Roberts and Todd for NJDEP, Hudson River Walkway and Design Guidelines, 1984.

5. Rogers, Golden and Halpern for NJDEP, Developing a Marina in New Jersey: A Handbook, 1982.

6. New Jersey Department of Environmental Protection, Division of Coastal Resources, "A Comparison of the Abundance and Diversity of Fish and Shrimp in Barnegat Bay and a Representative Lagoon System in New Jersey," November, 1984.

All publications are available from the Department's Division of Coastal Resources, N.J. Department of Environmental Protection, CN 401, Trenton, N.J. 08625.

Social and Economic Impact

The effect of the proposed amendments will be a reorganization and partial recodification of many of the provisions and standards contained in the present rules. Additionally, the amendments will clarify certain existing language and terminology which the Department has found to be vague. By doing so it will be easier for developers, homeowners and professional and trade groups to interpret the policies and determine their requirements. Planned development attracts suitable housing and industry to the areas in question, thus encouraging them to remain economically strong. In general, the regulations impose expenses of compliance upon the regulated class of builders and developers. However, on balance, they aid in providing an environment which is suitable for development and which will attract further positive development, thus contributing to the social and economic vitality of the affected areas.

As to specific substantive changes, the amendment concerning affordable housing will provide additional housing within the desirable coastal zone to low and moderate income families N.J.A.C. 7:7E-7.2.

Policies pertaining to Erosion Hazard Areas, Overwash Fans and Flood Hazard Areas will protect citizens and property from the ravages of major coastal storms. These rules could result in a reduction of funds which are needed for shore protection and shore development, and should prevent and alleviate added repair costs N.J.A.C. 7:7E-3.23, 3.24; 8.22.

The proposed Floating Home Policy would clarify the Department's existing prohibition of these structures within the coastal zone. The impact of the policy is to prohibit the building of such structures within the State of New Jersey and to eliminate floating home dwelling as a shorefront lifestyle. Although these regulations will have a positive social and environmental impact, they will have the economic impact of prohibiting the business of selling floating homes in New Jersey N.J.A.C. 7:7E-7.

The regulations have and will continue to allow in certain areas the combination of industry and ports with recreation and education. If safely constructed, for example, a bike path could follow the outskirts of an industrial facility to a park, or a public area near a port could be designed to give people a view of the port in action, as the more familiar "nature interpretative trails" offer ecological understanding. This basic policy is a recognition that developed waterfront areas in New Jersey, because of the views they offer and the large nearby populations, provide unique opportunities for nontraditional, as well as traditional, forms of development and redevelopment.

Sections of abandoned and deteriorating waterfront property are suitable for residential, commercial or recreational reuse depending on their location. The regulations will, in addition to providing a Statewide enforceable management program, provide a guide to aid counties, municipalities, and developers in design of plans and programs to redevelop these lands to more beneficial uses N.J.A.C. 7:7E-7.

The waterfront in or near urban areas can, with guidance, be creatively designed and used to accommodate diverse activities which might otherwise be considered infeasible or incompatible. Waterfront projects will be encouraged which include, for example, housing, public open space and commercial developments such as restaurants and stores N.J.A.C. 7:7E-7.

By updating the regulations to keep them consistent with recent developments and changes in the coastal area and with national policy generally, the Department will assure a continuation of Federal funding in the form of grants. Much of this funding is passed on to local governments for shore development and protection. The Department received $966,000 in Federal grants in fiscal year 1984 and expects to receive an additional $21,000,000 in August of this year. During fiscal 1984 the Department made available over $600,000 of this implementation money to selected county and municipal governments included within the Bay and Ocean Shore Segment boundary for planning projects which would help to fulfill the objectives of the coastal program.

Environmental Impact

It is anticipated that the proposed amendments will have a positive effect upon the environment within the Coastal Zone. As indicated in the summary, certain specific requirements have been deleted where it was determined that they were no longer necessary. In other areas, additional requirements and provisions have been added to address needs and deficiencies which have been revealed during the implementation of the rules. Most changes clarify existing requirements to reorganize the rules, minimize ambiguities and update the provisions in accordance with recent regulatory and technical developments. The result will be that the regulations and permits will be clearer, more easily complied with and more easily enforced.

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The program, generally, will continue to be a comprehensive Statewide coastal management plan in which environmentally sensitive "special areas" receive special protection wherever they are found, but in which the regulation of development will be most restrictive in the relatively pristine areas and least restrictive in urban areas. Coastal zone management, by necessity, encompasses a wide range of issues from dredge spoil disposal to urban rehabilitation, from protection of surf clam beds to preservation of dunes. These rules, as amended, are intended as a tool for making decisions. They will provide a framework which allows reasonable development in the fragile coastal area.

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

SUBCHAPTER 1. INTRODUCTION

7:7E-1.1 Purpose

(a) This chapter presents the substantive policies of the Department of Environmental Protection regarding the use and development of coastal resources, to be used primarily by the Division of Coastal Resources in the Department in reviewing permit applications under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., Wetlands Act, N.J.S.A. 13:9A-1 et seq., and Waterfront Development Permit Program, N.J.S.A. 12:5-3. The rules also provide a basis for recommendations by the [Department] **Division** to the Tidelands Resource Council on applications for riparian grants, leases, or licenses.

(b) In 1977, the Commissioner of [DEP] **the Department of Environmental Protection** submitted to the Governor and Legislature the Coastal Management Strategy for New Jersey-CAFRA Area (September 1977), prepared by the Department as required by CAFRA, N.J.S.A. 13:19-16, and submitted for public scrutiny in late 1977. The Department revised the Coastal Management Strategy for public review as the New Jersey Coastal Management Program—Bay and Ocean Shore Segment and Draft Environmental Impact Statement (EIS). In August 1978 the Governor submitted the revised New Jersey Coastal Management Program—Bay and Ocean Shore Segment and Final EIS for Federal approval, which was received in September 1978. In May 1980, the Department submitted further revisions, published as the Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement, for public review. In August 1980, the Governor submitted the final New Jersey Coastal Management Program and Final Environmental Impact Statement for Federal approval, which was received in September 1980. The Rules on Coastal Resource and Development Policies constitute the substantive core of the program. **The Rules were amended on June 4, 1981, January 12, 1982, April 19, 1982, and February 7, 1983.**

(c) (No change.)

[7:7E-1.2 Authority]

[This chapter is adopted under the general powers of the Department, N.J.S.A. 13:1D-9, as well as the Department's specific rule-making and coastal management powers under the Coastal Area Facility Review Act, N.J.S.A. 13:19-17, the Wetlands Act, N.J.S.A. 13:9A-1 et seq., the Waterfront Development Permit Program, N.J.S.A. 12:5-1 et seq., and the riparian lands statutes (generally N.J.S.A. 12:3-1 et seq.). These rules are consistent with the purpose and intent of the 90 Day Construction Permit Law and regulations, P.L. 1975, c.232, and N.J.A.C. 7:1C. These rules complement the adopted rules that implement the Wetlands Act, N.J.A.C. 7:7A, and the rules that define the permit application procedures under the CAFRA, N.J.A.C. 7:7D. The Coastal Resource and Development Policies are derived from the legislative intent of the CAFRA, Wetlands, Waterfront Development, and riparian statutes, and, in the case of the Coastal Area Facility Review Act, the rules define the standards for approval, conditional approval, or denial of permit applications more precisely than the findings required by N.J.S.A. 13:19-10 and 11.]

[7:7E-1.3] **7:7E-1.2** Jurisdiction

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

(f) [DEP Management Actions:] This chapter shall apply, to the extent statutorily permissible, to the following DEP management actions in or affecting the coastal zone in addition to those noted [above] **at N.J.A.C. 7:7E-1.1:**

1. (No change.)

2. Division of Water Resources:

i.-ii. (No change.)

iii. Permits for point source discharges under the [National] New Jersey [Pollution] **Pollutant** Discharge Elimination System (N.J.S.A. [58:10-1] **58:10A-1** et seq.). [presently issued by EPA under Section 402 of the Federal Clean Water Act.]

iv.-xvi. (No change.)

3. (No change.)

4. [Solid Waste Administration] **Division of Waste Management:** (Approval of sanitary landfill site (NJSA 13:1E-1 et seq.)

5.-7. (No change.)

(g) (No change.)

[7:7E-1.4] **7:7E-1.3** Severability (No change).

[7:7E-1.5] **7:71E-1.4** Review, revision, and expiration (No change).

7:7E-1.6] **7:7E-1.5** Coastal decision-making process (No change).

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

(c) Definitions: The Coastal Resource and Development Policies are stated in terms of actions that are encouraged, required, acceptable, conditionally acceptable, discouraged, or prohibited. Some policies include specific conditions that must be met in order for an action to be deemed acceptable. Within the context of the Coastal Resource and Development Policies and the principles defined in Subsection (b) above, the following words have the following meanings.

. . .

"Department" or "DEP" means the Department of Environmental Protection.

"Discouraged" means that a proposed use of coastal resources is likely to be rejected or denied as [DEP] **the Department** has determined that such uses of coastal resources should be deterred and developers should be dissuaded from proposing such uses. In cases where [DEP] the Department considers the proposed use to be in the public interest despite its discouraged status [DEP] **the Department** may permit the use provided that mitigating or compensating measures are taken so that there is a net gain in quality [of the affected ecosystem] and quantity of the coastal resource of concern.

"Division" means the Division of Coastal Resources within the Department.

"Encouraged" means that a proposed use of coastal resources is acceptable and is a use, by its purpose, location, design, [or] **and** effect, that [DEP] **the Department** has determined should be fostered and supported in the coastal zone[, through favorable consideration of other aspects of the loca-

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tion, design, or effect of the use in terms of the weighing process of the Coastal Resource and Development Policies].

. . .

"Prohibited" means that a proposed use of coastal resources is unacceptable and that [DEP] **the Department** will use its legal authority to reject or deny the proposal, **unless the use is essential to meet the mandate of another State of New Jersey environmental program, in which case the Department may permit the use provided that mitigating or compensating measures are taken so that there is a net gain in quality and quantity of the coastal resource of concern.**

. . .

"Water dependent" means development that [must have] **cannot physically function without** direct access to the body of water along which it is proposed [in order to function]. **Uses, or portions of uses, that can function on sites not adjacent to the water are not considered water dependent regardless of the economic advantages that may be gained from a waterfront location.** Maritime activity, commercial fishing, public waterfront recreation and marinas are examples of water dependent uses, but only the portion of a development requiring direct access to the water is water dependent. The test for water dependency shall assess both the need of the proposed use for access to the water and the capacity of the proposed water body to satisfy the requirements and absorb the impacts of the proposed use. A proposed use will not be considered water dependent if either the use can function away from the water or if the water body proposed is unsuitable for the use. For example, in a maritime operation a dock or quay and associated unloading area would be water dependent, but an associated warehouse would not be water dependent. [Housing, hotels, motels, casinos and restaurants are not water dependent.]

1. **Examples of water dependent uses include: marina activities requiring access to the water, such as boat repairs and short-term parking for boaters, storage of boats which are too large to be feasibly transported by car trailer, industries such as fish processing plants and other industries which receive and quickly process raw materials by ship, commercial fishing operations, port activities requiring the loading and unloading of ships, and water-oriented recreation.**

2. **Water dependent uses exclude, for example: housing, hotels, motels, restuarants, warehouses, manufacturing facilities (except those which receive and quickly process raw materials by ship) dry boat storage for boats that can be transported by car trailer, long-term parking, parking for persons not participating in a water-dependent activity, boat sales, automobile junkyards, and non-water oriented recreation such as roller rinks and racquet ball courts.**

"Water oriented" means development that serves the general public and derives economic benefit from direct access to the water body along which it is proposed. (Industrial uses need not serve the general public.) A hotel or restaurant, since it serves the public, could be water-oriented if it takes full advantage of a waterfront location. An assembly plant could be water oriented if overland transportation is possible but water-borne receipt of raw materials and shipment of finished products is economically advantageous. Housing is not water-oriented despite the economic premium placed on waterfront housing, because it only benefits those who can afford to buy or rent the housing units.

[(d) Pre-application phase: At an optional pre-application conference with a prospective applicant, DEP shall employ the Coastal Resource and Development Policies as a basis for a candid, informal and non-binding evaluation of the merits of a proposed use, location and design.]

[(e) Application or Project Review Phase: DEP shall employ the Coastal Resource and Development Policies as the standards for issuing actual decisions, making determinations, and carrying out management and planning actions that affect the coastal zone. Decisions may be issued with conditions or pre-conditions as permitted by the procedural rules of the Department and as reasonably necessary to carry out the spirit and intent of the Coastal Resource and Development Policies.]

[(f) Information Requirements: Applicants for coastal permits shall comply with the adopted procedural rules and regulations that define the information to be submitted as part of applications for Waterfront Development, Wetlands, and CAFRA permits. Applicants shall submit information to DEP indicating and documenting how the proposed use complies with the applicable Coastal Resource and Development Policies. This information shall be submitted at least in a discrete section of the application, or its accompanying environmental impact statement (EIS) is applicable, that is identified by the heading "Compliance with Coastal Resource and Development Policies". At the pre-application phase, mapped information for a site and its surrounding region shall be submitted at least at a scale of 1 : 24,000 (1 inch = 2,000 feet). At the application phase, mapped information shall be submitted at least at a scale of 1 : 24,000 and at larger scale(s), such as 1 : 2,400 (1 inch = 200 feet), appropriate for the size and complexity of the site and its surrounding region. Information describing the site and surrounding region, including alternatives, in terms of the Coastal Resource and Development Policies, shall be mapped to the maximum extent practicable. Approximate data sources referred to in the Coastal Resource and Development Policies, such as soil surveys, shall be required to be supplemented as necessary by site-specific data presented by an applicant in the environmental impact statement.]

7:7E-1.6 Mitigation

(a) When a permit shall allow the disturbance or loss of wetlands (see N.J.A.C. 7:7E-3.25) or intertidal and subtidal shallows (see N.J.A.C. 7:7E-3.15) by filling or other means, this disturbance or loss shall be compensated for by the creation or restoration of an area of wetlands or intertidal and subtidal shallows at least twice the size of the surface area disturbed, unless the applicant can prove through the use of productivity models or other similar studies, that by restoring or creating a lesser area, there will be no net loss in the environmental value of wetlands or intertidal shallows in the aquatic system. Mitigation must be performed prior to or concurrent with activities that will disturb wetlands or intertidal and subtidal shallows and immediately after activities that will temporarily disturb these habitats. The intent of the policy is to assure no net loss of aquatic habitat productivity, including flora and fauna.

(b) Where the Division permits mitigation, surface area of less than 2:1, monitoring will be required by the permittee to validate the productivity model. In such cases, the Division will retain the right to request additional mitigation if this indicates a net loss. Under no circumstances shall the mitigation area be smaller than the disturbed area. Creation of wetlands from existing intertidal and subtidal shallows is not an acceptable form of mitigation, nor is transfer of title of existing wetlands or intertidal or subtidal shallows to a government agency or conservation organization. The filling or destruction of wetlands and intertidal and subtidal shallows, even if compensated for by mitigation, shall not be permitted unless acceptable under the applicable special area policy (N.J.A.C. 7:7E-3).

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(c) Mitigation shall also be selectively considered on a case-by-case basis as compensation for other policies not able to be met by a particular project. In general, mitigation should be similar in type and location to the resource disturbed or destroyed, i.e., replacement in kind within the same watershed. The Division will, however, consider proposals for mitigation that differ in type and/or location from the disturbed or destroyed resource provided the mitigation would provide a major contribution to meeting one of the Basic Coastal Policies.

SUBCHAPTER 2. LOCATION POLICIES

(No change.)

SUBCHAPTER 3. SPECIAL AREAS

7:7E-3.1 Introduction

(a) Special Areas are those [44]**45** types of coastal areas which merit focused attention and special management policies. This subchapter divides Special Areas into Special Water Areas (see N.J.A.C. 7:7E-3.2 through 3.16), Special Water's Edge Areas (see N.J.A.C. 7:7E-3.17 through 3.31), Special Land Areas (see N.J.A.C. 7:7E-3.32 through 3.34), and Coastwide Special Areas (see N.J.A.C. 7:7E-3.35 through 3.45).

1.-4. (No change.)

(b) (No change.)

7:7E-3.2 Shellfish beds

(a) (No change.)

[(b) Policy relevant to shellfish beds is as follows:]

[1.] **(b)** Any development which would result in the destruction of presently productive shellfish beds is prohibited, **unless the development is of national interest and no prudent and feasible alternative sites exist.**

[i.] **1.** (No change in text.)

[ii. Development within shellfish beds is conditionally acceptable if the development is of national interest and no prudent and feasible alternative sites exist.]

[2.] **(c)** Any coastal development which would result in contamination or condemnation of shellfish beds is prohibited. Development which would significantly alter the **water quality,** salinity regime, substrate characteristics (as through runoff and sedimentation), natural water circulation pattern, or natural functioning of the shellfish beds during the construction or operation of the development is prohibited.

[3.] **(d)** Water dependent development which requires **new** dredging adjacent to shellfish beds is discouraged and [must] **shall** be managed so as not to cause significant mortality of the shellfish resulting from increase in turbidity and sedimentation, resuspension of toxic chemicals, or to otherwise interfere with the natural functioning of the shellfish bed.

[i.] **1.** (No change in text.)

[ii.] **2.** Maintenance dredging of existing navigation channels is conditionally acceptable. [with] State-managed shellfish recovery programs **are** encouraged prior to dredging.

[4.] **(e)** If there is a delay of more than one year between completion of permit application review and initiation of approved activity, the [site may be required to be resurveyed as the shellfish resource value may have changed during the interim.] **shellfish resource shall be resurveyed. If there is a significant change in the resource, new mitigation measures may be required by the Department.**

[(c)] **(f)** Rationale: See the OAL Note at the beginning of this subchapter.

7:7E-3.3 (No change.)

7:7E-3.4 (No change.)

7:7E-3.5 Finfish migratory pathways

(a) "Finfish migratory pathways" are waterways (rivers, streams, creeks, bays, inlets) which can be demonstrated to serve as passageways for diadromous fish to or from seasonal spawning areas, including juvenile anadromous fish which migrate in autumn and those listed by H.E. Zich (1977) "New Jersey Anadromous Fish Inventory" NJDEP Miscellaneous Report No. 41, and including those portions of the Hudson and Delaware Rivers within the coastal zone boundary.

1. Species of concern include: alewife or river herring (Alosa pseudoharengus), blueback herring (Alosa aestivalis), American shad (Alosa sapidissima), striped bass (Morone saxatilis), **Atlantic sturgeon (Acipenser oxyrhynchus), Shortnose sturgeon (Acipenser brevirostrum)** and American eel **(Anguilla rostrata).**

[(b) Policy relevant to finfish migratory pathways is as follows:]

[1.] **(b)** (No change in text.)

[2.] **(c)** (No change in text.)

[i.] **1.** (No change in text.)

[3.] **(d)** (No change in text.)

[(c)] **(e)** (No change in text.)

7:7E-3.6 (No change.)

7:7E-3.7 (No change.)

7:7E-3.8 (No change.)

7:7E-3.9 (No change.)

7:7E-3.10 [Marinas] **Marina moorings**

(a) (No change.)

(b) [Policy relevant to marinas is as follows] **Non-water dependent development in a marina mooring is prohibited. Water dependent development is conditionally acceptable provided there is no loss of boat slips or decrease in the water area provided for mooring.**

[1.] **(c)** Any use that would detract from existing or proposed recreational boating use in [marinas] **marina mooring areas** is discouraged.

[2.] **(d)** (No change in text.)

[(c)] **(e)** (No change in text.)

7:7E-3.11 Ports

(a) "Ports" are water areas having, or lying immediately adjacent to, concentrations of shoreside marine terminals and transfer facilities for the movement of waterborne cargo (including fluids), and including facilities for loading, unloading and temporary storage.

1. Port locations in New Jersey include, among others, Newark, Elizabeth, Bayonne, Jersey City, Weehawken, Hoboken, Woodbridge, Perth Amboy, Camden, Gloucester City, [and] Paulsboro **and Salem.**

2. [Policies] **Standards** for a docking facility or concentration of docks for a single industrial or manufacturing facility may be found under the General Water Area Policy for Docks and Piers (N.J.A.C. 7:7E-4.11).

[(b) Policy relevant to ports is as follows:]

[1.] **(b)** (No change in text.)

[2.] **(c)** (No change in text.)

[3.] **(d)** (No change in text.)

[4.] **(e)** Docks and piers for cargo movements are [an] encouraged [use].

[(c)] **(f)** (No change in text.)

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7:7E-3.12 Submerged infrastructure routes

(a) (No change.)

(b) [Policy:] Any activity which would increase the likelihood of infrastructure damage or breakage, or interfere with maintenance operations is prohibited.

(c) (No change.)

7:7E-3.13 Shipwrecks and artificial reefs

(a) A "shipwrecks and artificial reefs" special area includes all permanently submerged or abandoned remains of vessels which serve as a special marine habitat [and are within the] **or are fragile historic and cultural resources. This policy applies to tidal and** ocean waters of the State of New Jersey three mile territorial sea, but outside of navigation channels.

1. Known sites include those shown either on National Ocean Survey (N.O.S.) Charts listed in the definition above of the Navigation Channel Special Area, or listed in the definition of the Navigation Channel Special Area (N.J.A.C. 7:7E-3.7(a)), or listed in: W. Krotee and R. Krotee, Shipwrecks Off the New Jersey Coast (1966), and B.L. Freeman and L.A. Walford, Angler's Guide to the United States Atlantic Coast Fish, Fishing Grounds, and Fishing Facilities (1974). **In addition to known sites, unidentified remains of vessels may exist within tidal water.**

2. Also included in this category are artificial fishing reefs which serve the same natural function as a habitat for living marine resources. **(See also 7:7E-3.35, Historic and Archeological Resources).**

[(b) Policy relevant to shipwrecks and artificial reefs is as follows:]

[1.] **(b)** Acceptable uses of these submerged habitats include recreational and commercial finfishing and shellfishing, and scuba diving[, research and expansion of]. **In addition, construction of new or expanded** artificial reefs by the deposition of [additional] weighed non-toxic material[, provided it can be demonstrated that additional material will not wash ashore, or interfere with either navigation as regulated by United States Coast Guard or commercial fishing operations.] **is conditionally acceptable provided that:**

1. It can be demonstrated that the material will not wash ashore and interfere with either navigation as regulated by U.S. Coast Guard or commercial fishing operations; and

2. Placement of the material and ultimate management of the habitat is coordinated with the DEP Division of Fish, Game and Wildlife.

[2.] **(c)** [Prohibited uses include commercial salvage of wrecks, submarine sand or gravel mining which would destroy ecological or physical stability, and sewage or industrial waste disposal.] **Any use, except archeological research, which would significantly adversely affect the usefulness of this special area as a fisheries resource is prohibited. Persons conducting archeological research which significantly affects the usefulness of a shipwreck for fisheries purpose shall compensate for this loss by creation of an artificial reef of equal habitat value.**

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

[7:7E-3.14 Estuarine or Marine Sanctuary

(a) An "Estuarine" or "marine sanctuary" is a specific geographic area located within ocean waters, from the highest extent of tidal action seaward to the outer edge of the Continental Shelf, which has been designated by the Secretary of Commerce after approval by the President of the United States. Any sanctuary within New Jersey's coastal zone would not become effective if within 60 days of designation the Governor disapproved. Under Title III of the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532), a marine sanctuary can be established for the purpose of preserving or restoring marine areas for various values. To date, there are no designated marine sanctuaries within New Jersey. The Office of Coastal Zone Management within NOAA is presently reviewing all recommendations, including those within the Mid-Atlantic states. DEP submitted six recommendations to NOAA in 1977, including the Hudson Canyon, Shrewsbury Rocks, Great Bay estuary, shipwrecks, inlets, and offshore sand ridges. Designation of one or more of these areas as Estuarine or Marine sanctuaries in New Jersey's nearshore and offshore areas requires joint actions by the Governor of New Jersey and the U.S. Secretary of Commerce, and could take place during 1981. New Jersey is currently pursuing the nomination of an estuarine, but not a marine sanctuary.

(b) Policy: Management principles in the selected areas will serve to preserve and protect the areas, as well as indicate what actions are not permissible in the area. Non-permissible uses will be dependent on the five basic purposes for designation, which include: habitat areas, species areas, research areas, recreational and esthetic areas, and unique or exceptional areas. After designation, activities not compatible with the basic purposes will be prohibited or restricted, but in general all other uses are allowed. Final policy in marine sanctuaries must be approved jointly by the Governor of New Jersey and the U.S. Secretary of Commerce.

(c) Rationale: See the OAL Note at the beginning of this subchapter.]

[7:7E-3.15] **7:7E-3.14** Wet borrow pits

(a) "Wet borrow pits" are scattered [perennial] man-made lakes that are the results of surface mining for coastal minerals extending below groundwater level to create a **permanently** flooded depression. This includes but is not limited to, flooded sand, gravel and clay pits, and stone quarries.

[(b) Policy relevant to wet borrow pits is as follows:]

[1.] **(b)** (No change in text.)

[2.] **(c)** (No change in text.)

[3.] **(c)** (No change in text.)

[4.] **(e)** Disposal of dredge spoil is conditionally acceptable provided that:

[i.] **1.** (No change in text.)

[ii.] **2.** (No change in text.)

[5.] **(f)** (No change in text.)

[i.] **1.** (No change in text.)

[ii.] **2.** (No change in text.)

[iii.] **3.** (No change in text.)

[iv.] **4.** (No change in text.)

[v.] **5.** (No change in text.)

[vi.] **6.** [That recreational] **Recreational** uses in water and water quality buffer areas minimize wildlife disturbance.

[6.] **(g)** (No change in text.)

[(c)] **(h)** (No change in text.)

[7:7E-3.16] **7:7E-3.15** Intertidal [flats] **and subtidal shallows**

(a) ["Intertidal flats" are extensive areas between the mean high water line and mean low water line along tidal bayshores. Intertidal flats are found along Delaware Bay in Cape May County and in other tidal bayshores.]

"Intertidal and subtidal shallows" means all permanently or twice-daily submerged areas from the mean high water line to a depth of four feet below mean low water.

[(b) Policies relevant to intertidal flats is as follows:]

[1.] **(b)** Development, filling, new dredging or other disturbance [of intertidal flats] is **generally** discouraged **but may be**

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permitted in accordance with the Use Policy for the applicable water body type (see N.J.A.C. 7:7E-4). When development is permitted to destroy intertidal and subtidal shallows, this development must be mitigated in accordance with the Mitigation Policy (N.J.A.C. 7:7E-1.7), except when maintenance dredging consistent with N.J.A.C. 7:7E-4.11(r) or filling in a man-made lagoon consistent with N.J.A.C. 7:7E-4.4(i).

[2.] **(c)** Submerged infrastructure is conditionally acceptable, provided that:

[i.] **1.** There is no feasible alternative route that would not disturb intertidal and [flats] **subtidal shallows;**

[ii.] **2.** (No change in text.)

[iii.] **3.** (No change in text.)

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

[7:7E-3.17] **7:7E-3.16** Filled water's edge

(a) "Filled water's edge" areas are existing filled areas lying between wetlands or water areas, and either the upland limit of fill, or the first paved public road or railroad landward of the adjacent water area, whichever is [close] **closer** to the water. Some existing or former dredge spoil disposal sites and excavation fill areas are filled water's edge [areas].

[(b) Policy relevant to filled water's edge areas is as follows:

1. Water dependent (see N.J.A.C. 7:7E-1.6(c) for definition) uses are acceptable in the filled water's edge.]

[2. Non-water dependent development in the Filled Water's Edge is conditionally acceptable provided it would not preempt use of the waterfront portion of the Filled Water's Edge potential water dependent uses, and it would not prevent public access along the water's edge.]

(b) The "waterfront portion" is defined as a contiguous area at least equal in size to the area within 100 feet of navigable water, measured from the Mean High Water Line (MHWL). This contiguous area must be accessible to a public road and have at least 30 percent of its perimeter along the navigable water's edge.

(c) On filled water's edge sites with direct water access (i.e., those sites without extensive inter-tidal shallows or wetlands between the upland and navigable water), development shall comply with the following conditions:

1. The waterfront portion of the site shall be developed with a water dependent use (see N.J.A.C. 7:7E-1.6(c) for definitions) or left undeveloped for future water dependent uses;

2. On the remaining non-waterfront portion of the site, non-water related uses (i.e., uses that are neither water dependent nor water oriented) are acceptable only where both water dependent uses and water oriented uses are demonstrated to be impractical; and

3. On large filled water's edge sites, of about 10 acres or more, where water dependent and water oriented uses can coexist with other types of development, a greater mix of land uses may be acceptable or even desirable. In these cases, a reduced waterfront portion, i.e., less than that provided by a 100 feet setback, may be acceptable provided that non-water related uses do not adversely affect either access to or use of the waterfront portion of the site.

(d) On filled water's edge sites without direct access to navigable water, non-water related uses are acceptable only where water oriented uses are demonstrated to be impractical.

(e) On filled water's edge sites with an existing or pre-existing water dependent use, that is, one existing at any time since July 1977, development shall comply with the following additional conditions:

1. For sites with an existing or pre-existing marina, development that would reduce the area currently or recently devoted to the marina is acceptable if:

i. For every two housing units proposed on the Filled Water's Edge the existing number of boat slips in the Marina mooring area (7:7E-3.14) is increased by one and at least 75 percent of the total number of slips (existing and new) remain open to the general public. Removal of uplands to create slips is acceptable;

ii. Marina services are expanded in capacity and upgraded (i.e., modernized) to the maximum extent practicable; and

iii. In-water or off site boat storage capability is demonstrated or upland storage is provided to accommodate at least 75 percent of the marina's boats, as determined by maximum slip capacity, 26 feet in length and longer, and 25 percent of the marina's boats less than 26 feet in length.

2. For sites with an existing or pre-existing water dependent use other than a marina, development that would reduce or adversely affect the area currently or recently devoted to the water dependent use is discouraged.

(f) Along the Hudson River and in other portions of the Northern Waterfront and Delaware River Region, where water dependent uses are deemed infeasible, non-water dependent and non-water oriented development may be acceptable on the Filled Water's Edge under the following conditions:

1. The developed land uses closest to the water's edge are water oriented;

2. Currently active maritime port and industrial land uses are preserved;

3. Adverse impacts on local residents and neighborhoods are mitigated to the maximum extent practicable; and

4. All other Coastal Policies are met.

(g) On all filled water's edge sites, development must comply with the Public Access Resource Policy (N.J.A.C. 7:7E-8.13).

[(c)]**(h)** (No change in text.)

[7:7E-3.18] **7:7E-3.17** Existing lagoon edges

(a) "Existing lagoon edges" are defined as existing man-made land areas resulting from the dredging and filling of wetlands, bay bottom and other estuarine **water** areas for the purpose of creating waterfront lots along lagoons for residential and commercial development.

[1. The land area may be stabilized by a retaining structure.]

[2.] **1.** Existing Lagoon Edges extend upland to the limit of fill, or the first **paved** public road or railroad generally parallel to the water area, which ever is less.

(b) Development of existing lagoon edges [areas] is acceptable provided that:

[1. Reclamation of the site to its natural state is infeasible;]

[2.] **1.** The proposed development is compatible with **existing** adjacent land and water uses;

[(3) Existing unstabilized slopes are stabilized using vegetation, to the maximum extent practicable; and]

[(4)] **2.** Existing retaining structures are adequate to protect the proposed development, or [appropriate improvements are proposed for the retaining structure] **the retaining structure is reconstructed without extending outshore more than 18 inches; and**

3. New retaining structures are consistent with the acceptability conditions for filling (N.J.A.C. 7:7E-4.11(i)).

(c) (No change.)

[7:7E-3.19] **7:7E-3.18** Natural water's edge floodplains

(a) (No change.)

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(b) The natural water's edge floodplain [policy] **standards** shall not apply [on barrier islands, spits or headlands nor] in portions of a floodplain which meet the definition of another special water's edge type (filled water's edge, existing lagoon edge, alluvial flood margins, [beach and dune systems], **dunes, overwash fans, erosion hazard areas,** [central barrier] island corridor, wetlands, cranberry bogs, wet borrow pit margins, coastal bluffs, intermittent stream corridors). [Policy relevant to natural water's edge floodplains is as follows:]

[1.] **(c)** Development is prohibited in [the] natural water's edge floodplains within 100 feet of a navigable water body, unless the use is water dependent. ("Navigable" and "water dependent" are defined at N.J.A.C. 7:7E-1.6(c).)

[2.] **(d)** Development elsewhere in the natural water's edge floodplains is discouraged unless:

[i.] **1.** It has no feasible alternate site **outside of a natural water's edge floodplain**; and

[ii.] **2.** (No change in text.)

(e) Recreational uses, including but not limited to ballfields, tennis courts and golf courses are acceptable provided they do not reduce the flood dissipating value of the floodplain.

[3.] **(f)** Development must be consistent with all other coastal policies, in particular the performance standards found in the Flood Hazard Area Resource Policy (N.J.A.C. [7:7E-8.23] **7:7E-8.22**).

[4.] **(g)** (No change in text.)

[(c)] **(h)** (No change in text.)

[7:7E-3.20] **7:7E-3.19** Alluvial flood margins

(a) (No change.)

[(b) Policy relevant to alluvial flood margins is as follows:]

[1.] **(b)** (No change in text.)

[2.] **(c)** (No change in text.)

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

[7:7E-3.21] **7:7E-3.20** Beaches

(a) (No change.)

[(b) Policy relevant to beaches is as follows:]

(b) Beaches can be found on all tidal shorelines, including ocean, bay and river shorelines.

[1.] **(c)** (No change in text.)

[i.] **1.** (No change in text.)

[ii.] **2.** (No change in text.)

[iii.] **3.** (No change in text.)

[iv.] **4.** (No change in text.)

[v.] **5.** (No change in text.)

[vi.] **6.** (No change in text.)

[2.] **(d)** (No change in text.)

[(c)] **(e)** (No change in text.)

[7:7E-3.22] **7:7E-3.21** Dunes

(a) A "dune" is a wind or wave deposited **or man-made** formation of vegetated or drifting windblown sand that lies generally parallel to and landward of the beach, and between the upland limit of the beach and the foot of the most inland dune slope. "Dune" includes the foredune, [as well as] secondary and tertiary dune ridges, **as well as man-made dikes,** where they exist.

1. Formations of sand immediately adjacent to beaches that are stabilized by retaining structures, [and] or snow fences, planted vegetation, and other measures are considered to be dunes regardless of the degree of modification of the dune by wind or wave action or disturbance by development.

2. (No change.)

(b) [Policy:] Development is prohibited on dunes, except for development that has no prudent or feasible alternative in an area other than a dune, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. (No change.)

2. Limited, designated access ways for pedestrian and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are [so] oriented **so** as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runup;

3.-7. (No change.)

(c) (No change.)

[7:7E-3.23] **7:7E-3.22** Overwash fans

(a) An "overwash fan" is a gently sloping, conical accumulation of sediment, usually sand, that is deposited landward of the beach or dune by the rush of water up onto the beach, following the breaking of a wave, which carries sediment over the crest of a beach berm, a dune or a structure. An overwash fan may, through stabilization and vegetation, become a dune.

1. (No change.)

2. The landwash limit of overwash is the inland limit of sediment transport [or the first public road, whichever comes first].

3. Verifiable aerial photography and other appropriate sources may be used to identify the extent of overwash.

(b) [Policy:] Development is prohibited on overwash fans, except for development that has no prudent or feasible alternative in an area other than an overwash fan, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. Creation of dunes or expansion of existing dunes.

[1.] **2.** (No change in text.)

[2.] **3.** (No change in text.)

[3.] **4.** (No change in text.)

[4.] **5.** (No change in text.)

[5.] **6.** Sand fencing [, either a brush type barricade or a picket type,] to accumulate sand and aid in dune formation;

[6.] **7.** (No change in text.)

[7.] **8.** (No change in text.)

[8.] **9.** (No change in text.)

(c) A development may be permitted if, by creating a dune with buffer zone or expanding an existing dune landward, the classification of the site is changed so as to significantly diminish the possibility of future overwash. On non-oceanfront lots where this is not feasible, mitigation may take the form of creation or enhancement of adjacent street end dunes including appropriately designed walk over structures.

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

[7:7E-3.24] **7:7E-3.23** Erosion hazard areas

(a) "Erosion hazard areas" are shoreline areas that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion and damage from storms.

1. (No change.)

2. Erosion hazard areas extend inland to the limit of the area likely to be eroded in less than 50 years, including developed and undeveloped areas[, if no shore protection project, including beach nourishment, is implemented. The risk in,

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and therefore the extent of, erosion hazard areas can be decreased by the implementation of a shore protection project, such as creation of dunes, berms, beach nourishment, or other shore protection techniques. However, development that does not comply with the beach or dune policy is not acceptable on a beach or dune, even if the implementation of a shore protection project would create sufficient protection from erosion for a beach or dune that would otherwise be designated an erosion hazard area].

[(b) Policy relevant to erosion hazard areas is as follows:]

[1.] **(b)** (No change in text.)

[i.] **1.** (No change in text.)

[ii.] **2.** (No change in text.)

[2. A development proposed in an erosion hazard area may, by including a coastal engineering project, such as an earthen berm, mitigate the projected erosion and change the classification of the site so that it is no longer an erosion hazard area.]

(c) (No change.)

[7:7E-3.25] **7:7E-3.24** [Central Barrier] Island [Corridor] **corridor**

[(a) The "Central Barrier Island Corridor" is that portion of barrier islands and spits or peninsulas (Narrow land areas surrounded by both bay and ocean waters and connected to the mainland) that lies upland of wetlands, beach and dune systems, filled water's edges, and existing lagoon edges that line the ocean and bay sides of a barrier island or spit. Central Barrier Island Corridor does not apply to the headlands of northern Ocean County, Monmouth County, and the tip of Cape May County, which are part of the mainland.]

(a) "Island corridors" are the interior portions of oceanfront barrier islands, spits, peninsulas and bay islands.

1. The oceanfront barrier island corridor encompasses that portion of barrier islands, spits and peninsulas (narrow land areas surrounded by both bay and ocean waters and connected to the mainland) that lies upland of wetlands, beach and dune systems, filled water's edges, and existing lagoon edges. Island corridor does not apply to the headlands of northern Ocean County, Monmouth County, and the tip of Cape May County, which are part of the mainland.

2. The bay island corridor is composed of non-oceanfront islands surrounded by tidal waters.

3. The bay island corridor is that portion lying upland of wetlands and beaches but including the filled water's edge. The more restrictive provisions of the island corridor and filled water's edge shall apply (N.J.A.C. 7:7E-3.16).

[(b) Policy relevant to the Central Barrier Island Corridor is as follows:]

[(1)] **(b)** New or expanded development within the [Central Barrier Island Corridor] **oceanfront barrier island corridor** is conditionally acceptable provided that the [criteria for High Development Potential are met, as defined in the policy for Land Areas (see N.J.A.C. 7:7E-5.5)] **maximum acceptable intensities for development under the Land Area Policies are not exceeded.**

[(2) The acceptable density of new development shall be determined using the high-rise policy for residential structures.]

(c) Water dependent development is discouraged on bay island corridors which do not about a paved public road and sewerage system with adequate capacity, but may be acceptable if there are no feasible alternatives and environmental impacts are minimized. All other types of development are prohibited in these areas.

(d) On bay island corridors which abut a paved public road and sewerage system with adequate capacity, water dependent development is acceptable and all other development is acceptable only at a low intensity (three to five percent of the bay island corridor (upland areas) may be covered with impervious surfaces).

[(c)] **(e)** (No change in text.)

[7:7E-3.26] **7:7E-3.25** Wetlands

(a) "Wetlands" are areas where the substrate is inundated or saturated by surface or groundwater water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions [which are subject to the Wetlands Act, or the Coastal Area Facility Review Act (CAFRA) or the Waterfront Development Law].

1. (No change.)

2. Under CAFRA, [DEP] **the Department** regulates freshwater wetlands and forested wetlands such as white [cedars] **cedar stands, hardwood swamps, and other lowland forest types** on sites proposed for the major developments requiring a CAFRA permit.

i. Generalized location maps of white cedar stands and other [woody] **forested** wetlands can be found in J. McCormick and L. Jones, The Pine Barrens Vegetation (1973), and forest type maps within [DEP's] **the Department's** Bureau of Forestry, and, in some areas, in the vegetation maps prepared by the New Jersey Pinelands Commission for the Comprehensive Management Plan.

3.-4. (No change.)

[(b) Policy relevant to wetlands is as follows:]

[1.] **(b)** In general, development of all kinds is prohibited in wetlands, unless [DEP] **the Department** can find that the proposed development meets the following four conditions (see also N.J.A.C. 7:7A-1.5 and 1.7):

[i.] **1.** Requires water access or is water oriented as a central purpose of the basic function of the activity (this policy applies only to development proposed on or adjacent to waterways). This means that the use must be water dependent as defined in N.J.A.C. [7:7E-1.6(c)8;] **7:7E-2.2;**

[ii.] **2.** (No change in text.)

[iii.] **3.** (No change in text.)

[iv.] **4.** (No change in text.)

[2.] **(c)** (No change in text.)

[3.] **(d)** [Both the restoration of degraded wetlands as a mitigation measure for certain types of approved wetlands development and the creation of new wetlands in non-sensitive areas are encouraged. The Division of Coastal Resources previously has required restoration of temporarily disturbed wetlands and will continue to do so on a case-by-case basis.] **If destruction of a wetlands takes place, mitigation shall be carried out consistent with N.J.A.C. 7:7E-1.7.**

[4.] **(e)** Under the Wetlands Act, the activities of [DEP] **the Department**, the Tidelands Resource Council, the State Mosquito Control Commission and county mosquito control commissions are exempted from the coastal wetlands policies within mapped coastal wetlands. [Voluntary administrative compliance with the regulations adopted by DEP under to the Act is not, however, precluded.] **However, activities which involve manipulation of the mean high water line are regulated under the Waterfront Development Statute (N.J.S.A. 12:5-1 et seq.)**

[5.] **(f)** Development that adversely affects white cedar stands **such as water table draw down, surface and groundwater quality changes and the introduction of non native**

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plant species is prohibited.

[(c)] **(g)** (No change in text.)

[7:7E-3.27] **7:7E-3.26** Wetlands buffers

(a) (No change.)

(b) [Policy:] Development is prohibited in a wetlands buffer unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible adverse impact, through the use of mitigation where appropriate on the wetlands, and on the natural ecotone between the wetlands and the surrounding upland. The precise geographic extent of the required actual wetlands buffer on a specific site shall be determined on a case-by-case basis using these standards.

(c) (No change.)

[7:7E-3.28] **7:7E-3.27** Cranberry bogs

(a) (No change.)

[(b) Policy relevant to cranberry bogs is as follows:]

[1.] **(b)** (No change in text.)

[2.] **(c)** (No change in text.)

[3.] **(d)** Other uses of former cranberry bogs shall conform to the policies for Wetlands (N.J.A.C. [7:7E-3.26] **7:7E-3.25**).

[(c)] **(e)** (No change in text.)

[7:7E-3.29] **7:7E-3.28** Wet borrow pit margins

(a) (No change.)

[(b) Policy relevant to wet borrow pit margins is as follows:]

[1.] **(b)** (No change in text.)

[2.] **(c)** (No change in text.)

[3.] **(d)** Non-water dependent uses are prohibited unless acceptable filling (N.J.A.C. [7:7E-3.15(b)3 and 4] **7:7E-3.14(b)3 and 4**) in the wet borrow pit removes these areas from the water's edge and reclassifies them.

[4.] **(e)** If residential development takes place landward of the wet borrow pit margin, use of the margin must be consistent with the requirements for a water quality buffer around wet borrow pits (see N.J.A.C. [7:7E-3.15(b)4v)] **7:7E-3.14(b)5iv, v and vi)**.

[5.] **(f)** (No change in text.)

[6.] **(g)** (No change in text.)

[(c)] **(h)** (No change in text.)

[7:7E-3.30] **7:7E-3.29** Coastal bluffs

(a) (No change.)

[(b) Policy relevant to coastal bluffs is as follows:]

[1.] **(b)** (No change in text.)

[2. A development proposed landward of the crest of a coastal bluff may, by including shore protection measures to slow the rate of erosion, change the classification of the site so that it is no longer a coastal bluff.]

[3.] **(c)** (No change in text.)

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

[7:7E-3.31] **7:7E-3.30** Intermittent stream corridors

(a) (No change.)

[(b) Policy relevant to intermittent stream corridors is as follows:]

[1.] **(b)** (No change in text.)

[2.] **(c)** (No change in text.)

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

[7:7E-3.32] **7:7E-3.31** Farmland conservation areas

(a) [Large,] **"Farmland conservation areas" are defined as** contiguous areas of 20 acres or more (in single or multiple tracts **of single or multiple ownership)** with soils [of classification] in the Capability Classes I, II and III **or special soils for blueberries and cranberries** as mapped by the United States Department of Agriculture, Soil Conservation Service, in National Cooperative Soil Surveys[, and Special Soils for Blueberries and Cranberries] which are actively farmed[,] **or** suitable for farming, [or forested, and located in Cape May, Cumberland or Salem Counties are defined as "Farmland Conservation Areas"] **unless it can be demonstrated by the applicant that new or continued use of the site for farming or farm-dependent purposes is not economically feasible. Farming or farm-dependent purposes include nurseries, orchards, vegetable and fruit farming, raising grains and seed crops, silviculture (such as christmas tree farming), floriculture (including greenhouses), dairying, grazing, livestock raising, and wholesale and retail marketing of crops, plants, animals and other related commodities.**

[(b) Policy relevant to farmland conservation areas is as follows:]

[1.] **(b)** Farmland conservation areas shall be maintained and protected for open space or farming purposes [to the maximum extent practicable]. **Farming or farm-dependent uses are permitted uses in farmland conservation areas. Housing is permitted only if it is an accessory use to farming. Mining is permitted only in accordance with a reclamation plan which meets the requirements of the Mining Use Policy (N.J.A.C. 7:7E-7.8).**

[2.] **(c)** Continued, renewed, or new farming is encouraged in farmland conservation areas.

[3. Conversion of farmland conservation areas to development is acceptable only when the predominant surrounding pattern of development is urban or suburban and continued, renewed, or new farming is likely to produce unacceptable urban-agricultural conflict.]

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

[7:7E-3.33] **7:7E-3.32** Steep slopes

(a) (No change.)

(b) [Policy:] Development on steep slopes is discouraged unless [their] **its** use is essential to a reasonable use of the site [. If some development of steep slopes meets that standard then the development must:] **and it can be shown to the satisfaction of the Division that the development will:**

1.–5. (No change.)

(c) (No change.)

[7:7E-3.34] **7:7E-3.34** Dry borrow pits

(a) (No change.)

[(b) Policy relevant to dry borrow pits is as follows:]

[1.] **(b)** (No change in text.)

[2.] **(c)** (No change in text.)

[3.] **(d)** (No chnage in text.)

[4.] **(e)** (No change in text.)

[5.] **(f)** (No change in text.)

[i.] **1.** (No change in text.)

[ii.] **2.** (No change in text.)

[iii.] **3.** (No change in text.)

[6.] **(g)** (No change in text.)

[i.] **1.** (No change in text.)

[ii.] **2.** (No change in text.)

[iii.] **3.** (No change in text.)

[iv.] **4.** (No change in text.)

[v.] **5.** (No change in text.)

[vi.] **6.** (No change in text.)

[vii.] **7.** (No change in text.)

[7.] **(h)** (No change in text.)

[i.] **1.** (No change in text.)

[ii.] **2.** (No change in text.)

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[8.] **(i)** (No change in text.)

[(c)] **(j)** (No change in text.)

[7:7E-3.35] **7:7E-3.34** Historic and archeological resources

(a) "Historic and archeological resources" include objects, structures, **shipwrecks,** neighborhoods, districts, and man-made or man-modified features of the landscape **and seascape,** including archeological sites, which either are on or are eligible for inclusion on the State or National Register of Historic Places. The criteria for eligibility are defined at N.J.A.C. 7:4-4.2.

[(b) Policy relevant to historic and archeological resources is as follows:]

[1.] **(b)** (No change in text.)

[2.] **(c)** Development that incorporates historic and archeological resources in **sensitive** adaptive reuse is encouraged.

[3.] **(d)** (No change in text.)

[4.] **(e)** (No change in text.)

(f) Commercial salvage of shipwrecks over 50 years old is prohibited. Salvage for research and educational purposes is discouraged, but may be permitted provided that:

1. The proposed excavation project is in the public interest;

2. The purpose of the proposed activity is to further archeological knowledge;

3. The archeological knowledge gained will outweigh the loss to future archeologists and to the public of the preserved shipwreck;

4. The applicant has expertise in underwater archeology as outlined by the Federal Requirements (36 CFR66, pursuant to the Archeological and Historic Preservation Act of 1974 (P.L. 93-291), and through NEPA, the National Historic Preservation Act of 1966, as amended, and Executive Order 11593);

5. A State-designated archeologist will be present on location to supervise excavation;

6. Recovered artifacts will be preserved and/or restored and made accessible to researchers; and

7. A final report is prepared for the Department giving the following information about the shipwreck and its excavation: historic background, description of environment, salvage methodology, artifact analysis, description of techniques used in preservation of artifacts, base map, narrative and grid map on artifacts recovered, bibliography, photographs, National or State Historic Register documentation and conclusions.

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

[7:7E-3.36] **7:7E-3.35** Specimen trees

(a) "Specimen trees" are the largest known individual trees of each species in New Jersey. The [DEP] **the Department's** Bureau of Forestry maintains a list of these trees (see New Jersey Outdoors, [March-April 1981] **September-October 1984** for a listing of specimen trees). In addition, large trees approaching the diameter of the known largest tree shall be considered specimen trees.

(b) [Policy:] Development is prohibited that would significantly reduce the amount of light reaching the crown, alter drainage patterns within the site, adversely affect the quality of water reaching the site, cause erosion or deposition of material in or directly adjacent to the site, or otherwise injure the tree. The site of the tree extends to the outer limit of the buffer area necessary to avoid adverse impact, or 50 feet from the tree, whichever is greater.

(c) (No change.)

[7:7E-3.37] **7:7E-3.36** Endangered or threatened wildlife or vegetation species habitats

(a) (No change.)

(b) [Policy:] Development [that would adversely affect an endangered or threatened wildlife or vegetation species habitat] **of this special area** is prohibited unless [adequate habitat is preserved, or created, if appropriate for the species, either on or off site. These areas preserved or created as habitat must be appropriately managed in accordance with a plan approved by the Division of Coastal Resources with the advice of DEP's Endangered and Non-Game Species Office within the Division of Fish, Game and Wildlife] **it can be demonstrated that endangered or threatened wildlife or vegetation species habitat would not directly or through secondary impacts on the relevant site or in the surrounding region be adversely affected.**

(c) (No change.)

(d) The following species were listed as endangered on the State [or Federal lists] list in [March, 1981] **January, 1984:**

FISH

Shortnose Sturgeon[*][1]	Acipenser brevirostrum

AMPHIBIANS

(No change.)

REPTILES

Atlantic Hawksbill Turtle[1]	**Eretomochelys imbricata**
Atlantic Loggerhead Turtle[1]	**Caretta caretta**
Atlantic Ridley Turtle[1]	**Lepidochelys kempi**
Atlantic Leatherback Turtle[1]	**Dermochelys coriacea**
Bog Turtle	Clemmys muhlenbergi
Timber Rattlesnake	Crotalus horridus horridus
Corn Snake	**Elaphe guttata guttata**

BIRDS

Bald Eagle[*][1]	Haliaeetus leucocephalus
Peregrine Falcon[*][1]	Falco peregrinus
Osprey	Pandion haliaetus
Cooper's Hawk	Accipter cooperii
Least Tern	Sterna albifrons
Black Skimmer	Rynchops niger
Northern Harrier[2]	**Circus cyaneus**
Short-eared Owl[2]	**Asio flammeus**
Pied-billed Grebe[2]	**Podilymbus podiceps**
Upland Sandpiper	**Bartramia longicauda**
Cliff Swallow[2]	**Petrochelidron pyrrhonota**
Sedge Wren[2]	**Cistothorus platensis**
Henslow's Sparrow	**Ammodramus henslowii**
Vesper Sparrow[2]	**Pooecetes gramineus**
Piping Plover	**Charadrius melodus**
Roseate Tern	**Sterna dougallii**

MAMMALS

[Indiana Bat	Myotis sodalis]
Sperm Whale[1]	**Physeter catodon**
Blue Whale[1]	**Balaenopetera musculus**
Fin Whale[1]	**Balaenopetera physalus**
Sei Whale[1]	**Balaenopetera borealis**
Humpback Whale[1]	Megaptera novaeangliae
Right Whale[1]	**Eublaena glacialis**

[*][1] [On both State and] **Also on the Federal** [lists] **list.** [All others are on the State list only. In addition, 10 marine mammals or reptiles are on the New Jersey list of endangered species, but these species do not nest regularly in New Jersey.]

[2] **Status designation applicable to breeding populations only.**

(e) The following Species were listed as threatened species on the State list[s] in [March, 1981:] **January, 1984:**

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FISH
(No change.)

AMPHIBIANS
(No change.)

REPTILES

Wood Turtle	Clemmys insculpta
[Corn Snake	Elaphe guttata guttata]
Northern Pine Snake	Pituophia melanoleucus melanoleucus
Atlantic Green Turtle **1 & 3**	**Chelonia mydas**

BIRDS

[Pied-billed Grebe	Podilymbus podiceps]
Great Blue Heron	Ardea herodias
Red-shouldered Hawk	Buteo lineatus
[Marsh Hawk	Circus syaneus*]
Merlin	Falco columbarius
[Upland Sandpiper (Plover)	Bartramia longicauda]
Roseate Tern	Sterna Dougallii]
[Barred Owl	Strix varia]
[Short-eared Owl	Asio flammeus*]
Red-headed Woodpecker	Melanerpes erythrocephalus
[Cliff Swallow	Petrochelidon pyrrhonota]
[Short-billed Marsh Wren	Cistothorus platensis]
Bobolink	Dolichonyx oryzivorus
Savannah Sparrow	Passerculus sandwichensis[*][1]
Ipswich Sparrow	Passerculus sandwichensis princeps
Grasshopper Sparrow	Ammodramus savannarum*
[Vesper Sparrow	Pooecetes gramineus]
Yellow-crowned Night Heron	**Nyctanassa violacca**

[*][1] **Status designation applicable to breeding population only.** [In addition the Atlantic Green Turtle (Chelonia mydas), which does not nest regularly in New Jersey, is listed on both State and Federal Threatened Species lists.]

(f) No official State or Federal list of endangered or threatened vegetation (flora) species exists. [but the] The Federal Register, Volume [45] **48**, No. [242, December 15, 1980] **229, November 28, 1983** lists species being considered for listing as endangered or threatened. **In the interim, this policy will apply to those plants listed as "endangered" or "threatened" by D. B. Snyder and V. E. Vivian in: Rare and Endangered Vascular Plants Species in New Jersey, The Conservation and Environmental Studies Center, Inc. (1981).** Habitats of species eligible to be on the list are included in the definition so that the policy will apply to species identified since the last promulgations of the official list.

[(g) To insure continuing viability of the preserved habitat, an active or passive management program must be formulated by the applicant and approved by the Division of Coastal Resources.]

[7:7E-3.38] **7:7E-3.37** Critical wildlife habitats

(a) (No change.)

[(b) Policy relevant to critical wildlife habitats is as follows:]

[1.] **(b)** Development that **would directly or through secondary impacts on the relevant site or in the surrounding region** adversely affect critical wildlife habitats is discouraged, unless:

[(i)] **1.** (No change in text.)

[(ii)] **2.** (No change in text.)

[(iii)] **3.** (No change in text.)

[2.] **(c)** [DEP] **The Department** will review proposals on a case by case basis.

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

[7:7E-3.39] **7:7E-3.38** Public open space

(a) (No change.)

[(b) Policy relevant to public open space is as follows:]

[1.] **(b)** (No change in text.)

[2.] **(c)** (No change in text.)

[3.] **(d)** (No change in text.)

[(c)] **(e)** (No change in text.)

[7:7E-3.40] **7:7E-3.39** Special hazard areas

(a) "Special hazard areas" include areas with a known actual or potential hazard to public health, safety, and welfare, or to public or private property, such as the navigable air space around airports and seaplane landing areas [and], potential evacuation zones around major industrial and energy facilities **and areas where hazardous materials are used or disposed, including adjacent areas.**

(b) [Policy:] Coastal development, especially residential and labor-intensive economic development, within special hazard areas is discouraged. All development within special hazard areas must include appropriate mitigating measures to protect the public health and safety.

(c) (No change.)

[7:7E-3.41] **7:7E-3.40** Excluded Federal lands

(a) "Excluded Federal lands" are those lands that are owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the United States of America, its officers or agents, and are excluded from New Jersey's Coastal Zone as required by the Federal Coastal Zone Management Act. **They are listed in the New Jersey Coastal Management Program (August, 1980) at page 370.**

(b) [Policy:] Federal actions on excluded Federal lands that significantly affect the coastal zone (spillover impacts) shall be consistent with the Coastal Resource and Development Policies, to the maximum extent practicable.

(c) (No change.)

[7:7E-3.42] **7:7E-3.41** Special urban areas

(a) Special urban areas are those [areas] **municipalities** defined in urban aid legislation (N.J.S.A. 52:27D-178) [which designate municipalities] qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. [This] **In 1984,** Special Area [includes] **included** the following [21] **24** coastal municipalities:

Asbury Park	**Gloucester Twp.**	Neptune Twp.	Rahway
[Atlantic City]	Hoboken	New Brunswick	Trenton
Bayonne	Jersey City	Newark	West New York
Belleville	Keansburg	North Bergen	**Weehawken**
Bridgeton	Lakewood	**Old Bridge**	
Camden	Long Branch	Passaic City	
Elizabeth	Millville	Perth Amboy	

[(b) Policy relevant to special urban areas is as follows:]

[1.] **(b)** (No change in text.)

[2.] **(c)** Housing, hotels, motels, and mixed use development **which is consistent with the Public Access Resource Policy (N.J.A.C. 7:7E-8.13)** are acceptable **only** over [only one water area type,] large rivers [and only when located] **where water dependent uses are deemed infeasible. These uses are conditionally acceptable** on structurally sound existing pilings, [provided public access between the development and the water body is not unreasonably restricted.] **or where at least one of the following criteria is met:**

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1. Where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in the same or another location;

2. Where structurally sound existing pilings have been reconfigured, provided that the total area of water coverage is not increased and that fisheries resources are not adversely impacted; or

3. Where expansion of the existing total area water coverage has occurred, provided that it can be shown that extensions are functionally necessary for water dependent uses. For example, additional piers and pilings would be conditionally acceptable for a marina which is a water dependent use.

[3.] **(d)** Housing, hotels, motels and mixed use development are acceptable in filled water's edge areas, provided **that development is consistent with the Filled Water's Edge Policy (N.J.A.C. 7:7E-3.16) and** public access is provided for, as required by N.J.A.C. 7:7E-8.13[, and provided that Special Areas are adequately protected].

[(c)] **(e)** (No change in text.)

[7:7E-3.43] **7:7E-3.42** Pinelands National Reserve and Pinelands Protection Area

(a) (No change.)

(b) [Policy:] Coastal development shall be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.).

(c) (No change.)

[7:7E-3.44] **7:7E-3.43** Hackensack Meadowlands District

(a) (No change.)

(b) [Policy:] The HMDC will act as the lead coastal planning and management agency within this Special Area. [State coastal management actions within the Hackensack Meadowlands District are governed by the District Master Plan and its adopted components and management plans, and the zoning rules adopted thereunder.] The HMDC Master Plan Zoning Rules (N.J.A.C. 19:4) are adopted as part of the Coastal Management Program (see Appendix I) and the Hackensack Meadowlands District is designated a Geographic Area of Particular Concern (see section on GAPS in Chapter 4). **The Division will periodically review Commission actions and will consider incorporating any proposed changes in HMDC plans or policies into the Coastal Management Program with particular attention to continued protection of wetlands and other environmental resources.**

(c) (No change.)

[7:7E-3.45] **7:7E-3.44** Wild and scenic river corridors

(a) (No change.)

[(b) Policy relevant to wild and scenic river corridors is as follows:]

[1.] **(b)** (No change in text.)

[2.] **(c)** (No change in text.)

[3.] **(d)** (No change in text.)

[(c)] **(e)** (No change in text.)

[(d)] **(f)** (No change in text.)

1.-4. (No change.)

7:7E-3.45 Geodetic control reference marks

(a) "Geodetic control reference marks" are traverse stations and benchmarks established or used by the New Jersey Geodetic Control Survey pursuant to P.L. 1934, C.116. They include the following types:

1. Monument-(Mon), Disk-(DK): A standard United States Coast and Geodetic Survey or New Jersey Geodetic Control Survey disk set in a concrete post, pavement, curb, ledge rock, etc., stamped with a reference number, and used for both horizontal and vertical control.

2. Point (Pt.): A State highway, tidelands (riparian), city, etc. survey marker represented by a chiseled cross, punch hole, brass plug, etc. used for horizontal and vertical control. These stations are not marked, but if there should be an enclosing box, the rim is stamped with a number.

3. Rivet-(Rv.): A standard metal rivet set by the New Jersey Geodetic Control Survey, used for vertical control.

4. Mark-(Mk.): Same as point, but used only for vertical control. In the description of such marks there should appear a mark number followed by an equality sign and then the original name or elevation of the bench mark, and in parentheses the name of the organization which established the mark.

(b) The disturbance of a geodetic control reference mark is discouraged. When a geodetic control reference mark must be moved, raised or lowered to accommodate construction, the New Jersey Geodetic Control Survey shall be contacted at least sixty days prior to disturbance, and arrangements shall be made to protect the position. If the position can not be protected, it may be altered in position after approval by the New Jersey Geodetic Control Survey and under the supervision of a licensed professional engineer or land surveyor using standard methods. Copies of field notes and instruments, tape, and rod specifications including calibration data, shall be submitted to the New Jersey Geodetic Control Survey.

(c) Rationale: See the OAL Note at the beginning of this subchapter.

SUBCHAPTER 4. GENERAL WATER AREAS

7:7E-4.1 through 7:7E-4.6 (No change.)

7:7E-4.7 Large rivers

(a) The "large river" channel type includes flowing waterways with watersheds greater than 1,000 square miles, which means the Delaware, Hudson, and Raritan Rivers.

1.-2. (No change.)

3. The Raritan River is a tidal river from [the Interstate Route 287 Bridge] **a point approximately 1.1 miles upstream from the Landing Lane Bridge** between Piscataway and Franklin townships to its mouth at Raritan Bay and the Arthur Kill.

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

7:7E-4.8 through 7:7E-4.10 (No change.)

7:7E-4.11 Acceptability conditions for uses

(a) Numerous developments or activities seek locations in New Jersey's coastal waters. Some uses involve locations both above and below the mean high water line, in both Water and Water's Edge areas. This section defines the important uses of water areas managed by the Coastal Management Program and the conditions under which those uses are acceptable. Some projects involve combinations of uses, such as retaining structures, dredging, and filling. Other uses, such as Shore Protection uses, are defined elsewhere under Use Policies.

[(a)] **(b)** [Aquaculture] **Standards relevant to aquaculture are as follows:**

1. (No change.)

2. [Acceptability conditions:] Aquaculture is [conditionally acceptable] **encouraged** in all General Water Areas provided that:

i.-iii. (No change.)

3. Rationale: See the OAL Note at the beginning of this subchapter.

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[(b)] **(c)** [Boat ramps] **Standards relevant to boat ramps are as follows:**

1. (No change.)

2. [Acceptability] **The acceptability** conditions for **boat ramps are as follows**:

i.-ii. (No change.)

3. Rationale: See the OAL Note at the beginning of this subchapter.

[(c)] **(d)** Standards relevant to [D]**d**ocks and piers (for cargo movement **and commercial fisheries) are as follows:**

1. "Docks and piers (for cargo movement **and commercial fisheries)**" are structures supported on pilings driven into the bottom substrate or floating on the water surface, used for loading and unloading cargo, including fluids, connected to or associated with a single industrial or manufacturing facility **or to commercial fishing facilities**. [Policies] **Rules** for docks and piers intended for multiple uses may be found under Use Policies for Ports (N.J.A.C. 7:7E-7.9). Policies for docks composed of fill and retaining structures may be found under the category "filling" (see (i) below).

2. [Acceptability conditions:] Docks and piers for cargo movement **and commercial fisheries** are conditionally acceptable in most General Water Areas, provided that:

i.-ii. (No change.)

3. Rationale: See the OAL Note at the beginning of this subchapter.

[(d)] **(e)** [Docks] **Standards relevant to docks** and piers (recreational [and fishing]) are as follows:

1. "Recreational and fishing docks and piers" are structures supported on pilings driven into the bottom substrate, or floating on the water surface, which are used for recreation or fishing or for the mooring **or docking** of boats which are used for recreation or fishing[, including commercial fishing].

2. [Acceptability conditions:] Docks and piers are conditionally acceptable in General Water Areas bodies provided that:

i.-ii. (No change.)

iii. The docks and piers are located so as to not hinder navigation or conflict with overhead transmission lines; [and]

iv. There is minimum feasible interruption of natural water flow patterns[.];

v. Space between horizontal planking is maximized and width of horizontal planking is minimized to the maximum extent practicable;

vi. The width of the structure is minimized relative to height above the water, to the maximum extent practicable, especially where crossing above vegetated wetlands or submerged vegetation, and except under unusual circumstances the width does not exceed eight feet; and

vii. In lagoons the structure extends no more than 20 percent of the width of the lagoon from bank to bank.

[v.] **3.** Docks and piers on pilings **or cantilevered or floating docks and piers** shall be preferred to construction on fill. Repairs and maintenance of existing docks and piers are generally acceptable.

4. Rationale: See the OAL Note at the beginning of this subchapter.

[(e)] **(f)** [Dredging (Maintenance)] **Standards reievant to maintenance dredging are as follows:**

1. "Maintenance dredging" is the removal of accumulated sediment from previously authorized [and currently maintained] navigation channels, marinas, lagoons or boat moorings, for the purpose of maintaining an authorized water depth and width. **Dredging beyond those authorized dimensions is "new dredging", (see N.J.A.C. 7:7E-4.11(f)).**

2. [Acceptability conditions:] Maintenance dredging is conditionally acceptable to the authorized depth, **length** and width in all existing navigation channels, access channels, anchorages and moorings within all General Water Areas to ensure that adequate water depth is available for safe navigation, provided that:

i. [an] **An** acceptable spoil disposal site **with sufficient capacity** exists **(see N.J.A.C. 7:7E-4.11(g) and 7:7E-7.12 for rules on dredged material disposal)** [and turbidity is controlled using best available technology (reference: U.S. Army Waterways Experiment Station, Dredged Material Research Program Report, TR DS-78-22)].

[i. As necessary on a case-by case basis to mitigate adverse impacts upon Shellfish Beds (N.J.A.C. 7:7E-3.2), Surf Clam Areas (N.J.A.C. 7:7E-3.3), Finfish Migratory Pathways (N.J.A.C. 7:7E-3.9), and nursery areas for finfish, and to prevent reduction of ambient dissolved oxygen below critical levels, or the increase of turbidity or the resuspension of toxic substances above critical levels, seasonal limitations may be imposed on maintenance dredging.

ii. Maintenance dredging is necessary to provide access to marinas, docks, ports, and other appropriate water-dependent facilities. Beach nourishment shall be the priority use of clean dredge spoil when economically feasible. Scouring of channels, anchorages and moorings is acceptable on a case-by-case basis to permit small-scale water-dependent facilities.]

ii. A pre-dredging chemical analysis, bioaccumulation test, and bioassay of sediments is conducted by the applicant in sites where the Department suspects contamination of sediments. The results of these tests will be used to determine if hazardous substances may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine acceptability of dredged material disposal site.

iii. Turbidity concentrations (i.e. suspended sediments) and other water quality parameters at, downstream, and upstream of the dredging site, and slurry water overflows shall meet applicable State Surface Water Quality Standards in N.J.A.C. 7:9-4 and the Department may require the permittee to conduct biological, physical and chemical water quality monitoring before, during and after dredging and disposal operations to ensure that water quality standards will not be exceeded.

iv. If predicted water quality parameters are likely to exceed State Water Quality Standards, or if pre-dredging chemical analysis of sediments reveals significant contamination, then the Department will work cooperatively with the applicant to fashion acceptable control measures or, in the alternative, may impose seasonal restrictions under the specific circumstances identified below.

v. For maintenance dredging using mechanical dredges such as clamshell bucket, dragline, grab, orange peel, ladders, dipper or scouring, the feasibility of deploying silt curtains at the dredging site shall be examined. In sites with water currents above one knot, dredging using closed watertight buckets or lateral digging buckets will be examined. The Department may decide not to allow mechanical dredging or scouring of highly contaminated sites even if turbidity control measures were planned.

vi. If the applicant for mechanical maintenance dredging can not meet the acceptability conditions in i. through v. above then the Department will authorize dredging on a seasonally restricted basis only, in waterways characterized by the following:

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(1) Known spawning or nursery areas of the endangered shortnose sturgeon (N.J.A.C. 7:7E-3.37);

(2) Known spawning sites of anadromous fishes such as: Atlantic sturgeon; alewife; blueback herring; and striped bass;

(3) Waterbodies downstream of known anadromous fish spawning sites, as in N.J.A.C. 7:7E-3.9, where the predicted turbidity plume will encompass the entire cross-sectional area of the water body, thus forming a potential blockage to upstream migration;

(4) Areas of contaminated sediments with high levels of fecal coliform and/or streptocous bacteria, and/or hazardous substances adjacent to (upstream or downstream) State approved shellfishing waters and public or private bathing beaches;

(5) Areas within 1,000 meters or less of oyster beds as defined in N.J.A.C. 7:7E-3.2; or

(6) Known female blue crab winter hibernation areas. These typically are located in higher salinity water near bay mouths.

vii. For hydraulic dredges, if the applicant cannot meet the acceptability conditions in i through v above, specific operational procedures, such as removal of cutter head, flushing of pipeline sections prior to disconnection, limitations on depth of successive cuts, etc. shall be examined. Seasonal dredging restrictions may be imposed in the following areas to prevent entrainment and mortality of aquatic organisms:

(1) Known female blue crab winter hibernation areas;

(2) Known spawning, nursery, or wintering areas of the endangered shortnose sturgeon as in N.J.A.C. 7:7E-3.37; or

(3) Known wintering areas of adult Atlantic or shortnose sturgeon, striped bass or white perch.

3. To mitigate adverse impacts upon Shellfish Beds (N.J.A.C. 7:7E-3.2), endangered or Threatened Wildlife or Vegetation Species Habitat (N.J.A.C. 7:7E-3.37), Finish Migratory Pathways (N.J.A.C. 7:7E-3.9), Marine Fish and Fisheries (N.J.A.C. 7:7E-8.2) and wintering areas for finfish or blue crabs, and to prevent reduction of ambient dissolved oxygen below critical levels, or the increase of turbidity or the resuspension of toxic substances above critical levels, seasonal limitations may be imposed on maintenance dredging as specifically described in this subsection.

[(f)] **(g)** [Dredging (new)] **The standards relevant to new dredging are as follows:**

1. "New dredging" is the removal of sediment from the bottom of a water body that has not been previously dredged [or excavated], for the purpose of increasing water depth, or the widening or deepening of navigable channels to a newly authorized depth or width.

2. Acceptability conditions **relevant to new dredging are as follows:**

i. New dredging is conditionally acceptable in all **General Water Areas** [oceans, rivers, creeks and streams] for boat moorings, navigation channels or anchorages (docks) provided that:

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

(3) The adjacent water areas are currently used for recreational boating, commercial fishing or [shipping] **marine commerce**;

(4) The dredge area causes no significant disturbance to Special Water or Water's Edge Areas **other than intertidal and subtidal shallows, which must be mitigated in accordance with N.J.A.C. 7:7E-1.7**;

(5) (No change.)

(6) Dredging will be accomplished consistent with all conditions described under Dredging—Maintenance (e)2i through vi, as appropriate to the dredging method;

[(6)] **(7)** (No change in text.)

[(7)] **(8)** (No change in text.)

[(9) Turbidity is controlled during the dredging operation using best available technology (reference: United States Army Waterways Experiment Station, Dredged Material Research Program Report, TR D5-78-22).]

[(8)] **(9)** The dredged area is reduced to the minimum practical; and

(10) The maximum depth of the newly dredged area shall not exceed that of the connecting access or navigation channel necessary for vessel passage to bay or ocean.

ii. [As necessary on a case-by-case basis to] **To** mitigate adverse impacts upon Shellfish Beds (N.J.A.C. 7:7E-3.2), [Surf Clam Areas (N.J.A.C. 7:7E-3.3)], **Endangered or Threatened Wildlife or Vegetation Species Habitat (N.J.A.C. 7:7E-3.36)**, Finfish Migratory Pathways (N.J.A.C. 7:7E-3.5), [and nursery areas] **Marine Fish and Fisheries (N.J.A.C. 7:7E-8.2), spawning or wintering areas for finfish, or female blue crab wintering areas**, and to prevent reduction of ambient dissolved oxygen below critical levels, or the increase of turbidity or the resuspension of toxic substances above critical levels, seasonal **and/or dimensional limitations** may be imposed on new dredging.

iii. New dredging or excavation to create new lagoons for residential development is prohibited **in wetlands and discouraged elsewhere**. [New dredging in lakes, ponds and reservoirs, bays, man-made harbors and guts is discouraged.]

[vi.] **iv.** New dredging is conditionally acceptable to control siltation in lakes, ponds and reservoirs.

v. Rationale: See the OAL Note at the beginning of this subchapter.

[(g)] **(h)** [Dredged spoil] **The standards relevant to dredged material** disposal are as follows:

1. "Dredged [spoil] **material** disposal" is the discharge of sediments (spoils) removed during dredging operations.

2. Acceptability conditions **relevant to dredged** [spoil] **material disposal are as follows:**

i. Dredged [spoil] **material** disposal is prohibited in tidal guts, man-modified harbors, and medium rivers, creeks and streams [, and].

ii. Dredged material disposal is discouraged in open bays and semi-enclosed and back bays [when] where the water depth is less than six feet. [Spoil disposal by sidecasting in these water body types when shallow waters preclude removal of the dredge spoil from the area is conditionally acceptable on a case by case basis.]

[ii.] **iii.** Disposal of dredge**d** [spoils] **materials** in the ocean and bays deeper than six feet is conditionally acceptable provided that it is in conformance with USEPA guidelines (40 CFR 230, 40 FR 41291, September 5, 1975) established under Section 404(b) of the Clean Water Act.

[iii.] **iv.** (No change.)

[iv. Clean dredge sediments of suitable particle size are acceptable or beach nourishment on ocean or open bay shores.]

[v. The use of clean dredge spoil to create new wetlands in any general Water Area is conditionally acceptable depending upon an evaluation of the biological value of the wetlands gained, compared with the water area lost.]

v. Overboard disposal (also known as aquatic, open water, side casting, subaqueous, or wet) of uncontaminated sedi-

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ments into unconfined disposal sites is acceptable in existing anoxic dredge holes, provided that a submerged elbow or underwater diffuser is used. The hole shall not be filled higher than the depth of the surrounding waters.

[vi. Spoil disposal in lakes, ponds and reservoirs is conditionally acceptable provided that the spoil is adequately contained. Cross-reference: Conditions for dredge spoil disposal on land are indicated in N.J.A.C. 7:7E-7.12.]

vi. Overboard disposal of sediments less than 75 percent sand shall be acceptable in unconfined disposal sites when shallow waters preclude removal to an upland or confined site provided that: Shellfish Beds (as defined in N.J.A.C. 7:7E-3.2) are not within 1,000 meters; disposal will not smother or cause condemnation of harvestable shellfish resources (as in N.J.A.C. 7:7E-3.2.); and sediment characteristics of the spoil and disposal site are similar. If unconfined aquatic disposal cannot meet these conditions, then the Department shall impose a seasonal restriction appropriate to the resource of concern.

vii. Uncontaminated dredge sediments with 75 percent sand or greater are generally encouraged for beach nourishment on ocean or open bay shores.

viii. The use of uncontaminated dredged material to create new wetlands in any General Water Area is conditionally acceptable depending upon an evaluation of the biological value of the wetlands gained compared with the biological value of the water area lost.

ix. Spoil disposal in lakes, ponds and reservoirs is conditionally acceptable provided that the spoil is adequately contained. Cross-reference: Conditions for dredge spoil disposal on land are indicated in N.J.A.C. 7:7E-7.12.

x. Spoil disposal on upland sites is preferred. Conditions for dredged spoil disposal on land are indicated in N.J.A.C. 7:7E-7.12.

3. Rationale: See the OAL Note at the beginning of this subchapter.

[(h)] **(i)** [Dumping] **The Standards relevant to dumping** (Solid waste or sludge) **are as follows:**

1.-2. (No change.)

3. Rationale: See the OAL Note at the beginning of this subchapter.

[(i)] **(j)** [Filling] **The standards relevant to filling are as follows:**

1. (No change.)

2. Acceptability conditions **relevant to filling are as follows:**

i. (No change.)

ii. In all other natural water areas, filling is discouraged, but limited filling may be considered for acceptability provided that:

(1)-(7) (No change.)

iii. Filling in a man-made lagoon is discouraged unless it complies with the conditions found under N.J.A.C. 7:7E-4.11(i)2ii or the following three conditions:

(1) In those areas of man-made lagoons where the Division of Coastal Resources has promulgated a limit of fill line, no fill or associated retaining structures shall be permitted seaward of that line. Compliance with the mitigation policy (N.J.A.C. 7:7E-1.7) shall not be required in such cases.

(2) In those areas where two existing lawful bulkheads are not more than 75 feet apart and no limit of fill line has been promulgated, the connecting bulkhead may not extend seaward of a straight line connecting the ends of the existing bulkheads. Compliance with the mitigation policy shall not be required in such cases.

(3) Elsewhere, the proposed retaining structure shall not extend seaward of the high water line.

3. In no event may regulated wetlands be filled except under the conditions of the Wetlands Special Area Policy (N.J.A.C. 7:7E-3.25).

[iii.] **4.** Filling using clean sediment of suitable particle size and composition is acceptable for beach nourishment projects (see the Coastal Engineering Use Policies (N.J.A.C. 7:7E-7.11)), and conditionally acceptable for the creation of new wetlands.

[iv. Filling is acceptable at the end of lagoons when flushing is poor, and water quality is significantly degraded.]

5. Standards relevant to the removal of unauthorized fill are as follows:

i. For filling which took place prior to September 26, 1980 (the effective date of the Rules on Coastal Resource and Development Policies, N.J.A.C. 7:7E.), or prior to September 28, 1978 for areas within the coastal area defined at N.J.S.A. 13:19-4 (CAFRA), removal shall be required only if the fill has resulted in ongoing significant adverse environmental impacts, such as the blocking of an otherwise viable tidal wetland or waterbody, and its removal will alleviate the adverse impacts.

ii. For filling which took place subsequent to September 26, 1980 (or subsequent to September 28, 1978 for areas within the coastal area defined at N.J.S.A. 13:19-4), removal shall be required if it violates the acceptability conditions for filling in water areas set forth at N.J.S.A. 7:7E-4.11(i).

[3.] **6.** (No change in text.)

[(j) Piling:

1. "Piling" is the insertion of columnar structural members into the water bottom substrate.

2. Acceptability conditions: When pilings are an element of docks and moorings they must meet the acceptability conditions for those uses. The placement of pilings for other purposes is discouraged in lakes, ponds, reservoirs, and ocean and bay waters greater than 18 feet in depth. Elsewhere pillings are conditionally acceptable provided that they are not a hazard to navigation.]

(k) [Mooring] **Standards relevant to mooring are as follows:**

1. (No change.)

2. [Acceptability conditions:] Temporary or permanent boat mooring areas are conditionally acceptable in all General Water Areas provided that the mooring area is adequately marked and is not a hazard to navigation.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(l) [Sand] **Standards relevant to sand** and gravel extraction **are as follows:**

1. (No change.)

2. [Acceptability conditions:] Sand and gravel extraction is prohibited in lakes, ponds and reservoirs, man-made harbors and tidal guts. This activity is discouraged in all other General Water Areas except the deep ocean and rivers, creeks, and streams. In these General Water Area types, priority will be given to sand extraction for beach nourishment, and extraction is conditionally acceptable provided that:

i. (No change.)

ii. Turbidity and resuspension of toxic materials is controlled throughout the extraction operation [through use of the best available mitigation technology] **consistent with the Department's Surface Water Quality Standards standards (N.J.A.C. 7:9-4);**

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iii. There is an acceptable disposal site for the waste from washing operations; [and]

iv. In rivers, creeks and streams, the depth of water at the mining site is at least six feet[.];

v. The mining will not increase shoreline erosion; and

vi. The mining will not create anoxic water conditions.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(m) [Bridges] **Standards relevant to bridges are as follows:**

1. (No change.)

2. [Acceptability conditions:] Bridges are conditionally acceptable over all water area types provided that:

i.-iv. (No change.)

3. (No change.)

(n) [Submerged] **Standards relevant to submerged** infrastructure **as as follows:**

1. "Submerged infrastructures" include the following:

i. (No change.)

ii. Pipelines are [hollow] underwater pipes laid, buried, or trenched for the purpose of transmitting **liquids or gas** [fluids]. Examples would be crude oil, natural gas, water, petroleum products or sewage pipelines. Construction of an underwater pipeline may involve trenching, temporary trench spoil storage, and back filling, or jetting as an alternative to trenching.

2. [Acceptability conditions:] Submerged infrastructures are conditionally acceptable provided that they are not sited within Special Areas, unless no prudent and feasible alternate route exists.

i. In the case of pipelines, the following conditions [must] **shall** also be met:

(1) Trenching takes place to a sufficient depth and is backfilled, either through natural or mechanical means to [avoid puncturing or] **minimize the possibility of puncturing by** snagging anchors or sea clam dredges;

(2)-(3) (No change.)

ii.-iii. (No change.)

3. (No change.)

(o) [Overhead] **Standards relevant to overhead** transmission lines are as follows:

1. (No change.)

2. [Acceptability conditions:] Overhead transmission lines are prohibited or discouraged, except over rivers, streams, creeks, and tidal guts, where transmission lines will be considered for acceptability provided that:

i.-v. (No change.)

3. (No change.)

(p) [Dams] **Standards relevant to dams** and impoundments **are as follows:**

1. (No change.)

2. [Acceptability conditions:] Dams and impoundments are impractical in many water body types, prohibited in other water body types, and discouraged in specified water body types (see Figure 21), unless essential for water supply purposes or the creation of special wildlife habitats.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(q) [Outfalls] **Standards relevant to outfalls** and intakes **are as follows:**

1. (No change.)

2. [Acceptability conditions:] Outfalls and intakes are conditionally acceptable in most water bodies provided that the use associated with the intake or outfall meets the [coastal] **Coastal** Resource and Development Policies. In particular, stormwater discharge pipes shall comply with the Runoff Policy (N.J.A.C. 7:7E-8.7) and provide appropriate filtration methods. The Water Areas policy applies only to the location of the mouth of the pipes, not to the effluent or the amount of diversion.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(r) [Realignment] **Standards relevant to realignment** of water areas **are as follows:**

1. (No change.)

[2. Acceptability conditions:]

[i.] **2.** Realignment of [natural (] naturally occurring, unaltered[)] water areas is discouraged.

[ii.] **3.** (No change in text.)

4. Rationale: See the OAL Note at the beginning of this subchapter.

(s) [Miscellaneous] **Standards relating to miscellaneous uses are as follows:**

1. (No change.)

2. [Acceptability conditions:] [Uses] **Water dependent uses** of Water Areas not identified in the Water Acceptability Table or addressed in the Use Policies will be analyzed on a case-by-case basis **to ensure that adverse impacts are minimized. Non-water dependent uses are discouraged in all water areas.**

SUBCHAPTER 5. GENERAL LAND AREAS

(a) "General land areas" include all mainland land features located upland of special water's edge areas. **These land area policies apply in all general land areas, including those land areas that are also Special Areas, where both the General Land Area and Special Area Policies must be complied with.**

(b) (No change.)

7:7E-5.2 (No change.)

7:7E-5.3 Coastal growth rating

(a) [Introduction:] The coastal zone is classified into 13 different regions on the basis of the varied pattern of existing coastal development and natural and cultural resources. For the region, [DEP] **the Department** uses three broad regional growth strategies:

1. **The** Development Region [: This region] is already largely developed. From a coastwide perspective, development in this region would be infill development. In accordance with the coastal policy on concentration of development, development in this region is preferred over development in other regions, other factors being equal. Infill, extension and some scattered development is acceptable here. Development in these regions, however, must be consistent with Recreation and Public Access Policies.

2. **The** Extension Region [: This region] is the region where development should be channeled after full development of the Development Region. Generally, infill and some extension of development is acceptable here.

3. **The** Limited Growth Region [: This region] contains large environmentally sensitive ares. Generally, only infill development is acceptable here, with the exception of development which meets the requirements of the Large-Scale Residential Development Policy (N.J.A.C. 7:7E-7.2(i)).

(b) The Barrier Island Region [: The oceanfront] **is composed of oceanfront** [barrier] **and back bay** islands and spits [constitute the Barrier Island Region]. The Land Areas Policy does not apply to the Barrier Island Region, which is composed entirely of various Special Areas. **For purposes of applying the Water's Edge Housing Use Policy (N.J.A.C. 7:7E-**

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7.2(b)) oceanfront islands shall be considered an Extension Region.

(c) [Urban Areas Region: Each of the Urban Aid municipalities identified below is considered an urban area. The urban areas are designated development areas.] **The Urban Area Region consists of all Special Urban Areas (see N.J.A.C. 7:7E-3.41). This region is a Development Region.**

1.-11. (No change.)

(d) [North Shore Region:] **The North Shore Region includes those portions of Monmouth and Middlesex Counties that are within the** [Bay and Ocean Shore Region] **coastal zone** and is designated a Development Region.

(e) [Central Shore Region:] The Central Shore Region includes those portions of Ocean County within the [Bay and Ocean Shore Region] **coastal zone** that are north of State Highway 37 and west of the Garden State Parkway, and those parts of the county north of Cedar Creek and east of the Parkway, and is designated a Development Region.

(f) [Western Ocean County Region:] The Western Ocean County Region includes those portions of Ocean County west of the Garden State Parkway and south of State Highway 37, and is designated an Extension Region.

(g) [Barnegat Corridor Region:] The Barnegat Corridor **Region** includes those portions of Ocean County south of Cedar Creek and north of State Highway 72, and is designated an Extension Region.

(h) [Mullica-Southern Ocean Region:] The Mullica-Southern Ocean Region includes those portions of Ocean County south of State Highway 72 except for the Tuckerton Region, all of **Bass River Township**, Burlington County, and those portions of Atlantic County north of County Road 561 (Jimmy Leeds Road), located within the [Bay and Ocean Shore Region] **coastal zone,** and is designated a Limited Growth Region.

(i) [Tuckerton Region:] The Tuckerton Region is bounded on the west by the Burlington-Ocean County border, on the north by U.S. Highway 9, Otis Bog Road, Nugentown Road and the Tuckerton Borough Line, and on the south and east by Little Egg Harbor, Big Thorofare, Big Creek, Great Bay and the Mullica River. The Tuckerton Region is designated an Extension Region.

(j) [Absecon-Somers Point Region:] The Absecon-Somers Point Region includes those mainland portions of Atlantic County south of County Road 561 (Jimmy Leeds Road), and east of Garden State Parkway, and is designated a Development Region.

(k) [Great Egg Harbor River Region:] The Great Egg Harbor River Region includes those portions of Atlantic County southwest of County Road Alternate 559 and those portions of Cape May County east of State Highway 50, north of County Road 585, and west of U.S. Highway 9, and is designated a Limited Growth Region.

(l) **The** Southern Region [: All] **is composed of all** of Cape May County, within the [Bay and Ocean Shore Region] **coastal zone,** except for that portion in the Great Egg Harbor River Basin and Barrier Island Region, and is designated an Extension Region.

(m) **The** Delaware Bayshore Region [: All] **is composed of all** of Cumberland County and Salem County [within the Bay and Ocean Shore Region] **subject to CAFRA and** is designated a Limited Growth Region, with the exception of the [Cities] **City** of Bridgeton [and Millville] which [are] **is** designated a Development Region.

(n) **The** Delaware River Region [: The] **is composed of the** area north of the [Delaware Memorial Bridge] **CAFRA regulated area** to the coastal zone boundary in Trenton **and** is designated a Development Region, except for land designated as a Low Growth Area by the State Development Guide Plan Concept Map. Such land is along Oldmans Creek eastward of Route I-295, and along Rancocas Creek and its tributaries in Medford and Southampton Townships, and is designated for Limited Growth.

(o) **The** Northern Waterfront Region [: The] **is composed of** the entire coastal zone from Cheesequake Creek in Middlesex County to the New York State boundary **and** is designated a Development Region.

7:7E-5.4 Environmental Sensitivity rating

(a) [Introduction:] Environmental Sensitivity is a composite indication of the general suitability of a land area for development based on [three factors—] vegetation [fertile] **and** soils[, and high permeability wet soils—that]. **These factors** are combined to indicate High, Moderate, or Low Environmental Sensitivity on a site or parts of a site. This section first defines these rankings and then defines [specifically] the [three] **two** factors.

(b) [High Environmental Sensitivity:] High Environmental Sensitivity Areas are land areas with **the following characteristics:**

1. (No change.)

2. [Agricultural Capability Class I] **Wet** or high permeability [wet] **moist** soil adjacent to a stream channel (permanent or ephemeral), as defined in (e)2 below.

(c) [Moderate Environmental Sensitivity:] Moderate Environmental Sensitivity Areas are neither High nor Low Environmental Sensitivity Areas.

(d) [Low Environmental Sensitivity:] Low Environmental Sensitivity Areas are areas with **depth to seasonal high water greater than five feet and one of the following characteristics:**

1. (No change.)

2. Areas with bare earth or herbaceous vegetation or early successional meadow with Agricultural Capability Class V-VIII Soils, except soils suitable for blueberry and cranberry production[, and a depth to seasonal high water table greater than five feet].

(e) Definitions of Environmental Sensitivity Factors **are as follows:**

1. (No change.)

[2. "High permeability wet soils" are soils with a depth to seasonal high water table of three feet or less and with textures equal to or coarser than loamy sand within a 24 inch depth from the surface, as indicated in National Cooperative Soil Surveys and is likely to include primarily the following coastal soils series: Atsion (At), Hammonton (HaA), Klej (KmA), and Lakehurst (LmA and LhA).]

2. "Wet or high permeability moist soils" are soils with a depth to seasonal high water table less than, or equal to, three feet, unless the soils are loamy sand or coarser in which case they are soils with a depth to seasonal high water table less than, or equal to, five feet.

(f) (No change.)

7:7E-5.5 Development potential

(a) [Introduction:] Development Potential has three levels—High, Medium and Low—depending upon the presence or absence of certain development-oriented elements at or near the site of the proposed development, as defined in (b) through (e) below. The Development Potential rating applies to the entire **land area portion of the** site. Different sets of Development Potential criteria are also defined in (b) through (e) below for different categories of development. Also, some

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of the criteria vary depending upon the regional type. If a specific set of Development Potential criteria is not defined for a particular category or type of development, then the [Location Policy assumes a Medium Potential for that category until specific criteria are adopted by DEP. Recommended criteria from an applicant or the public may be considered in the course of the permit application process for a particular development prior to adoption by DEP of specific criteria.] **acceptable intensity of development policy (N.J.A.C. 7:7E-5.6) is not applicable to that type of development.**

(b) **The standards relating to** Residential Development Potential **are as follows**:

1. (No change.)

2. High Potential sites meet all of the following criteria:

i. [Roads:] Direct access from the site to an existing paved public road with sufficient capacity to absorb satisfactorily the traffic likely to be generated by the proposed development.

(1) (No change.)

ii. [Sewage:] Direct access to a wastewater treatment system, including collector sewers and treatment plant, with adequate capacity to treat the sewage from the proposed development, or soils suitable for on-site sewage disposal system that will meet applicable ground and surface water quality standards.

(iii) [Infill:] A majority of the perimeter of the site, excluding wetlands or surface water areas, is adjacent to or across a public road or railroad from land that is developed, or a majority of the land within 1,000 feet of the site, is developed. Developed land, for infill purposes for determination of high, medium, or low potential, means:

(1)-(5) (No change.)

(6) Public park areas developed for **active** recreational use; and

(7) (No change.)

3.-5. (No change.)

(c) **The standards relevant to** Major Commercial and Industrial Development Potential **are as follows:**

1.-4. (No change.)

(d) **The standards relevant to** Campground Development Potential **are as follows:**

1. [Scope:] A campground development provides facilities for visitors to enjoy the natural resources of the coast. Typically, this type of development seeks sites somewhat isolated from other development and with access to water, beach, forest and other natural amenities.

2.-4. (No change.)

(e) [Energy Facility Development Potential:] Development Potential Rankings for energy facilities shall be jointly determined by NJDEP and NJDOE on a case by case basis [pending completion of energy facility siting studies].

(f) (No change.)

7:7E-5.6 to 7:7E-5.7 (No change.)

SUBCHAPTER 6. GENERAL LOCATION POLICIES

7:7E-6.1 to 7:7E-6.2 (No change.)

7:7E-6.3 Secondary impacts

(a) "Secondary impacts" are the effects of additional development likely to be constructed as a result of the approval of a particular proposal. **Secondary impacts can also include traffic increases, increased recreational demand and any other offsite impacts generated by onsite activities which affect the site and surrounding region.**

(b) [Policy:] Coastal development that induces further development shall demonstrate, to the maximum extent practicable, that the secondary impacts of the development will satisfy the Coastal Resource and Development Policies. The level of detail and areas of emphasis of the secondary impact analysis are expected to vary depending upon the type of development. Minor projects may not even require such an analysis. Transportation and wastewater treatment systems are the principal types of development that require a secondary impact analysis, but major industrial, energy, commercial, residential, and other projects may also require a rigorous secondary impact analysis.

1.-2. (No change.)

(c) (No change.)

SUBCHAPTER 7. USE POLICIES

7:7E-7.1 (No change.)

7:7E-7.2 Housing use policies

(a) (No change.)

(b) [Water Areas] **Standards relevant to water area and water's edge housing are as follows:**

[1. Policy relevant to housing in these areas is as follows:]

[i.] **1.** New housing is prohibited in Water Areas, except for reconstruction of existing structures on pilings located on guts, canals, lagoons and ports which have been damaged by causes other than wind, water or wave, which is conditionally acceptable.

2. In special urban areas **and along large rivers where water dependent uses are deemed infeasible,** new housing is also acceptable [only over large rivers] on structurally sound existing pilings[, provided public access between the residential units and the water body is not unreasonably restricted] **or where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in the same or another location.**

i. Structurally sound existing pilings may be reconfigured provided that the total area of water coverage is not increased and fisheries resources are not adversely impacted.

ii. Expansion of the total area of water coverage is discouraged, except where it can be shown that extensions are functionally necessary for water dependent uses.

[ii. Filled water's edge:]

[(1)] **3.** [Outside of special urban areas, new housing] **Housing** is conditionally acceptable in the filled water's edge, provided that [:It] **it** [would not preempt use of the waterfront portion of the filled water's edge for potential water dependent uses; the site fulfills the general Land Area Policy criteria for the intensity of development proposed; and public access along the water's edge, as required by N.J.A.C. 7:7E-8.13, is not unreasonably restricted.] **meets the requirements of the Filled Water's Edge Policy (N.J.A.C. 7:7E-3.16) and the Public Access Policy (N.J.A.C. 7:7E-8.13). The acceptable intensity of residential development shall be determined by applying the criteria of the General Land Area Policy (N.J.A.C. 7:7E-5) except on bay islands where the requirements of the Island Corridor Policy (N.J.A.C. 7:7E-3.24) shall apply.**

[(2) In special urban areas, housing in filled water's edge areas is acceptable, provided public access requirements (N.J.A.C. 7:7E-8.13) are complied with and Special Areas are adequately protected.]

[iii.] **4.** New housing involving the stabilization of existing lagoons through revegetation, bulkheading or other means is conditionally acceptable provided that the conditions of the existing lagoon edges policy **and the Filling Policy (N.J.A.C. 7:7E-4.11(i))** are satisfied.

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[2.] **5.** (No change in text.)

(c) Standards relevant to floating homes are as follows:

1. A "floating home" is any waterborne structure designed or intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, which will remain stationary for more than 30 days.

2. Floating homes are prohibited in the Coastal Zone.

3. Rationale: See the OAL Note at the beginning of this subchapter.

[(c)] **(d)** [Cluster] **Standards relevant to cluster** development **are as follows:**

1. [Policy:] Housing developments are encouraged to cluster dwelling units on the areas of sites most suitable for development. "Clustering" is defined as an increase of net density realized by reducing the size of private lots and retaining or increasing the gross density of a project.

2. (No change.)

[(d)] **(e)** [Residential] **Standards relevant to residential** mix **are as follows:**

1. [Policy:] Housing development that provides for a mix of dwelling types and for persons of different age and income groups is encouraged.

2. (No change.)

[(e)] **(f)** [Affordable] **Standards relevant to affordable** housing **are as follows:**

1. Definitions:

i. "Affordable" means housing with monthly carrying costs which are no greater than [25] **30** percent of a household's gross monthly income for rental housing, and no greater than [30] **28** percent of a household's gross monthly income for housing offered for sale.

ii. (No change.)

iii. "Low income household" means a household [eligible for Section 8 housing (income less than 80 percent of the region's median income adjusted for household size, as determined by the U.S. Department of Housing and Urban Development).] **which has an income that is 50 percent or less of regional median household income adjusted for household size as determined by the United States Department of Housing and Urban Development.**

iv. "Moderate income household" means a household [eligible for Section 235 housing (income less than 95 percent of the region's median income, adjusted for household size, and determined by the U.S. Department of Housing and Urban Development).] **which has an income which is between 50 and 80 percent of the regional median household income adjusted for household size as determined by the United States Department of Housing and Urban Development.**

v. "Income" means all forms of taxable income that must be reported to the United States Internal Revenue Service.

vi. "Monthly carrying costs" consist of mortgage payments, real estate tax, insurance, and condominium association fees for housing offered for sale; and consist of rent payments for housing offered for rent. Utilities and other shelter expenses are not included in this definition.

vii. "Region" means the county in which the housing is proposed to be located. The data to be used to describe the region is standard Metropolitan Statistical Area (SMSA) data published annually by the United States Department of Housing and Urban Development, and available from the HUD area offices in Newark and Camden.

[2. Policy]

[(i) New residential developments shall provide an appropriate amount of affordable housing for low and moderate income households, where needed and feasible.]

2. The Affordable Housing Policy shall apply to all coastal developments of 100 units or more which are not located in the Urban Areas Region, the Delaware River Region or the Northern Waterfront Region (see N.J.A.C. 7:7E-5.3).

3. A project located in the Urban Areas Region may be required to provid an appropriate amount of low and moderate income housing if a determination is made that the proposed project will result in the displacement of low and moderate income households or the proposed project will use public funds for the development of housing.

4. Proposed developments subject to this policy shall provide at least 10 percent of the units to be built at prices affordable by low income households and at least 10 percent of the units at prices affordable by moderate income households.

[ii.] **5.** The number of bedrooms in the affordable housing units shall be appropriate to the size of the families needing affordable housing in the region, **and shall be proportionate to the number of bedrooms per unit mix in the market units.**

[iii.] **6.** [Appropriate agreements] **Agreements approved by the Division** shall ensure that the sale, resale and rental of affordable housing is limited to households eligible for low and moderate income housing, and that the units remain affordable **for a period of at least 30 years. In evaluating an applicant's proposal to meet the policy, the Division will recognize that if the price of the market units is close to the acceptable price for the moderate income units, restrictions concerning resale may make the units unmarketable.**

7. The Affordable Housing standards shall be met by either of the following two methods.

i. Construction of the affordable units on site; or

ii. Construction or rehabilitation of the affordable units off-site but within the municipality in which the project is located or at a location agreed to by the Division of Coastal Resources as a special case.

8. If it can be demonstrated that compliance with the affordable housing policy cannot be achieved by on or off-site development of housing, or that the objectives of the policy could be better fulfilled in another way, the requirement may also be met by the following method:

i. A contribution which is dedicated to a specific project to be conducted by the State, county improvement authority or local housing authority to be used for the construction or rehabilitation of housing units elsewhere in the subject municipality or at a location agreed to by the Division of Coastal Resources as a special case. A plan and time schedule showing how affordable housing will be provided with these funds must also be produced prior to the issuance of a CAFRA permit.

ii. The appropriate contribution shall be based upon the number of units built and the selling or rental prices of the units. The following formula shall be used to determine the contribution:

The contribution shall equal (2 percent of average unit price) × (total number of units in the project).

9. Construction of the affordable units shall commence prior to occupancy of the structure receiving a CAFRA permit.

[iv. In determining the need for affordable housing, the following factors shall be considered:

(1) The present and projected future shortage of affordable housing in the region, normally at least in a county.

(2) The number of jobs for low and moderate income people in the region.

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(3) The number of existing affordable housing units in the municipality and the need for additional units in the municipality and region.

v. In determining the feasibility of providing affordable housing the following factors shall be considered:

(1) The size and type of the development;

(2) The mix of unit types being built;

(3) Whether the size of affordable units would be comparable to established standards for minimum floor space for bedroom size involved.

(4) The absence of frills or unnecessary cost generating features from the unit;

(5) The allocation of land costs and on-site improvements among the affordable units and the other units;

(6) Whether the developer can make a fair return on the entire development if affordable housing is required;

(7) The availability of Federal and state housing subsidies;

(8) The availability of special financing for affordable housing through agencies such as count improvement authorities;

(9) The developer's commitment to building least cost units on-site or affordable units off-site, if affordable units on-site are infeasible.]

10. In determining the obligation under this policy the recent affordable income housing activities of the developer in the region where the housing is proposed shall be considered.

11. If the municipality in which the proposed residential development is to be located has received a judgment of compliance with the Mount Laurel II decision for its affordable housing zoning ordinance by a New Jersey Supreme Court appointed Mount Laurel judge, and the proposed development complies with the ordinance, this affordable housing policy shall not apply.

12. If the proposed residential development is located outside of the area(s) identified and zoned by the subject municipality for the construction of low and moderate income housing and the zoning ordinance is approved by the Division of Coastal Resources, this affordable housing policy shall not apply.

[3.] **13.** (No change in text.)

[(f)] **(g)** [Housing] **The standards relevant to housing** and transportation **are as follows:**

[1. Policy relevant to housing and accessibility is as follows:]

[i.] **1.** (No change in text.)

[ii.] **2.** (No change in text.)

[iii.] **3.** (No change in text.)

[2.] **4.** (No change in text.)

[(g)] **(h)** [Housing] **Standards relevant to housing** rehabilitation **are as follows:**

1. [Policy:] Residential development involving the demolition and redevelopment of existing structures is discouraged, unless rehabilitation of the existing structures is demonstrated to be impractical, infeasible, or contrary to the public interest.

2. (No change.)

[(h) High-rise housing:

1. Policy: All high rise housing developments, defined as structures for residential use more than six stories or more than 60 feet from grade, are encouraged to locate in areas of existing high density, high-rise and/or intense settlements. High rise housing is acceptable subject to the following conditions:

i. High-rise structures within the view of coastal waters must be separated from coastal waters by at least one public road or an equivalent area physically and visually open to the public;

ii. The longest lateral dimension of any high-rise structure must be oriented perpendicular to the beach or coastal waters;

iii. The proposed structures must not block the view of dunes, beaches, horizons, skylines, rivers, inlets, bays, or oceans that are currently enjoyed from existing residential structures, public roads or pathways, to the maximum extent practicable;

iv. The structure must not overshadow beaches between May and October, or waterfront parks year round;

v. The proposed structure must be in character with the surrounding transitional heights and residential densities, or be in character with a comprehensive development scheme requiring an increase in height and density; and

vi. The proposed structure must not have an adverse impact on air quality, traffic, and existing infrastructure.]

[2. Rationale: See the OAL Note at the beginning of this subchapter.]

(i) [Large-scale residential] **Standards relevant to large-scale** multi-use development **are as follows:**

1. "Large-scale [Residential] **multi-use** developments" are free standing, planned developments, **such as planned unit developments,** which [include] combine at least 500 residential dwelling units[. They may also include] **with** commercial, industrial, [and] recreational, **or other** uses.

[2. Policy relevant to large-scale residential development is as follows:]

[i.] **2.** Large-scale [residential] multi-use developments are conditionally acceptable, provided that they carry out the basic coastal policy to concentrate the regional pattern of development, contribute to regional housing needs, [and] do not cause significant adverse secondary impacts[.], **and will not induce growth outside the site boundary which is inconsistent with coastal policies.**

[ii.] **3.** Large-Scale [Residential] **multi-use** developments need not meet the Land Area Policies, except in the [High] high and [Moderate Environmental] moderate environmental sensitivity portions of Limited Growth Regions, where only the roads and sewage criteria will be used in determining if the Development Potential is High, Medium or Low (see N.J.A.C. 7:7E-5.5(b)). **Large-scale Residential Development in Limited Growth Regions must, however, incorporate a buffer along the perimeter of the site of sufficient size to preclude scattered infill development, i.e., generally in excess of 1000 feet.**

[3.] **4.** (No change in text.)

7:7E-7.3 "Resort/recreational use" [policies]

(a) "Resort/recreation uses" include the wide range of small and large developments attracted to and often dependent upon locations along the coast. These uses include hotels, motels, marinas, boating facilities, campgrounds, amusement piers, parks and recreational structures such as bathhouses, natural areas, open space for active and passive recreation, and linear paths for bicycling and jogging **(see N.J.A.C. 7:7E-7.10 and N.J.A.C. 7:7E-5.5(d)).**

(b) [Recreation] **Standards relevant to recreation** priority **are as follows:**

[1. Policy concerning recreation priority is as follows:]

[i.] **1.** Each waterfront municipality should contain at least one waterfront park on each body of water within the municipality. Municipalities [or private developments] that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection Bond Funding.

[ii.] **2.** Resort/recreation uses **and commercial fisheries** uses shall have priority over all other uses in Monmouth,

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Ocean, Atlantic, and Cape May[, Cumberland and Salem] counties with highest priority reserved for those uses that serve a greater rather than a lesser number of people, and those uses that provide facilities for people of all ages and for people with physical handicaps.

[2.] **3.** (No change in text.)

(c) [Recreation] **Standards relevant to recreation areas** within developments **are as follows:**

[1. Policy: Recreation areas shall be incorporated in the design of all residential, industrial and commercial development, to the maximum extent practicable. (See Reservice Policy on Public Access to the Shorefront, N.J.A.C. 7:7E-8.13.)]

1. "Recreation areas" include a variety of types and sizes of open space adequate to accommodate appropriate recreational activities or facilities.

2. Appropriate recreation areas shall be incorporated in the design of all residential, industrial and commercial development to the maximum extent practicable, to ensure that on-site recreation opportunities will not be precluded by a lack of suitable open space. The "maximum extent practicable" will be determined based on guidelines of the Green Acres Program (see N.J.S.A. 13:8A-1 et seq.) which consider the recreation resource supply and demand, the natural characteristics of the site, and the ability to identify a public agency or other organization willing to manage, maintain and develop the open space as a recreational resource.

[2.] **3.** (No change in text.)

(d) [Marinas:] **Standards relevant to marinas are as follows:**

[1. Policy concerning marinas is as follows:]

[i.] **1.** New or expanded marinas for recreational boating are conditionally acceptable if:

[(1) The demonstrated regional demand for recreational boating facilities cannot be met by the upgrading or expansion of existing marinas;]

[(2)] **i.** (No change in text.)

[(3)] **ii.** (No change in text.)

[ii.] **2.** New marinas or boat launching facilities that provide primarily for sail [and], oar or rental boating are encouraged.

[iii. Expansions of existing marinas shall be encouraged by limiting non-water dependent land uses that preclude support facilities for boating.]

[iv.] **3.** (No change in text.)

[v.] **4.** (No change in text.)

5. New marinas are prohibited on wetlands unless the wetlands area lost to marina development is minimal and is compensated for by the creation or restoration of wetlands elsewhere, consistent with the Mitigation Policy (N.J.A.C. 7:7E-1.7).

6. New marinas are encouraged to locate on filled water's edge sites, where minimal dredging is required.

[2.] **7.** (No change in text.)

(e) [Amusement] **Standards relevant to amusement** piers, parks and boardwalks **are as follows:**

1. [Policy:] New amusement piers are prohibited, except in areas with privately held riparian grants, where they are discouraged. Expanded or extended amusement piers, parks, and boardwalks at the water's edge or in the water, and the on-site improvement or repair of existing amusement piers, parks and boardwalk areas are discouraged unless the proposed development meets the following conditions:

i.-iii. (No change.)

2. (No change.)

7:7E-7.4 Energy use policies

(a) (No change.)

(b) [General] **Standards relevant to general** energy facility siting procedure **are as follows:**

[1. Policy relevant to general energy facility siting procedure is as follows:]

[i.] **1.** The acceptability of all proposed new or expanded coastal energy facilities shall be determined by a review process that includes both [NJDEP] **the Department** and the New Jersey Department of Energy **(NJDOE)** (N.J.S.A. 52:27F-1 et seq.) according to the procedures defined in the Memorandum of Understanding between [NJDEP] **the Department** and NJDOE on Coordination of Permit Reviews.

[ii.] **2.** NJDOE will determine the need for future coastal energy facilities according to three basic standards. NJDOE will submit an Energy Report to [DEP] **the Department** with its determination of the need for a coastal energy facility based on three required findings:

[(1)] **i.** (No change in text.)

[(2)] **ii.** (No change in text.)

[(3)] **iii.** (No change in text.)

[iii.] **3.** [NJDEP] **The Department** will determine the acceptability of coastal energy facilities using the Coastal Resource and Development Policies supported by appropriate, technically sound analyses of alternatives.

[iv.] **4.** If NJDOE has submitted an Energy Report to [DEP] **the Department,** the [DEP] Department decision document shall refer to the NJDOE Energy Report and indicate [DEP's] **the Department's** reasons for differences, if any, between the [DEP] **the Department's** decision and the NJDOE Energy Report.

[v.] **5.** Where NJDOE and [NJDEP] **the Department** disagree on the acceptability of a specific proposed coastal energy facility (for example, on a specific proposed site for one type of energy facility), the disputed decision shall, in accord with State law, be submitted to the State's Energy Facility Review Board for final administrative action.

[2.] **6.** (No change in text.)

(c) Coastal energy facilities construction and operation shall not directly or indirectly result in net loss of employment to the State for any single year.

1. Coastal energy facility construction and operation which results in loss of 200 or more person-years of employment in jobs in New Jersey directly or indirectly related to the State's coastal tourism industry in any single year is prohibited.

2. Rationale: See the OAL Note at the beginning of this subchapter.

[(c)] **(d)** Standards relevant to Outer Continental Shelf (OCS) oil and gas exploration and development **are as follows:**

1. [Policy:] Rapid exploration of the Mid-Atlantic, North Atlantic, and other offshore areas with potential reserves of oil and natural gas is encouraged, as long as no long term adverse impacts will result, onshore or offshore and such activities are conducted in accordance with the policies of the program. Onshore activities related to the exploration, development and production of offshore hydrocarbons shall be carried out according to the specific energy facility rules of this section.

2. (No change.)

[(d)] **(e)** [Onshore] **Standards relevant to onshore** support bases **are as follows:**

1. [Policy:] New or expanded onshore support bases and marine terminals to support offshore oil and gas exploration,

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development, and production (including facilities for work boats, crew boats and helicopters, pipelaying barges, pipeline jet barges, ocean-going tugs, anchor handling vessels, and limited, short-term storage facilities) are encouraged at locations in built-up urban coastal areas and discouraged in less developed areas of the coastal zone.

i.-ii. (No change.)

2. (No change.)

[(e)] **(f)** [Platform] **Standards relevant to platform** fabrication yards and module construction **are as follows:**

1. [Policy:] Platform fabrication yards and module construction are encouraged in built-up coastal areas of the coastal zone, along the Hudson, Raritan and Delaware Rivers which have the requisite acreage, adequate industrial infrastructure, ready access to the open sea, and adequate water depth, and where the operation of such a yard would not alter existing recreatonal uses of the ocean and waterways in the areas. They are discouraged elsewhere in the coastal zone.

2. (No change.)

[(f)] **(g)** [Repair] **Standards relevant to repair** and maintenance facilities **are as follows:**

1. [Policy:] Repair and maintenance facilities for vessels and equipment for offshore activities are encouraged in the Delaware River and Northern Waterfront Areas. Repairs can be accommodated on an emergency basis in existing ship repair facilities in the Atlantic Ocean and Delaware Bay area, but not on a continual, long-term basis.

2. (No change.)

[(g)] **(h)** [Pipe] **Standards relevant to pipe** coating yards **are as follows:**

1. [Policy:] Pipe coating yards are discouraged along the Atlantic Ocean and Delaware Bay and encouraged along the Delaware River and in the port area under the jurisdiction of the Port Authority of New York and New Jersey.

2. (No change.)

[(h)] **(i)** [Pipelines] **Standards relevant to pipelines** and associated facilities **are as follows:**

1. [Policy:] Crude oil and natural gas pipelines to bring hydrocarbons from offshore New Jersey's coast to existing refineries, and oil and gas transmission and distribution systems and other new oil and natural gas pipelines are conditionally acceptable, subject to the following conditions and restrictions:

i.-vi. (No change.)

vii. Pipelines shall be buried to a depth sufficient to [withstand] **minimize** exposure by scouring, shipgroundings, anchors, fishing and clamming and other potential obstacles on the sea floor. Trenching operations shall be conducted in accordance with applicable Federal regulations.

2. (No change.)

[(i)] **(j)** [Gas] **Standards relevant to gas** separation and dehydration facilities **are as follows:**

1. (No change.)

2. [Policy:] Separation and dehydration facilities are discouraged in the Bay and Ocean Shore area. Such facilities that are approved shall meet all applicable air and water quality standards, and be protected by adequate visual, sound, and vegetative buffers. Separation and dehydration facilities will be reviewed as part of the overall proposed gas transportation system by [NJDEP] **the Department** and NJDOE.

3. (No change.)

[(j)] **(k)** [Gas] **Standards relevant to gas** compressor stations **are as follows:**

1. (No change.)

2. [Policy:] Compressor stations are encouraged to be located out of the sight of the shoreline on platforms in offshore waters. They are discouraged from locations in the Bay and Ocean Shore area.

3. (No change.)

[(k)] **(l)** [Gas] **Standards relevant to gas** pigging facility **are as follows:**

1. (No change.)

2. [Policy:] A pigging facility, which may or may not be associated with a separation and dehydration facility, is discouraged in the Bay and Ocean Shore area. The need for and location of the facility will be reviewed within the context of the entire natural gas pipeline system.

3. (No change.)

[(l)] **(m)** [Gas] **Standards relevant to gas** processing plants **are as follows:**

1. (No change.)

2. [Policy:] Gas processing plants proposed for locations between the offshore pipeline landfall and interstate natural gas transmission lines shall be prohibited from sites within the Bay and Ocean Shore area and shall be located the maximum distance from the shoreline. The siting of gas processing plants will be reviewed in terms of the total pipeline routing system by [DEP] **the Department** and NJDOE.

3. (No change.)

[(m)] **(n)** [Other] **Standards relevant to other** gas-related facilities **are as follows:**

1. [Policy:] Additional facilities related to a natural gas pipeline such as metering and regulating stations, odorization plants, and block valves are conditionally acceptable in the Bay and Ocean Shore area provided they are protected by adequate visual, sound, and vegetative buffer areas; are approved by [DEP] **the Department** and NJDOE; and are in compliance with [U.S./DOT] **United States Department of Transportation** regulation.

2. (No change.)

[(n)] **(o)** [Oil] **Standards relevant to oil** refineries and petrochemical facilities **are as follows:**

1. [Policy:] New oil refineries and petrochemical facilities are conditionally acceptable outside of the Bay and Ocean Shore area provided that: they are consistent with all applicable Location and Resource Policies; there is a need for the facility as determined by NJDOE; and an [EIS] **Environmental Impact Statement** determines that the facility will have no unacceptable impacts.

i.-iii. (No change.)

2. (No change.)

[(o)] **(p)** [Storage] **Standards relevant to storage** of crude oil, gases and other potentially hazardous liquid substances **are as follows:**

1. [Policy:] The storage of crude oil, gases and other potentially hazardous liquid substances as defined in N.J.A.C. 7:1E-1.1 under the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 **et seq.**) is prohibited on barrier islands and discouraged elsewhere in the Delaware and Raritan Bay and Atlantic Ocean Shore region.

i.-iii. (No change.)

2. (No change.)

[(p)] **(q)** [Tanker] **Standards relevant to tanker** terminals **are as follows:**

1. [Policy:] New or expanded tanker facilities will be acceptable only in existing ports and harbors where the required channel depths exist to accommodate tankers.

i.-iii. (No change.)

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2. (No change.)

[(q)] **(r)** [Electric] **Standards relevant to electric** generating stations **are as follows:**

1. [Policy:] New or expanded electric generating facilities (for base load, cycling, or peaking purposes) and related facilities are conditionally acceptable subject to the conditions that follow. Conversion or modification of existing generating facilities for purposes of fuel efficiency, cost reduction, or national interest are conditionally acceptable provided they meet applicable State and Federal laws and standards.

i.-vi. (No change.)

2. (No change.)

[(r)] **(s)** [Liquefied] **Standards relevant to liquefied** natural gas (LNG) facilities **are as follows:**

1. [Policy:] New marine terminals and associated facilities that receive, store, and vaporize liquefied natural gas for transmission by pipeline to a base-load electric generating station are discouraged in the coastal zone unless a clear and precise justification for such facilities exists in the national interest; the proposed facility is located and constructed so as to neither unduly endanger human life and property, nor otherwise impair the public health, safety and welfare, as required by N.J.S.A. 13:19-10f; and such facilities comply with the Coastal Resource and Development Policies.

i.-iii. (No change.)

2. (No change.)

7:7E-7.5 Transportation use policies

(a) [Roads:] **Standards relevant to roads are as follows:**

1. [Policy:] New road construction must be consistent with the Policy on Location of Linear Development and shall be limited to situations where:

i.-v. (No change.)

2. (No change.)

(b) [Public] **Standards relevant to public** transportation **are as follows:**

1. [Policy:] New and improved needed public transportation facilities, including bus, rail, air, [and] boat travel, **people mover systems** and related parking facilities, are encouraged.

i.-iii. (No change.)

2. (No change.)

(c) [Solid] **Standards relevant to solid** waste facilities **are as follows:**

[1. Policy relevant to solid waste is as follows:]

[i.] **1.** (No change in text.)

[ii.] **2.** Sanitary landfills that are located in the upland [must] **shall** demonstrate that the leachate will not adversely impact the ground or surface waters[, by using a lining and/or a leachate filtration plant.] **by using an impervious liner and/or leachate collection, treatment and disposal system.** Acceptable plans for restoring the site must be submitted with the original proposal.

[2. Rationale: See the OAL Note at the beginning of this subchapter.]

3. Sanitary landfills are prohibited in Wetlands.

(d) [Wastewater] **Standards relevant to wastewater** treatment facilities **are as follows:**

[1. Policy relevant to wastewater treatment is as follows:]

[i.] **1.** (No change in text.)

[ii.] **2.** (No change in text.)

[iii.] **3.** (No change in text.)

[iv.] **4.** (No change in text.)

[2.] **5.** (No change in text.)

7:7E-7.7 Industry use policies

(a) (No change.)

[1. Policy relevant to industry is as follows:]

[i.] **(b)** Industry is encouraged in special urban areas and conditionally acceptable elsewhere, provided it is compatible with all applicable Location and Resource Policies. Particular attention should be given to Location Policies which reserve the water's edge for water-dependent uses (N.J.A.C. 7:7E-3.17 [and 3.21] **through 3.31**); to Resource Policy N.J.A.C. 7:7E-8.15, which requires that the use be compatible with existing uses in the area, or adequate buffering be provided; and to Resource Policy N.J.A.C. 7:7E-8.13, which places public access requirements upon the use.

2. Existing rail right-of-ways may not be converted to other uses, unless the Department determines that the route is not critical for public transportation or public access reasons.

[2.] **3.** (No change in text.)

(c) [Bicycle] **Standards relevant to bicycle** and foot paths **are as follows:**

[1. Policy relevant to bicycle and foot paths is as follows:]

[i.] **1.** (No change in text.)

[ii.] **2.** Linear bicycle and foot paths are encouraged along the edges of all water bodies, **and from the water body to the nearest public road,** provided they would not disturb Special Areas or subject the user to danger.

[iii.] **3.** Existing bicycle and foot paths [must] **shall** be continued around development when it is not practical to pass through development.

[2.] **4.** (No change in text.)

(d) [Parking] **Standards relevant to parking** facilities **are as follows:**

1. Parking facility [policies] **standards** apply to all parking facilities, in part or wholly within the area subject to the Waterfront Development Act (N.J.S.A. 12:5-1, et seq.), and to parking facilities for 300 or more cars **and related access or paving of an area of equal to or greater than three acres excluding access drives** elsewhere in the coastal zone.

2. [Policy:] Parking lots, garages and large paved areas are conditionally acceptable, provided that they will not interfere with existing or planned mass transit services, the extent of paved surfaces is minimized, [and] landscaping with indigenous or preferred species is maximized; the development satisfies the Resource Policies for air, water, and runoff; and the development is compatible with its surroundings and satisfies the Location Policies.

3. (No change.)

7:7E-7.6 Public facility use policies

(a) (No change.)

(b) [General] **Standards relevant to general** public facilities **are as follows:**

1. [Policy:] Upgrading existing facilities to meet development and redevelopment needs in developed waterfront areas is encouraged. New or expanded public facility development is conditionally acceptable provided that:

[ii.] **(c)** New industrial development is encouraged to locate at or adjacent to existing **industrial** sites, to the maximum extent practicable.

[iii.] **(d)** (No change in text.)

[iv.] **(e)** (No change in text.)

[v.] **(f)** (No change in text.)

[2.] **(g)** (No change in text.)

7:7E-7.8 Mining use policies

(a) [Policy:] New or expanded mining operations on land, and directly related development, for the extraction and/or processing of construction sand, industrial sand, gravel, ilmenite, glauconite, and other minerals are conditionally acceptable, provided that the following conditions are met (min-

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ing is otherwise exempted from the General Land Areas policy, but shall comply with the Special Areas, and General Water Area Policies: N.J.A.C. 7:7E-5, 7:7E-3, 7:7E-4).

1.-5. (No change.)

6. The mining operations control and minimize to the maximum extent practicable adverse impacts from noise and dust, surface and groundwater pollution, and disposal of spoils and waste materials and conform to all applicable Federal, State, and local regulations and standards; [and]

7. The mineral extraction will not have a substantial or longlasting adverse impact on coastal resources, including local economies, after the initial adverse impact of removal of vegetation, habitat, and soils, and not including the long-term irretrievable impact of use of the non-renewable mineral resource[.]; **and**

8. The mine development and reclamation plan minimizes the area and time of disruption of agricultural operations and provides for storage and restoration of all Agricultural Class I, II, and III soils, so that there will be no net loss in the area covered by these soils.

(b) (No change.)

7:7E-7.9 Port Use Policies

(a) (No change.)

[(b) Policy relevant to port uses is as follows:]

[1.] **(b)** (No change in text.)

[2.] **(c)** (No change in text.)

[3.] **(d)** (No change in text.)

[4.] **(e)** (No change in text.)

[5.] **(f)** (No change in text.)

[(c)] **(g)** (No change in text.)

7:7E-7.10 Commercial facility use policies

(a) [Hotels] **Standards relevant to hotels** and motels are as follows:

1. (No change.)

[2. Policy relevant to hotels and motels is as follows:]

[i.] **2.** (No change in text.)

[ii.] **3.** Hotels [and], motels [are not water dependent] **or restaurants may be water oriented if they take full advantage of a waterfront location.**

[iii.] **4.** In special urban areas, new hotel [and], motel, **or restaurant** development is acceptable in the filled water's edge and over large rivers on structurally sound existing pilings, provided it is consistent with [Policy N.J.A.C. 7:7E-3.42.] **policies on filled water's edge (N.J.A.C. 7:7E-3.16) and Special Urban Areas (N.J.A.C. 7:7E-3.41), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.**

[3.] **5.** (No change in text.)

(b) [Casino] **Standards relevant to casino** hotels **are as follows:**

1. (No change.)

2. [Policy:] Hotel-casino development in Atlantic City shall be located in the city's traditional resort area (along the Boardwalk), and in the State Marina area to the maximum extent practicable.

i.-iv. (No change.)

3. (No change.)

(c) [Retail] **Standards relevant to retail** trade and services **are as follows:**

1. (No change.)

[2. Policy relevant to retail trade and services is as follows:]

[i.] **2.** In special urban areas, new or expanded retail trade and service establishments are [encouraged] **conditionally acceptable** in filled water's edge areas and over large rivers on structurally sound existing pilings as part of mixed use developments, provided that the development is consistent with [Policy N.J.A.C. 7:7E-3.42.] **policies on filled water's edge (N.J.A.C. 7:7E-3.16) and Special Urban Areas (N.J.A.C. 7:7E-3.41), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.**

[ii.] **3.** Elsewhere in the coastal zone, new or expanded retail trade and service establishments are conditionally acceptable [in filled water's edge Areas,] provided that the development [is]:

[(1) Consistent with the Special Area Policy for the Filled Water's Edge, and

(2) Adjacent to, and compatible with, existing Water's Edge Development.]

i. Complies with all acceptable Location and Resources Policies;

ii. Is compatible in scale, site design, and architecture with surrounding development; and

iii. Where appropriate, utilizes the water area as the central focus of the development.

[iii. New or expanded retail trade facilities are prohibited in most Special Water's Edge Areas, other than the Filled Water's Edge.]

[3.] **4.** (No change in text.)

(d) [Convention] **Standards relevant to convention** centers and arenas **are as follows:**

1. (No change.)

2. [Policy:] New convention centers and arenas are encouraged in special urban areas, and conditionally acceptable in Development regions, provided that the development is compatible in scale, site design, and architecture with surrounding development, and is accessible by public transportation. New convention centers and arenas are discouraged in Barrier Island, Extension and Limited Growth regions.

3. (No change.)

7:7E-7.11 Coastal engineering

(a) (No change.)

(b) [Shore] **Standards relevant to shore** protection priorities **are as follows:**

1. [Policy:] Non-structural solutions to shoreline erosion problems are preferred over structural solutions. **Vegetative shore protection measures have been proven effective, and are preferred at shoreline sites in which they are feasible. Feasibility is dependent on the following factors: shoreline geometry; shoreline slope; sediment type; boat traffic; and wind and extent of exposed land/water surface (fetch).** The infeasibility and impracticality of a non-structural solution must be demonstrated before structural solutions may be deemed acceptable.

2. (No change.)

(c) [Dune] **Standards relevant to dune** management **are as follows:**

1. [Policy:] Dune restoration and maintenance projects as a non-structural shore protection measure, including sand fencing, revegetation, additions of non-toxic appropriately sized material, control of pedestrian and vehicular traffic, are encouraged.

2. (No change.)

(d) [Beach] **Standards relevant to beach** nourishment **are as follows:**

1. [Policy:] Beach nourishment projects, such as a non-structural shore protection measure, are encouraged, provided that:

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i.-iii. (No change.)

2. (No change.)

(e) [Structural] **Standards relevant to structural** shore protection **are as follows:**

[1. Policy relevant to structural shore protection is as follows:]

[i.] **1.** (No change in text.)

[(1)] **i.** (No change in text.)

[(2)] **ii.** (No change in text.)

[(3)] **iii.** (No change in text.)

[(4)] **iv.** (No change in text.)

[(5)] **v.** (No change in text.)

[(6)] **vi.** If the proposed project requires filling of a Water Area it must also be consistent with the General Water Area Policy for filling (N.J.A.C. [7:7E-4.10(i)] **7:7E-4.11(i)) and all other relevant coastal policies;** and

[(7)] **vii.** (No change in text.)

[ii. A new, short retaining structure that connects two existing lawful retaining structures is normally acceptable provided that extensive filling is not involved.]

[iii.] **2.** (No change in text.)

[iv. Rip-rap is a preferred construction material for retaining structures as it provides a habitat for aquatic life and helps absorb wave energy.]

3. Stone rip-rap and sloped concrete revetments which allow for the growth of vegetation are the preferred form of retaining structures.

4. Public access, including parking where appropriate, must be provided to publicly funded shore protection structures and to waterfront land created by public projects, unless public access would create a safety hazard to users. Physical barriers or local regulations which unreasonably interfere with access to, along or across a structure are prohibited.

[2.] **5.** (No change in text.)

7:7E-7.12 Dredge Spoil Disposal on Land

(a) "Dredge spoil disposal" is the discharge of sediments, known as spoils, removed during dredging operations. The following policies govern Land and Water's Edge disposal only[;]. The policies regulating dredge spoil disposal in Water Areas are found in N.J.A.C. [7:7E-4.10] **7:7E-4.11.**

(b) [Policy:] Dredge spoil disposal is conditionally acceptable under the following conditions: sediments are covered with appropriate clean material that is similar in texture to surrounding soils; and the sediments will not pollute the groundwater table by seepage, degrade surface water quality, present an objectionable odor in the vicinity of the disposal area, or degrade the landscape.

1.-4. (No change.)

5. Dredge spoil disposal in wet and dry borrow pits is conditionally acceptable (see [policies] N.J.A.C. 7:7E-3.15, 7:7E-3.25 and [7:7E-3.30] 7:7E-3.29).

6. If pre-dredging sediment analysis indicates contamination, then special precautions shall be imposed, including but not necessarily limited to increasing retention time of water in disposal site or rehandling basin through weir and dike design modifications, use of coagulants, ground water monitoring, or measures to prevent biological uptake by colonizing plants.

7. Dewatering releases from confined (diked) disposal sites and rehandling basins shall meet existing State Water Quality Standards (N.J.A.C. 7:9-4 and 7:9-6).

(c) (No change.)

7:7E-7.13 National defense facilities use policy

(a) (No change.)

[(b) Policy relevant to national defense facilities is as follows:]

[1.] **(b)** National Defense facilities are conditionally acceptable, and will be approved if one of two findings can be made:

[i.] **1.** (No change in text.)

[ii.] **2.** The proposed facility is [coastal] **coastally** dependent, will be constructed and operated with maximum possible consistency with Coastal Resource and Development Policies, and will result in minimal feasible degradation of the natural environment.

[2.] **(c)** (No change in text.)

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

7:7E-7.14 High rise structures

(a) All high rise structures more than six stories or more than sixty feet from grade high, are encouraged to locate in an area of existing high density, high-rise and/or intense settlements. High rise housing and structures are acceptable subject to the following conditions:

1. High-rise structures within the view of coastal waters must be separated from coastal waters by at least one public road or an equivalent area (at least 34 feet) physically and visually open to the public;

2. The longest lateral dimension of any high-rise structure must be oriented perpendicular to the beach or coastal waters;

3. The proposed structure must not block the view of dunes, beaches, horizons, skylines, rivers, inlets, bays, or oceans that are currently enjoyed from existing residential structures, public roads or pathways, to the maximum extent practicable;

4. The structure must not overshadow the dry sand beach between 10 A.M. and 4 P.M. between June 1 and September 20, and must not overshadow waterfront parks year round;

5. The proposed structure must be in character with the surrounding transitional heights and residential densities, or be in character with a municipal comprehensive development scheme requiring an increase in height and density which is consistent with all applicable Coastal Resource and Development Policies; and

6. The proposed structure must not have an adverse impact on air quality, traffic, and existing infrastructure.

(b) Rationale: See the OAL Note at the beginning of this subchapter.

SUBCHAPTER 8. RESOURCE POLICIES

7:7E-8.1 Purpose

(a) The third step in the screening process of the Coastal Resource and Development Policies involves a review of a proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region. These policies serve as standards to which proposed development must adhere.

(b) In addition to the standards addressed in this subchapter, proposed development must also adhere to applicable site development standards administered by other State and local agencies. These include but are not limited to standards adopted by local Soil Conservation Districts or municipalities pursuant to the Soil and Sediment Control Act (N.J.S.A. 4:24-39 et seq.) as well as barrier free design standards promulgated by the Department of Treasury, Division of Building and Construction pursuant to N.J.S.A. 52:32-1 and 52:32-5 and the Department of Transportation pursuant to N.J.S.A. 52:32-14 et seq.

7:7E-8.2 Marine fish and fisheries

(a) [Policy:] Coastal actions are conditionally acceptable to the extent that minimal feasible interference is caused to the

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natural functioning of marine fish and fisheries, including the reproductive and migratory patterns of estuarine and marine estuarine-dependent species of finfish and shellfish.

(b) (No change.)

7:7E-8.3 [Shell Fisheries] Shellfisheries

(a) (No change.)

[(b) Policy relevant to shellfisheries is as follows:]

[1.] **(b)** (No change in text.)

[2.] **(c)** (No change in text.)

[i.] **1.** (No change in text.)

[ii.] **2.** (No change in text.)

[3.] **(d)** (No change in text.)

[(c)] **(e)** (No change in text.)

7:7E-8.4 Water quality

(a) As required by Section 307(f) of the Federal Coastal Zone Management Act (P.L. 92-583), Federal, State and local water quality requirements established under the Clean Water Act (33 U.S.C. §1251) shall be the water resource standards of the coastal management program. [In the Delaware River Area, water quality standards established by the Delaware River Basin Commission shall also be standards of the coastal management program. State surface and groundwater quality statutes, regulations and standards are established and administered by DEP's Division of Water Resources (see N.J.A.C. 7:9-4-5, and -6]. **These requirements include not only the minimum requirements imposed under the Clean Water Act but also the additional requirements adopted by states, localities, and interstate agencies pursuant to Section 510 of the Clean Water Act and such statutes as the New Jersey Water Pollution Control Act. In the Delaware River Basin, the requirements include the prevailing "Basin Regulations-Water Quality" adopted by the Delaware River Basin Commission as part of its Comprehensive Plan. In the waters under the jurisdiction of the Interstate Sanitation Commission in the New Jersey-New York metropolitan area, the requirements include the Interstate Sanitation Commission's Water Quality Regulations. Department rules related to water pollution control and applicable throughout the entire coastal zone include, for example, the Surface Water Quality Standards (N.J.A.C. 7:9-4), the rules concerning Treatment of Waste Water Discharged Into Surface Waters of the State (N.J.A.C. 7:9-5), the Ground-Water Quality Standards (N.J.A.C. 7:9-6), and the Regulations Concerning the New Jersey Pollutant Discharge Elimination System (N.J.A.C 7:14A).**

[(b) Policy: Coastal development which would prevent attainment of the defined standards for surface or groundwater is prohibited. Coastal development in conflict with any State certified Areawide Water Quality Management (208) Plan is also prohibited.]

(b) Coastal development which would violate the Federal Clean Water Act, or State laws, rules and regulations enacted or promulgated pursuant thereto, is prohibited. In accordance with N.J.A.C. 7:15 concerning the Water Quality Management Planning and Implementation process, coastal development that is inconsistent with an approved Water Quality Management (208) Plan under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., is prohibited.

(c) (No change.)

7:7E-8.5 Surface water use

(a) (No change.)

(b) [Policy:] Coastal development shall demonstrate that the anticipated surface water demand of the facility will not exceed the capacity, including phased planned increases, of the local potable water supply system or reserve capacity, and that construction of the facility will not cause unacceptable surface water disturbances, such as drawdown, bottom scour, or alteration of flow patterns.

1.–2. (No change.)

(c) (No change.)

7:7E-8.6 Groundwater use

(a) (No change.)

(b) [Policy:] Coastal development shall demonstrate, to the maximum extent practicable, that the anticipated groundwater withdrawal demand of the development, **alone and in conjunction with other groundwater diversions proposed or existing in the region,** will not cause salinity intrusions into the groundwaters [of the development] of the zone, will not degrade groundwater quality, will not significantly lower the water table or piezometric surface, or significantly decrease the base flow of adjacent water sources. Groundwater withdrawals shall not exceed the aquifer's safe yield.

1. (No change.)

2. Coastal development shall conform with all applicable DEP and, in the Delaware River **Basin** [Area], Delaware River Basin Commission requirements for groundwater withdrawal and water diversion rights.

(c) (No change.)

7:7E-8.7 [Runoff] **Stormwater runoff**

(a) ["Runoff"] **"Stormwater runoff"** is [that portion of precipitation on the land which is not absorbed by the soil, but instead runs off to surface water bodies] **flow on the surface of the ground, resulting from precipitation.**

[(b) Policy relevant to runoff is as follows:]

[1.] **(b)** (No change in text.)

[i.] **1.** (No change in text.)

[ii.] **2.** (No change in text.)

[2. The goal of runoff control methods shall be to prevent the rate of off-site storm water runoff during the construction and operation of a development under any storm conditions, from exceeding the rate of runoff that would occur under the existing predevelopment conditions of the site. For some sites, with existing predevelopment conditions such as cultivated land, bare earth, or partial paving, the goal of runoff control methods shall be to achieve the runoff standard for good condition pasture land (SCS TR-55 Curve Number 39), which may result in a greater quantity of on-site retention and infiltration than under the existing predevelopment conditions.

3. The off-site stormwater sewers may not discharge into sanitary sewer systems.

4. The amount of pollutants in the stormwater runoff discharge to surface water bodies shall be minimized and the impact of the discharge shall satisfy the applicable DEP-established surface water quality standards of the receiving water body using measures such as sediment traps, oil skimmers and vacuum street cleaners. Pollutants of major concern include petrochemicals and heavy metals from vehicle spillage, de-icing salts, aromatic hydrocarbons from blacktop paving, and pesticides, herbicides and fertilizers from lawn and garden areas.

5. The volume and quality of stormwater discharged off-site will not cause adverse impacts to the receiving water body, and must conform with the requirements of the DEP Stream Encroachment Permit Program (N.J.S.A. 58:1-26).

6. Groundwater infiltration areas such as detention ponds or swales shall be sited as far horizontally from surface water and as far vertically from groundwater as is practicable.

i. Infiltration areas are discouraged in soils with a seasonal high water table between 1½ and three feet. Limited infiltra-

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tion swales may be acceptable on a case-by-case basis provided that:

(1) Swales in these areas are not the principal infiltration areas and only serve to recharge runoff generated within the area of soils with seasonal high water tables between 1½ and three feet;

(2) Maximum swale slopes are two percent;

(3) Time of concentration is maximized by maximizing the length of the swale; and

(4) Swales are planted with native woody spécies at sufficient densities to delay surface water flow and promote evapo-transpiration.

ii. Infiltration areas, detention and retention basins, or any other techniques of delaying runoff are prohibited in soils with a seasonal high water table of 1½ feet or less.

7. Stormwater runoff calculations shall be developed and used in designing the site plan, including retention basins and storm drains, based on 14-hour storms of at least 10 years and 100 years frequencies, using standard methods of calculation, such as the so-called "Rational Method" or the CSC Tabular Method of Determining Peak Discharge, as defined in United States Department of Agriculture, Soil Conservation Service, Urban Hydrology for Small Watersheds, Technical Release No. 55, January 1975.

i. Stormwater runoff calculations shall be based on 24-hour storms of at least 10 years frequency in designing detention basins.

ii. Site plans shall make maximum use of overland swales and minimum use of closed pipes.]

(c) Standards relevant to flood and erosion control are as follows:

1. The flood and erosion control standard for detention requires that volumes and rates be controlled so that after development the site will generate no greater peak runoff from the site than prior to development, for a two-year, 10-year, and 100-year storm considered individually. These design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the United States Soil Conservation Service when using United States Soil Conservation Service procedures (such as United States Soil Conservation Service, "Urban Hydrology for Small Watersheds," Technical Release No. 55), or as the estimated maximum rainfall for the estimated time of concentration of runoff at the site when using a design method such as the Modified Rational Method. For purposes of computing runoff, all lands in the site shall be assumed, prior to development, to be in good condition (if the lands are pastures, lawns or parks), with good cover (if the lands are woods), or with conservation treatment (if the land is cultivated), regardless of conditions existing at the time of computation.

(d) Standards relevant to water quality control are as follows:

1. The water quality requirement for detention will require prolonged retention of a small design storm which shall be either a one year frequency 24-hour storm using the rainfall distribution recommended for New Jersey by the United States Soil Conservation Service or a storm of one and one-quarter inches of rainfall in two hours. Provisions shall be made for the water to be retained and released so as to evacuate 90 percent in approximately 18 hours in the case of residential developments and 36 hours in the case of other developments. This is usually accomplished by a small outlet at the lowest level of detention storage, with a large outlet or outlets above the level sufficient to control the small design storm. If this requirement would result in a pipe smaller than three inches in diameter, the period of retention shall be waived so that three inches will be the minimum pipe size used.

2. Where soils have sufficient permeability, the production of zero runoff from the site under conditions of the one and one-quarter inch water quality storm will be considered sufficient to meet the water quality requirement for residential developments, provided that the seasonal high groundwater does not rise to within two feet of the bottom of the detention basin. For other than residential developments, approvals will be on a case-by-case basis after technical review. The object of this review will be to avoid pollution of groundwater.

(e) Standards relevant to detention ponds and swales are as follows:

1. Groundwater infiltration areas such as detention ponds or swales shall be sited as far horizontally from surface water and as far vertically from groundwater as is practicable.

i. Infiltration areas are discouraged in soils with a seasonal high water table between one and one-half and three feet. Limited infiltration swales may be acceptable on a case by case basis provided that:

(1) Swales in these areas are not the principal infiltration areas and only serve to recharge runoff generated within the area of soils with seasonal high water tables between one and one-half and three feet;

(2) Maximum swale slopes are two percent;

(3) Time of concentration is maximized by maximizing the length of the swale; and

(4) Swales are planted with native woody species at sufficient densities to delay surface water flow and promote evapo-transpiration.

ii. Infiltration areas, detention and retention basins, or any other techniques of delaying runoff are prohibited in soils with a seasonal high water table of one and one-half feet or less, and in riverine floodplains.

(f) Standards relevant to alternatives to detention basins are as follows:

1. It is not necessary that basic requirements for water quantity and quality control be satisfied by means of detention basins. Measures including, but not limited to rooftop storage, tanks, infiltration pits, porous pavement, dry wells, gravel layers underneath paving, or sheet flow through vegetated areas may be used for the purpose, with appropriate consideration for length of life and feasibility of continued maintenance in accordance with technical guidance from the Department. Vacuum street sweeping may be substituted for the water quality requirement where it can be shown to the satisfaction of the Department that continuity of the service will be assured, and where the pollution in question originates on the pavement.

2. Non-structural management practices, including but not limited to, cluster land use development, open space acquisition, stream encroachment and flood hazard controls, protection of wetlands, steep slopes and vegetation should be coordinated with detention requirements. Changes in land use can often reduce the scope and cost of detention provisions required by means of appropriate changes in runoff coefficients.

(g) Standards relevant to maintenance and repair are as follows:

1. Maintenance of detention basins and infiltration areas, or of other alternatives, is a very important aspect of a storm water management program. Control measures shall be designed to provide for mechanical maintenance operations. Responsibility for operation and maintenance of storm water

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management facilities including periodic removal and disposal of accumulated particulate material and debris, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. In the case of developments where lots are to be sold, permanent arrangements, satisfactory to the approving agency shall be made to insure continued performance of these obligations.

(h) Standards relevant to stormwater point source discharges are as follows:

1. Stormwater point source discharges shall not flow into sanitary sewer systems.

[(c)] **(i)** (No change in text.)

[7:7E-8.8 Soil erosion and sedimentation

(a) "Erosion" is the detachment and movement of soil or rock particles by water, wind, ice, or gravity, while "sedimentation" is the action or process of depositing soil or rock particles.

(b) Policy: Coastal development is required to restrict soil loss and control soil erosion and sedimentation during the construction of development to the standards specified in "Standards for Soil Erosion and Sediment Control in New Jersey" adopted by the State Soil Conservation Committee in 1972, revised in 1975, and any other soil conservation standards or plans adopted by State Soil Conservation Committee, Local Soil Conservation Districts or municipalities pursuant to the Soil Erosion and Sediment Control Act (N.J.S.A. 4:24-39 et seq.).

(c) Rationale: See the OAL Note at the beginning of this subchapter.]

[7:7E-8.9] **7:7E-8.8** Vegetation

(a) (No change.)

(b) [Policy:] Coastal development shall preserve, to the maximum extent practicable, existing vegetation within a development site. Coastal development shall plant new vegetation, particularly appropriate native coastal species, to the maximum extent practicable.

(c) (No change.)

[7:7E-8.10] **7:7E-8.9** Important wildlife habitat

(a) "Important wildlife habitats" are areas of general importance to the maintenance of a range of wildlife species, providing high primary productivity, good mixes of habitat types, surface water, cover, or movement corridors. These areas are not as critical as "critical wildlife habitats". If they were depleted the effect on wildlife population would not be as catastrophic as the loss of a critical habitat, but serious depletions of wildlife population would occur. [Definitions and maps of important wildlife habitats are currently available from the Division of Coastal Resources only for Cape May County.] Until [additional] maps **which identify these areas** are available, sites will be considered for importance on a case by case basis by the Division of Fish, Game and Wildlife.

[(b) Policy relevant to important wildlife habitats is as follows:]

[1.] **(b)** Coastal development which does not incorporate management techniques which minimize disturbance to important wildlife habitats, on and offsite, is discouraged.

[2.] **(c)** (No change in text.)

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

[7:7E-8.11] **7:7E-8.10** Air quality

(a) The protection of air resources refers to the **protection from air contaminants that injure human health, welfare or property, and to** attainment **and maintenance** of State and Federal air quality goals and the prevention of degradation of current levels of air quality.

(b) [Policy:] Coastal development shall conform to all applicable State and Federal [emissions] regulations, [ambient air quality] standards[, prevention of significant deterioration criteria, nonattainment criteria, any other policies of New Jersey's State Implementation Plan, and other regulations] and requirements [established to meet requirements of the Federal Clean Air Act as amended in 1977] **and be consistent with the requirements of New Jersey's State Implementation Plan (SIP). See N.J.A.C. 7:27-2 through 18 and New Jersey SIP for particulate matter, sulfur dioxide, nitrogen dioxide, carbon monoxide and lead.**

(c) (No change.)

[7:7E-8.12 Public services

(a) "Public services" include a variety of essential facilities provided by either public or private institutions. Health, education, welfare, fire, police and community facilities are principal examples. Others such as child care and home services for the elderly may be important for certain developments.

(b) Policy: Coastal development shall insure, to the maximum extent practicable, that adequate levels of public services will be provided to meet the additional demands for public services likely to be generated by the proposed development.

(c) Rationale: See the OAL Note at the beginning of this subchapter.]

[7:7E-8.13] **7:7E-8.11** Public Access to the [shorefront] **waterfront**

(a) "Public access to the [shorefront] **waterfront**" is the ability of all members of the community at large to pass physically and visually to, from and along the ocean shore and other waterfronts.

(b) [Policy:] Coastal development adjacent to all coastal waters, including both natural and [built-up] **developed** waterfront areas, shall provide perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. [Shorefront development] **Development** that limits public access and the diversity of [shore] **waterfront** experiences is discouraged.

1. All development adjacent to water shall, to the maximum extent practicable, provide, within its site boundary, a linear waterfront strip accessible to the public. If there is a linear waterfront [path] **accessway** on either side of the site[,] and [the use, due to operation or security reasons, cannot allow continuation of passage along the water's edge,] **it is not feasible to continue it within the boundaries of the site,** a pathway around the site [must be designed that connects] **connecting** to the [other] **adjacent** parts, or potential parts of the waterfront path system in adjacent parcels **shall be provided.**

2. Municipalities [or private development] that [does] **do not** currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection Bond funding.

3. Public access shall be clearly marked, provide parking where appropriate, be designed to encourage the public to take advantage of the waterfront setting, and shall be barrier free where practicable.

4. A fee for access to, including parking where appropriate, or use of publicly owned waterfront facilities shall be no greater than that which is required to operate and maintain the facility and shall not discriminate between residents and non-residents except that municipalities may set a fee schedule that charges up to twice as much to non-residents for use of

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marinas and boat launching facilities for which local funds provide 50 percent or more of the costs.

5. No establishment, including marinas and beach clubs, which controls access to tidal waters shall discriminate among patrons on the basis of race, religion, residence, ethnic background, sex, or sexual preference.

6. Public access, including parking where appropriate, shall be provided to publicly funded shore protection structures and to waterfronts created by public projects unless such access would create a safety hazard to the user. Physical barriers or local regulations which unreasonably interfere with access to, along or across a structure are prohibited.

7. Development along the Hudson River shall conform with the Hudson River Walkway and Design Guidelines, a report prepared by Wallace, Roberts and Todd for NJDEP, 1983 and which may be obtained from the Department's Division of Coastal Resources, New Jersey Department of Environmental Protection, CN 401, Trenton, New Jersey 08625.

(c) (No change.)

[7:7E-8.14] **7:7E-8.12** Scenic resources and design

[(a) "Scenic resources" include the view of the natural and/or man made landscape, while design is defined as the elements that compose the man-made landscape such as structures, including their geometry, texture and color.

(b) Policy: New coastal development that is visually compatible, in terms of scale, height, materials, color, texture, and geometry of building and site design, with surrounding development and coastal resources, to the maximum extent practicable, is encouraged. Coastal development that is significantly different in design and visual impact than existing development or adversely affects the scenic resources of the region is discouraged, unless the new development upgrades the scenic and aesthetic resources of a site and its region.]

(a) "Scenic resources" include the views of the natural and/or built landscape.

(b) "Large-scale Elements of Building and Site Design" are defined as the elements that compose the developed landscape such as size, geometry, massing, height and bulk of structures.

(c) New coastal development that is visually compatible with its surroundings in terms of building and site design, and enhances scenic resources is encouraged. New coastal development that is not visually compatible with existing scenic resources in terms of large-scale elements of building and site design is discouraged.

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

[7:7E-8.15] **7:7E-8.13** Buffers and compatibility of uses

(a) (No change.)

(b) [Policy:] Development shall be compatible with adjacent land and water uses to the maximum extent practicable.

1.–2. (No change.)

(c) (No change.)

[7:7E-8.16] **7:7E-8.14** Solid waste

(a) (No change.)

[(b) Policy relevant to solid waste is as follows:]

[1.] **(b)** Coastal development shall recover material and energy from solid waste, to the maximum extent practicable, as required by the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) and the Federal Resource Conservation and Recovery Act [(P.L. 94-580)] 42 U.S.C. 6901 et seq. If resource and energy recovery are [impractical] **infeasible**, solid waste[, including litter, trash, refuse, and demolition debris] shall be handled and disposed of in a manner [acceptable to] **consistent with** the standards of [DEP's Solid Waste Administration] **the Division of Waste Management.**

[2. Large-scale Residential Developments (N.J.A.C. 7:7E-8.2(i)) and commercial developments, including hotels and restaurants, with over 300 parking spaces, or a seating capacity over 150 persons shall develop source separation and recycling plans, unless it can be demonstrated that such plans are not economically feasible.]

(c) Residential developments of over 99 units and all commercial and industrial developments which generate identifiable recyclable waste products, shall develop and implement a source separation and recycling plan to include collection methods and schedules, unless it can be demonstrated that such plans are not feasible. Demonstration of planned participation in an existing municipal or county recycling program is required for single family detached developments and shall meet the above requirement for other developments.

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

[7:7E-8.17] **7:7E-8.15** Energy conservation

(a) "Energy Conservation" is the use of **construction and siting** techniques which minimize the amount of non-renewable energy used by a facility and maximize the productivity of the energy that is used.

(b) [Policy:] Coastal development shall incorporate energy conservation techniques and alternative sources of energy, including passive and active solar power and wind turbines, to the maximum extent practicable.

1. [The] **For all high rise construction (as defined at N.J.A.C. 7:7E-7.2(h)) and for commercial and industrial construction costing $1,000,000.00 or more, the** technical and economic feasibility of employing such measures shall be evaluated in an energy [plan] **audit** prepared by the applicant. [The] **An accompanying** plan shall specify the energy conservation techniques and alternative sources of energy to be utilized as well as anticipated energy requirements for space heating, cooling, ventilation and lighting, industrial processes and other uses.

2. New [high rise] buildings shall be situated and designed [to minimize shadows on] **so that they do not block solar access to** existing [and potential active and passive solar energy systems to the maximum extent practicable] **solar collectors more than 20 percent of the period of time from 9 A.M. to 3 P.M. between December 21 and February 2.**

3. Paragraphs 1 and 2 above shall not apply in municipalities which have energy conservation ordinances consistent with New Jersey Department of Energy standards.

(c) (No change.)

[7:7E-8.18 Neighborhoods and special communities

(a) "Neighborhoods, small towns, and communities" are discrete districts and areas with a degree of social stability as well as special architectural, ethnic, cultural, aesthetic, or historical qualities that distinguish these places from other areas along the coast.

(b) Policy: Coastal development that protects and enhances the physical coherence in neighborhoods and special communities is encouraged. Development that would adversely affect neighborhoods and special communities is discouraged.

(c) Rationale: See the OAL Note at the beginning of this subchapter.]

[7:7E-8.19] **7:7E-8.16** Traffic

(a) "Traffic" is the movement of vehicles, pedestrians [and] **or** ships along a route.

[(b) Policy: Coastal development that induces marine and/or land traffic is conditionally acceptable provided that it does

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not cause unacceptable congestion and safety problems.]

(b) Coastal development shall be designed and located in a manner so as to cause the least possible disturbance to traffic systems.

(c) When traffic systems are disturbed by approved development, the necessary design modifications shall be prepared and implemented in conjunction with the coastal development, and in a manner which is satisfactory to the New Jersey Department of Transportation.

(d) Development which will generate traffic in excess of capacity Level D is discouraged. A developer may by incorporating design modifications or by contributing to the cost of traffic improvements be able to address traffic problems resulting from the development, in which case development would be conditionally acceptable. Determinations of traffic levels which will be generated will be made by the New Jersey Department of Transportation.

[(c)] **(e)** (No change in text.)

[7:7E-8.20 High permeability moist soils

(a) "High permeability moist soils are soils" contiguous with perennial stream channels, with a depth to seasonal high water table less than five feet, and with a loamy sand or coarser soil, as indicated in National Cooperative Soil Surveys prepared by the United States Department of Agriculture, Soil Conservation Service. These soils are distinguished from the high permeability wet soils, with a depth to seasonal high water table less than or equal to three feet, which are discussed in the Location Policies (N.J.A.C. 7:7E-5.4(e)2).

(b) Policy: Coastal development shall avoid filling, building, paving, disturbing soil, or discharging effluent to groundwater on high permeability moist soils, to the maximum extent practicable. In particular, coastal development shall be designed such that on-site roads, parking lots, structures, subsurface sewage disposal areas, and discharge basins avoid high permeability moist soils, particularly in the proximity of surface water bodies and wells. Development that is determined by DEP to be acceptable in these areas shall conform to the Wet Soils policy (N.J.A.C. 7:7E-8.21).

(c) Rationale: See the OAL Note at the beginning of this subchapter.]

[7:7E-8.21] **7:7E-8.17** Wet soils **and high permeability moist soils**

(a) "Wet soils **and high permeability moist soils**" are soils with a depth to seasonal high water table less than, or equal to, three feet, [as delineated by the United States Soil Conservation Service in a National Cooperative Soil Survey] **unless the soils are loamy sand or coarser, in which case they are soils with a depth to seasonal high water table less than, or equal to, five feet.**

(b) [Policy: Development in wet soils is discouraged unless the following conditions are met:] **Development shall avoid portions of a site which consist of wet or high permeability moist soils, to the maximum extent practicable. Where construction is permitted on wet or high permeability moist soils, the following conditions apply:**

1.-6. (No change.)

7. The lowering of the water table by pumping that would disturb adapted vegetation is prohibited; [and]

8. Detention basins, swales and other runoff retention and groundwater recharge areas are discouraged in soils with a seasonal high water table between 1½ feet and three feet, although limited swales may be acceptable on a case-by-case basis (see N.J.A.C. 7:7E-8.7). Runoff retention and groundwater recharge areas are prohibited in soils with a seasonal high water table of 1½ or less[.];

9. Placement of fill is limited to areas where structures or pavement will be placed; and

10. The development is designed, to the maximum practicable, to concentrate development on portions of the site where the soils are least permeable (fine soils) and where depth to seasonal high water table is greatest.

[7:7E-8.22] **7:7E-8.18** Fertile soils

(a) (No change.)

(b) [Policy:] Location Policies restrict development in farmland conservation areas. Elsewhere, coastal development shall avoid disturbing fertile soils, to the maximum extent practicable, and shall carefully remove, stockpile and reuse the topsoil when on-site fertile soils cannot be preserved.

(c) (No change.)

[7:7E-8.23] **7:7E-8.19** Flood [hazard] **prone** areas

(a) **"Flood prone areas" include both delineated flood hazard areas and areas flooded by non-delineated streams.** Flood hazard areas around rivers, creeks and streams are being delineated by [DEP] **the Department** under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.), and by the Federal Emergency Management Agency **(FEMA)**. The Flood Hazard Area Control Act mandates [DEP] **the Department** to "delineate as flood hazard areas, areas as in the judgment of the Department, the improper development and use of which would constitute a threat to the safety, health and general welfare from flooding" (N.J.S.A. 58:16A-52). **The Act also regulates "the area which would be inundated by the 100 year design flood of any non-delineated stream".** Where flood hazard areas have been delineated by both [DEP] **the Department** and FEMA, the [DEP] **the Department** delineations shall be used.

1. Flood hazard areas around water bodies other than rivers, creeks and streams are delineated [only] by FEMA. Where Flood Hazard Areas have been delineated by neither FEMA nor DEP, the 10-foot contour line shall be used as the inland boundary of the [flood plain] **flood hazard area**. The seaward boundary shall be the mean high water line.

2. ' Floodway" is defined as "the channel of natural stream and portions of the flood hazard area adjoining the channel, which are reasonably required to carry and discharge the flood water for flood flow of any natural stream" (N.J.S.A. 58:16A-51). Floodways are being delineated by [DEP] **the Department** (see Figure 28).

3. (No change.)

[4. In the tidal areas, 100 year tidal elevations have been identified for FEMA in most municipalities within the coastal zone by the United States Army Corps of Engineers, and are known as the intermediate regional tidal flood. The geographic extent of tidal flood hazard areas are indicated on USGS topographical maps as "flood prone" areas (there are no floodways in tidal flooding).

(b) Policy relevant to flood hazard areas is as follows:]

[1.] **(b)** (No change in text.)

[2. Certain land uses are prohibited, under the Flood Hazard Area Control Act and rules, in the floodway portion of fluvial flood hazard areas, including uses such as placing, depositing or dumping solid wastes on the delineated floodways; processing, storing or disposal of pesticides, domestic or industrial wastes, radioactive materials, petroleum products or hazardous materials; erection of structures for occupancy by humans or livestock or kennels for boarding of

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domestic pets; and storage of materials or equipment, or construction of septic tanks for residential or commercial use (see N.J.A.C. 7:13-1.2).

i. Not affected by this policy are hazard-free activities such as recreation, agriculture, soil conservation projects and similar uses which are not likely to cause obstructions, undue pollution, or intensify flooding.

ii. According to N.J.A.C. 7:13-1.4(c), any lawful, pre-existing prohibited uses may be maintained in a delineated floodway provided, that if expanded or enlarged, they do not increase the flood damage potential. Property owners in delineated floodways may rebuild damaged structures, providing that any expansion or enlargement will not increase the flood damage potential.

3. Most land uses are also regulated, under the State Flood Hazard Area Control Act and rules, in the fluvial flood fringe. Structures for occupancy by humans are conditionally acceptable provided that: the first habitable elevation is one foot above the 100-year flood prone line established by HUD Flood Insurance Maps, and the structure will not increase flood damage potential, by obstructing flood waters.

4. Construction acceptable in flood hazard areas must conform with applicable flood hazard reduction standards, as adopted by the Federal Insurance Administration in HUD (Federal Register, Vol. 41, No. 207, Park II, October 26, 1976), as amended.

5. In river areas designated as components of the New Jersey Wild and Scenic Rivers System, land uses are regulated or prohibited in accordance with N.J.A.C. 7:38-1, including special regulations adopted for a particular river, or sections thereof, upon designation to the system.]

(c) Development in areas subject to fluvial flooding shall conform with the Flood Hazard Area Control Act and rules adopted thereunder, at N.J.A.C. 7:13.

(d) In flood hazard areas subject to tidal flooding, the following standards shall apply:

1. Residential development, including hotels and motels, is prohibited in areas designated as Coastal High Hazard Areas (V zones) on Federal Flood Insurance Rate Maps.

2. All permanent structures shall be set back a minimum of 50 feet from oceanfront shore parallel structures, including bulkheads, revetments and seawalls.

3. Construction acceptable in other flood hazard areas subject to tidal flooding shall conform with applicable Federal flood hazard reduction standards as found at 44 CFR 60.

(e) In river areas designated as components of the New Jersey Wild and Scenic Rivers System, land uses are regulated or prohibited in accordance with N.J.A.C. 7:38-1.1 et seq. including special regulations adopted for a particular river, or sections thereof, upon designation to the system.

[(c)] **(f)** (No change in text.)

[7:7E-8.24 Decommissioning of projects

(a) "Decommissioning" is the shutdown of a development and the return of the site to a state suitable for future use.

(b) Policy: Coastal development applications other than those for residential developments must state the anticipated life of the proposed project and address the steps necessary to adapt the site to another use once the proposed project is no longer functional. Development proposals in which the applicant takes the long-term responsibility for making the site available for another use are encouraged.

(c) Rationale: See the OAL Note at the beginning of this subchapter.]

[7:7E-8.25] **7:7E-8.20** Noise abatement

(a) (No change.)

(b) [Policy:] Noise levels [must] **shall** conform with the standards established in N.J.A.C. 7:29-1 and administered by the Office of Noise Control in the Division of Environmental Quality.

(c) (No change.)

[7:7E-8.26 Barrier free design

(a) "Barrier free design" is a plan for a project which would permit a handicapped person to operate independently with comparative ease.

(b) Policy: All development without barrier free design in public areas is prohibited, and multi-family residential developments of more than 250 units without barrier free design in some of the units are discouraged. Further, barrier free design must be included in all buildings and spaces used by the general public according to State Law (N.J.S.A. 52:32-1 and 52:32-5). Barrier free design is encouraged in units of private residential developments. All curb ramping, sidewalks, and grade changes on public property or on private property for public use shall be constructed or reconstructed according to State Law (N.J.S.A. 52:32-14 et seq.) and pursuant standards promulgated by the Department of Transportation.

(c) Rationale: See the OAL Note at the beginning of this subchapter.]

(a)

DIVISION OF WASTE MANAGEMENT

Tank Storage
Short-Term Tank Storage Permitting Exemption

Proposed Amendments: N.J.A.C. 7:26-1.4 and 9.3

Authority: N.J.S.A. 13:1E-6.
Proposal Number: PRN 1985-332.
DEP Docket No. 028-85-05.

A **public hearing** on the proposal will be held on July 16, 1985 at 10:00 A.M. at:

The Archives Reading Room
New Jersey State Library
West State Street
Trenton, New Jersey

Submit written comments by July 17, 1985 to:

Frank Coolick
32 East Hanover Street
Trenton, N.J. 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to allow storage of hazardous waste in above-ground tanks, for 90 days or less, without the person responsible for such storage having to obtain a hazardous

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waste management facility permit. If this proposal is adopted, such storage will have to be in compliance with specific, existing design and operating requirements for hazardous waste storage in tanks, as well as certain additional requirements. While facility owners will not have to obtain a prior permit for such storage, written Departmental approval will still be required. The proposal is similar to, but more restrictive than the exemption provided in the Federal hazardous waste management rules, 40 CFR 262.34.

The proposed amendment requires that the storage tank(s) be emptied and the waste properly disposed every 90 days or less. The proposed definition of "empty tank" requires that all wastes be removed from the tank(s) by direct pumping or drainage and that the quantity of residue remaining in any tank after such removal be no more than one percent of the tank volume. The Federal regulations consider a tank "empty" when the generator has left the tank's drainage system open until a steady, continuous flow has ceased. New Jersey's proposed rule is potentially more restrictive in this regard.

This proposal is directed toward above-ground storage tanks only. Where a storage tank has been or is to be constructed with part of the tank below grade, it may only qualify for the exemption if it has been excavated to allow visual inspection of the tank, comparable to a totally above-ground tank and if secondary containment for the below-grade part of the stored waste is provided.

It should be noted that, under current regulations, the storage of hazardous waste in drums or containers for less than 90 days does not require a company to obtain a full permit as a hazardous waste storage, treatment or disposal facility. Hence, this rule would permit industry to improve current safety and environmental situations by installing more secure tankage for waste storage. In addition, such storage, while not constituting a hazardous waste facility activity, is nevertheless subject to review and inspection under other environmental regulations.

Social Impact

The Department has concluded that short-term storage in tanks, with an adequate design, is safer in many cases than storage in containers, due to such factors as decreased employee exposure, as well as a decreased potential for spills during waste transfer. Since there presently exists an exemption for those generators who accumulate hazardous wastes on-site, in containers, for less than 90 days, the Department has concluded that extending this exemption to above-ground tanks is reasonable and justified.

One concern of the Department which argued against a short-term tank storage exemption, when the hazardous waste rules were originally adopted, was the inability of rapid removal of wastes, where a natural disaster or other emergency might require. In response to this concern, the proposed rule requires that each tank be "designed such that at least 99 percent of the volume of each tank can be readily emptied by direct pumping or drainage", see proposed N.J.A.C. 7:26-9.3(b)4. The Department believes that this provision, when combined with emergency response planning requirements, adequately addresses the issue of emergency response.

Economic Impact

Generators of hazardous waste, whose operations involve short-term tank storage, will be relieved of the economic burden resulting from compliance with the permitting procedures. They will also benefit from avoidance of delays which are involved in the permitting process.

Some of the facilities that request to be exempted under this regulation may be required to retrofit storage tanks in order to meet minimum design requirements. The costs of retrofitting the tanks may be offset by the difference in costs between bulk and container shipments, elimination of empty drum disposal costs, as well as elimination of costs associated with regulatory compliance.

The Department will be able to direct its limited resources to activities of higher environmental priority.

Environmental Impact

The proposed amendment requires that short-term storage tanks meet certain of the design requirements of N.J.A.C. 7:26-10.5, including minimum shell thickness, controls to prevent overfilling and secondary containment, as well as requirements regarding personnel training, preparedness and prevention and contingency and emergency planning and procedures. The Department has concluded that exempting short-term storage tanks, which meet these minimum design requirements, will not adversely affect human health or the environment.

However, to the extent that the full permit review process might identify some hidden hazard or threat which might escape detection under the procedures in this proposal, there is slight potential for adverse environmental impact from the proposed rule. This minimal threat does not, in the Department's opinion, justify the regulatory burden resulting from the full, permit review process.

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

7:26-1.4 Definitions

. . .

"Empty tank" means a tank that meets the following criteria:

1. All wastes have been removed that can be removed by direct pumping or drainage; and

2. The quantity of residue remaining in the tank after waste removal is no more than one percent of the volume of the tank.

. . .

7:26-9.3 Accumulation of hazardous waste for 90 days or less

(a) (No change.)

(b) A generator may accumulate hazardous waste on-site in an above-ground tank, for 90 days or less without a permit, after obtaining written approval from the Department, provided that the following requirements are met:

1. Each tank shall have sufficient shell thickness to ensure that the tank will not collapse or rupture. The Department shall specify a minimum shell thickness to be maintained as part of the approval;

2. Each tank shall be equipped with controls to prevent overfilling in accordance with N.J.A.C. 7:26-10.5(c);

3. Each tank or tank storage area shall have adequate secondary containment in accordance with N.J.A.C. 7:26-10.5(f);

4. Each tank shall be designed so that at least 99 percent of the volume of each tank can be readily emptied by direct pumping or drainage;

5. Each tank is rendered empty, as defined at N.J.A.C. 7:26-1.4, every 90 days or less;

6. All waste removed from the tank(s) shall be shipped off-site to an authorized facility or placed in an on-site, authorized facility, as defined at N.J.A.C. 7:26-1.4; and

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7. The generator shall comply with the requirements for owners or operators of hazardous waste facilities under N.J.A.C. 7:26-9.4(g) concerning personnel training, and under N.J.A.C. 7:26-9.6 and 9.7 concerning preparedness and prevention, contingency plans and emergency procedures.

8. No part of the tank(s) is below grade unless the tank(s) is constructed to allow visual inspection of the tank, comparable to a totally above-ground tank, and to provide secondary containment for the below-grade part of the tank.

[(b)] **(c)** (No change in text.)

HEALTH

(a)

PUBLIC HEALTH COUNCIL
HEALTH DEVELOPMENT SERVICES

Licensure of Persons for Public Health Positions

Proposed Readoption as a New Rule: N.J.A.C. 8:7-1

Authorized By: Paul R. Jackson, Acting Chairperson, Public Health Council.
Authority: N.J.S.A. 26:1A-38 et seq.
Proposal Number: PRN 1985-326.

Submit comments by July 17, 1985 to:
Ronald S. Ulinsky
Acting Chief
Evaluation and Training Program
CN 364
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 8:7 was originally filed and became effective prior to September 1, 1969. Revisions to this Chapter were filed and became effective on March 3, 1977, as R.1977 d.102. See: 8 N.J.R. 512(b), 9 N.J.R. 173(a) and on July 17, 1980. See: 12 N.J.R. 476(b).

Under the provisions of Executive Order No. 66(1978) (which provides for the expiration of rules within five years), Subchapter 1, Licensure for Public Health Positions of Chapter 7 of the Public Laws of 1947 expired on April 17, 1985. The Department therefore proposes to adopt the current text of the regulation as a new rule.

N.J.S.A. 26:1A-38 requires the Public Health Council to prescribe the qualifications of various public health professionals.

A review of the existing rules follows:

N.J.A.C. 8:7-1.1 lists those positions which require a license issued by the State Department of Health.

N.J.A.C. 8:7-1.2(a) establishes the Public Health Examining Board.

N.J.A.C. 8:7-1.2(b) requires the Board to conduct examinations for various public health positions.

N.J.A.C. 8:7-1.2(c)1 establishes the criteria for Board membership, appointment and meetings.

N.J.A.C. 8:7-1.3 establishes the protocol for the submission of an application or licensure examination.

N.J.A.C. 8:7-1.4 mandates the Department to collect a fee from each qualified candidate for licensure.

N.J.A.C. 8:7-1.5 establishes the procedure for the determination of qualified candidates for examination.

N.J.A.C. 8:7-1.6 establishes an appeal procedure for candidates denied admission to a licensure examination.

N.J.A.C. 8:7-1.7 establishes the procedure for scheduling and conducting licensure examinations. Subsection (c) details the protocol for those candidates who failed an examination and who wish to reapply to take the licensure examination again.

N.J.A.C. 8:7-1.8 requires minutes to be taken at the meetings of the Public Health Examining Board.

N.J.A.C. 8:7-1.9 establishes the qualifications for education and experience of candidates for licensure by the New Jersey State Department of Health.

Social Impact

The proposed readoption of N.J.A.C. 8:7-1 concening the licensure of persons for public health positions shall continue to have a beneficial social impact. The deletions from the expired text at N.J.A.C. 8:7-1.2(1), 1.9(a)3, and 1.9(b)1, concern dates and language which are outdated, and are made for purposes of clarification.

The readoption of these rules shall continue to allow the Public Health Council to meet its legislative mandate of N.J.S.A. 26:1A-38, to prescribe the qualifications for the examining and licensing of public health officials in New Jersey. The readoption of these rules shall continue to ensure that persons employed in public health positions possess the proper training and experience necessary to protect the health of the public. Furthermore, readoption of these rules shall continue to ensure that persons employed in public health positions will maintain a working knowledge of the latest public health research and technology needed to resolve current public health problems. Moreover, the readoption of these rules will establish the administrative procedure for the annual renewal or issuance of approximately 1,000 licenses for public health positions.

The deletions from the expired text at N.J.A.C. 8:7-1.1(1), 1.9(a)3, and 1.9(b)1, concern dates and language which are outdated, and are made for purposes of clarification.

Economic Impact

The readoption of these rules shall allow the Department to continue the existence of an administrative procedure for the collection of fees for the examination, in the amount of $25.00, and licensure fees in the amount of $10.00, from public health officials respectively required by N.J.S.A. 26:1A-39 and 42. The readoption shall continue to allow the Department to collect approximately $20,000, annually in fees to be utilized to defray the cost of the program. The cost to the Department for administering the program shall continue to be approximately $50,000, per year.

The deletions from the expired text at N.J.A.C. 8:7-1.1(1), 1.9(a)3, and 1.9(b)1, concern dates and language which are outdated, and are made for purposes of clarification.

Full text of the proposed new rules follows.

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SUBCHAPTER 1. GENERAL PROVISIONS

8:7-1.1 Positions requiring a license

(a) A license granted by the New Jersey State Department of Health is required for any person who is employed as a:

1. Health officer;
2. Sanitary inspector, first grade;
3. Sanitary inspector, second grade;
4. Food and drug inspector;
5. Milk inspector;
6. Meat inspector;
7. Veterinary meat inspector;
8. Plumbing inspector, first grade;
9. Plumbing inspector, second grade;
10. Public health laboratory technician.

8:7-1.2 Board of examiners

(a) There shall be established in the Health Department, a board of examiners to be known as the Public Health Examining Board.

(b) The Board shall conduct examinations for the licensing of:

1. Health officer;
2. Sanitary inspector, first grade;
3. Sanitary inspector, second grade;
4. Food and drug inspector;
5. Milk inspector;
6. Veterinary meat inspector;
7. Meat inspector;
8. Public health laboratory technician;
9. Plumbing inspector, first grade;
10. Plumbing inspector, second grade.

(c) The Board shall be composed of 12 members appointed by the Commissioner of Health whereby:

1. One of the members of the Board shall be either a deputy commissioner of health or an assistant commissioner of health, and such individual shall serve as chairperson of the Board.

2. With the exception of the chairperson, a Board member shall be:

i. Appointed for a term of two years; and

ii. Permitted to serve for no more than six years.

3. Of the initial appointments to the Board, six members shall be appointed for a one-year term and, thereafter, all appointments shall be for terms of two years, except those appointments which shall be for the purpose of completing an unexpired term.

(d) The Board membership shall include:

1. Two health officers, whereby the initial appointments shall be for one one-year term and one two-year term;
2. One sanitary inspector of the first grade;
3. One veterinarian;
4. One laboratory representative;
5. One representative of the State Department of Civil Service;
6. One plumbing inspector of the first grade;
7. One comprehensive health planner;
8. Two consumers, whereby at least one shall be from a minority group;
9. One health professions educator; and
10. Either a deputy commissioner of health or an assistant commissioner of health.

(e) At least one member of the Board shall be a woman.

(f) For purposes of continuity, at least two of the members of the present board of examiners shall be appointed to the Public Health Examining Board and such individuals shall not be eligible for reappointment.

(g) As vacancies occur, when a Board member cannot complete his/her term, the Commissioner shall appoint a person representing a constituency similar to that of the person being replaced. The replacement appointment shall be for the completion of the unexpired term.

(h) For the purpose of conducting its business meetings, seven members of the Board shall be required for quorum and no actions shall be taken by the Board in the absence of a quorum.

(i) In the absence of the chairperson at a business meeting, the members of the Board shall elect a chairperson pro tem to direct the business of that meeting.

(j) Any action of the Board shall require a majority vote of the members present and no proxy votes shall be permitted.

(k) Members of the Board shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

8:7-1.3 Submission of evidence of qualification

(a) The State Commissioner of Health in the name of the New Jersey State Department of Health shall grant licenses only to those candidates who submit evidence of the required training and experience, are accepted for testing by the Public Health Examining Board and/or the Commissioner of Health, and who subsequently pass examinations, indicating their fitness for the positions they seek.

(b) A person who desires to be admitted to an examination may obtain an application form from the New Jersey State Department of Health, P.O. Box 1540, Trenton, New Jersey 08625. The application shall be filed with the department and accompanied by documentary evidence satisfying the education, training, and experience requirements for the position. Such documentary evidence shall include an evaluation of the candidate's performance written by the supervisor(s) under whom the candidate obtained such working experience.

(c) In evaluating applications for admission to examinations, the New Jersey high school equivalency certificate will be recognized as the equivalent to graduation from an accredited high school.

8:7-1.4 Examination and initial license fee

The New Jersey State Department of Health shall collect a fee, as established by statute, from each qualified candidate for licensure prior to the examination. Such fee will be payable only after a candidate has been notified of eligibility for admission to the examination. Candidates who are successful in passing the examination will not be required to pay an additional fee for the issuance of their initial license.

8:7-1.5 Determination of qualified candidates

(a) Appropriate members of the Public Health Examining Board shall review each candidate's application for admission to the licensure examination. Based upon the qualifications of the candidate, the Board shall approve or deny such candidate entrance to the examination.

(b) The candidate and the Department of Health shall be notified within ten days of the Board's determination. In the case of a denial the candidate shall have the opportunity to appeal the decision of the Board.

8:7-1.6 Appeal procedure

(a) Any candidate who has been denied admission to a licensure examination by the Public Health Examining Board

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may appeal the Board's action according to the following procedure:

1. Within 30 days of notification of denial, the candidate may request, in writing, a reconsideration of his qualifications by the Board;

2. At a regular meeting of the Board, the candidate will have the opportunity to discuss his qualifications. At the conclusion of the discussion, the Board shall vote on the candidate's appeal;

3. In the event that the Board reaffirms its denial decision, the candidate may immediately request a formal hearing of his case in accordance with the Department's rules regarding hearings. The Office of the Commissioner shall arrange for such hearing to be conducted by the Public Health Council.

4. At the conclusion of the formal hearing, the Council will forward its findings and recommendations to the Commissioner of Health for a final decision.

8:7-1.7 Examinations

(a) The Department of Health shall schedule examinations for the licensure of persons for public health positions at least twice a year.

(b) Examinations shall be prepared, conducted and scored in accordance with the department's standard operating procedures with the advice of the Public Health Examining Board.

(c) If any qualified candidate fails an examination for a particular type of license two times, such candidate shall not be permitted entrance to the next examination for that type of license until, and unless, the candidate submits evidence, to the Board, of further formal training and supervised experience specifically in those areas in which the candidate was deficient. The board, in its discretion, may accept the additional evidence or require the candidate to postpone taking the licensure examination for a period of one year from the date of the last examination. During the one year waiting period, the candidate shall be required by the Board to either obtain further training and experience under the supervision of a person licensed for the position for which the candidate seeks licensure, or obtain further educational training and experience through formal courses at an accredited institution of higher education or through recognized professional or governmental bodies. At the conclusion of the one-year period, the candidate shall furnish the Board with a written report from his supervisor or from the educational institution, attesting to the completion of the additional training and experience and may then make application to gain admission to the licensure examination.

8:7-1.8 Record keeping requirements of the Board

The Public Health Examining Board shall keep minutes of its meetings and shall transmit the record of all its transactions and recommendations to the Commissioner of Health.

8:7-1.9 Qualifications of candidates for licensure

(a) Regarding the qualifications of health officer candidates, applicants shall meet one of the following qualifications:

1. Diplomate of the American Board of Preventive Medicine or complete eligibility therefor;

2. Degree of doctor or master from an accredited college or university program in a health-related field (recognized as such by the New Jersey Departments of Higher Education and/or Education, as appropriate) such as medicine, osteopathy, veterinary medicine, public health, environmental science, health administration, social work, nursing or health education. The core course work for the degree shall include or be supplemented by at least three credits in each of the following: planning, administration, environmental science, social science and epidemiology; and

i. Unless otherwise exempted by statute, satisfactory completion of two years full-time employment in a position providing administrative experience in at least three of the five existing recognized public health activities as specified in N.J.A.C. 8:51.

3. What a candidate for health officer license should know:

i. The health officer is expected to provide leadership in the field of public health in his community. In addition to being the administrative officer of a local health department, he is responsible for evaluating the health problems of his community, planning appropriate activities to meet their health problems, developing necessary budget procedures to cover these activities, and directing the department's staff so as to carry out the activities efficiently and economically. These activities are covered in "Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey". Applicants are examined relative to these essential activities.

(b) Sanitary inspector, first grade, qualifications are as follows.

1. A baccalaureate degree from an accredited college or university recognized as such by the Department of Higher Education and/or Education, as appropriate, with a minimum of 32 credits in the biological sciences, physical sciences, environmental sciences and mathematics; and

2. Successful completion of a course in environmental health and law conducted by an accredited college or university recognized as such by the Departments of Higher Education and/or Education, as appropriate. This course must be equivalent to that offered by Rutgers—The State University; and

3. Successful completion of a field training course approved as such by the State Department of Health. Full-time employment for a minimum period of one year in a local health agency (under the supervision of either a licensed health officer or sanitary inspector, first grade), as defined in "Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey", will be accepted in lieu of the field training course only if an approved field training course is not available.

4. What a candidate for sanitary inspector, first grade license, should know:

i. The sanitary inspector is responsible for making inspections, compiling proper records of such inspections, informing operators of establishments of violations, the sanitary basis thereof, methods of abating such violations, and securing evidence that may be necessary for legal action. Such inspections shall be in all environmental sanitation activities, particularly those indicated in the "Recognized Public Health Activities and Minimum Standards of Performance for Local Health Departments in New Jersey". Applicants are examined relative to these indicated activities.

(c) The qualifications for sanitary inspector, second grade, are as follows:

1. Satisfactory completion of a two-year associate degree course in a recognized college or university or two years of training in a recognized college or university, recognized as such by the Departments of Higher Education and/or Education, as appropriate, with satisfactory completion of 60 credit hours. The collegiate training shall include credits in the biological and/or physical sciences; and

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2. Successful completion of a course in environmental health and law conducted by an accredited college or university recognized as such by the Departments of Higher Education and/or Education, as appropriate. This course must be equivalent to that offered by Rutgers—The State University. Equivalent training and/or experience may be accepted in lieu of completion of the environmental health and law course. The academic qualification is a basic requirement and no substitution is to be accepted.

3. What a candidate for sanitary inspector, second grade license, should know:

i. The sanitary inspector is responsible for making inspections, compiling proper records of such inspections, informing operators of establishments of violations, the sanitary basis thereof, methods of abating such violations, and securing evidence that may be necessary for legal action. Such inspections shall be in all environmental sanitation activities particularly those indicated in the "Recognized Public Health Activities and Minimum Standards of Performance for Local Health Departments in New Jersey". Applicants are examined relative to these indicated activities.

(d) The qualifications for food and drug inspector are as follows:

1. The applicant must hold a license for sanitary inspector, first grade; or

2. Have the qualifications equivalent to those required of a sanitary inspector, first grade, and show evidence at the licensure examination (food and drug inspector) to the satisfaction of the examining board of adequate knowledge of the basic sanitary sciences, such knowledge being equivalent to that possessed by a person having a license for sanitary inspector, first grade; and

i. The applicant must also indicate one year's full-time working experience in food and drug control under the supervision of a license health officer.

3. What a candidate for food and drug inspector license should know:

i. The food and drug inspector is responsible for making inspections, compiling proper records of such inspections, informing operators of establishments of violations, the sanitary basis thereof, methods of abating such violations, and securing evidence that may be necessary for legal action. Applicants are examined relative to these activities.

(e) The qualifications for milk inspector are as follows:

1. The applicant must hold a license for sanitary inspector, first grade; or

2. Have the qualifications equivalent to those required of a sanitary inspector, first grade, and show evidence at the licensure examination (milk inspector) to the satisfaction of the examining board of adequate knowledge of the basic sanitary science, such knowledge being equivalent to that possessed by a person having a license for sanitary inspector, first grade; and

i. The applicant must also indicate one year's full-time working experience in milk control under the supervision of a licensed health officer;

3. What a candidate for milk inspector license should know: The milk inspector is responsible for making inspections, compiling proper records of such inspections, informing operators of establishments of violations, the sanitary basis thereof, methods of abating such violations, and securing evidence that may be necessary to legal action. Applicants are examined relative to these indicated activities.

(f) The qualifications for veterinary meat inspector are:

1. Graduation from a generally recognized school of veterinary medicine, recognized as such by the Departments of Higher Education and/or Education, as appropriate; and

i. Knowledge and skill in the theory and practical application of sanitary sciences, specially in the field of food control.

2. What a candidate for veterinary meat inspector should know: The candidate should be prepared to answer questions covering the public health aspects of the slaughtering and processing of meat. This includes both red meat and poultry. Specifically included may be the following:

i. Basic principals of meat inspection and their application to public health;

ii. State and Federal laws regarding inspection of meat and its products;

iii. Methods of sanitation and types of compounds that may be used in the sanitizing of slaughter houses, meat markets and meat processing plants;

iv. Preservatives that are allowed and those not allowed in meat and its products;

v. Legal methods of sampling meat and its products;

vi. Diseases of animals where carcasses are used for meat or meat products, and whether such diseases are transmissible to humans. Proper disposition of infected or inedible carcasses in accordance with State Health Department regulations;

vii. Elements of a safe water supply and satisfactory method of sewage disposal;

viii. Each candidate may be asked to display his knowledge of inspection and processing techniques in an actual practical examination.

(g) The qualifications for meat inspector are:

1. Except for the substitution of education provided for in 2 below, applicants for meat inspector license must have had, since their 16th birthday, at least three years of experience in one or any combination of the following:

i. Experience with animals such as that gained in the capacity of an assistant to a veterinarian or in field disease control activities;

ii. Experience with livestock or poultry such as that gained in a public stockyard, in the manufacture or preparation of veterinary biological products, or on a ranch, farm or hatchery in the management or handling of livestock or poultry, or in some other comparable activity;

iii. Experience with livestock or poultry slaughtering or poultry or meat processing, an experience in marketing or handling meat or poultry at wholesale or retail outlets;

iv. Experience in dairy, poultry, meat or other food processing in plants or activities where sanitary measures and quality controls are applied;

v. Experience (such as laborer, guard, sales clerk, and so forth), in the activities described above, which does not provide an intimate knowledge of livestock or poultry, livestock slaughtering or meat, dairy or other food processing will not be qualifying. The total training and experience of an applicant must show that he possesses the ability to comprehend, interpret, explain and apply regulations and instruction pertaining to the duties of a meat or poultry inspector, and show that he can meet and deal satisfactorily with employees and officials of poultry eviscerating or processing plants, or meat packing establishments;

2. Educational substitution (maximum of three years of experience) rules are:

i. Satisfactory completion of a full four-year course of accredited high school study which has included at least two

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one-year courses in biology, general science, chemistry or appropriate agricultural subjects, or a time-equivalent combination of these subjects, may be substituted for one year of the experience required; or

(1) Satisfactory completion of the courses entitled "Inspection of meat and meat products" offered by Rutgers University Extension Division in cooperation with the New Jersey State Department of Health may be substituted for one year of the experience required; or

ii. Each successfully completed year of study in a residence school above the high school level may be substituted for nine months of required experience, provided that such study included an average of at least six semester hours (or equivalent) per year in one or in any combination of the subjects of zoology, biology, chemistry or appropriate agricultural subjects;

3. What a candidate for meat inspector license should know: The candidate should be prepared to answer questions covering the public health aspects of the slaughtering and processing of meat. This includes both red meat and poultry. Specifically included may be the following:

i. Basic principles of meat inspection and their application to public health, and why inspectors look at glands, tissues and organs;

ii. State and Federal laws regarding inspection of meat and its products;

iii. Methods of sanitation of slaughter houses, meat markets and meat processing plants;

iv. Preservatives that are allowed and those not allowed in meat and its products;

v. Legal methods of sampling meat and its products;

vi. Common disease of animals whose carcasses are used for meat and its products;

vii. Principles and procedures to be followed in conducting a postmortem examination under supervision of a veterinary meat inspector, and the normal from abnormal tissue appearance of all food animals;

viii. Each candidate may be asked to display his knowledge of inspection and processing techniques in an actual practical examination. Questions on the practical examination will be of the type to determine knowledge or location and function of the liver, kidney, spleen, heart, lungs, their surrounding and protective tissues, as well as lymph glands—all on actual carcasses under actual inspection procedures;

ix. In addition, each candidate should be able to demonstrate his ability to handle inspection equipment, such as knives, hooks and trays, and to sharpen a knife, if on his observation it needs sharpening to allow him to utilize same in his inspection procedures.

(h) The qualifications for plumbing inspector, first and second grade, are:

1. Possess a New Jersey professional engineer's license, plus successful completion of the advanced course in plumbing regulation and inspection at Rutgers University, or its equivalent; or

2. Possess a license for sanitary inspector, first grade, at least five years full-time working experience in the plumbing trade, plus successful completion of the advanced course in plumbing regulation and inspection at Rutgers University, or its equivalent; or

3. Graduation from high school or equivalent with at least ten years of full-time working experience as a journeyman or master plumber following an apprenticeship[1] of four years, plus successful completion of the basic course in plumbing regulation and inspection at Rutgers University, or its equivalent; or

4. Fourteen years as a journeyman or master plumber, plus successful completion of the basic course in plumbing regulation and inspection at Rutgers University, or its equivalent;

5. What a candidate for plumbing inspector license should know:

i. The candidate for a plumbing inspector's license should have detailed knowledge of the proper methods and procedures for all types of plumbing installations used in private dwelling, industrial buildings, office buildings, and so forth, in order that the public health of citizenry be protected;

ii. A plumbing inspector should be able to administer a program which includes techniques of plumbing, methods of inspection, enforcement procedures and record keeping.

iii. The candidate should be prepared in the following areas:

(1) Engineering principles of water purification and sewage disposal;

(2) Interpretation and corrections of plans for plumbing and drainage systems;

(3) Methods of testing plumbing systems, locating defects, and improper cross-connections and correcting the same;

(4) Principles of physics and hygiene which deal with the proper methods of removing waste water and sewage from buildings;

(5) Knowledge of standards for materials used in the installation of plumbing and drainage systems;

(6) Ability to draw plans of plumbing systems showing soil waste and vent pipes, traps and fixtures;

(7) Devices used in connection with plumbing systems;

(8) Hot water heaters and storage tanks, condensing tanks and blowoff tanks;

(9) Plumbing aspects of air conditioning and ventilating system;

(10) Knowledge of laws and State rules and regulations for installation of cross-connections between safe and unsafe water supplies;

(11) Methods of construction, location and operation of cesspools, septic tanks, small sewage disposal plants and private water supply systems;

(12) Principles of administration, record keeping and communications with public;

(13) Statutes relating to licensing, local board of health powers and State codes;

(14) Procedures for preparing cases for legal action.

(i) Public health laboratory technician rules are:

1. The qualifications for public health laboratory technician license are:

i. Formal education represented by graduation from a recognized college or university, recognized as such by the Departments of Higher Education and/or Education, as appropriate, with a major in the chemical or biological sciences, or its equivalent; or

ii. Certification as "registered technician" by the American Society of Clinical Pathologists in cooperation with the American Society of Medical Technicians;

iii. Graduation from a high school; at least one year of full-time experience in a laboratory performing bacteriological, serological, chemical or related technical laboratory tests. Completion of one year's successful training in a recognized school for laboratory technicians will be accepted in lieu of one year of full-time experience required above;

2. What a candidate for public health laboratory technician license should know:

i. The laboratory technician candidate should have special information and training in the handling, laboratory preparation and examination of specimens for identification of com-

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municable disease organisms. Training should be in the following categories:

(1) Bacteriology: Knowledge of care and use of microscope; preparation of specimens for bacteriological examination; media, their uses and preparation; stains, their application and preparation; methods of sterilization; bacteriological examination of milk and water; and knowledge of laboratory techniques in the handling of infectious material;

(2) Chemistry: General background in chemistry with knowledge of the chemical techniques in blood, food and drug, sanitation, milk and milk products, drinking waters, streams, trade wastes and sewage;

(3) Pathology: Knowledge of preparation, embedding and staining of pathological specimens for examination; use of microtome, preparation of stains, and proper recording of specimens of tissue;

(4) Serology: Knowledge of techniques and principles involved in standard blood tests for syphilis, blood counts, blood grouping and Rh factor determination, and serological tests for communicable diseases;

(5) Virology knowledge and techniques involved in examination or studies of virus infections;

ii. The candidate has the privilege of selecting one of three booklet titles on the day of examination: "Bacteriology", "Pathology" or "Serology". It must be emphasized that each booklet contains a certain number of general questions in addition to those related to title.

[1] For the purpose of these qualifications, an apprenticeship is regarded as the first four years of full-time working experience in the plumbing trade under the supervision of a master plumber.

NARCOTIC AND DRUG ABUSE CONTROL

Proposals numbered PRN 1985-325 and 335 are authorized by J. Richard Goldstein, M.D., Commissioner, Department of Health.

Submit comments by July 17, 1985 to:
Lucius A. Bowser, R.P., M.P.H.
Chief, Drug Control Program
CN 362
Trenton, New Jersey 08625
(609) 984-1308

(a)

Controlled Dangerous Substances General Provisions, Registration

Proposed readoption as New Rule: NJAC 8:65-1

Authority: N.J.S.A. 24:21-9.

Proposal Number: PRN 1985-325.

The agency proposal follows:

Summary

The Department of Health proposes to readopt N.J.A.C. 8:65-1 as new rules, relating to the general provisions of the controlled dangerous substances regulations which concern registration fees, time for renewal and who must renew or register to handle controlled dangerous substances.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:65-1 expired on February 11, 1985. The Department has reviewed the rules and has found them to be necessary, adequate, and proper. The Department therefore proposes that they be readopted as new rules.

N.J.A.C. 8:65-1.1 concerns registration fees. N.J.A.C. 8:65-1.2 concerns registration requirements. N.J.A.C. 8:65-1.3 concerns activities requiring registration. N.J.A.C. 8:65-1.4 concerns the registration application. N.J.A.C. 8:65-1.5 concerns action upon application. N.J.A.C. 8:65-1.6 concerns assignment or transfer of registration. N.J.A.C. 8:65-1.7 concerns scheduling of controlled dangerous substances.

The following amendments to the expired text are also proposed: The fee at N.J.A.C. 8:65-1.1(d) will be raised to $20.00 from $10.00, the date of July 1 will be deleted from N.J.A.C. 8:65-1.2; there will be changes of address at N.J.A.C. 8:65-1.2 and 1.4, and a new section at N.J.A.C. 8:65-1.8, entitled duplicate registration, will be added.

These requirements have been in effect since 1971 and specifically establish who is or is not responsible for registration for handling controlled dangerous substances. These requirements allow the Department of Health to know who is subject to the regulations and where such registrant practices. The readoption is necessary for the Department to monitor every registrant having in his/her possession or who prescribes, administers or dispenses controlled dangerous substances. The readoption is necessary to ensure that diversion of controlled dangerous substances do not go from licit to illicit channels of distribution.

Social Impact

These rules have had and will continue to have a significant impact on the protection of the public from any diversion of controlled dangerous substances because of the registration requirement for those handling controlled dangerous substances from manufacturer to wholesaler to dispenser to the public. In the past fourteen years these rules have allowed the Federal Government to verify registrants in New Jersey who have been authorized to dispense, administer, prescribe or otherwise handle controlled dangerous substances. Readoption of these rules is necessary, in that these beneficial uses of the rule are expected to continue in the future and allow for effective regulation of controlled dangerous substances.

The proposed amendment at N.J.A.C. 8:65-1.1(d), to increase the fee for the purchase of sodium pentobarbital for humane societies or licensed animal control facilities is made to conform to a State budget mandate, and was inadvertently excluded when the fees in the remainder of this section were previously raised. It increases the cost of doing business for these facilities. The addition of N.J.A.C. 8:65-1.8 sets forth the procedure for obtaining duplicate certificates of registration and the required $5.00 fee, which will be paid by registrants and collected by the Department. The proposed amendment of N.J.A.C. 8:65-1.2 deletes the July 1 date for registrants to renew their registration. Registrations will, rather, be assigned the quarterly expiration date of June 30, December 30, September 30, or March 31, which first occurs one year after registration is obtained. Registrants will, therefore, need to observe new deadlines for renewal. The pro-

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posed amendments at N.J.A.C. 8:65-1.2 and 1.4 are of an administrative nature.

Economic Impact

The cost of compliance with these regulations has and will continue to vary because there are different fees for different categories of registration. All registrants must pay the registration fee set forth at the time of registration and upon renewal of the registration.

The Department has and will continue to incur expenses in processing the applications and renewal of registrations for those controlled substances registrants. The provision of a fee would not impact severely upon any client who may be the recipient of the manufacture or distribution of controlled dangerous substances. The fees will allow the Department to conduct audits and inspections of registrants to note their compliance with the controlled dangerous substances law or regulations.

The proposed amendment at N.J.A.C. 8:65-1.1(d) raises the increase in the fee for sodium pentobarbital for humane societies or licensed animal control facilities from $10.00 to $20.00. The affected facilities will pay the higher fee, and the revenue in question will be collected by the Department.

The proposed amendment at N.J.A.C. 8:65-1.8 requires registrants to incur a $5.00 expense in order to purchase duplicate certificates of registration. This will result in a new source of revenue to the State. The changed renewal date proposed at N.J.A.C. 8:65-1.2 will require payment of renewal fees at new dates for registrants. The proposed amendments at N.J.A.C. 8:65-1.2(g)1, and 1.4 are not expected to have an economic impact, as they are of an administrative nature.

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

8:65-1.1 Registration fees

(a) Manufacturers of controlled dangerous substances shall pay an annual fee of $200.00 at the time of application for registration or for renewal of registration.

(b) Distributors of controlled dangerous substances shall pay an annual fee of $100.00 at the time of application for registration or for renewal of registration.

(c) Dispensers of controlled dangerous substances or practitioners registered to conduct research with controlled dangerous substances shall pay an annual fee of $20.00 at the time of application for registration or for renewal of registration.

(d) Incorporated humane societies or licensed animal control facilities registered to purchase and administer sodium pentobarbital for the purpose of animal euthanasia shall pay an annual fee of [$10.00] **$20.00** for registration or renewal of registration as a Dispenser in the category of hospital/clinic.

(e) A separate fee shall be paid for each separate place of business or professional practice for which registration is required.

(f) The following persons shall be exempt from payment of a fee for registration or renewal of registration:

1. Any hospital, clinic, institution, or other facility operated by any department of the State of New Jersey;

2. Any other agency, excluding individual State employees, for which the State of New Jersey would be responsible for payment of the fee, provided that such exemption is approved by the commissioner;

3. Hospitals and other facilities operated by any department of the United States of America.

(g) Exemption from payment of a fee for registration or renewal of registration does not relieve the person of the requirement to obtain a registration or of any other requirements or duties prescribed by law.

8:65-1.2 Registration requirements

(a) Every person who manufactures or proposes to manufacture a controlled dangerous substance or substances, unless specifically exempted by statute or specifically waived by the Commissioner of Health, shall obtain a registration within 30 days of the effective date of these regulations, and shall obtain a renewal of the registration [on or before July 1 of] every year thereafter.

(b) Every person who distributes or proposes to distribute a controlled dangerous substance or substances, unless specifically exempted by statute or specifically waived by the Commissioner of Health, shall obtain a registration within 30 days of the adoption of these regulations, and shall obtain a renewal of the registration within 30 days of the effective of these regulations, and shall obtain a renewal of the registration [on or before July 1, of] every year thereafter.

(c) Every person who dispenses (including prescribing, administering, compounding, or delivering) or proposes to dispense a controlled dangerous substance or substances, unless specifically exempted by statute or specifically waived by the Commissioner of Health, shall obtain a registration within 30 days of the effective date of these regulations, and shall obtain a renewal of the registration [on or before July 1, of] every year thereafter.

(d) Every person who conducts research or proposes to conduct research with a controlled dangerous substance or substances, unless specifically exempted by statute or specifically waived by the Commissioner of Health, shall obtain a registration within 30 days of the effective date of these regulations, and shall obtain a renewal of the registration [on or before July 1, of] every year thereafter.

(e) A person desiring to obtain a registration or a renewal of registration as provided in (a) through (d) above shall prepare and file an application in accordance with the procedure set forth in N.J.A.C. 8:65-1.4, accompanied by the annual registration fee as set forth in N.J.A.C. 8:65-1.1.

(f) A separate application shall be made and a separate registration obtained for each place of business or professional practice, where the applicant manufactures, distributes or dispenses controlled dangerous substances. A separate application shall be made and a separate registration obtained for each separate and distinct business entity, affiliated corporation, or subsidiary corporation that engages in such activities, but a single entity doing business at one location under more than one business name or trade name may obtain a single registration provided that all such business names or trade names are stated in the application.

(g) Every person or duly authorized agent who dispenses or proposes to dispense sodium pentobarbital for purposes of animal euthanasia, unless specifically exempted by statute or specifically waived by the Commissioner of Health, shall apply for a registration within 30 days of the effective date of the regulations and shall obtain a renewal of registration [on or before July 1 of] every year thereafter.

1. Applications for registration to use sodium pentobarbital for animal euthanasia may be obtained from the Drug Control Program, [Consumer Health Services, 1911 Princeton Avenue 08648] **Division of Narcotic and Drug Abuse Control, New Jersey State Department of Health, CN 362, Trenton, New Jersey 08625.** Upon receipt of said application

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by this Department, the security, safeguards, recordkeeping requirement and personnel training requirements shall be inspected and/or reviewed, and upon satisfactory compliance with the statute and regulations, a registration certificate shall be issued to the applicant.

(h) Every person or duly authorized agent required to register pursuant to (g) above shall be required to provide evidence of a current general liability insurance policy. A certified individual shall be deemed to be acting in behalf of and at the direction of the duly authorized agent.

(i) Every person or duly authorized agent required to register pursuant to (g) above shall be limited to the use of sodium pentobarbital only. Registration granted under (g) above shall not entitle a registrant to buy possess and/or dispense controlled dangerous substances other than that specified in the registration.

(j) Every individual, as directed by the registered duly authorized agent to use sodium pentobarbital in animal euthanasia, shall be required to be trained in, and demonstrate proficiency with, the use of sodium pentobarbital in animal euthanasia, to the satisfaction of a New Jersey licensed veterinarian. Said New Jersey licensed veterinarian shall, in writing and filed with the registered incorporated humane society or licensed animal care facility, so certify the training and demonstrated proficiency of the individual in the use of sodium pentobarbital in animal euthanasia.

(k) Every person or duly authorized agent required to register pursuant to (g) above shall prepare written procedures and protocol, approved by a New Jersey licensed veterinarian, for the administration of sodium pentobarbital in animal euthanasia. Such written procedure and protocol must be on file at the licensed premise and readily available for review by a Department representative.

(l) A person or duly authorized agent registered as a dispenser for the purposes of purchasing and dispensing sodium pentobarbital for the purpose of animal euthanasia shall be limited to registration in Schedule II (sodium pentobarbital) and may possess or have under his control such amounts as are reasonably necessary to administer euthanasia on the premises of the registered location.

8:65-1.3 Activities requiring registration

(a) Registration under N.J.A.C. 8:65-1.2(a) or (b) shall be issued to authorize the registrant to manufacture or distribute respectively specific controlled dangerous substances included in Schedule I or Schedule II, or to authorize the registrant to manufacture or distribute respectively the controlled dangerous substances included in Schedules III, IV, or V. Any registrant authorized to manufacture or distribute substances included in Schedules III, IV, or V may manufacture or distribute respectively any controlled dangerous substance listed in the Schedule or Schedules for which he is registered.

(b) A person desiring to obtain a registration under N.J.A.C. 6:85-1.2(a) or (b) shall specify the controlled dangerous substances or the Schedules for which he wishes to obtain a registration in his application and may manufacture or distribute only those controlled dangerous substances authorized in his registration.

(c) Registration under N.J.A.C. 8:65-1.2(c) shall be issued to authorize the registrant to dispense controlled dangerous substances in Schedules II, III, IV, or V by Schedules. Any person desiring to obtain a registration to dispense shall specify the Schedules for which he wishes to be registered in his application and may dispense only those controlled dangerous substances in the Schedules included in his registration.

(d) Every practitioner registered to dispense controlled dangerous substances who desires to conduct research with substances included in Schedule I or with narcotic substances included in Schedules II through V shall make a separate application and be issued a separate registration to conduct such research. Such practitioner shall, in addition to the general requirements of these regulations, furnish the Commissioner of Health with a copy or photocopy of his Federal registration or Federal authorization to conduct research with such substances and, where required by Federal regulations, a copy of the research protocol.

(e) A practitioner registered to dispense controlled dangerous substances may conduct research with nonnarcotic substances in Schedules II through V which are included in his registration without applying for a separate registration to conduct research.

(f) A practitioner not registered to dispense may be registered to conduct research only for the purpose of making a laboratory analysis of substances to determine the presence of controlled dangerous substances. Such registrant may not possess or have under his control any controlled dangerous substance except such amounts as are reasonably necessary to make such analysis on the premises of the registered location.

(g) A person registered to manufacture controlled dangerous substances may distribute those substances which he is authorized to manufacture without obtaining a separate registration, provided that distribution is from the registered location. A person desiring to distribute controlled dangerous substances other than those he is registered to manufacture or from a different location shall obtain a separate registration as a distributor.

(h) For purposes of registration, the following activities by a registrant will not be deemed to require an additional registration for a separate location:

1. An office used by a registered manufacturer or distributor or his agents or employees to solicit or make sales of controlled dangerous substances, provided that no such substances are contained in or distributed from such office.

2. An office used by a registered dispenser where controlled dangerous substances are prescribed, provided that no such substances are administered, delivered, or otherwise dispensed, and no such substances are contained in such office.

8:65-1.4 Registration application

(a) All applications for registration shall be made on forms provided by the Commissioner of Health and shall be filed with the Division of Narcotic and Drug Abuse Control, **Drug Control Program**, State Department of Health, [P.O. Box 1540] **CN 362**, Trenton, NJ 08625.

(b) Applications shall contain all information called for on the forms provided, except where such information is not applicable in which case this fact shall be stated.

(c) The Commissioner may require an applicant to submit documents and statements pertinent to the application or may require the applicant to amend the application to make it more definite and certain.

(d) Each application and each additional document or statement required by the Commissioner shall be signed by the applicant, if an individual; by a general partner of the applicant, if a partnership; or by an officer of the applicant, if a corporation or other entity.

(e) Any application may be amended or withdrawn by the applicant as a matter of right prior to the date of service of any order to show cause pursuant to N.J.S.A. 24:21-12. An application may be amended or withdrawn by the applicant

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after the date of service of such an order to show cause only upon written consent of the Commissioner.

(f) A duplicate copy of each application and of each additional document or statement required pursuant to (c) above shall be kept by the applicant at the location to be registered.

8:65-1.5 Action upon application

(a) After an application for registration has been filed, the Commissioner or his authorized agent or representative shall make such inspection of the place of business or professional practice described in the application and such investigation of the applicant as may be necessary to determine that the applicant meets the requirements of the applicable statutes and regulations.

(b) A person lawfully engaged in the manufacture, distribution or dispensing of any controlled dangerous substance prior to January 17, 1971, who was registered or licensed by the State to engage in such activity, may in the discretion of the Commissioner, after making proper application for registration, be issued a registration as to such controlled dangerous substances prior to the making of an inspection or investigation by the Commissioner or his authorized agent or representative.

(c) Any application for renewal of a registration issued pursuant to the New Jersey Controlled Dangerous Substances Act and these regulations may in the discretion of the Commissioner be granted and a renewal of registration issued prior to the making of an inspection or investigation by the Commissioner or his authorized agent or representative.

(d) The issuance of a registration pursuant to paragraphs (b) or (c) above shall not be deemed to vest any right to continue the registration or to obtain a renewal thereof, if upon subsequent inspection or investigation the Commissioner determines that the registrant does not meet the requirements of the applicable statutes or regulations.

(e) The registration certificate issued hereunder shall be displayed conspicuously in the registered location.

8:65-1.6 Assignment or transfer of registration

(a) No registration nor any right granted thereunder shall be assigned or otherwise transferred to any person not named as the registrant therein nor to any place of business or professional practice not stated therein, except as provided by statute or regulations.

(b) A registrant who changes his place of business or professional practice from the location which is stated in the registration to a new location within the State of New Jersey, without any change in the ownership of the business or professional practice, may obtain an endorsement validating his registration for the remainder of the registration period at the new location by notifying the Commissioner in writing, which notice shall set forth the name and registration number of the registrant, the address of the registered location, the address of the new location, and the effective date of the change of location.

(c) A registration shall terminate and become void if and when the registrant dies, ceases legal existence, or discontinues business or professional practice in the State of New Jersey. A registrant who ceases legal existence or discontinues business or professional practice shall notify the Commissioner in writing and surrender his current registration. In the event that the business or professional practice will be continued or resumed after a change in ownership a new application for registration shall be made pursuant to N.J.A.C. 8:65-1.1 and 1.2 of this Chapter.

(d) For purposes of this section it shall be deemed to be a change of ownership of a business or professional practice in the case of a partnership, and in the case of a corporation if there is a change in the president or chief executive officer of the corporation, or in the ownership of ten per cent or more of the outstanding shares in the corporation.

8:65-1.7 Changes in schedule

Consistent with the provisions set forth in N.J.S.A. 24:21-3, regulations promulgated pursuant to the United States Comprehensive Drug Abuse Prevention and Control Act of 1970, which designate, reschedule or delete a substance as a controlled substance under Federal Law, shall be deemed to be effective under the New Jersey Controlled Dangerous Substance Act (N.J.S.A. 24:21-1 et seq.) 30 days after their effective date of the Federal regulation, unless the Commissioner, within that 30 day period, shall object to inclusion, rescheduling or deletion, which objection shall thereafter be published in the New Jersey Register.

8:65-1.8 Duplicate registration

Any registrant requesting a duplicate of a certificate of registration shall apply to the Department in writing and pay a fee of $5.00 for such duplicate.

(a)

Controlled Dangerous Substances Temporary Placement of 3-Methylfentanyl into Schedule I

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

Authority: N.J.S.A. 24:21-3.
Proposal Number: PRN 1985-335.

The agency proposal follows:

Summary

The Department proposes to amend the schedules of controlled dangerous substances to add 3-Methylfentanyl to Schedule I on a temporary basis because the substance poses an imminent hazard to public safety. This amendment will bring the State regulations into conformity with Federal regulations. 3-Methylfentanyl was placed into Schedule I of the Controlled Substances Act as a final rule published in the Federal Register, cited as 50 F.R. 11690, dated March 25, 1985.

3-Methylfentanyl is a new chemical analog of an existing controlled dangerous substance having a psychedelic, stimulant or depressant effect and exhibits a high potential for abuse. Information received by the Federal Drug Enforcement Administration indicates that this product is clandestinely produced, distributed and abused in the United States. It is being sold on the streets as "China White" or "Synthetic Heroin". This substance is an extremely potent morphine-like analgesic substance with a rapid onset and a short duration. The effectiveness of 3-Methylfentanyl is effective at 1/5000th the dose of morphine. The toxicity of this product in test rats have shown that it is over 200 times lower than morphine.

At least 31 deaths have been associated with the Fentanyl analogs and many have been identified as 3-Methylfentanyl.

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The deaths have been caused by pulmonary congestion. 3-Methylfentanyl is distributed and cut with lactose similar to Heroin.

Social Impact

The controlling of 3-Methylfentanyl as a Schedule I substance, having no known medical use in the United States, would have a great social impact in that it would control the illicit production and distribution of this extremely potent morphine-like drug. These controls would lower the incidence of drug overdosing or hospitalizations resulting from ingestion or administration of 3-Methylfentanyl preparations. There would be no social impact on practitioners or pharmacists as these products are not commercially available for use in modern medical practice.

Economic Impact

Preventing drug substance overdosing or long term hospitalization from the administration or ingestion of 3-Methylfentanyl would have a great economic impact on the community and hospitals. It would be in the interest of public safety to control manufacture and distribution of 3-Methylfentanyl. There would be no economic impact on practioners, pharmacists or other dispensers because it would make the substance a Schedule I, non medicinal preparation.

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

8:65-10.1 Controlled dangerous substances; Schedule I

(a) (No change.)

(b) The following is Schedule I listing of the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substances code number.

1.-6. (No change.)

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

i. 3-Methylfentanyl (N-(3-methyl-1-(2-phenylethyl)-4-iperidyl)-N-phenylpropanamide), its optical and geometric isomers, salts and salts of isomers . . . . . 9613.

HIGHER EDUCATION

For proposals numbered PRN 1985-327, 328, 345 and 346, submit comments by July 17, 1985 to:

Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
225 West State Street
Trenton, New Jersey 08625

BOARD OF HIGHER EDUCATION

Proposals numbered PRN 1985-327, 345 and 346 are authorized by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

(a)

Minority Faculty Advancement Loan and Loan Redemption Program

Proposed New Rules: N.J.A.C. 9:2-1

Authority: P.L. 1984, c.189 (N.J.S.A. 18A:72F-1 et seq.)

Proposal Number: PRN 1985-345.

The agency proposal follows:

Summary

Under the provisions of P.L. 1984, c.189, the Board of Higher Education is statutorily charged with the implementation and administration of a loan and loan redemption program for the purpose of increasing the number of minority faculty with doctoral degrees at the State's private and public colleges and universities.

The proposed new rules set forth eligibility criteria for entrance into the program, responsibilities of institutions of higher education, procedures for obtaining loans and redeeming loans, terms of loan repayment and forgiveness and other administrative requirements.

Social Impact

The proposed new rules will encourage and increase the number of minorities in doctoral programs at New Jersey's public and private institutions of higher education. This will result, through the redemption of loans through faculty service, in a greater number of minority faculty members at the State's institutions of higher education, especially in areas in which minorities have been historically underrepresented.

Economic Impact

The proposed new rules shall allow for educational loans to be made to participants of this program of up to $40,000 over a period of four years. Upon receipt of the doctoral degree, a program participant shall be eligible for redemption of 25 percent of his or her total indebtedness incurred under the program for each year of approved service.

Full text of the proposed new rules follows.

CHAPTER 2

ADMINISTRATIVE POLICIES

SUBCHAPTER 1. MINORITY FACULTY ADVANCEMENT LOAN AND LOAN REDEMPTION PROGRAM

9:2-1.1 Definitions

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

"Authority" means New Jersey Higher Education Assistance Authority created pursuant to chapter 72 of Title 18A of the New Jersey Statutes.

"Eligible discipline" means an academic discipline in which minority faculty members are underrepresented in comparison to non-minority faculty members with doctorates, including but not limited to the physical and life sciences, engineering, mathematics, management, computer sciences, environmental science and statistics. "Eligible discipline"

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shall not, however, include the disciplines of law, medicine or dentistry.

"Faculty member" means any person employed full-time by a New Jersey state college or other sponsoring institution, to perform primarily teaching or research duties for a full academic year.

"Faculty service requirement" means that service which qualifies a program participant for loan redemption as set forth in N.J.A.C. 9:2-1.14.

"Full-time student" means one who, in each semester, quarter or equivalent thereof, carries the minimum number of credit hours or other coursework necessary to constitute a full-time graduate student courseload as defined by the host institution attended.

"Host institution" means an institution of higher education having authority under the laws of New Jersey to award doctoral degrees which elects to participate in the program through the awarding of doctoral degrees to program participants.

"Institution of higher education" means an institution of collegiate grade in New Jersey which is approved or licensed by the New Jersey Board of Higher Education.

"Minority" means any United States citizen or permanent resident who is a member of a racial-ethnic group that has been historically disadvantaged in obtaining access to equal educational opportunities as designated by the United States Department of Education, Office of Civil Rights, including Blacks, Hispanics, Native Americans, Asians and Pacific Islanders.

"Program" means the Minority Faculty Advancement Loan and Loan Redemption Program.

"Program participant" means an individual who has been recommended by the Minority Faculty Advancement Program Advisory Committee and accepted by the Chancellor to participate in the program.

"Sponsoring institution" means an institution of higher education which nominates and sponsors either a minority faculty member, a member of the non-teaching professional staff or any other recipient of a baccalaureate or master's degree from its or another institution to participate in the program or other eligible minority as defined herein.

9:2-1.2 Degree requirements

(a) Each program participant must pursue doctoral studies as a full-time student at an approved host institution.

(b) Eligible disciplines shall be determined on an annual basis by the Chancellor and reported to the Board of Higher Education.

9:2-1.3 Program participation eligibility

(a) To qualify for eligibility under the program, an applicant must:

1. Be a member of a minority group;

2. Be admitted on a full-time basis as a graduate student pursuing a doctoral degree in an eligible discipline at a host institution;

3. Have demonstrated a potential for academic excellence based upon superior performance in previous academic work and graduate admission testing; and

4. Have a high interest and potential for success in college teaching and academic research and agree to fulfill a faculty service requirement in New Jersey for at least four years.

(b) In addition to the requirements in (a) above, to qualify for eligibility under the program, an applicant must fulfill one or more of the following requirements:

1. Be a faculty or staff member of a sponsoring institution who has been nominated by his or her respective institution and has been granted up to a four year leave of absence and a commitment for reemployment upon completion of the program; or

2. Be a recipient of a baccalaureate or master's degree in an academic discipline in which minorities are underrepresented and have a desire to teach that subject at the collegiate level. Included in this category are members of the non-teaching professional staff at New Jersey colleges and universities.

9:2-1.4 Admission to host institution

Admission to the graduate program will be determined by each individual host institution.

9:2-1.5 Participation in program

(a) The nomination of eligible candidates for participation in the program after institutional admission, shall be determined by the Department of Higher Education Minority Faculty Advancement Program Advisory Committee, established pursuant to N.J.A.C. 9:2-1.15.

(b) Approval of eligible candidates for participation in the program shall be granted by the Chancellor of Higher Education.

9:2-1.6 Sponsoring institution responsibilities

(a) A sponsoring institution may nominate one of its minority faculty members to participate in the program under the following conditions:

1. The minority faculty member must be granted a leave of absence from his or her regular duties at the sponsoring institution for the amount of time necessary for the faculty member to obtain the doctoral degree but no greater than four academic years in length; and

2. The minority faculty member must be given a commitment by the sponsoring institution for reemployment, in at least an equivalent teaching position at the institution, when the doctoral degree has been completed.

(b) A sponsoring institution may nominate a member of the non-teaching professional staff or any other recipient of a baccalaureate or master's degree to participate in the program under the following conditions:

1. The sponsoring institution is willing to give serious consideration to the appointment of said person to the faculty of the institution upon completion of the doctorate; and

2. The sponsoring institution shall involve said person in a variety of faculty activities during his or her participation in the program.

(c) Prior to a minority faculty member's entrance into the program pursuant to the provisions of this section, the sponsoring institution and the program participant shall execute a written agreement, consistent with existing applicable statutes and regulations, which shall set forth the program participant's employment rights, including but not limited to the areas of tenure, seniority, salary and promotion, upon his reemployment by the institution.

9:2-1.7 Host institution responsibilities

(a) A host institution shall:

1. Offer a doctoral degree in at least one of the eligible disciplines designated in the program;

2. Provide to each program participant an annual grant of at least $5,000, which may include tuition remission, each year for up to four years;

3. Recruit candidates for the program from among minority faculty members who are currently teaching in New Jersey

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institutions of higher education and minority graduates of baccalaureate and masters programs both in and out of state;

4. Make available appropriate support services;

(b) Each host institution participating in the program shall develop a written policy concerning the operation of the program at that institution which shall include but not be limited to policies regarding admission, institutional aid, appeal procedures and support services.

1. A copy of the written policy shall be provided to each program participant at the host institution upon commencement of the program by the participant.

9:2-1.8 Program participant responsibilities

(a) Each program participant shall:

1. Abide by all rules and regulations of the host institution applicable to full-time graduate students;

2. Pay all tuition, fees and other educational expenses, except for any charges or costs waived by the host institution pursuant to the provisions of N.J.A.C. 9:2-1.7(a)2; and

3. Maintain satisfactory academic progress as defined by the host institution attended by the program participant.

9:2-1.9 Source of loan funds

(a) The eligible student will be considered for two loan sources: the Guaranteed Student Loan and the Minority Faculty Advancement Loan, in that order. The type and amount of loan(s) will depend on the student's eligibility, in accordance with the policies and procedures set forth by the Guaranteed Student Loan and the Minority Faculty Advancement Loan. Regardless of the loan(s) for which the recipient qualifies, these loans will be eligible for loan redemption upon qualifying service as set forth in N.J.A.C. 9:2-1.14.

(b) The maximum loan amount received shall not exceed $10,000 annually and $40,000 aggregate for any combination of Guaranteed Student Loan and Minority Faculty Advancement Loan.

(c) Sequence of funding will be:

1. Subsidized Guaranteed Student Loan;

2. Non-subsidized Guaranteed Student Loan;

3. Minority Faculty Advancement Loan.

(d) The combined maximum annual loan and grant amounts may not exceed the student's budget determined by the educational institution for the program year.

9:2-1.10 Loan application process

(a) All eligible participants being considered for participation in Minority Faculty Advancement Loan Program will apply through the Authority's Direct Loan Office. The Authority will serve as lender, guarantor, and servicer of this loan program.

(b) Each academic year, the borrower will obtain a Guaranteed Student Loan application from the Direct Loan Office which will be used to process a subsidized and/or non-subsidized Guaranteed Loan, and a Minority Advancement Loan.

(c) Finance charges levied will be as follows:

1. As required by Federal rules, an origination fee will be levied on the subsidized and/or non-subsidized Guaranteed Student Loan and will be deducted from the proceeds of the loan disbursement.

2. A one percent insurance premium/processing fee will be levied on the subsidized and/or non-subsidized Guaranteed Student Loan and will be deducted from the proceeds of the loan disbursement however, it will not be levied on the Minority Faculty Advancement Loan.

9:2-1.11 Redemption

(a) Borrowers with earned doctoral degrees will be eligible for redemption of their Guaranteed Student Loan(s) and Minority Faculty Advancement Loan(s) over a four-year period of qualifying service as defined by N.J.A.C. 9:2-1.14.

(b) The principal balance of each loan will be cancelled at an annual rate of 25 percent, in return for each full academic year of service as set forth in N.J.A.C. 9:2-1.14.

(c) Total cancellation of loan indebtedness will not exceed the maximum of $40,000 per student. Any previous loans obtained by the borrower will not be eligible for loan redemption.

(d) Prior to the annual redemption of loan indebtedness, participants shall submit institutional certification of qualifying service to the Department of Higher Education.

(e) If the borrower is deemed ineligible for loan redemption or chooses not to have the loans redeemed, the unpaid principal balance plus accruing interest at the prevailing rate for Guaranteed Student Loans and Minority Faculty Advancement Loans at the time the loans were made on the portion of loans not already redeemed will be converted to an installment contract and serviced by the Direct Loan Office of the Authority.

9:2-1.12 Terms of repayment

(a) Repayment of loans under the program shall be governed under the following conditions:

1. For subsidized Guaranteed Student Loan:

i. Repayment of the loan shall be governed by the appropriate policies and procedures of the Guaranteed Student Loan program.

2. Interest shall be at the prevailing rate established for the Guaranteed Student Loan program at the time the loan is made, and will be paid by the Federal government during in-school enrollment and grace periods and authorized periods of deferment.

3. Interest will begin accruing at the time of repayment, which will commence six months following less than half-time enrollment, withdrawal, graduation, or thereafter, in the absence of qualifying service as defined in N.J.A.C. 9:2-1.14.

2. For non-subsidized Guaranteed Student Loan:

i. Repayment of the loan shall be governed by the appropriate policies and procedures of the Guaranteed Student Loan program.

ii. Interest shall be at the prevailing rate established for the Guaranteed Student Loan program at the time the loan is made and will be waived during full-time enrollment periods, grace period, and authorized periods of deferment.

iii. Interest will begin accruing subsequent to a six month grace period, following less than half-time enrollment, withdrawal, or graduation or thereafter in the absence of qualifying service as defined in N.J.A.C. 9:2-1.14.

iv. Repayment shall then commence following a six month grace period, with all outstanding accrued interest being capitalized to the principal balance at that time.

3. For Minority Faculty Advancement Loan:

i. Repayment of the loan shall be governed by the appropriate policies and procedures of the Guaranteed Student Loan program.

ii. Interest shall be at the prevailing rate established for the Guaranteed Student Loan program at the time the loan is made, and will be waived during full-time enrollment, grace period and authorized periods of deferment.

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iii. Interest will begin accruing subsequent to a six month grace period, following less than full-time enrollment, withdrawal, graduation, or thereafter, in the absence of qualifying service as defined in N.J.A.C. 9:2-1.14.

iv. Repayment shall then commence following a six month period of forbearance, with all outstanding interest being capitalized to the principal balance at that time.

(b) The Guaranteed Student Loan and Minority Faculty Advancement Loan will be converted to repayment simultaneously.

9:2-1.13 Loan forgiveness

(a) In the case of a program participant's death or total and permanent disability, the loan will be forgiven pursuant to the guidelines set forth under the guaranteed student loan program.

(b) Requests for deferment or forgiveness of loans must be made by the borrower to the Chancellor. Such requests shall be referred for an initial recommendation to a three member panel appointed by the Chancellor. Following receipt of such recommendation the Chancellor shall issue a final determination.

9:2-1.14 Faculty service requirements

(a) Faculty service requirements for loan redemption purposes shall be satisfied:

1. For those program participants nominated by a sponsoring institution, by faculty service at the sponsoring institution unless otherwise mutually agreed upon by the president of the institution and the program participant; or

2. By faculty service in an appropriate position, as determined by the Chancellor of Higher Education, at an institution of higher education within New Jersey; or

3. By service in an appropriate position, as determined by the Chancellor of Higher Education, in an agency of State government.

(b) Host institutions shall be responsible for assisting program participants not nominated by a sponsoring institution who successfully complete the program in obtaining an appropriate position to fulfill faculty service requirements.

(c) A sponsoring institution which does not desire to reemploy a program participant who successfully completes the program and was nominated by that institution may not reemploy the program participant only under extreme circumstances and with the approval of the Chancellor.

9:2-1.15 Minority faculty advancement program advisory committee

(a) A Minority Faculty Advancement Program Advisory Committee shall be appointed by the Chancellor.

(b) The committee shall meet at least four times per year or more frequently if necessary.

(c) The committee shall:

1. Make recommendations to the Chancellor for participants in the program from among those candidates admitted by the academic programs of the host institutions who have applied for the program;

2. Make recommendations to the Chancellor regarding appropriate eligible disciplines and faculty service requirement positions;

3. Recommend to the Chancellor policies governing the program;

4. Engage in other such activities as designated by the Chancellor which will further the quality of the program.

(a)

Teacher Education: Degree Standards

Proposed Amendments: N.J.A.C. 9:2-12.1 and 12.2

Authority: N.J.S.A. 18A:3-14(d) and (e).
Proposal Number: PRN 1985-327.

The agency proposal follows:

Summary

The Board of Higher Education is statutorily charged with the approval of academic programs at all public institutions of higher education (N.J.S.A. 18A:3-14(d) and (e)). N.J.A.C. 9:2-12.1 governs the evaluation and approval of baccalaureate programs in teacher education at public colleges and universities.

N.J.A.C. 9:2-12.2 was previously noticed for comment 17 N.J.R. 22(b) wherein certain revisions were made in credit hour and coursework requirements within such programs. The intent of that proposal was to bring these regulations into conformity with similar regulations recently adopted by the State Board of Education. The first proposal generated substantial discussion with both the Department of Education and the teacher education community at the public institutions of higher education. This current proposal reflects amendments made to the original proposal based upon the above-mentioned discussions.

Social Impact

The proposal modifies the requirements which must be satisfactorily completed by a student in a teacher education program from a public college or university within this State which should result in better qualified teachers trained at New Jersey public colleges and universities.

Economic Impact

As the proposal only changes requirements for teacher education programs at public colleges and universities within this State, there are no costs associated with this proposal.

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

9:2-12.1 Admission, retention and graduation of students

(a) Teacher preparation programs are those curricula which lead to a recommendation for a New Jersey instructional certificate irrespective of the organizational unit of the college by which the curriculum is offered. Formal admission to teacher preparation programs shall be reviewed at the beginning of the junior year and shall be granted only to those students who have:

1. (No change.)

2. Achieved acceptable levels of proficiency in the use of the English language (oral and written) and mathematics. Students with deficiencies in these areas upon admission to college shall be required to demonstrate the elimination of such deficiencies through an oral or written assessment [at] **no later than** the beginning of the junior year.

3. (No change.)

(b) Each student shall be evaluated at the end of the [junior year] **semester prior to student teaching** by college faculty (both education and subject matter) and confirmed as a candidate for certification on the basis of a comprehensive assessment of relevant indicators which shall include:

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1.-2. (No change.)

(c) (No change.)

(d) Colleges shall recommend for certification to the Department of Education only those students who have completed the certification program and have:

1. (No change.)

2. Demonstrated continued competence, aptitude, motivation, and potential for outstanding success in teaching as indicated by assessments of student teaching performance by college and school supervisors. Such assessments shall be communicated to the student and shall be a part of the student's file[;].

[3. Demonstrated knowledge of the behavioral/social foundations of teaching through successful completion at the end of the senior year of a comprehensive oral or written test devised or selected by the institution (this standard applies to all elementary and secondary teacher candidates);

4. Demonstrated knowledge of the academic subject area major through successful completion at the end of the senior year of a comprehensive oral or written test devised or selected by the institution (this standard applies only to those candidates who will be certified to teach the subject area major, primarily at the secondary school level.]

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

9:2-12.2 Curriculum

(a) Each undergraduate teacher education program shall provide approximately 60 semester credit hours of general education including electives. General education courses shall be distributed among the arts[/], humanities, mathematics[/], science[/], technology, and the social sciences. The inclusion of technology as an aspect of general education is intended to allow for the inclusion of courses and topics (such as **computer literacy**, the history of technology and the sociological impact of technological advancement) which would contribute to the general technical literacy of students. However, the purpose of general education is to develop the prospective teacher as an educated person rather than to provide professional preparation. Therefore, this component of the program shall exclude courses which are clearly professional or vocational in nature. Introductory courses in other areas of the program may also be applied toward meeting the general education requirement when such courses are consistent with institutional standards for general education.

(b) Each teacher preparation program shall require its students to complete a [coherent sequence of study of no fewer than 30 semester credit hours] **major** in the arts[/], humanities, social science [or], mathematics[/], science[/], **or** technology disciplines. The inclusion of technology as a potential academic area is intended to provide for those candidates who will be certified to teach one of the technical disciplines such as distributive occupations or industrial technology.

(c) Each undergraduate teacher preparation program shall provide a minimum of [18] **9** semester credit hours in the study of the behavioral and social sciences.

(d) At least 96 semester credit hours of the total program must be distributed among the general education, academic major, and behavioral/social science aspects of the program.

[(d)] **(e)** Each undergraduate teacher preparation program shall provide a coherent sequence of professional courses **of no more than 30 semester credit hours** [which shall emphasize the study of school curriculum and teaching methodology]. This component of the undergraduate program shall provide students, normally beginning in the sophomore year, with practical experience in an elementary or secondary school setting; these opportunities shall increase in intensity and duration as the student advances through the program and culminate with a student teaching experience.

[(e)] **(f)** The student teaching experience of each undergraduate program shall be equivalent of a full-time experience of one semester's duration.

(a)

Jobs, Science and Technology Band Act of 1984
Policies and Procedures

Proposed New Rules: N.J.A.C. 9:8

Authority: P.L. 1984, c.99.
Proposal Number: PRN 1985-346.

The agency proposal follows:

Summary

The Jobs, Science and Technology Bond Act of 1984, P.L. 1984, c.99, approved the issuance of $90 million in bonds to finance the establishment and construction of a network of advanced technology centers at public and private institutions of higher education, the construction and improvement of technical and engineering facilities at such institutions and the operation of high technology job training and retraining programs. In the latter two categories, the Board of Higher Education was given responsibility for the administration and distribution of $33 million of the funds.

The proposed new rules set forth, within the limitations of the above statute, the manner in which those funds shall be spent, the process by which private and public institutions of higher education may apply to receive such funds and the manner by which the funds shall be awarded to the various institutions.

Social Impact

Implementation of the Jobs, Science and Technology Bond Act, P.L. 1984, c.99, through the provisions of this proposal, shall lead to improved technical and engineering education facilities upon the campuses of the State's public and private institutions of higher education and therefore better educated students and members of the State's work force in these areas. Also through the jobs training and retraining programs, greater employment opportunities should be available for workers within the State.

Economic Impact

Implementation of the proposed new rules will result in the receipt of large amounts of funding by private and public institutions of higher education which shall be used to improve undergraduate science, technical and engineering related facilities and equipment at those institutions. Further, the new rules shall also result in greater employment by residents of the State in high technology and related industries.

Full text of the proposed new rules follows.

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CHAPTER 8
DISBURSEMENT OF FUNDS FOR TECHNICAL AND ENGINEERING FACILITIES AND EQUIPMENT UNDER THE JOBS, SCIENCE AND TECHNOLOGY BOND ACT OF 1984, P.L. 1984, c.99

SUBCHAPTER 1. FUNDS FOR UNDERGRADUATE TECHNICAL AND ENGINEERING RELATED FACILITIES AND EQUIPMENT AND FOR HIGH TECHNOLOGY JOB TRAINING AND RETRAINING PROGRAMS

9:8-1.1 Objectives

The primary goal of the instructional portion of the Jobs, Science and Technology Bond Act of 1984, P.L. 1984, c.99, is improved education of undergraduate students in science and technology, through the construction and upgrading of undergraduate science and technical/engineering related facilities and equipment.

9:8-1.2 Use of funds

(a) Funds shall be used for construction of major new buildings, or to support major laboratory renovation or for construction of small additions to science and technology/engineering buildings, along with the initial equipping or re-equipping of such new or renovated facilities. In addition, funds may be used for the purchase of large scale equipment that does not require facilities construction or renovation but that has extended useful life and significant educational impact.

(b) Only projects which support undergraduate science or technical/engineering programs and coursework directed toward job training and retraining (occupational and professionally oriented programs) will be funded.

(c) The intent is to fund a limited number of projects of significant scope and impact. Only projects involving major capital expenditures and with an extended useful life expectancy will be funded.

9:8-1.3 Eligibility

(a) Only New Jersey institutions of higher education are eligible to receive funds.

(b) Priority will be given to institutions not receiving major institutional support under other provisions of the Bond Act.

9:8-1.4 Review process

(a) The review procedures will consist of two stages: first, a competitive request for proposals process to determine educational viability; and, second, the Board of Higher Education's existing Facilities Planning Standards and Approval Procedures, N.J.A.C. 9:3.

(b) The initial stage will be a competitive process whereby institutions shall submit proposals in accordance with procedures specified in a Departmental request for proposals. The primary focus of this stage will be the educational value of the proposed project. Institutions will also be asked to provide basic information regarding the nature and cost of any construction and equipment required by the project.

(c) The review will be conducted by the Department with the assistance of external consultants.

(d) Proposals will be reviewed in accordance with the following criteria:

1. The overall consistency of the proposed project's objectives with the objectives of the Jobs, Science and Technology Bond Act of 1984, P.L. 1984, c.99;
2. The consistency of the proposed project with institutional mission;
3. The quality of the idea and importance of the project with respect to education and economic development;
4. Clarity and attainability of the objectives;
5. The extent to which equipment to be purchased represents the state of the art;
6. Appropriateness of the academic qualifications of key personnel and their proposed roles in the projects;
7. Appropriateness of the budget request;
8. The extent of institutional commitment of resources (both capital and operating);
9. The extent to which the institutions establish appropriate linkages with other higher education institutions and/or with industry;
10. The type and number of jobs available for which students would be educated;
11. Reasonableness of the construction cost estimates;
12. Feasibility of construction.

(e) Priority will be given to projects in those areas identified by the Governor's Commission on Science and Technology for present and future development.

(f) Priority will be given to projects that have regional and statewide economic development impact and which are consortial in nature. Projects which involve institutions from various sectors are encouraged.

(g) Projects that are judged to be superior by external consultants will be brought to the Board of Higher Education for approval. Those projects approved by the Board will be advanced to the second stage. If a project involves a new degree program and/or a new branch campus, Board approval for the degree program and/or the branch campus, where required, must be obtained before the project will be advanced to the second stage.

(h) The second stage of the review process will consist of the Board's established Facilities Planning Standards and Approval Procedures, N.J.A.C. 9:3, which shall be used in the review of proposals from both the public and independent sectors.

SUBCHAPTER 2. FUNDS FOR CAPITAL CONSTRUCTION

9:8-2.1 Objectives

(a) The primary goal of the Capital Construction portion of the Jobs, Science and Technology Bond Act of 1984, P.L. 1984, c.99 is improved education of students in technical and engineering programs, through capital construction of technical and engineering related facilities.

9:8-2.2 Use of funds

(a) Funds shall be used for the construction and initial equipping of major new technical and engineering buildings.

(b) Only projects which support undergraduate (or a combination of undergraduate and graduate) programs and coursework directed toward job training and retraining in technology and engineering will be funded.

9:8-2.3 Eligibility

(a) Projects to be funded under this category shall include those specified in the Jobs, Science and Technology Bond Act of 1984, P.L. 1984, c.99, and those later identified by the Department of Higher Education.

(b) Only New Jersey institutions of higher education are eligible to receive funds.

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9:8-2.4 Review process

(a) For the funds in this subchapter not already specified in the Jobs, Science and Technology Bond Act of 1984, P.L. 1984, c.99, or identified by the Department of Higher Education, the Department of Higher Education will invite proposals from accredited engineering schools for a northern and/or central region computer integrated manufacturing (CIM) center(s).

(b) The initial review of the invited proposals will be conducted by the Department of Higher Education with the assistance of external consultants.

(c) Priority will be given to projects that have an impact on the economic development of the northern and/or central region of the State and which are consortial in nature.

(d) Projects that are judged to be superior by external consultants will be brought to the Board of Higher Education for approval. Those projects approved by the Board will be advanced to a second stage of review. If a project involves a new degree program and/or a new branch campus, Board approval for the degree program and/or the new branch campus, where required, must be obtained before the project will be advanced to the second stage.

(e) The second stage of the review process will consist of the Board of Higher Education's established Facilities Planning Standards and Approval Procedures, N.J.A.C. 9:3, which shall be used in the review of proposals from both the public and independent sectors.

(a)

HIGHER EDUCATION ASSISTANCE AUTHORITY

Guaranteed Student Loan Program Loan Amounts

Proposed Amendment: N.J.A.C. 9:9-1.2

Authorized By: New Jersey Higher Education Assistance Authority, Jerome Lieberman, Chairman.
Authority: N.J.S.A. 18A:72-10.
Proposal Number: PRN 1985-328.

The agency proposal follows:

Summary

The Higher Education Assistance Authority is statutorily charged with the administration of the Guaranteed Student Loan Program and PLUS (Parent Loans for Undergraduate Students) program, two Federally insured educational loan programs within the State of New Jersey (N.J.S.A. 18A:72-10). Current regulations allow a student to borrow a second time for the same year in college for reasons other than academic failure or lighter than usual workload. The Authority felt that this language allowed students to obtain repeat borrowing under unjustifiable circumstances. The new language seeks to restrict situations under which second time borrowing is permitted to certain circumstances deemed acceptable to the Authority.

Social Impact

The proposed amendment will, if implemented, serve to restrict borrowing under the Guaranteed Student Loan Program and PLUS program to one time per academic grade level unless the request for second time borrowing for the same stated grade level is based upon circumstances beyond the borrower's control.

Economic Impact

The proposed amendment shall prevent certain borrowers from obtaining loan funds under the Guaranteed Student Loan Program and the PLUS program when the borrower has already borrowed money under the programs for the same stated grade level. The amendment will also serve to insure that students do not exhaust their eligibility to participate in the programs prior to graduation due to excessive borrowing in any particular academic grade level.

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

9:9-1.2 Loan amounts

[(a) A student who requests to borrow a second time for the same stated year in school, as indicated on the previous loan application, may be permitted to do so if the reason is caused by other than academic failure, or a lighter than usual workload, and evidence is submitted from the educational institution.]

(a) No student shall be permitted to borrow a second time for the same stated grade level in school, as indicated on the previous loan application, if the request is the result of either academic failure or the failure to complete a full-time course load for the stated grade level at the institution attended; provided however that the Authority shall have the discretion to permit borrowing a second time for the same stated grade level in school when, in the discretion of the Authority, the borrower's request for repetitive funding is substantially based upon circumstances which were beyond his or her immediate control.

(b) (No change.)

HUMAN SERVICES

Proposals numbered PRN 1985-320, 322, 323, 336, 337, 338 and 339 are authorized by George J. Albanese, Commissioner, Department of Human Services.

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

For proposals numbered PRN 1985-320, 322, 323 and 336 submit comments by July 17, 1985 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, N.J. 08625

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(a)

Administration Manual Provider Reinstatement

Proposed Readoption: N.J.A.C. 10:49-7

Authority: N.J.S.A. 30:4D-3h, 5, 7a, b, c, 17.1
Proposal Number: PRN 1985-323.

The readoption of the existing rule becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of readoption.

The agency proposal follows:

Summary

This proposal is designed to readopt the provisions of N.J.A.C. 10:49-7, concerning Provider Reinstatement. Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:49-7 would otherwise expire on September 4, 1985. The rule was designed to establish an orderly procedure to review the requests of persons who had been debarred, disqualified or suspended from participation in the New Jersey Medicaid Program. Those persons who have been excluded from the Medicaid program must petition the Director, Division of Medical Assistance and Health Services, for reinstatement in writing. The rule defines a "person" as "any natural person, company, firm, corporation, professional association, partnership, or other entity . . . "

N.J.A.C. 10:49-7.3 describes the appropriate time for filing a petition for reinstatement. Persons who have been debarred or disqualified for a definitely stated period of time may file their petition within 90 days from the expiration of the period of debarment or disqualification. A person disqualified for an indefinite period of time may petition after a disqualification period of eight years. Persons who have been suspended, debarred or disqualified as the result of an indictment, conviction or license revocation may petition immediately upon acquittal, reversal of the conviction upon appeal, or restoration of the license.

Upon receipt of the petition, the Director may on his own motion order reinstatement or refer the matter to the Provider Reinstatement Committee, which will be composed of three impartial officials of the Division appointed by the Director. The Committee will be governed by the procedures set forth in N.J.A.C. 10:49-7.7.

N.J.A.C. 10:49-7.6 contains the criteria for reinstatement, which includes restitution and payment of any criminal fines imposed, satisfaction of any civil penalties imposed, and the absence of any pending criminal licensing or professional disciplinary proceedings.

An administrative review has been conducted, and a determination made that the rule should be continued because it is necessary, adequate, reasonable, efficient, understandable and responsive for the purpose for which it was created. The rule does allow providers who have been excluded from participation in the Medicaid program to apply for readmittance. The rule also enables the Division to screen applications for readmission. The rule has not been amended and the current text should be retained.

Social Impact

The rule's impact is limited to those Medicaid providers who have been subject to debarment, suspension or disqualification from the New Jersey Medicaid Program. Although the rule's impact is limited in its scope, it is essential because it establishes a standardized process that enables the Division to screen the requests for reinstatement by those providers that have been excluded from participation. During calendar year 1984, there were 17 requests from providers seeking reinstatement.

The rule should be continued because the social conditions have not changed. There are providers who are currently under suspension who will apply for reinstatement.

Economic Impact

There is virtually no economic impact upon the Division because if it is necessary to convene a Provider Reinstatement Committee in a particular case, three impartial Division officials are appointed by the Director.

Providers applying for reinstatement must submit a written application. If an appearance before the Provider Reinstatement Committee is required, the provider may appear pro se or be represented by an attorney.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:49-7.

(b)

Common Procedure Coding System (HCPCS)

Proposed Amendments and New Rules: N.J.A.C. 10:50, 54, 55, 57, 58, 59, 61, 62, 64, 66 and 67

Authorized By: George J. Albanese, Commissioner, Department of Human Services, proposes to amend or add new rules to the affected manuals for the purpose of establishing the Health Care Financing Administration's (HCFA) Common Procedure Coding System, commonly known as HCPCS, for fee-for-service providers.
Authority: 30:4D-6a(3)(4)(b)(5); 6b(1)(3)(5)(6)(7)(8)(10)(12)(15)(16); 7, 7a, 7b, 7c.
Proposal Number: PRN 1985-320.

The agency proposal follows:

Summary

The Division of Medical Assistance and Health Services intends to utilize the HCPCS Procedure Coding System beginning September 1, 1985. (HCPCS stands for Health Care Financing Administration Common Procedure Coding System.) HCPCS was developed to replace various existing coding systems with a single national coding system using common procedure code numbers and terminology. In New Jersey, HCPCS will be used by Medicare (Title XVIII), Medicaid (Title XIX), New Jersey Blue Shield, and possibly other third-party payers.

The basic concept of HCPCS is a three level coding system. Level I Codes will be used primarily by physicians and independent laboratories, and are based on the CPT-4. (The CPT-4 stands for Physicians' Current Procedure Terminology, 4th Edition, and is published by the American Medical Associa-

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tion.) The Medicare/Medicaid Bulletin dated March 29, 1985, issued by the Prudential Insurance Company advised physicians and laboratories to purchase copies of the CPT-4 because the New Jersey Medicaid Program will utilize the numerical coding system and corresponding descriptive terminology. The affected manuals are: Physician's Services, Podiatric Services, Vision Care Services (performed by either an ophthalmologist or an optometrist), Certified Nurse Midwifery Services, Independent Laboratories and Independent Clinics.

Level II Codes are assigned by HCFA (Health Care Financing Administration) for those services not included in the CPT-4. Examples of such services would be prosthetics and orthotics, certain vision care services, including optical appliances, medical supplies and equipment and transportation.

Level III Codes are assigned by the Division and Prudential and are to be used for services that are unique to New Jersey.

The use of HCPCS should enable providers to prepare and submit claims in a standardized manner through the use of a common coding system. In addition, the unified format will enable the Medicare and Medicaid programs to identify services rendered to beneficiaries and eligible individuals.

Social Impact

The rule will impact on virtually all Medicaid providers who are reimbursed on a fee-for-service basis. These providers who will be required to use the HCPCS coding system include physicians, clinics, laboratories, psychologists, nurse-midwives, and prosthetists and orthotists. The rule will also impact on providers of medical supplies and equipment, and providers of vision care services.

The rule will not directly impact on hospitals, long term care facilities, and home health care providers, who are reimbursed on a cost related basis. The rule will not impact on pharmacies and dentists, even though these two provider groups are reimbursed on a fee-for-service basis.

The same services that are currently available to eligible Medicaid patients will continue to be available under the HCPCS coding system.

Economic Impact

There should be virtually no additional administrative cost to the Division because the Prudential Insurance Company will convert its existing claim processing system to accommodate the HCPCS system.

There should be minimal economic impact on providers. Physicians and laboratories should purchase the CPT-4 because the Medicaid fee schedule is based on this descriptive nomenclature and terminology. All affected providers will receive updates to their manuals prior to implementation of HCPCS, which will be September 1, 1985. Providers will be required to use HCPCS codes on or after this date. There are no fee increases associated with this proposal.

There will be no cost to the Medicaid patient.

Due to the volume of material, the full text of the proposal is not being reproduced herein. Instead, a summary of the proposed changes in each manual that will be affected by HCPCS appears below. The basic format remains the same, since services covered by the New Jersey Medicaid Program will still be identified by procedure code, narrative description, and corresponding fee schedule and/or basis of reimbursement. This proposal is designed to implement HCPCS which is a universal system utilizing standardized numbers, or alpha-numeric numbers, and narrative descriptions. Providers affected by HCPCS will use the HCPCS coding system on their existing claim forms beginning September 1, 1985.

A **summary** of the changes in those manuals affected by HCPCS appears below. Examples of the proposed changes are also included.

Transportation Manual: N.J.A.C. 10:50-3.

Delete and reserve N.J.A.C. 10:50-1.6 which contains the current procedure codes and maximum allowable fees. A new rule, N.J.A.C. 10:50-3, is added, containing new procedure codes, narrative descriptions, and fees. The following is an example of the HCPCS coding system:

HCPCS CODE	DESCRIPTION	MEDICAID DOLLAR VALUE
A 0010	Ambulance Service, Basic Life Support (BLS) Base Rate, Emergency Transport. One Way	$24.00

Manual for Physician's Services: N.J.A.C. 10:54-4.

The current Procedure Code Manual, which is referenced but not reproduced at 10:54-3, is being proposed for repeal. N.J.A.C. 10:54-4, now reserved, is proposed as a new rule. The HCPCS codes are divided into four major areas: medicine, surgery, radiology/ultrasound, and pathology and laboratory. The procedure codes are based on the CPT-4 (Common Procedural Terminology) that is published by the American Medical Association. Physicians and independent laboratories are advised to purchase copies of the CPT-4 prior to September 1, 1985. The coding system also contains any indicators, which are limitations imposed by the New Jersey Medicaid Program, or modifiers, which are part of the CPT-4, that might affect the particular procedure code. An example follows:

IND	HCPCS CODE	MOD	DESCRIPTION	MEDICAID DOLLAR VALUE	
				S	NS
N	90015		Refer to CPT-4	$22.00	$12.00
				(Note: The "S" means specialist; the "NS" means non-specialist)	

Prosthetic and Orthotic Services Manual: N.J.A.C. 10:55-3.

The current text, which references the Prosthetic and Orthotic procedure code lists, will be deleted and replaced with the new text covering the HCPCS coding system and corresponding reimbursement. An example follows:

HCPCS CODE	DESCRIPTION	MEDICAID DOLLAR VALUE
L 0120	Cervical, flexible non-adjustable (Foam Collar)	$15.00

Podiatry Services Manual: N.J.A.C. 10:57-3.

A new rule is being added at 10:57-3 covering HCPCS codes, descriptions, and corresponding fee schedules for podiatric services. Some codes are taken from the CPT-4 (referenced at 10:54-4 above), which should be purchased by podiatrists. An example follows:

IND	HCPCS	DESCRIPTION	MEDICAID DOLLAR VALUE
N	90015	Refer to CPT-4	$17.00

Nurse-Midwifery Services Manual: N.J.A.C. 10:58-3.

A new rule is being added at 10:58-3 covering HCPCS codes, descriptions and corresponding fee schedules. All codes for nurse-midwifery services contain the modifier "WM", which identifies those procedures which were performed by a C.N.M. (certified nurse midwife). Nurse-midwives should purchase the CPT-4. An example follows:

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IND	HCPCS CODE	MOD	DESCRIPTION	MEDICAID DOLLAR VALUE
N	58300	WM	Refer to CPT-4	$39.00

Medicaid Supplier Manual: N.J.A.C. 10:59-3.

The current text of N.J.A.C. 10:59-3 is being deleted. It will be replaced by the HCPCS codes and narrative descriptions for durable medical equipment, medical supplies, orthopedic footwear, and by peralimentation equipment and supplies. There is no corresponding fee schedule. Reimbursement is based on the provider's usual and customary charge or an allowance determined reasonable by the Commissioner, Department of Human Services. In no event shall the Medicaid allowance exceed the lowest charge calculated by the Medicare carrier . . . An example follows:

HCPCS CODE	DESCRIPTION
E 0100	Cane, includes canes of all materials, adjustable or fixed.

Independent Laboratory Services Manual: N.J.A.C. 10:61-3.

The current text of subchapter 3 is being deleted, and will be replaced by the HCPCS coding system. Providers of independent laboratory services should purchase the CPT-4. An example follows:

IND	HCPCS CODE	MOD	DESCRIPTION	MEDICAID DOLLAR VALUE
N	80003		Refer to CPT-4	$7.50

Vision Care Manual: N.J.A.C. 10:62-4.

The current text of subchapter 4 will be deleted and replaced with the HCPCS coding system. This manual contains both level I, level II and level III codes. It covers vision care services provided by an ophthalmologist, optometrist, or optician. Ophthalmologists and optometrists should purchase the CPT-4. There is no fee schedule for vision care appliances.

Two examples follow:

IND	HCPCS CODE	MOD	DESCRIPTION	MEDICAID DOLLAR VALUE
N	92002		Refer to CPT-4	$22.00

IND	HCPCS	MOD	DESCRIPTION
	V 2020		Frames, purchases

Hearing Aid Services Manual: N.J.A.C. 10:64-4.

A new subchapter 4 is being added which will list the HCPCS code for hearing aid services. An example follows:

HCPCS CODE	DESCRIPTION
U 5030	Hearing aid, monaural, body worn, air conduction.

Independent Clinic Services Manual: N.J.A.C. 10:66-3.

The current text of subchapter 3 is being deleted and replaced by the HCPCS coding system. Independent clinics should purchase the CPT-4. An example follows:

IND	HCPCS CODE	DESCRIPTION	MEDICAID DOLLAR VALUE	
N	90015	Refer To CPT-4	S $22.00	NS $17.00
			(Note: "S" means specialist; "NS" means non-specialist)	

Psychological Services Manual: N.J.A.C. 10:67-3.

The current text of N.J.A.C. 10:67-2.10 is being deleted. This text just referred the reader to the Procedure Code Manual which is currently cited as N.J.A.C. 10:54-3. The addition of the new subchapter 3 is this manual will mean that the HCPCS coding system for psychological services will be contained in this manual. Two examples follow:

HCPCS CODE	DESCRIPTION	MEDICAID DOLLAR VALUE	
W 9113	Individual psychotherapy, by a psychologist, . . . 25 minutes	S $19.00	NS $13.00
W 9130	Bayley Scale of Infant Development	$48.00 (Note: "S" means specialist; "NS" means non-specialist)	$34.00

A copy of the **full text** of the proposal is available for review by contacting Henry W. Hardy, Administrative Practice Officer, at the following location:

Division of Medical Assistance and
Health Services
Building 7
Quakerbridge Plaza
CN 712
Trenton, N.J. 08625

Copies are also available for review at each of the sixteen Medicaid District Offices.

The **full text** of the proposal was filed and is available for review at the following agency:

Office of Administrative Law
Rules and Publications
Building 9
Quakerbridge Plaza
CN 301
Trenton, N.J. 08625

(a)

Pharmacy Manual: Pharmaceutical Assistance to Aged and Disabled Program Diabetic Testing Material

Proposed Amendments: N.J.A.C. 10:51-5.1, 5.16

Authority: N.J.S.A. 30:4D-22.
Proposal Number: PRN 1985-322.

The agency proposal follows:

Summary

This proposal will revise two sections of the Pharmacy Manual, at 10:51-5, that pertain specifically to the PAAD (Pharmaceutical Assistance to the Aged and Disabled) program.

A recent amendment to the New Jersey Medical Assistance and Health Service Act required that diabetic testing materials be included as part of the PAAD program (P.L. 1985, C.55, signed February 22, 1985 and effective 90 days after enactment).

The definition of diabetic testing materials that was contained in the law is set forth at N.J.A.C. 10:51-1(a)4 below. It should be noted that electronically monitored devices are not included in this definition.

Social Impact

The rule will enable PAAD beneficiaries to obtain diabetic testing materials and have them covered by the PAAD program.

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Pharmacies will be reimbursed for providing diabetic testing materials by submitting the standard MC-6 claim form to New Jersey Blue Cross, which is the fiscal agent for the Division of Medical Assistance and Health Services.

Economic Impact

PAAD beneficiaries are required by law to contribute a $2.00 co-payment for diabetic testing materials (N.J.S.A. 30:4D-22).

The law provides that in the case of diabetic testing materials, the maximum allowable cost (to the pharmacy) is the manufacturer's suggested retail selling price or the pharmacy's usual over-the-counter price charged to other persons in the community, whichever is less.

The PAAD program is wholly State funded. The cost to the program is expected to be minimal.

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

10:51-5.1 Covered pharmaceutical services

(a) The following prescribed drugs and items are covered by PAAD:

1. Prescribed Legend Drugs;
2. Insulin;
3. Insulin Syringes or Insulin Needles[.];
4. **Diabetic Testing Materials.**

i. "Diabetic testing materials" means blood glucose reagent strips which can be visually read, urine monitoring strips, tapes and tablets and bloodletting devices and lancets, but shall not include electronically monitored devices.

(b) (No change.)

10:56-5.16 Pharmaceutical services not eligible for payment

(a) (No change.)

(b) Devices, legend or non-legend, such as but not limited to, electronic devices for monitoring blood glucose levels are not covered.

(a)

Prosthetic and Orthotic Services Manual, Medical Supplier Manual Fees for Shoe Appliances

Proposed New Rule: N.J.A.C. 10:59-1.13 and 1.14

Proposed Amendment: N.J.A.C. 10:55-3.1, 10:59-1.7, 10:59-3.2(b)

Authority: N.J.S.A. 30:4D-6b(6), 7, 7a, 7b.
Proposal Number: PRN 1985-336.

Comments may be reviewed by the public at the Division of Medical Assistance and Health Services, Quakerbridge Plaza, Quakerbridge Road, Trenton, New Jersey. A copy of the proposed changes are available for public review at the sixteen Medicaid District Offices.

The agency proposal follows:

Summary

This proposal will complete the revisions to the reimbursement for shoes and shoe appliances that was initiated in response to a petition for rule making filed pursuant to the New Jersey Administrative Procedure Act (N.J.S.A. 52:14B-4(f)). The petition was filed by the law firm of Carella, Byrne, Bain and Gilfillan representing the New Jersey Pedorthic Society. The proposal, which appeared in the January 21, 1985 issue of the New Jersey Register at 17 N.J.R. 162(a), was adopted as R.1985 d.167 effective April 15, 1985 and cited as 17 N.J.R. 967(a). The notice of adoption indicated that the reimbursement formula of invoice cost plus 50 percent pertained only to orthopedic shoes. In order to increase fees for shoe appliances, a separate proposal would be required.

Therefore, this proposal will increase the fee schedule for shoe appliances which are currently identified with the procedure code numbers 5000 through 5118. The schedule will apply equally to all providers (of shoes and shoe appliances), whether they are certified prosthetists, certified orthotists, pedorthists, or shoe dealers.

A copy of the proposed fee schedule has been included with the proposal but is not printed in the text of the rule. Copies may be obtained from the Administrative Practice Officer at the address listed above.

The Division is also amending the Medical Supplier Manual to make it consistent with the Prosthetic and Orthotic Services Manual in so far as reimbursement for shoes and shoe appliances is concerned. For example, the basic reimbursement policy for shoes (invoice cost plus 50 percent), which was adopted as an amendment to Prosthetic and Orthotic Manual (N.J.A.C. 10:55-1.5), is now being proposed as a new rule in the Medical Supplier Manual (N.J.A.C. 10:59-1.13). However, there is no change in Division policy or in the basic text of the rule. In addition, 10:59-1.14 will reference common procedures that can be performed by providers other than certified prosthetists and orthotists. This text is similar to 10:55-1.8.

In summation, the only new material being introduced in this proposal is the fee schedule for shoe appliances.

Social Impact

Medicaid patients who need shoe appliances will continue to have this service available to them due to the revised fee schedule.

The rule impacts on providers of prosthetics and orthotics, and pedorthists and shoe dealers, who are participating in the Medicaid program. These providers should continue to provide orthopedic shoes and shoe appliances to Medicaid patients.

Economic Impact

There is no cost for shoes and shoe appliances to the Medicaid patient.

The original economic impact statement that appeared in the original proposal (see 17 N.J.R. 162(a)) indicated the estimated cost to the Division would be approximately $200,000 annually (Federal and State share combined). This figure is still valid because the original computation included a fee increase for both shoes and shoe appliances. However, no new monies are included with this proposal.

The economic impact on Medicaid providers will vary, depending on the number of Medicaid patients being served. All providers, whether certified prosthetists, certified orthotists, pedorthists and shoe dealers, will be reimbursed using the same fee schedule.

Full text of the proposed amendments and new rules N.J.A.C. 10:59-1.7, 1.13 and 1.14 follows (additions indicated in boldface **thus**):

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Full text of amendments proposed to N.J.A.C. 10:55-3.1 "Orthotic and prosthetic code lists" and 10:59-3.2(b) "Orthotic appliance codes" may be reviewed at:

Division of Medical Assistance and
Health Services
Quakerbridge Plaza, Bldg. 7
CN 712
Trenton, NJ 08625; or

Office of Administrative Law
Rules and Publications
Quakerbridge Plaza, Bldg. 9
CN 301
Trenton, NJ 08625; and

All Medicaid District Offices

10:55-3.1 Prosthetic and orthotic code lists

The Division proposes to increase the fees for shoe appliances which are governed by procedure codes 5000–5118. A copy of the proposed fee schedule was filed with the rule but is not reproduced herein.

The full text of the proposed amendments may be obtained from the Administrative Practice Officer at the address listed above.

10:59-1.7 Prior authorization

(a) Suppliers providing any of the following items must first obtain prior authorization from the appropriate MDO.

1.-3. (No change.)

4. Orthopedic shoes are covered only under the following conditions:

i. When attached to a brace or bar; and/or

ii. When a part of the normal (customary, usual) post-fracture treatment program; and/or

iii. When used to correct or adapt to gross foot deformities;

iv. For additional information concerning policies and procedures for providers of shoes and shoe appliances, reference is made to N.J.A.C. 10:59-1.12 and 1.13.

5.-20. (No change.)

(b) (No change.)

10:59-1.13 Policy on shoes

(a) Reimbursement for shoes will be made in the following manner:

1. The provider will attach a copy of the invoice to the claim form (MC-11-C4) that is submitted to the Prudential Insurance Company.

i. If there is more than one line item on an invoice, the provider must clearly identify which item corresponds to the entry on item 14 of the claim form;

ii. The item identified on both the invoice and the claim form must correspond to the item that was dispensed to the Medicaid patient.

2. The provider will complete the claim form in the prescribed manner.

i. Providers will continue to use the same procedure code number and narrative description contained in the listing for shoes that is referenced at N.J.A.C. 10:59-3.2(b).

3. The Prudential Insurance Company will process the claim for payment by taking the invoice cost and adding 50 percent to this cost. The sum total of both figures (invoice cost plus 50 percent) will be the amount of reimbursement to the provider.

i. If the provider's customary charge is lower than the computed amount (invoice cost plus 50 percent) specified in 3. above, then the provider will be reimbursed on the basis of his/her customary charge.

(b) The Prudential Insurance Company may request additional information from the provider where the invoice cost is excessive in comparison to invoice costs submitted by other providers. An adjustment may be made for invoice costs that are deemed excessive.

10:59-1.14 Common procedures for providers of shoes and shoe appliances

(a) Certain procedures may be performed by providers other than certified prosthetists and orthotists, including pedorthists and shoe dealers. These procedures will be identified by an asterisk (*) next to the procedure code which is referenced, but not reproduced, at N.J.A.C. 10:55-3.1, entitled Prosthetic and Orthotic Code lists, which is a subchapter within the Prosthetic and Orthotic Services Manual.

(b) Providers submitting claims using the asterisk (*) procedure codes must follow all applicable Medicaid policies and procedures.

10:59-3.2 Orthotic appliance codes

(a) (No change.)

(b) Shoes and shoe appliances: Reimbursement for orthopedic shoes will be on the basis of invoice cost plus 50 percent. A list of procedure codes and descriptive nomenclature was filed but is not reproduced herein.

DIVISION OF PUBLIC WELFARE

For proposals numbered PRN 1985-338 and 339, submit comments by July 17, 1985 to:

Audrey Harris, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

(a)

Assistance Standards Handbook
Deeming of Sponsor's Income and Resources to a Sponsored Alien

Proposed Amendment: N.J.A.C. 10:82-3.13

Authority: N.J.S.A. 44:7-6 and 44:10-3; 45 CFR 233.51.

Proposal Number: PRN 1985-339.

The agency proposal follows:

Summary

The proposed amendments provide clarity and uniformity with current Federal regulations at 45 CFR 233.51 and 233.52 with regard to sponsored aliens.

Current Federal regulations at 45 CFR 233.51 provide for the exempting of a sponsor to the deeming provisions when the sponsored alien is the sponsor's dependent child, spouse or the dependent child of the sponsor's spouse. Therefore, State regulations at N.J.A.C. 10:82-3.13(a) are being amended to comport with Federal regulations in order to

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maintain compliance, by allowing for the exclusion of a sponsor's income and resources when applying deeming provisions to an alien who is the dependent child of the sponsor or sponsor's spouse.

The proposed rule at N.J.A.C. 10:82-3.13(e) addresses eligibility and reporting by aliens of income (received by the sponsor and sponsor's spouse if living with the sponsor) for a period of three years following entry into the United States, and comports with Federal regulations at 45 CFR 233.51(a). The rule provides that if a sponsored alien's circumstances change during the three year period so that he or she is no longer exempt from or subject to deeming of income, the resulting change in unearned income will be reflected in the assistance payment. The proposal also stipulates that a sponsored alien is ineligible in any month in which adequate information about the income and resources of the sponsor (and sponsor's spouse) is not provided, regardless of the reason, but that such failure to obtain or provide information shall not cause ineligibility of unsponsored family members. The proposed amendment at N.J.A.C. 10:82-3.13(f) serves to specify the maximum contribution an alien's sponsor is obligated to provide. The proposed rule at N.J.A.C. 10:82-3.13(g) expands on existing policy of overpayment recovery, in accordance with Federal regulatory changes at 45 CFR 233.52(b) and (c). When a sponsor is found to have good cause or to be without fault for not providing information about income and resources to the county welfare agency, the sponsor will not be held liable for the overpayment. The rule also provides that recovery of overpayments will be made in accordance with the provisions at N.J.A.C. 10:82-2.19 (governing recovery of overpayments of assistance under the Aid to Families with Development Children program). Where overpayments cannot be recovered through this method, the overpayment shall be withheld from future payments to which the alien or sponsor may be entitled under any State administered or supervised program established by the Social Security Act.

Social Impact

While situations that fall within the proposed rule, that is, involving the dependent child of a sponsor or sponsor's spouse, are relatively infrequent occurrences, for those aliens to whom this regulation applies the social impact may be significant, since it may not only affect the amount of entitlement, but the determination as to whether financial eligibility for program benefits does or does not exist. Similarly, while the amendments regarding reporting of income and resources as well as recovery of overpayments may affect very few cases, any cases to which the rules do apply will be affected financially.

Economic Impact

No measurable economic impact is anticipated as a result of this proposed amendment. This is based on the premise that very few, if any, cases will be affected by the change.

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

10:82-3.13 **Eligibility of sponsored aliens and** [D]deeming of sponsor's income and resources to a sponsored alien

(a) The income and recourses of an alien's sponsor shall be deemed to be unearned income and resources of an alien applying for AFDC for the first time after September 30, 1981 for a period of three years following the alien's entry into the United States. For purposes of this section, a sponsor is an individual, a public or private agency or organization who executed an affidavit of support or similar agreement on behalf of an alien [(who is not the sponsor's dependent child or spouse)] **(who is not the child of the sponsor or the sponsor's spouse)** as a condition of the alien's entry into the United States. No income or resources shall be deemed from a sponsor who is (or whose spouse is) receiving AFDC or SSI.

1. These deeming provisions do not apply to any alien who is:

i. Admitted as a conditional entrant refugee to the United States as a result of the application of the provision of section 203(a)(7) **(in effect prior to April 1, 1980)** of the Immigration and Nationality Act;

ii. Admitted as a refugee to the United States as a result of the application of the provisions of section 207(c) **(in effect after March 31, 1980)** of the Immigration and Nationality Act;

iii. Paroled into the United States as a refugee under section 212(d)(5) of the Immigration and Nationality Act;

iv. Granted political asylum by the Attorney General under section [212(d)(5)] **208** of the Immigration and Nationality Act; [or]

v. A Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96-422) [.]; **or**

vi. The dependent child of the sponsor or sponsor's spouse.

2. (No change.)

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

(e) **Eligibility and reporting of income and resources: For a period of three years following entry for permanent residence into the United States,** [T]the sponsored alien **who is not exempt from deeming under (a)1. above** shall provide the CWA with any information and documentation necessary to determine the income and resources of the sponsor and the sponsor's spouse **(if applicable and if living with the sponsor)** that can be deemed available to the alien, and obtain any cooperation necessary from the sponsor.

1. Change in circumstances and deeming: If the alien's circumstances change during the three-year period such that the alien is no longer exempt from or subject to deeming in accordance with (a)1i through vi above, the CWA shall reflect the resulting change in unearned income in the assistance payment.

2. Ineligibility: A sponsored alien is ineligible in any month in which adequate information concerning the income and resources of the sponsor or sponsor's spouse (if living with the sponsor) is not provided, regardless of the reason the alien failed to provide the information.

3. Unsponsored family members: Unsponsored family members are not ineligible if a sponsored alien fails to provide information concerning the sponsor or sponsor's spouse (if living with the sponsor). However, any income the unsponsored family members actually receive from the sponsor must be reported and considered in determining their eligibility.

(f) Income and resources which are deemed to an alien shall not be considered in determining the need of other unsponsored members of the alien's family except to the extent the income and resources are actually available. **The sponsor's obligatory contribution shall not exceed the per capita share of the eligible unit's adjusted allowance for the alien(s) for whom the sponsor is liable.**

(g) **Overpayments to aliens:** Any individual sponsor of an alien, and the alien, shall be jointly and severally, liable for any overpayment of AFDC made to the alien during the three

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/ears after the alien's entry into the United States that was :aused by the sponsor's failure to provide correct information ınder the provisions of this section, [except where the sponsor vas without fault or where good cause existed.] **except as ɔrovided in 1 below.**

[1. Any overpayments described above which are not re-ɔaid to the CWA or recovered in accordance with the provi-ıions of N.J.A.C. 10:82-2.19 shall be withheld from any fu-ure payments to which the alien or sponsor is entitled under:]

1. When a sponsor is found to have good cause or to be vithout fault for not providing information to the CWA, the ;ponsor will not be held liable for the overpayment and recov-ɜry will not be made from this sponsor.

2. Overpayment recovery: An overpayment for which the ılien or the sponsor and the alien are liable as described above ıhall be repaid to the CWA or recovered in accordance with he provisions of N.J.A.C. 10:82-2.19. If the CWA is unable o recover the overpayment through this method, the overpay-nent shall be withheld from future payments to which the ılien or the alien and the individual sponsor are entitled un-ler:

i. Any [state] **State** administered **or supervised** program :stablished [under] **by** the Social Security Act; or

ii. (No change.)

(a)

Medicaid Only Manual
Resource Eligibility and Limits

Proposed Amendments: N.J.A.C. 10:94-4.5, 4.6 and 4.7

ıuthority: N.J.S.A. 44:7-87.
'roposal Number: PRN 1985-338.

'he agency proposal follows:

Summary

The Deficit Reduction Act of 1984 (Section 2611) increased ıe monetary limits on allowable resources in the Supplemen-ıl Security Income program (SSI), the first such increase .nce the inception of the program. Under New Jersey's Medi-aid Only program for the aged, blind, and disabled, SSI ligibility criteria must be used to determine eligibility for Medicaid benefits. The Department is therefore proposing to ıcrease the resource limits applicable in the Medicaid Only rogram to align them with those of SSI.

Additionally, in order to resolve problems in determining 'hen resource eligibility is to be considered to have been ;tablished, SSI has adopted a policy whereby all resource ligibility determinations will be accomplished on the first ıoment of the first day of the month. This amendment is ıtended to pinpoint the resource eligibility to alleviate prob-:ms created by fluctuations in the value and amount of re-ɔurces during the month. Again, because it is required that SI procedures be used in the determination of Medicaid ligibility for the aged, blind, and disabled, the Department is roposing to amend its rules to comport with the Federal olicy.

Social Impact

The increase in the limits on allowable countable resources will allow Medicaid eligibles to set aside additional funds from their income so that they are better able to meet unexpected financial contingencies.

The amendment, which sets the resource eligibility at the first moment of the first day of the month, has no identifiable impact on the public but should contribute to program simplification and understanding of the eligibility process.

Economic Impact

The increase in the resource limits will have an insignificant economic impact. While the increase liberalizes Medicaid eligibility criteria, it is thought that this amendment will have no significant effect on the eligible population.

The amendment providing that resource eligibility determinations be based on the first moment of the first day of the month will have no economic impact.

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

10:94-4.5 Resource eligibility standards

(a) For eligibility in the Medicaid Only Program, total countable resources are limited by the following [standards] **limits**. (See N.J.A.C. 10:94-4.19(b) regarding resources defined and N.J.A.C. 10:94-4.2 regarding countable resources.)

1. Resource eligibility is determined as of the first moment of the first day of the month. Changes in the amount of countable resources subsequent to the first moment of the first day of the month shall not affect eligibility.

2. In the case of checking accounts, the balance as of the first moment of the first day of the month shall be reduced by the amount of any checks which have been drawn on the account but which have not yet cleared the financial institution.

(b) Resource maximum [of $2,250 (couple)] **for a couple**: Participation in the program shall be denied or terminated if the total value of a couple's countable resources exceeds [$2,250.] **the limits below:**

before January 1, 1986	**$2,400**
January 1, 1986–December 31, 1986	**$2,550**
January 1, 1987–December 31, 1987	**$2,700**
January 1, 1988–December 31, 1988	**$2,850**
January 1, 1989 and thereafter	**$3,000**

1. (No change.)

(c) Resource maximum [of $1,500 (individual)] **for an individual**: participation in the program shall be denied or terminated if the total value of an individual's resources exceeds [$1,500.] **the limits below:**

before January 1, 1986	**$1,600**
January 1, 1986–December 31, 1986	**$1,700**
January 1, 1987–December 31, 1987	**$1,800**
January 1, 1988–December 31, 1988	**$1,900**
January 1, 1989 and thereafter	**$2,000**

(d) Resource maximum (institutionalized individuals): The resource maximum [of $1,500 applies to individuals in Long Term Care facilities] **for an individual in (c) above applies equally to individuals institutionalized in a Title XIX approved facility**. Countable resources held in the institution (e.g., trust funds, personal needs accounts) [and/or elsewhere] **together with those held outside the institution**, are to be applied toward the resource maximum. If the [$1,500] resource maximum is exceeded, Medicaid eligibility will cease.

(e) (No change.)

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10:94-4.6 Deeming of resources

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

(e) Applicant/recipient unmarried and under 18 years of age, living with parents: If the applicant/recipient is an unmarried child under 18 years of age who lives with [his/her] **his or her** parents (including stepparents), the total value of all countable resources in excess of the appropriate parental resource maximum, cited in (e)1 below, shall be applied toward the [applicant's $1,500] resource maximum **for an individual (see N.J.A.C. 10:94-4.5)**. A child will be considered to be not living with [his/her] **his or her** parents when [he/she] **he or she** has ceased living with them for a period of one calendar month.

1. (No change.)

2. Parental resource maximums (including stepparents):

i. One parent: The total value of countable resources in excess of [$1,500] **the resource limit for an individual (see N.J.A.C. 10:94-4.5)** shall be applied toward the eligible child's resource maximum.

ii. Two parents: The total value of countable resources in excess of [$2,250] **the resource limit for a couple (see N.J.A.C. 10:94-4.5)** shall be applied toward the eligible child's resource maximum.

3. (No change.)

(f) Deeming resources of an alien's sponsor: When the sponsor of an alien is subject to deeming provisions (see N.J.A.C. 10:94-5.7) any countable resources of the sponsor in excess of the appropriate [standard ($1,500 for the sponsor and $2,250] **resource limit (the resource limit for an individual or the resource limit for a couple** if the sponsor resides with his or her spouse) shall be considered to be resources of the alien in addition to whatever resources the alien has.

10:94-4.7 Transfer of resources

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

(e) Resource transferred, resource [limited] **limit** not exceeded: When the UV of a transferred resource, combined with other countable resources does not exceed the applicable resource limit, the application shall be processed as usual. In addition, the following procedures shall be adhered to.

1. (No change.)

2. The client shall be informed that although eligible at the time of application, if his or her resources, including the amount of the UV, should exceed the resource maximum within the 24-month period, he or she will lose Medicaid eligibility.

i. Example: At the time of application the UV equals $1,000, other resources equal $200.00 for a total of $1,200, the client is resource eligible. At the time of redetermination, the UV equals $1,000, other resources equal [$600.00] **$1,100** for a total of [$1,600] **$2,100, the** client is ineligible because of excess resources and the case must be terminated.

3. (No change.)

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

(a)

Public Assistance Manual
Reimbursement by Counties to State for Administrative Expenses of Tax Setoffs and Other Collections

Proposed Amendment: N.J.A.C. 10:81-11.9 (PRN 1985-98)

Public Hearing

A **public hearing** will be held at 10:00 A.M. on Friday, July 12, 1985 at the Division of Public Welfare, 2nd Floor Conference Room, 6 Quakerbridge Plaza, Trenton, New Jersey 08625, concerning the proposed amendments to N.J.A.C. 10:81-11.9, published in the February 19, 1985 issue of the New Jersey Register at 17 N.J.R. 369(a). That proposal deals with county reimbursement to the State for administrative expenses incurred for Child Support and Paternity tax setoff programs and other collections.

The Department received several comments on the subject proposal, as well as requests that a public hearing be held in accordance with the provisions of N.J.S.A. 52:14B-4.

Interested persons are invited to attend. Persons wishing to present testimony must contact:

Audrey Harris, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625
(609) 633-6209

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Social Services Program for Individuals and Families
Personal Needs Allowance: Residential Health Care Facilities and Boarding Homes

Proposed Readoption: N.J.A.C. 10:123-3

Authority: N.J.S.A. 44:7-87.
Proposal Number: PRN 1985-337.

Submit comments by July 17, 1985 to:

Steve Valli
Boarding Home Coordinator
Division of Youth and Family Services
1 South Montgomery Street
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

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Summary

N.J.A.C. 10:123-3 was internally reviewed by the Department and in compliance with Executive Order No. 66(1978) was found to be adequate, reasonable and necessary in regulating personal needs allowance (PNA) for eligible residents residing in rooming houses, boarding houses, or residential health care facilities. The Department therefore wishes to readopt N.J.A.C. 10:123-3, which would otherwise expire on August 27, 1985. The Commissioner of the Department of Human Services is empowered under the Rooming and Boarding House Act of 1979 (P.L. 1979, Chapter 496) to establish a PNA. PNA is a monthly amount of money that is reserved for the residents' personal use and is exclusive of services agreed to and provided by the facility to residents under the Department of Health or the Department of Community Affairs standards.

Social Impact

N.J.A.C. 10:123-3 has assured that eligible residents have had a monthly amount of money reserved for their use in obtaining items including, but not limited to, personal incidentals (i.e., combs, a hair brush, nail polish etc.), to engage in recreational and entertainment activities such as attending movies or ballgames, and to purchase miscellaneous items such as cigarettes and gifts. The readoption of this rule is necessary in order to continue the PNA which will continue these benefits.

Economic Impact

The PNA is based upon Federal Supplemental Security Income (SSI) program with no costs to the State. There is no negative impact on the facility owners or operators. Any increase in the PNA is proportionate to the increase in the SSI allotment.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:123-3.

LAW AND PUBLIC SAFETY

(a)

BOARD OF MARRIAGE COUNSELOR EXAMINERS

Annual License Fees and Charges

Proposed Amendments: N.J.A.C. 13:34-1.1

Authorized By: Board of Marriage Counselor Examiners, Arthur Santucci, Ed.D., President.
Authority: N.J.S.A. 45:1-3.2.
Proposal Number: PRN 1985-313.

Submit comments by July 17, 1985 to:
Jeannette V. Balber, Executive Secretary
Board of Marriage Counselor Examiners
1100 Raymond Boulevard, Room 512
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Marriage Counselor Examiners is proposing to amend N.J.A.C. 13:34-1.1(a) to raise the fees charged by the Board for the examination of credentials, the reexamination of credentials, the written examination, the temporary permit, the annual license renewal, license reinstatement and late license renewal. The Board is proposing to delete the present N.J.A.C. 13:34-1.1(a)4, the initial licensing fee. Additionally, the Board is proposing two new fees. N.J.A.C. 13:34-1.1(a)4 would establish a fee for the verification of the licensee's New Jersey licensure to another State. N.J.A.C. 13:34-1.1(a)10 would establish a fee for replacement wall certificates.

Social Impact

The proposed amendments will have no significant social impact as they do not change the tenor and thrust of the existing regulations; rather they affect only the amounts to be paid to the Board by licensees and prospective licensees for services rendered by the Board.

Economic Impact

The proposed amended fees should yield revenues sufficient to cover the rising expenses generated by the statutory requirement that the Board administer examinations and issue licenses. To the extent that such fees may be passed along to the client as a cost of doing business, the costs of professional services to the consumer may be increased.

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

13:34-1.1 Annual license fees and charges

(a) There shall be paid to the State Board of Marriage Counselor Examiners the following fees:

1. Examination of credentials, which shall not be subject to refund ..... [$25.00;] **$ 50.00;**
2. Reexamination of credentials, not subject to refund .....[$10.00;] **$ 25.00;**
3. Examination fee ..... [$60.00;] **$100.00;**
4. [Initial license certificate ..... $60.00;] **Verification of licensure .....$ 10.00;**
5. Temporary permit ..... [$25.00;] **$ 50.00;**
6. **Annual** [L] license renewal fee .....[$55.00;] **$ 65.00;**
7. Reinstatement fee ..... [$50.00;] **$100.00;**

i. Upon verification acceptable to the Board that an individual has not practiced marriage or family counseling in private practice or otherwise practiced in New Jersey or used a previously issued New Jersey license in any manner, the annual license **renewal** fee during the inactive period will be waived. The fee to be paid, under these conditions, is the **annual license** renewal fee for the current period, [($55.00)] **$65.00**, the reinstatement fee, [($50.00)] **$100.00**, and the late license fee, [($25.00)] **$50.00**, if appropriate.

ii. In the absence of the above verification, the annual license **renewal** fee, [($55.00)] **$65.00**, for each year since last paid is required in addition to the license reinstatement fee, [($50.00)] **$100.00.**

iii. The late renewal penalty or license revival fee shall be [$25.00] **$50.00** in addition to the annual license **renewal** fee of [$55.00] **$65.00**.

8. License revival fee (for late license renewals] ..... [$25.00;] **$50.00;**
9. (No change.)
10. **Replacement wall certificate ..... $20.00.**

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BOARD OF NURSING

Proposals numbered PRN 1985-342 and 344 are authorized by Kathleen M. Dirschel, R.N., Ph.D., President, New Jersey State Board of Nursing.

Submit comments by July 17, 1985 to:
Sister Teresa Louise Harris
Executive Secretary
State Board of Nursing
Room 319
1100 Raymond Boulevard
Newark, NJ 07102

(a)

Programs in Nursing Education

Proposed Amendment: N.J.A.C. 13:37-1.2
Proposed Repeal: N.J.A.C. 13:37-1.21, 1.23, 1.24, 1.25

Authority: N.J.S.A. 45:11-33; 45:11-24(d)(12)(13)(14) and (19).
Proposal Number: PRN 1985-342.

The agency proposal follows:

Summary

The regulations at N.J.A.C. 13:37-1.21, 1.23, 1.24, 1.25 and 1.26 were promulgated prior to 1978 and therefore are not subject to the sunset requirements of Executive Order No. 66(1978). Nonetheless, the Board has reviewed the regulations and determined that there has been a demonstrated need for their continuation. The rules have been effective, efficient and necessary instruments to ensure that a proper procedure is developed to protect students currently enrolled in a nursing program planning to discontinue operation.

The regulations are proposed for repeal but their provisions are being recodified into N.J.A.C. 13:37-1.2 (see Notice of Adoption in June 3, 1985, Register). The substance of the rules remain unchanged: Any nursing educational program planning to discontinue operation must notify the Board at least six months prior to admission of the last class. The program must indicate the reasons for terminating the program and making plans to phase out or transfer all of the students currently enrolled. Within ten days of closing of the program, notification must be made to the Board that successful completion of plans to phase out and/or transfer all students has been made. Such notification must be received from the new governing body when a program plans to continue to operate under a change of control. The institution is held responsible for developing a plan to maintain the safekeeping of its records.

Social Impact

The social impact of these rules has been favorable. They have promoted a reasonable and effective procedure to protect the public, to wit: nursing students who are currently enrolled in a nursing program which is planning to discontinue operation. They are protected from the loss of time, effort and money which would result from discontinuation of a program without proper notice or accommodation.

Economic Impact

These rules will pose no economic impact upon the public or licensees because it imposes no economic burden on any party. There is a minimal financial burden to be borne by the program seeking to close the program, namely the cost of making adequate arrangements to phase out or transfer students currently enrolled in the program. However, this minimal burden is outweighed by the strong public interest associated with the protection of the rights of these nursing students.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:37-1.21, 1.23, 1.24, 1.25.

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

13:37-1.2 Criteria for accreditation
(a)-(u) (No change.)
(v) An annual report of the school of nursing shall be submitted each year on a date determined by the Board. Forms will be supplied by the Board two months before the report is due.
(w) The administrative officer responsible for an educational institution or hospital which plans to discontinue the educational program in nursing, or to suspend any essential part of its program, shall forward a written notification to the Board which shall:
1. Be received by the Board at least six months prior to the admission of the last class;
2. Include the reasons for terminating the program;
3. Define the specific plans for the students enrolled.
(x) Procedures for termination of the program include:
1. "Phasing out," in which students enrolled continue until they complete the program, and no students are admitted or accepted by transfer, qualified faculty remain and Board requirements continue to be met, according to conditions under which the program was originally approved;
2. Transfer of students to other schools in a manner providing a minimum loss to the students.
(y) Within ten days of the official date of closure the date on which the last student is properly transferred or completes the program, the administrative officer shall notify the Board of same in writing.
1. Governing bodies shall notify the Board in writing in cases involving change of control, said notification containing their intentions with respect to the school of nursing. If the intent is to continue the operation of the school, notification shall be made of the name under which the school will operate and statements of assurance that requirements will continue to be met shall be included.
2. The institution shall be responsible for the safekeeping of the records and, at termination, shall plan with the Board for the future custody of such records.

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(a)

Licensure by Examination and Endorsement; Foreign Nurses; Nursing Procedures

Proposed Amendments: N.J.A.C. 13:37-2.1, 2.3, 3.5, 4.1, 4.3, 4.4, 4.6, 5.1.
Proposed Repeal: N.J.A.C. 13:37-4.5
Proposed Repeal and New Rule: N.J.A.C. 13:47-5.5

Authority: N.J.S.A. 45:11-23; 45:11-24(d)(8) and (19); 45:11-26 and 45:11-27.
Proposal Number: PRN 1985-344.

The agency proposal follows:

Summary

The proposed amendments are intended to clarify and add consistency to the licensing procedure particularly the use of temporary work permits. Applicants for a nursing license are required to submit their final record as proof of successful completion of an approved course of study. Prior to receiving a temporary work permit to practice as a graduate nurse pending the results of the first licensing examination, the applicant must submit: 1. an official application; 2. written request for a temporary work permit; 3. written intention to take the first licensing examination following completion of an approved course of study; 4. written verification of successful completion of an approved course of study; and 5. written promise of employment with an approved facility. Foreign nurse graduates must submit: 1. an official application; 2. written request for a temporary work permit; 3. written intention to take the first licensing examination following completion of an approved course of study and arrival in this country; 4. a copy of the nursing license from the country where the nursing education was obtained; 5. a copy of a H-1 Visa, alien registration number, visa classification number or a work authorized visa from the U.S. Immigration Service permitting employment; and 6. written promise of employment with an approved facility unless a H-1 Visa is shown. All applicants are required to show the original temporary work permit to the employer. All applicants must return the temporary work permit if the applicant fails to take or pass the first licensing examination. Failure to do so will prevent the applicant from applying to take any further licensing examination. Prior to receiving a temporary work permit, an applicant for licensure by endorsement must be verified by the original state of licensure of being licensed in good standing. The temporary work permit is issued pending the Board's evaluation of the completed application or for a period not to exceed one year.

Social Impact

The proposed amendments will have a beneficial social impact in that explicit standards are provided for the licensing procedure, particularly the use of temporary work permits. There has been a growing misunderstanding, confusion and misinterpretation of the Board's procedure for the use of temporary work permits which will be clarified by these amendments. The proposal will eliminate to a large extent the growing problem of license applicants receiving and using temporary work permits who are not eligible to do so and are not qualified to be licensed. It will give assurance to the public and health care facilities that only license applicants who are properly qualified will be issued and be allowed to use temporary work permits.

Economic Impact

The economic impact of the proposed amendments is minimal. The submission of the additional documentation to the Board will result in minimum cost to applicants for a nursing license. It will result in more cost efficient management based on the improved procedures used by the Board of Nursing in issuing licenses and temporary work permits.

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

13:37-2.1 Educational requirements

(a) (No change.)

(b) Applicants who entered schools of nursing on and after June 11, 1947 shall have completed the course of study required at such school meeting the requirements of N.J.A.C. 13:37-1.6. **Applicants shall submit their completed student final record as proof of successful completion of an approved course of study.**

13:37-2.3 Examinations; temporary work permits

(a) (No change.)

(b) **If** [A]an individual [who] has submitted an application to take the first licensing examination scheduled by the Board following completion of an approved course of study in nursing **such person** shall be issued a temporary work permit enabling such person to work as a graduate nurse in hospitals, institutions and agencies approved by the Board for this purpose, pending the results of the first licensing examination. **Said application shall include the following items:**

1. An official application for a nursing license;

2. A written request for a temporary work permit;

3. Written intention to take the first licensing examination following graduation from an approved course of study;

4. Written verification from the Program Director that the applicant has successfully completed an approved course of study;

5. A written promise of employment to work as a graduate nurse in a hospital, institution or agency approved by the Board for this purpose.

(c) (No change.)

(d) If an individual fails to **take or** pass the **first** licensing examination[,] **following completion of an approved course of study,** such person shall be required to forthwith surrender the temporary work permit to the Board and **immediately** refrain from further practice as a graduate nurse.

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

(g) Every applicant is responsible to show the original temporary work permit to his or her employer prior to beginning employment and upon request.

(h) Every applicant is responsible to return the temporary work permit to the Board immediately upon failing to take or to pass the first licensing examination following completion of an approved course of study. Failing to do so shall prevent said applicant from applying to take any further licensing examination.

13:37-3.5 Examinations; temporary work permits

(a) (No change.)

(b) **If** [A]an individual [who] has submitted an application to take the first licensing examination scheduled by the Board following completion of an approved course of study in nursing **such person** shall be issued a temporary work permit to

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work as a graduate nurse in hospitals, institutions and agencies approved by the Board for this purpose, pending the results of the first licensing examination. **Said application shall include the following items:**

1. An official application for a nursing license;

2. A written request for a temporary work permit;

3. Written intention to take the first licensing examination following successful completion of the nursing course;

4. Written verification from the Program Director that the applicant has successfully completed the nursing course;

5. A written promise of employment to work as a graduate nurse in a hospital, institution or agency approved by the Board for this purpose.

(c) (No change.)

(d) If an individual fails to **take or** pass the **first** licensing examination **following successful completion of the nursing course,** such person shall be required to forthwith surrender the temporary work permit to the Board and **immediately** refrain from further practice as a graduate nurse.

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

(g) Every applicant is responsible to show the original temporary work permit to his or her employer prior to beginning employment and upon request.

(h) Every applicant is responsible to return the temporary work permit to the Board immediately upon failing to take or pass the first licensing examination following successful completion of the nursing course. Failing to do so shall prevent said applicant from applying to take any further licensing examination.

13:37-4.1 Initial inquiry

(a) Professional nurse: Upon receipt of an initial inquiry from a foreign nurse applicant, the applicant shall be required to submit an information form. If the applicant appears to satisfy the requirements for licensure, the applicant shall be required to submit:

1.-2. (No change.)

3. Student final record or an equivalent school of nursing record, or in the event such record is unavailable, proof that the applicant is a graduate of an approved school of professional nursing **or a valid certificate issued by the Commission of Graduates of Foreign Nursing Schools;**

4. (No change.)

(b) (No change.)

13:37-4.3 Deficiencies

(a) Professional nurse: Prior to being examined for registration, applicants deficient in medical, surgical, pediatric, obstetric, or psychiatric nursing shall complete an accredited course in an approved school of professional nursing in the areas of deficiency.

(b) Practical nurse: Prior to being examined for registration, applicants deficient in medical, surgical, pediatric, obstetric, or psychiatric nursing shall complete an accredited course in an approved school of practical nursing in areas of deficiency.

13:37-4.4 Examinations; temporary work permits

(a) (No change.)

(b) **If** [A]an individual [who] has submitted an application to take the first licensing examination scheduled by the Board following completion of an approved course of study in nursing and arrival in this country shall be issued a temporary work permit if eligible enabling such person to work as a graduate nurse in hospitals, institutions and agencies approved by the Board for this purpose, pending the results of the first licensing examination. **Said application shall include the following items:**

1. An official application for a nursing license;

2. A written request for a temporary work permit;

3. Written intention to take the first licensing examination following graduation from an approved course of study and arrival in this country;

4. A copy of the nursing license of the country where nursing education was obtained;

5. A copy of H-1 Visa, alien registration number, visa classification number or a work authorized letter from the U.S. Immigration Service permitting employment.

6. Written promise of employment with an approved facility unless a H-1 Visa is shown.

(c) (No change.)

(d) If an individual fails to **take or** pass the **first** licensing examination **following completion of an approved course of study and arrival in this county** such person shall be required to forthwith surrender the temporary work permit to the Board and **immediately** refrain from further practice as a graduate nurse.

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

(g) Every applicant is responsible to show the original temporary work permit to his or her employer prior to beginning employment and upon request.

(h) Every applicant is responsible to return the temporary work permit to the Board immediately upon failing to take or pass the first licensing examination following completion of an approved course of study. Failing to do so shall prevent said applicant from applying to take any further licensing examination.

13:37-4.5 [Employment prior to licensure] **(Reserved)**

[The Board may issue a permission to work letter if eligible pending examination; provided, however, that the applicant shall have furnished the Board with either an alien registration number, visa classification number or letter from the United States Immigration Service permitting such employment.]

13:37-4.6 Language comprehensive requirement

(a) Professional nurse: All foreign nurse[s] candidates prior to taking the examination shall submit to the Board a certificate from the Commission on Graduates of Foreign Nursing Schools.

(b) Practical nurse: All foreign nurse candidates from non-english speaking countries or countries wherein the primary language is other than English, prior to taking the examination shall submit to the Board a TOEFL (Test of English) certificate with a minimum score acceptable to the Board and determined annually.

13:37-5.1 Initial inquiry

(a) (No change.)

(b) Practical nurse: Upon receipt of an initial inquiry from an applicant who has been licensed by examination or original waiver in another state, the applicant shall be required to submit:

1.-3. (No change.)

4. Foreign nurse graduates shall submit proof of completion of the equivalent of two years of high school and the school of nursing record.

13:37-5.5 Employment prior to licensure

[Upon the applicant's exhibiting to the Board a license to practice nursing in another state and filing with the Board the official application for licensure by endorsement, the Board may issue a permission to work letter granting permission to

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be employed as a nurse pending the Board's evaluation of such application and the verification by the Board of licensure in another state.]

(a) If an individual has submitted an application for licensure by endorsement such person shall be issued a temporary work permit to work as a nurse pending the Board's evaluation of his or her completed application or for a period not to exceed one year from the date the temporary work permit was issued, whichever occurs first. Said application shall include the following items:

1. An official application for a nursing license by endorsement;

2. Written verification from the original state of licensure indicating licensure in good standing.

(b) Every applicant is responsible to show the original temporary work permit to his or her employer prior to beginning employment and upon request.

(c) Every applicant is responsible to return the temporary work permit to the Board immediately upon failing to submit a completed application within one year of the date the temporary work permit was issued. Failing to do so shall prevent said applicant from applying to take any further licensing examination.

(a)

ATTORNEY GENERAL

Chemical Breath Testing Approved Instruments as Methods of Chemical Breath Testing

Proposed Amendments: N.J.A.C. 13:51-3.5 and 13:51-3.6

Authorized By: Irwin I. Kimmelman, Attorney General of New Jersey
Authority: N.J.S.A. 39:4-50.3
Proposal Number: PRN 1985-340.

Submit comments by July 17, 1985 to:
Attorney General Irwin I. Kimmelman
c/o Colonel Clinton L. Pagano
Superintendent, Division of State Police
Attn: Breath Test Unit
P.O. Box 7068
West Trenton, N.J. 08625

The agency proposal follows:

Summary

Pursuant to the provisions of N.J.S.A. 39:4-50.3 "Chemical analyses of the arrested person's breath, to be considered valid under the provisions of this act, shall have been performed according to methods approved by the Attorney General, . . ." The Attorney General has been made aware of the results of a study by the National Highway Traffic Safety Administration (NHTSA) of the Breathalyzer Model 1000 chemical breath testing device which concluded that in a significant number of instances the instrument failed to comply with the NHTSA standard for Chemical Breath Test instruments. Subsequently the Division of State Police reviewed the NHTSA's findings and recommended that the Breathalyzer Model 1000 be removed from the list of certified instruments approved by the Attorney General pursuant to N.J.S.A. 39:4-50.3 and as more fully reflected at N.J.A.C. 13:51-3.5(e) and 13:51-3.6(e).

At present there are only two law enforcement agencies within the State of New Jersey, which are under Federal jurisdiction, utilizing these chemical breath testing instruments for drinking driving enforcement.

As part of the NHTSA study it was recommended that the manufacturer institute improvements in quality control and a more comprehensive maintenance program be developed as a means to correct any future problems relating to unreliable readings on this instrument. The manufacturer of the instrument, Smith and Wesson Corporation, ceased production of the instrument as of January 1983, therefore eliminating the ability to effectuate improved quality control by the manufacturer. Likewise, due to the extremely limited use of this instrument in New Jersey, the Division of State Police does not contemplate establishing a comprehensive maintenance program for these instruments under the foregoing circumstances.

Accordingly, and in reliance upon the findings of the NHTSA and the recommendation of the Superintendent of the Division of State Police, the Breathalyzer Model 1000 is hereby proposed to be de-certified as an approved instrument for chemical breath testing under the provisions of N.J.S.A. 39:4-50.3.

Social Impact

The social impact from the amendment of these sections of the chemical breath test regulations for approved instruments will assure the public, law enforcement and the Judiciary that the enforcement of drinking driving laws in the State of New Jersey are being applied fairly and without prejudice to individuals who are being subjected to chemical breath testing under the provisions of N.J.S.A 39:4-50, et seq. Although the NHTSA findings concluded that with proper quality control, maintenance and operator training the instrument continues to remain to be an effective enforcement tool, the discontinuance of production by the manufacturer and the limited use of the instrument in the State of New Jersey vitiate against continuing to maintain this particular instrument as an approved instrument for chemical breath testing.

Economic Impact

The economic impact of this proposed amendment is considered minimal in that only two law enforcement agencies within the State of New Jersey, which are under Federal jurisdiction and with Federal reservations, presently employ the use of a Breathalyzer Model 1000 in the enforcement of drinking driving laws.

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

13:51-3.5 Approved instruments for performing chemical analysis of a person's breath

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

[(e) The Breathalyzer, Model 1000, is an instrument approved by the Attorney General pursuant to L.1966, c.142, Sec. 3, as amended by L.1971, c.273, Sec. 1 (C. 39:4-50.3) and this subchapter, for the testing of a person's breath by chemical analysis.]

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13:51-3.6 Approved methods for performing chemical analysis of a person's breath utilizing an approved instrument

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

[(d) Breathalyzer, Model 1000:

1. The Breathalyzer, Model 1000, being an approved instrument, has been determined to operate on the same basic principal or theory and utilize the same chemical compounds in the analysis process as the Breathalyzer as described at N.J.A.C. 13:51-3.6(a)1. In addition, the Breathalyzer, Model 1000 also incorporates computerized operational programming with digital electronic display or paper printout of the chemical analysis results.

2. An operational check list may be used with this device and may be prepared by the manufacturer of the Breathalyzer, Model 1000 or the organization using the Breathalyzer, Model 1000. The check off list, if used, shall contain, at least, the following information:

i. Advance switch to "Reset" and allow "Wait" light to go out;

ii. Gauge reference ampoule and insert into left hand ampoule holder;

iii. Gauge test ampoule, open, insert in right hand holder, insert bubbler, connect to outlet and close cover;

iv. Insert ticket, if applicable, and advance switch to "Run" position;

v. Take breath specimen when "Sample" and "Blow" illuminate; record time;

vi. Return switch to "Reset" position at conclusion of analysis.]

TRANSPORTATION

(a)

NEW JERSEY TRANSIT CORPORATION

Senior Citizen and Disabled Resident Transportation Assistance Act Program Guidelines and Procedures

Proposed New Rule: N.J.A.C. 16:78

Authorized By: New Jersey Transit Corporation, Jerome C. Premo, Executive Director.
Authority: N.J.S.A. 27:25-5(e), N.J.S.A. 27:25-32(a).
Proposal Number: PRN 1985-330.

Submit comments by July 17, 1985 to:
Albert R. Hasbrouck, III
Assistant Executive Director
New Jersey Transit Corporation
(NJ TRANSIT)
P.O. Box 10009
Newark, N.J. 07101

The agency proposal follows:

Summary

In 1981 the voters of New Jersey approved a State constitutional amendment to permit revenues from casino taxes to be used for additional and expanded transportation services or benefits to senior citizens and the disabled. In January 1984, Governor Kean signed into law the Senior Citizen and Disabled Resident Transportation Assistance Act (P.L. 1983 c.578). This legislation was designed to implement the constitutional amendment by making funds available to the counties and NJ TRANSIT for additional and expanded accessible transportation services. The proposed new rule establishes guidelines and procedures pursuant to which NJ TRANSIT will administer the new program in cooperation with the counties and other interested parties.

Social Impact

This new program offers an enormous opportunity for State and local government to develop a coordinated Statewide network of transportation services for New Jersey's elderly and disabled residents. With care and effective management, this network can strengthen transportation opportunities for everyone and provide sufficient funds to create a truly coordinated transportation service from the existing and sometimes fragmented service networks. The funds will also be used to assist counties to develop accessible feeder transportation services and accessible local transit service and enable NJ TRANSIT to develop and maintain capital improvements for the improvement of accessibility to transit services.

Economic Impact

The program will have no adverse economic impact. In fact, one of the goals of the program is to provide opportunities for disabled persons to have transportation available for trips to and from workplaces. Once this goal is achieved, it will enable some disabled persons to re-enter the workforce, becoming self-sufficient.

Full text of the proposed new rule follows.

CHAPTER 78

SENIOR CITIZEN AND DISABLED RESIDENT TRANSPORTATION ASSISTANCE ACT PROGRAM GUIDELINES AND PROCEDURES

SUBCHAPTER 1. GENERAL OVERVIEW

16:78-1.1 Purpose

(a) The general purpose of the Senior Citizen and Disabled Resident Transportation Assistance Program is to make available and accessible transportation so that senior citizens and disabled residents may obtain the necessities of life, including, but not limited to, employment, post-secondary education, social and recreational activities, shopping, and non-emergency medical services.

(b) The purposes of this program are as follows:

1. To assist counties to:

i. Coordinate the activities of the various participants in this program in providing the services to be rendered at the county level and between counties, and

ii. Develop and provide accessible feeder transportation service to accessible fixed-route transportation services where such services are available, and accessible local transit service to senior citizens and the disabled, which may include, but will not be limited to, door-to-door service, feeder service, fixed route service, local fare subsidy, and user-side subsidy, which may include, but will not be limited to, private rider or taxi fare subsidy.

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2. To enable the Corporation to:

i. Coordinate the program within and among counties;

ii. Render technical information and assistance to counties eligible for assistance under these guidelines; and

iii. Develop, provide and maintain those portions of capital improvements that afford accessibility to fixed route and other transit services which make rail cars, rail stations, bus shelters and other bus equipment accessible to senior citizens and the disabled.

16:78-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings:

"Accessible" means a service or facility that can be used by all individuals, including those who cannot negotiate steps or who can negotiate steps only with great difficulty.

"Board" means Board of Directors of the New Jersey Transit Corporation.

"Consumers" means senior citizens or disabled persons. In addition, for purposes of meeting the 51 percent minimum requirement for consumers on local senior citizen and disabled advisory committees, parents or legal guardian of disabled minors and non-professional advocates for mentally or emotionally disabled persons will be considered consumers.

"Corporation" means the New Jersey Transit Corporation.

"Demand responsive service" means a transportation mode in which a vehicle operates on demand to a variety of different origins and destinations.

"Disabled" means any individual who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, is unable without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected. Escorts may be allowed to use this service pursuant to rules established by the individual operators.

"Eligible counties" means counties submitting a proposal meeting the program guidelines.

"Fixed route service" means a transportation mode in which a vehicle operates on a regular basis along a predetermined route according to a schedule.

"General administration" means the management activities necessary to implement the purpose and objectives of the Senior Citizen and Disabled Resident Transportation Assistance Program. The NJ TRANSIT audit required by the Act will be funded as one of these management activities.

"Geographic region" means one of the following regions of the State: the Northern Region encompassing the counties of Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union, Warren; the Central Region encompassing the counties of Hunterdon, Mercer, Middlesex, Monmouth, Ocean and Somerset; and the Southern Region encompassing those counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem.

"Local fare subsidy" means an arrangement in which the designated recipient contracts with private and/or public operators of public transportation to reduce the fare to the senior citizen and disabled persons.

"New Jersey Special Services Citizen Advisory Committee" means a committee representing advocacy groups from senior citizens and the disabled and other interested parties appointed by the Executive Director of New Jersey Transit.

"Private ride" means a program whereby the designated recipient reimburses an individual or volunteer who provides transportation to senior citizens and disabled persons on an incidental and non-commercial basis.

"Senior citizen" means any individual who is 60 years of age or older.

"Taxi fare subsidy" means an arrangement in which the designated recipient contracts with a taxi operator to reduce its fare to senior citizens and disabled persons.

"Technical assistance" means those activities, of NJ TRANSIT or its representatives, designed to assist local designated recipients in the planning, organizing, implementating, operating, monitoring, and evaluating existing and future transportation services. The result of technical assistance activities is improvement of the efficiency, effectiveness and safety of transportation provided to the senior citizens and disabled persons.

"User side subsidy" means a program in which the designated recipient makes tickets available to senior citizens and disabled persons to purchase transportation at reduced rates.

SUBCHAPTER 2. APPORTIONMENT

16:78-2.1 General

In each fiscal year there is authorized to the Corporation from the Casino Revenue Fund established pursuant to section 145 of P.L. 1977, c. 110 (N.J.S.A. 5:12-145) a sum equal to 7.5 percent of the revenues deposited in the Casino Revenue Fund during the preceding fiscal year, as determined by the State Treasurer.

16:78-2.2 Formula

(a) Moneys under this program will be allocated by the Corporation in the following manner:

1. 75 percent will be available to be allocated to eligible counties for the purposes specified under N.J.A.C. 16:78-1.1(b)1. of the program.

2. 25 percent will be available for use by the Corporation for the purposes specified under N.J.A.C. 16:78-1.1(b)2. of the program and for the general administration of the program, but no more than 10 percent of the total moneys allocated under this program will be used for the general administration of the program.

(b) The amount of money which each eligible county may receive will be based upon the number of persons 60 years of age and older residing in that county expressed as a percentage of the whole number of persons resident in this State of 60 years and older, as provided by the U.S. Bureau of the Census. As similar data becomes available for the disabled population, such data will be used in conjunction with the senior citizens data to determine the county allocation formula. No eligible county will receive less than $150,000 nor more than 10 percent of the total funds available for allocation to the counties during a fiscal year under this program. No matching funds are required.

16:78-2.3 Funds availability

(a) Available funds must be committed by June 30 of each year or they will revert back to the General Casino Fund.

(b) The total NJ TRANSIT portion of the annual appropriation can be committed immediately upon adoption of a budget. A budget will be adopted using the following process. The Office of Special Services shall have the lead role in preparing the annual program budget. All organization units with eligible projects will submit requests with justification to the Office of Special Services, where requests will be put into priority order. That list will then be reviewed by the NJ TRANSIT Special Services Citizen Advisory Committee. The priority list and Special Services Citizen Advisory Committee comments will then be submitted to the Capital Program

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Committee for action, normally with the entire capital program. The Budget Office will be asked to review each project for operating budget impacts. The list of projects is then forwarded to the Executive Committee for action. The Board will then be asked to review and adopt the program. The Special Services staff shall complete Project Initiation Forms and work with appropriate staff at NJ TRANSIT Bus, Rail and Corporate to coordinate activities.

(c) The funds will be committed to a county upon notification of a grant award by NJ TRANSIT to the designated recipient.

1. The county or its designated recipient must submit an application to NJ TRANSIT prior to March 15 for funds available for the state fiscal year starting the following July 1. For the state fiscal year 1986, the Office of Special Services may extend the application deadline when warranted. In no case will an extension be given beyond July 15, 1985.

2. County contracts must coincide with a June 30 fiscal year-end and require at least quarterly financial reports to be submitted within 30 days of the end of the quarter. This is a reimbursement program. Requests for reimbursement may be monthly. When warranted, monthly advances may be given, but payments will be withheld if financial reports are not received when due.

3. The balance of county funds remaining unexpended by the county on June 30 can be used by the county in the succeeding fiscal year by having the succeeding fiscal year contract modified by NJ TRANSIT. In no case can a county carry-over more than the previous years allocation to that county, with the exception of carry-over of fiscal years 1984 and 1985 funds to fiscal year 1986. These carry-over contract modifications will only be approved by NJ TRANSIT if the services to be provided have been included in the most recently approved county plan. Newly proposed services that have been subject to the same review process as the county plan may also be approved as a modification. Unexpended county funds in excess of the previous years allocation will be reallocated as specified in N.J.A.C. 16:78-2.4.

16:78-2.4 Transfer of allocations

Any funds either not applied for by the deadlines specified in N.J.A.C. 16:78-2.3(c) or excess unexpended funds will be made available for reallocation to those counties which have an application on file by the deadline, and have not reached the maximum allocation for that fiscal year (see N.J.A.C. 16:78-2.2(b)).

SUBCHAPTER 3. ELIGIBILITY

16:78-3.1 Eligible recipients

(a) The governing body of the county is an eligible recipient and may make application to the Board for moneys available under N.J.A.C. 16:78-2.2(a)1. The governing body of a county may relinquish this designation to an agency, group or groups to replace it as the applicant. Relinquishing this designation requires that a public hearing be held. NJ TRANSIT will deal with only one applicant from each county.

(b) The purpose of the public hearing is to afford an opportunity for senior citizens, the disabled and other interested individuals or parties, to comment on the appropriateness of such designation.

16:78-3.2 Eligible service areas

The recipients are allowed to provide service beyond county and State boundaries under this program, and are strongly encouraged to do so, as long as services benefit eligible residents of New Jersey (see N.J.A.C. 16:78-5.4(c)). At a minimum, recipients must provide service into contiguous counties.

16:78-3.3 Eligible activities

(a) Eligible county activities are as follows:

1. The development and provision of additional or expanded accessible feeder transportation service to accessible fixed-route transportation services must be provided where such services are available, and accessible local transit service to senior citizens and the disabled, which may include but not be limited to door-to-door service, fixed-route service, local fare subsidy, and user-side subsidy which may include but not be limited to private ride or taxi fare subsidy and to coordinate the activities of the various participants in this program in providing the services to be rendered at the county level and between counties. Only passenger transportation services are eligible for reimbursement under this program. The transport and/or delivery of meals or other goods is not an eligible activity under this program. Transportation services for medical purposes are eligible as long as they are of a non-emergency nature. Specifically, eligible activities include, but are not limited to, the following:

i. Planning: analysis and inventory of needs, existing services; determination of unmet needs, development of county's coordination plan, analysis of costs, etc.

ii. Capital investment: purchase of vehicles, lifts, radios and other necessary equipment.

iii. Operating costs: any activity related to providing transportation services. Such activities include drivers' salaries, maintenance, insurance, gas and oil, dispatching expenses, driver training, etc.

2. The recipients must make serious efforts to provide transit service for disabled persons needing employment and post-secondary education transportation.

(b) Eligible NJ TRANSIT activities are as follows:

1. Technical assistance to render technical information and assistance to counties eligible for assistance. Such activities may include but not be limited to the collecting and dissemination of information on the coordination of transportation services and funding sources, vehicle scheduling, routing, and dispatching, specifications for vehicle procurement and maintenance.

2. Accessible capital improvements which include the design and purchase of capital improvements that provide additional or expanded accessible fixed route and other transit service. These accessible capital improvements include improvements to rail cars, rail stations, buses, bus facilities, and other related rail and bus facilities which make transportation services accessible to senior citizens and disabled persons.

3. Operating costs associated with the operation and maintenance of additional and expanded accessible capital improvements.

4. The administration of the program within and among the counties as well as coordinate NJ TRANSIT's improvements allowed under the program. The total dollars allowed for general administration of these activities may not exceed 10 percent of the total moneys allocated under this program.

5. The planning of Statewide activities leading to improved additional or expanded accessible transit services.

16:78-3.4 Coordination plan requirements

(a) In order for a county to be eligible for assistance under the program, the governing body of that county or an agency, group or groups authorized by the governing body will develop a county plan for that assistance in accordance with the program regulations. The plan must be reviewed by the local

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citizen advisory committee. The county plan will be approved by the governing body of that county and then be subject to approval by the NJ TRANSIT Board of Directors.

(b) Recipients are required to coordinate the activities of the various participants in the program. Mere cooperation is not sufficient. Coordination involves at least some of the following activities:

1. Central gasoline purchasing
2. Central vehicle maintenance
3. Centralized vehicle dispatch
4. Centralized passenger trip request
5. Centralized billing and accounting

(c) Usually, the best economies of scale are realized through actual consolidation of all the transit activities. It is intended that recipients incorporate these coordination activities not only among their own transit operators, but to also make efforts to attract other local transit operators to join the coordinated system.

(d) The county plan shall include, but not be limited to the following:

1. Provisions for the coordination of existing and future transportation services at the county level and for intercounty transportation services;
2. Information as to what existing accessible and non-accessible transportation services are available;
3. What additional and/or expanded accessible and non-accessible transportation services will be provided;
4. The methods that will be utilized to deliver these services;
5. The anticipated financial costs to be incurred from the implementation of the services; and
6. The financial resources to be put in place to meet these costs, including fares and/or voluntary contributions/donations.

(e) Beginning with the Fiscal Year 1987 application, the recipient must include a plan as described in (d) above. The plan must be updated annually and a copy of the updated plan included in subsequent applications for funding.

(f) In order to afford individuals the capability of influencing transportation decisions at all stages of development, the governing body of each county must appoint a citizens advisory committee. The objective of the committee is to advise the recipient on planning, implementing and operating coordinated transportation services at the county level.

(g) The governing body may choose to appoint an existing advisory committee to satisfy the objective set forth herein. However, committee membership must consist of at least 51 percent consumers (for example, senior citizens and disabled residents) of the service.

(h) The recipient shall provide NJ TRANSIT with the following information about the local citizen advisory committee:

1. Committee By-Laws
2. Membership, terms of office, positions
3. List of consumers
4. Notice of meetings
5. Copy of minutes

SUBCHAPTER 4. PROGRAM DEVELOPMENT AND MANAGEMENT

16:78-4.1 General

NJ TRANSIT in conjunction with the NJ TRANSIT Special Services Citizen Advisory Committee, its other advisory bodies, representatives and associations of counties, and other interested parties, has developed these regulations for transportation assistance to senior citizens and the disabled. The instrumentalities of local government, particularly the counties of this State, should play a major role in facilitating the provision of that transportation assistance. NJ TRANSIT in conjunction with the New Jersey Department of Transportation's Office of Coordination, and the counties, should coordinate existing transportation services provided at the local level including but not limited to those services funded by any other State agency, and establish coordinated intercounty transportation services.

16:78-4.2 Regional public hearings

In January of each year the Corporation will conduct at least one public hearing in each of the three geographic regions in order to gather information from interested parties as to the efficiency of the program. A minimum of 30 days notice will be given to every municipal clerk within that geographic region before these meetings. NJ TRANSIT and the local recipients of aid will make reasonable efforts to provide transit service to the public hearings. These public hearings shall be held at accessible locations.

16:78-4.3 Annual audit

The Corporation will cause an annual audit to be made of the program and will, if not conducted by the Corporation, employ a recognized accounting firm for that purpose. The expenses of conducting the audit will be considered as part of the cost of the general administration of the program. Each local recipient will cause an audit to be made of the local program on at least a bi-annual basis. The local recipient's audit will be paid for out of local funds received through this program. If the audit is not conducted by the designated recipient, a recognized accounting firm shall be employed by the designated recipient.

16:78-4.4 Technical assistance

The Corporation will be entitled to call upon the assistance, or contract for services, of any State department, board, bureau, commission or agency as may be necessary to implement the provisions of the program.

16:78-4.5 Reporting requirements

The Corporation will submit an annual report to the Legislature by October 1 of each year covering the period of the previous State fiscal year. The report will cover the status of this program including any recommendations concerning the general improvement of mass transit for the senior citizens and the disabled. The local recipients of aid will provide information to the Corporation, as requested on a timely basis to assist the Corporation in preparing this report. Copies of the annual report will be made available to each local recipient, as well as each county's governing body. Reports shall also be made available to the County Transportation Association (CTA) and the Council on Special Transit (COST).

SUBCHAPTER 5. LOCAL ASSISTANCE APPLICATION

16:78-5.1 General

(a) The governing body of an eligible county, or an agency, group, or groups designated as an applicant by the county after a public hearing in which senior citizens and disabled residents will have an opportunity to comment on the appropriateness of such designation, may make application to the Board for moneys available under N.J.A.C. 16:78-2.2(a)1. The application will be in the form of a proposal to the Board. This proposal will include:

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1. Description of proposed services
2. Budget
3. Description of coordination efforts
i. At the County Level
ii. With other Counties
iii. With existing Fixed Routes
4. Description and certification of maintenance of effort
5. Description of public involvement
6. Transcript of public hearing
7. Freeholder resolutions
i. Approving designated recipient
ii. Approving application
8. Reporting Requirements

16:78-5.2 Description of proposed services

(a) The proposed services should be described as follows:

1. Indicate the service or services to be provided. Eligible types of service include, but are not limited to, door-to-door service, fixed-route service, local fare subsidy, and user-side subsidy which may include, but not be limited to, private ride or taxi fare subsidy.

2. Describe the fleet of vehicles to be used in the program. Specify the age, type, mileage, funding source and condition of all vehicles in the fleet. Provide a five year capital replacement schedule.

3. Describe the days of the week, and the hours of the day that service will be available. For each type of service to be provided.

4. Describe the procedure that a prospective passenger would follow in order to register for and receive transportation, including a description of any advance reservation systems that may be used. Identify any phone numbers that consumers need to be aware of.

5. Describe marketing efforts.

16:78-5.3 Budget

The application must contain a program budget which identifies expense categories as identified in *Coordinating Transportation Services for the Elderly and Handicapped, Volume 2, A Model Uniform Billing and Accounting System for Coordinated Transportation Systems.* This publication is sponsored by the United States Department of Transportation and is available from the National Technical Information Service, Springfield, Virginia 22161. These categories must be aggregated into Administration, Planning, Operation, and Capital expense functions. Two budgets should be submitted. The first should include all program expenses. The second budget should only reflect the Senior Citizen and Disabled Resident Transportation Assistance Program expenses. Both budgets should be prepared using a July 1 to June 30 fiscal year.

16:78-5.4 Coordination

(a) The application must include a description of the means by which the applicant will coordinate intra-county transportation, inter-county transportation and existing accessible fixed route services described in (b) through (d) below. This description should show that the receipient is implementing the comprehensive planning document described in N.J.A.C. 16:78-3.4 beginning with the Fiscal Year 1987 application.

(b) Intra-county coordination describes the means by which the applicant will coordinate accessible and non-accessible transportation services which operate within the county. Any agencies or organizations which the applicant has an agreement or letter of intent, whereby the applicant will provide transportation service to the senior citizens and disabled residents within the county should also be listed.

(c) Inter-county coordination describes the means by which the applicant will coordinate accessible and non-accessible transportation services which operate between counties. Any agencies or organizations which the applicant has an agreement or letter of intent, whereby the applicant will provide transportation service to the senior citizens and disabled residents between counties should also be listed (Copies of the agreements or letters of intent should be available upon request).

(d) Accessible fixed route coordination describes the means by which the applicant will coordinate existing, expanded, or additional accessible and non-accessible transportation for senior citizens and disabled residents with existing accessible fixed routes operated by public or private operators. Any public or private operators of accessible fixed route service which operate in or through the service area to which the applicant will provide accessible connecting service to should also be listed.

16:78-5.5 Description and certification of maintenance of effort (MOE)

(a) The purpose of the Senior Citizen and Disabled Resident Transportation Assistance Program is to provide for additional or expanded transportation services to senior citizens and disabled residents. Therefore, designated recipients must maintain the same level of funding for senior citizen and disabled transportation services as prior years.

(b) In order to comply with this Maintenance of Effort (MOE) requirement, the application must contain senior citizen and disabled resident transportation non-capital expense data from the past two years prior to the implementation of the Senior Citizen and Disabled Resident Transportation Assistance Program. This data should include non-capital expenditures of the designated recipient and/or applicant and any other agency, group, or groups which will participate in the coordinated transportation program. Data from groups joining the coordinated system since the implementation of the Senior Citizen and Disabled Resident Transportation Assistance Program must be added to the original MOE. The data from the new groups should cover the two year period immediately preceeding their joining the coordinated system.

(c) The applicant must complete a Maintenance of Effort Certification and Schedule, the form of which will be provided by NJ TRANSIT.

16:78-5.6 Public involvement

(a) In order to assure that an opportunity is afforded to any interested individual, agency, group, or groups to comment on the appropriateness of an application it will be necessary to hold a public hearing. A transcript of the hearing must be attached to the application.

1. The governing body of the recipient will also provide an opportunity for interested parties to provide the governing body with any facts, materials, or recommendations that would be of assistance regarding the efficacy of the local program.

(b) Notice of any public hearing required to be held pursuant to these rules will be published at least 30 days prior to the date of the public hearing in at least two newspapers circulating in the specific geographic area in which the meeting is to be held. Notice of any hearing will also be transmitted, at least 30 days in advance thereof, to every municipal clerk within the specified geographic area where the meeting will be held and to NJ TRANSIT. All public hearings held pursuant to these rules will be held at locations which are accessible to

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senior citizens and the disabled. NJ TRANSIT and the local recipients of aid will make reasonable efforts to provide transit service to the public hearings.

(c) The extent of efforts to involve the public in preparation of the application should be described. Public participation, should include senior citizens and disabled individuals, advocacy organizations representing seniors and disabled persons, public and social service agencies, public and private operators of existing transportation services. In particular, the efforts, other than those required in (a) and (b) above, should also be described.

16:78-5.7 Governing body resolution

(a) The governing body of each county is designated as the recipient of funds available under this program. If the governing body so chooses to relinquish this designation to an agency, or group it will be necessary for the Board of Chosen Freeholders to pass a resolution designating the agency or group. This resolution must be included in the application. A new resolution is not required for each annual application if the designated recipient remains the same.

(b) The governing body or the appropriate elected official of the designated recipient must pass a resolution and/or authorize the submission of an application. This resolution or authorization must be submitted with the application. The resolution or authorization should provide authority for the recipient to enter into a contractual agreement with NJ TRANSIT to implement the program.

TREASURY-TAXATION

DIVISION OF TAXATION

Proposals numbered PRN 1985-321, 324, 341 are authorized by John R. Baldwin, Director, Division of Taxation.

Submit comments by July 17, 1985 to:

John R. Baldwin, Director
Division of Taxation
50 Barrack Street, CN 240
Trenton, N.J. 08646

(a)

Corporation Business Tax Investment Companies; Indebtedness; Subsidiaries; Filing of Returns

Proposed Amendments: N.J.A.C. 18:7-1.15, 4.5, 4.11 and 11.7

Authority: N.J.S.A. 54:10A-27.
Proposal Number: PRN 1985-321.

The agency proposal follows:

Summary

The proposed amendment related to the Corporation Business Tax Act, N.J.S.A. 54:10A-1 et seq., and are necessary as a result of *Mobay Chemical Corp. v. Director, Division of Taxation,* 69 N.J. 407(1984) and *Fedders Financial Corp. v. Director, Division of Taxation,* 96 N.J. 376 (1984). The amendments relate to indebtedness regarding net-worth, income and interest that arose as a result of the cases. Timely filing requirements have been added regarding postmarked dates and due dates where the return is due on a Saturday, Sunday or holiday (N.J.A.C. 18:7-11.7). The definition of investment company has been amended for the purpose of clarity and also to give the public the Division's policy regarding qualification or exclusion as an investment company (N.J.A.C. 18:7-1.15). The definition of subsidiary has been clarified for proper interpretation of the statutory provisions contained in N.J.S.A. 54:10A-4(d) and 54:10A-9 (N.J.A.C. 18:7-4.11).

Social Impact

The proposed amendments would relieve perplexing problems the Division has had with taxpayers, their attorneys and accountants that have resulted in past and present litigation. The amendments will assist auditors and accountants in how they should prepare required filings. Filing deadlines and refinements of certain definitions clarify the rules, avoid confusion and make a tax more acceptable. Knowing what the Division will do in certain instances and interpret different circumstances permits taxpayers to act accordingly.

Economic Impact

Timely filing of returns and timely payment of tax will aid the State in paying its bills, carrying on its programs and preparing its budget for the oncoming year. This will have a positive effect on the State's revenues. The court's decision in the *Mobay* and *Fedders* cases and the defining of "investment company" and "subsidiary" will have a negative effect on the State's revenues although the net economic effect cannot be estimated at this time. The proposed amendments themselves, however do not have a negative economic impact per se since the proposal simply amends the rules to conform with the cases.

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

18:7-1.15 Investment company; definition

(a) (No change.)

(b) For purposes of the Act, "investment company" does not include any corporation which:

1. Is a merchant or dealer in stocks, bonds and other securities, and which is regularly engaged in buying and selling such securities to customers[.]; **or**

2. Had less than 90 percent of its average gross assets in New Jersey, **during the period covered by the return,** at cost, either [:] **invested in stocks, bonds, debentures, mortgages, notes, patents, patent rights or other securities, or consisting of cash on deposit; or**

[i. Invested in stocks, bonds, debentures, mortgages, notes, patents, patent rights or other securities; or

ii. Consisting of cash on deposit during the period covered by its return.]

3. Is a banking corporation or a financial business corporation as defined in the Act and these rules.

(c) (No change.)

18:7-4.5 [Net worth; indebtedness includible] **Indebtedness owing directly or indirectly**

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

(d) [In the case of a creditor, corporate or otherwise (other than an individual], including an estate, trust or other entity, indebtedness, if not includible by reason of direct ownership

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of taxpayer's stock by such creditor, shall be includible if both the taxpayer and the creditor are substantially owned or controlled directly or indirectly by interests, including members of the immediate family of stockholders, which in the aggregate hold ten percent or more of the taxpayer's outstanding shares of capital stock of all classes. For the purpose of determining the degree of stock ownership of a corporate creditor, all the shares of the taxpayer's capital stock held by all corporations bearing the relationship of parent, subsidiary or affiliate of the corporate creditor shall be aggregated.] **Indebtedness owing directly to a 10 percent shareholder is a part of statutory net worth whether or not the 10 percent shareholder is functioning as a conduit.**

(e) Indebtedness must be owing directly or indirectly to a 10 percent shareholder. Indebtedness owing by a taxpayer to a commonly controlled affiliate of a parent is still presumed to be owing indirectly to the common parent. However, the taxpayer may show that the affiliate is merely a conduit of funds from a non-affiliated source and defeat the presumption. Indebtedness between commonly controlled affiliates may not be attributable as owing indirectly to the common shareholder unless the common shareholder was the source of the funds. The taxpayer must establish that the common shareholder was not the source of the funds since it has the burden of demonstrating that the indebtedness is owing to third party creditors and not to the common shareholder.

(f) For the purpose of determining the degree of stock ownership of a corporate creditor all the shares of the taxpayer's capital stock held by all corporations bearing the relationship of parent, subsidiary or affiliate of the corporate creditor shall be aggregated.

18:7-4.11 Subsidiary corporations; [varying definitions] **definition**

(a) **For purposes of the subsidiary reduction from net worth** [U]under Section 4(d) of the [law] **Act, as well as for purposes of the subsidiary deduction from net worth under Section 9 of the Act,** a subsidiary is defined as [ownership] **any corporation in which taxpayer is the owner** of:

1. (No change.)

2. **At least 80 percent of** [T]the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends.

3. The investment shall be determined only with reference to investment in capital stock and shall exclude any loans or advances to any such subsidiaries.

(b) An entity organized under the laws of a foreign country shall be considered a subsidiary [, under Section 4(d) of the law,] if the foregoing requisite degree of ownership is met and if the entity is considered a corporation for any purpose under the United States Federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed-paid foreign tax credits or for purpose of status as a controlled foreign corporation.

[(c) Under section 9 of the law, a subsidiary is defined as may corporation in which:

1. A taxpayer is the owner of at least 80 percent of the total combined voting power of all classes of stock entitled to vote; and

2. The total number of all other classes of stock except nonvoting stock which is limited and preferred as to dividends.]

18:7-11.7 Time for filing of returns

(a) (No change in text.)

(b) A return is timely filed when it is received by the Division of Taxation on or before the due date.

(c) A return is timely filed when it is received by the Division of Taxation on the next business day, if the due date falls on a Saturday, Sunday or holiday.

(a)

Corporation Business Tax Entire Net Income Base

Proposed Amendments: N.J.A.C. 18:7-5.1, 5.2 and 5.4

Authority: N.J.S.A. 54:10A-1 et seq., specifically 54:10A-27.

Proposal Number: PRN 1985-341.

The agency proposal follows:

Summary

The proposed amendments deal with the entire net income base of the Corporation Business Tax (N.J.S.A. 54:10A-1 et seq.). One amendment concerns the definition of entire net income which indicates that entire net income shall be determined on a separate entity basis. Consolidated returns are not permitted or provided for, except for the Consolidated Casino Business Tax Return provided for by N.J.S.A. 5:12-148(b) and the proposed new rule, N.J.A.C. 18:7-1.17, found at 17 N.J.R. 901(a). Entire net income shall be determined for S Corporations and DISC and "Former DISC" Corporations in the same manner as any other corporation. The proposed amendment to N.J.A.C. 18:7-5.4 provides for non-recognition of gains or losses not recognized for Federal income tax purposes under Sections 332, 333, 336, 337, 351 or other similar sections of the Federal Internal Revenue Code, but only to the extent that recapture or other provisions of the Federal Internal Revenue Code are not paramount to these sections. Due to the enactment of Chapter 143, Laws of 1985, approved on April 22, 1985, the old N.J.A.C. 18:7-5.4(a)2 is deleted and the old 5.4(a)3 will be renumbered as N.J.A.C. 18:7-5.4(a)2. N.J.A.C. 18:7-5.2(b)3 is amended by adding subparagraph iii, which provides that the amount of deductible income, war-profits and excess profits taxes paid to each foreign country or possession of the United States shall not exceed the net income earned by the taxpayer in such foreign country or possession. The language in N.J.A.C. 18:7-5.2(a)6 is being deleted; said paragraph is being reserved due to a change contained in Chapter 143, Laws of 1945, supra. The provisions of N.J.A.C. 18:7-5.2(a)7 adds subparagraphs i, ii and iii.

Social Impact

The Division of Taxation has been in the process of updating its Corporation Business Tax rules concerning new matters and putting into rule form several of its ongoing policies and practices. The public, the corporate taxpayer, its accounting and legal representatives and the Division itself benefit from clearly articulated written rules. Since the net worth base of the tax is being phased out, the net income base is of increasing importance. Some of the technical changes add

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clarity which leads to better understanding. The amended rules should lessen the amount of litigation.

Economic Impact

Since some of the proposed amendments deal with technical changes to the current rules and the remainder reflect in written form the Division's current policies and practices no new or additional significant economic impact is expected.

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

18:7-5.1 Entire net income; definition

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

(c) Consistent with N.J.A.C. 18:7-11.15, entire net income shall be determined on a separate entity basis as if the contemporaneous Federal return had not been a consolidated return.

(d) Entire net income shall be determined as if no election had been made under 26 U.S.C. 1371 (Subchapter S of the Federal Internal Revenue Code).

(e) Entire net income shall be determined as if no election had been made under 26 U.S.C. 992(b) to be treated as a DISC or as if it were not a "Former DISC" under 26 U.S.C. 992(a)(3).

18:7-5.2 Entire net income; how computed

(No change.)

(a) Add to Federal taxable income:

1.-5. (No change.)

6. [Net operating losses sustained during any year or period other than that covered by the return, which were deducted in computing Federal taxable income;] **(Reserved)**

7. The amount deducted, in computing Federal taxable income, for interest on indebtedness (whether or not evidenced by a written instrument) directly or indirectly owed to an individual stockholder or members of his immediate family who, in the aggregate, own beneficially ten percent or more of the taxpayer's outstanding shares of capital stock, or to a corporate stockholder, including its subsidiaries, which owns beneficially, directly or indirectly, ten percent or more of the taxpayer's outstanding shares of capital stock minus **ten percent** of the amount so deducted or $1,000.00, whichever is larger. Thus, if the amount of such interest is $1,000.00 or less, then none of said amount need be added back. [A taxpayer is not required to add back interest paid or accrued on bonds or other evidences of indebtedness issued, with stock, pursuant to a bona fide plan of reorganization to persons who prior to such reorganization were bona fide creditors of the taxpayer or any predecessor corporation, but were not stockholders thereof.]

However, there shall be allowed as a deduction:

i. Any part of a deduction for interest on written evidence of indebtedness issued, with stock, pursuant to a bona fide plan of reorganization to persons who prior to such reorganization were bona fide creditors of the taxpayer or any predecessor corporation, but were not stockholders thereof; and

ii. Any part of a deduction for interest that relates to financing of motor vehicle inventory held for sale to customers, provided that the underlying indebtedness is owing to a taxpayer customarily and routinely providing this type of financing. The portion of such interest which may be deducted is limited to interest on indebtedness relating to floor-planning of motor vehicles evidenced by a trust receipt or similar document and is also limited to interest on unsold inventory items. The interest must be paid or accrued directly to a creditor which is a taxpayer under the act and not indirectly to any related or affiliated entity. The taxpayer, or a corporation which is a parent or subsidiary of that taxpayer must be the manufacturer of the motor vehicles financed; and

iii. Any part of a deduction for interest that related to debt of a banking corporation owing directly to a bank holding company as defined in 12 U.S.C. 1841 of which the banking corporation is a subsidiary. The allowable deduction for interest is limited to interest paid or accrued directly by the subsidiary to its bank holding company parent notwithstanding that related indebtedness may be excluded from net worth where it is owing to an affiliate of such bank holding company.

8.-11. (No change.)

i. Where the "user/[lessor] **lessee**" of qualified lease property which is precluded from claiming a deduction for rent under this rule would have been entitled to cost recovery on property which is subject to such "safe harbor lease" election in the absence of that election, it may claim depreciation on that property under the provisions of (b)4 and 5 below. See (b)6 below for the treatment to be accorded related income on such "safe harbor lease" transactions.

12. (No change.)

(b) Deduct from Federal taxable income:

1. 100 percent of all dividends included in Federal taxable income which were received from subsidiaries meeting the definition of a subsidiary under [subsections (a) and (b) of] Section 4.11 (Subsidiary corporations; [varying definitions] **definition**) of this Chapter and 100 percent of all dividends from those subsidiaries which were added to Federal taxable income in accordance with subsection (a) of this Section;

2. (No change.)

3. Income, war-profits, and excess profits taxes imposed by foreign countries or possessions of the United States, allocable to income included in Federal taxable income **subject to the following limitations:**

i. To the extent that these income, war-profits and excess profits taxes were allowed as a credit against the Federal income tax under the applicable provisions of the Internal Revenue Code; [and]

ii. Provided, that such taxes were not reflected in deductions made in computing Federal taxable income or taken under paragraph 9 of subsection (a) of this Section[.] **; and**

iii. Also provided that the amount of the deductible income, war-profits and excess profits taxes paid to each foreign country or possession of the United States shall not exceed the net income earned by the taxpayer in such foreign country or possession.

4.-7. (No change.)

18:7-5.4 Factors not adjustable to Federal taxable income

(a) No adjustment to Federal taxable income is permitted under this [Act] **rule** for:

1. Gains or losses not recognized for Federal income tax purposes under Sections 332, 333, **336,** 337, 351 or similar sections of the Internal Revenue Code **but only to the extent that recapture or other provisions of the Code are not paramount to these sections.**

[2. Net operating losses sustained during any year or period other than that covered by the report. (N.J.S.A. 54:10A-4(k)(2)(D).)]

Renumber 3. and 4. as **2.** and **3.** (No change in text.)

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(a)

Spill Compensation and Control Tax Tax Rates

Proposed New Rule: N.J.A.C. 18:37-2.2

Authority: N.J.S.A. 58:10-23.11.
Proposal Number: PRN 1985-324.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:37 expired on May 6, 1985. A notice of Proposed Readoption appears in the May 6, 1985 Register at 17 N.J.R. 1074(a). Since the text of the rules, as they appear in N.J.A.C. 18:37, expired on May 6, 1985, the amendments to N.J.A.C. 18:37-2.2 in this proposal are proposed as new rules.

The proposal will amend the rules to reflect the changes in the tax rates on transfers of hazardous substances other than petroleum or petroleum products.

The Administrator of the New Jersey Spill Compensation and Control Fund notified the Division of Taxation on May 2, 1985 that the total cost of reasonable claims against the Fund exceeds the balance of the Fund as recorded on May 1, 1985.

Accordingly, by reason of the requirements set forth in the Spill Compensation and Control Act, subsection 9b of P.L. 1976, c.141 (N.J.S.A. 58:10-23.11h), as amended, the rate of tax shall be increased as follows effective with transfers made on and after June 1, 1985:

1. On hazardous substances other than petroleum or petroleum products, the tax rate shall be imposed at the greater of $0.04 per barrel transferred or 0.8 percent of the fair market value, and

2. On hazardous substances other than petroleum or petroleum products which are or contain any precious metals to be recycled, refined, or rerefined in this State, or which are transferred into this State subsequent to being recycled, refined, or rerefined, the tax rate shall be imposed at $0.04 per barrel.

The foregoing rates will remain in effect until the revenues produced by such increased rates equal 150 percent of the total dollar amount of all pending reasonable claims resulting from the discharge of hazardous substances other than petroleum or petroleum products.

The tax rate on petroleum and petroleum products remains at $0.01 per barrel transferred.

Social Impact

The proposal will properly notify taxpayers in the petrochemical industry and other interested parties of the tax rate increase, effective June 1, 1985, on the transfer of hazardous substances other than petroleum and petroleum products.

Economic Impact

The economic impact of the action taken by the Spill Compensation Fund Administrator, reflected in these proposed amendments, would effectively double the tax revenues received on transfers of chemical hazardous substances and quadruple the tax revenues received on certain hazardous substances which are or contain precious metals. Tax revenues received on the transfer of petroleum and petroleum products would be unaffected.

Full text of the proposed new rule follows (additions indicated in boldface **thus**).

18:37-2.2 Tax rates on the transfer of hazardous substances other than petroleum or petroleum products

(a) The tax on transfers of hazardous substances other than petroleum or petroleum products shall be at the rate of:

1. On transfers occurring prior to April 1, 1980, $0.01 per barrel; or

2. On transfers occurring on and after April 1, 1980 but prior to November 1, 1980, the greater of $0.01 per barrel or 0.4 percent of the fair market value of the hazardous substance provided, however, that with respect to transfers of hazardous substances other than petroleum or petroleum products which are or contain any precious metals to be recycled, refined, or rerefined in this State, or which are transferred into this State subsequent to being recycled, refined or rerefined, the tax shall be $0.01 per barrel of the hazardous substance; or

3. On transfers occurring on or after November 1, 1980, **but prior to August 1, 1982,** the greater of $0.04 per barrel or 0.8 percent of the fair market value of the hazardous substance, provided, however, that with respect to transfers of hazardous substances other than petroleum or petroleum products which are or contain any precious metals to be recycled, refined, or rerefined **in this State, or which are transferred into this State subsequent to being recycled, refined, or rerefined,** the tax shall be $0.04 per barrel of the hazardous substance. The tax rates specified herein were adopted pursuant to the determination of the Administrator of the Spill Compensation Fund that the condition stated for a tax increase in (c) below existed as of October 17, 1980; **or**

4. On transfers occurring on or after August 1, 1982, but prior to June 1, 1985, the greater of $0.01 per barrel or 0.4 percent of the fair market value of the hazardous substance provided, however, that with respect to transfers of hazardous substances other than petroleum or petroleum products which are or contain any precious metals to be recycled, refined, or rerefined in this State, or which are transferred into this State subsequent to being recycled, refined, or rerefined, the tax shall be $0.01 per barrel of the hazardous substance. The tax rates specified herein were adopted pursuant to the determination of the Administrator of the Spill Compensation Fund that the condition stated for a tax increase in (c) below no longer existed as of June 21, 1982; or

5. On transfers occurring on or after June 1, 1985, the greater of $0.04 per barrel or 0.8 percent of the fair market value of the hazardous substance, provided, however, that with respect to transfers of hazardous substances other than petroleum or petroleum products which are or contain any precious metals to be recycled, refined, or rerefined in this State, or which are transferred into this State subsequent to being recycled, refined, or rerefined, the tax shall be $0.04 per barrel of the hazardous substance. The tax rates specified herein were adopted pursuant to the determination of the Administrator of the Spill Compensation Fund that the condition stated for a tax increase in (c) below existed as of May 1, 1985.

(b) For purposes of (a) above, "fair market value" means the invoice price of the hazardous substances transferred, including transportation charges; but where no price is so fixed, "fair market value" shall mean the market price as of the close of the nearest day to the transfer paid for similar hazardous substances.

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(c) In the event of a major discharge or series of discharges of hazardous substances other than petroleum or petroleum products resulting in claims against the Spill Compensation Fund which exceed the existing balance of the fund, a tax rate of the greater of $0.04 per barrel transferred, or 0.8 percent of the fair market value of such hazardous substance shall be levied until the revenue produced by such increased rate equals 150 percent of the total dollar amount of all pending reasonable claims resulting from the discharge of hazardous substances other than petroleum or petroleum products; provided, however that with respect to transfers of hazardous substances other than petroleum or petroleum products which are or contain any precious metals to be recycled, refined, or rerefined in this State, or which are transferred into this State subsequent to being recycled, refined, or rerefined, the tax shall be $0.04 per barrel of the hazardous substances. The tax rate as herein set forth may be less than $0.04 per barrel transferred or 0.8 percent of the fair market value of such hazardous substance if, as provided by the Spill Compensation Law, the revenue produced by such lower rate shall be sufficient to pay outstanding claims against the fund within one year of such levy.

(d) If under the Spill Compensation Law it is determined:

1. That pending, reasonable claims against the fund for hazardous substances other than petroleum exceed 70 percent of the existing balance of the fund; and

2. That the sum of the claims paid by the fund on behalf of discharges or removals of hazardous substances other than petroleum plus pending, reasonable claims against the fund on behalf of discharges of hazardous substances other than petroleum is equal to or greater than 70 percent of all claims paid by the fund plus all pending, reasonable claims against the fund, the State Treasurer may order the Director of the Division of Taxation to levy the tax on all hazardous substances other than petroleum at a specified rate greater than $0.01 per barrel or 0.4 percent of the fair market value of the product, as the case may be, but in no event to exceed $0.04 per barrel with respect to transfers of hazardous substances other than petroleum or petroleum products which are or contain any precious metals to be recycled, refined or rerefined, in this State, or which are transferred into this State subsequent to being recycled, refined or rerefined or the greater of $0.04 per barrel or 0.6 percent of the fair market value of the product with respect to transfers of any other hazardous substances other than petroleum or petroleum products. However, such levy of tax shall not preclude the imposition of the tax at the higher rate set forth under (c) above.

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RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Diseases of Bees
Acarine Mite Quarantine

Adopted Repeal: N.J.A.C. 2:24-1.1 and 1.2

Proposed: April 15, 1985 at 17 N.J.R. 860(a).
Adopted: May 20, 1985 by Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: May 22, 1985 as R.1985 d.304, **without change.**

Authority: N.J.S.A. 4:6-20.

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): None.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adopted repeal appears in the New Jersey Administrative Code at N.J.A.C. 2:24-1.1 and 1.2.

(b)

DIVISION OF PLANT INDUSTRY

Diseases of Bees
Tracheal Mite Quarantine

Readopted New Rule: N.J.A.C. 2:24-1.3, 1.4 and 1.5

Proposed: April 15, 1985 at 17 N.J.R. 985(a).
Adopted: May 20, 1985 by Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: May 22, 1985 as R.1985 d.301, **without change.**

Authority: N.J.S.A. 4:6-20.

Effective Date: May 22, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): February 11, 1990.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

2:24-1.3 Entities with apiary inspection service
No colony or nucleus of bees or used apiary supplies coming from a state or country having an apiary inspection service shall be permitted in New Jersey unless accompanied by a valid certificate of inspection from the exporting state or country stating that each colony or supplies are free from American foulbrood, European foulbrood, tracheal mite disease and all other infectious or contagious bee diseases.

2:24-1.4 Common carrier
No colony or nucleus of bees or used apiary supplies coming from a state or country having apiary inspection service shall be accepted by any person or common carrier for transportation to a point within this state unless accompanied by a valid certificate of inspection stating that each colony or supplies are free of American foulbrood, European foulbrood, tracheal mite disease or other infectious or contagious bee diseases.

2:24-1.5 Entities without apiary inspection services
A colony or nucleus of bees or used apiary supplies coming into this state from a state or country having no apiary inspection service shall be immediately reported by the consignee and by the person or carrier delivering them in this state; giving the name and address of the consignee to the Department, which shall cause the shipment to be inspected at such time as shall be expedient.

(c)

DIVISION OF RURAL RESOURCES

State Soil Conservation Committee
Soil and Water Conservation Projects: Cost Sharing

Adopted New Rule: N.J.A.C. 2:90-2.24

Proposed: April 15, 1985 at 17 N.J.R. 86(a).
Adopted: May 21, 1985 by Arthur R. Brown, Jr., Chairman, State Soil Conservation Committee.
Filed: May 22, 1985 as R.1985 d.303, **without change.**

Authority: N.J.S.A. 4:24-3 and 4:1C-24.

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): September 14, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adopted new rule follows.

2:90-2.24 Cost share rates
(a) Projects as identified in N.J.A.C. 2:90-2.5 through 2:90-2.23 shall be cost shared at 50 percent of the actual cost, not to exceed 50 percent of a maximum amount per project as estimated by the district in consultation with the United States Department of Agriculture, Soil Conservation Service District Conservationist and ASCS County Executive Director. Districts shall consult with authorized personnel within the New Jersey Bureau of Forest Management for forestry related practices.

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(b) The maximum per project cost shall be based upon the average cost for installation of such practices in the district, as determined from actual ASCS and SCS cost records for similar work under Federal cost share programs. For those practices which are not in the Federal programs, the district shall consult with USDA or Bureau of Forest Management officials in the district to investigate actual costs and establish a suitable average maximum cost reflecting current prices. An average cost schedule developed in accordance with this procedure shall be adopted by the district and filed with the State Soil Conservation Committee on or before January 15 of each year. The SSCC shall reserve the right to review maximum cost rates and to require adjustments if deemed necessary.

(a)

DIVISION OF RURAL RESOURCES

State Soil Conservation Committee
Soil and Water Conservation Project Cost Sharing: Procedural Rules

Adopted Amendment: N.J.A.C. 2:90-3.6

Proposed: April 15, 1985 at 17 N.J.R. 861(b).
Adopted: May 21, 1985 by Arthur R. Brown, Jr., Chairman, State Soil Conservation Committee.
Filed: May 22, 1985 as R.1985 d.302, **without change.**

Authority: 4:24-3 and 4:1C-24.

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): April 1, 1990.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

2:90-3.6 Preparation of conservation plan
(a)-(c) (No change.)
(d) If the SCD determines that serious soil and water management problems exist on the applicants' land, it may require that such problems be addressed prior to the initiation of other projects which are not directly related to the observed soil and water management problems. In addition, projects which are dependent upon prior installation of protective practices identified in the plan must be installed in accordance with the plan schedule.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Rooming and Boarding Houses
Owner and Operator Training; Licenses

Adopted Amendments: N.J.A.C. 5:27-1.6

Proposed: April 1, 1985 at 17 N.J.R. 777(a).
Adopted: May 17, 1985 by John P. Renna, Commissioner, Department of Community Affairs.
Filed: May 21, 1985 as R.1985 d.300, **without change.**

Authority: N.J.S.A. 55:13B-4.

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): July 1, 1985.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

5:27-1.6 Licenses
(a)-(j) (No change.)
(k) On or after July 1, 1987, no license to own or operate a boarding house shall be issued to, or shall be continued to be held by, any person who has not completed a training course approved by the Department of Community Affairs. This subsection shall not apply to persons holding or applying for only Class A (rooming house) licenses and shall only be effective so long as there exists a training program funded by the Department of Human Services.

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ENVIRONMENTAL PROTECTION

(a)

OFFICE OF THE COMMISSIONER

90 Day Construction Permit Rules

Adopted New Rule: N.J.A.C. 7:1C-1

Proposed: December 3, 1984 at 16 N.J.R. 3243(a).
Adopted: May 28, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: May 28, 1985 as R.1985 d.316, **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-9; 13:1D-33.

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): June 17, 1990.
DEP Docket No.: 070-84-10.

Summary of Public Comments and Agency Responses:

Comments were received during the comment period, which closed on January 29, 1985, from the following: New Jersey Association of County Engineers, New Jersey Department of the Public Advocate, New Jersey Society of Municipal Engineers, Morris County Flood/Drainage Study Committee, New Jersey Builder's Association, New Jersey Department of Commerce and Economic Development, New Jersey Society for Environmental, Economic Development, County of Ocean, the law firm of Greenstone and Sokol, New Jersey Department of Transportation, County of Hunterdon and Hartz Mountain Industries, Inc.

Comment: Three commenters object to the fee increase generally.

Response: As was stated in the summary when this rule was proposed, the fee increases are intended to make them more comparable with the costs incurred by the Department in processing and reviewing permit applications. In addition to increased expenses due to inflation generally, new regulatory standards require that significant additional evaluations be done during the permit review. In Stream Encroachment, the relatively new Flood Hazard Area Regulations (N.J.A.C. 7:13) require an extensive review to assure that areas which may be flooded at some time in the future can be filled in only up to the amount provided for in the regulation. "Projects of specific concern" require special provisions for public notice and impose additional standards which must be met. An additional procedural provision of these regulations call for fact-finding meetings in the Division of Water Resources when differences of opinion arise regarding the issuance or denial of a permit. This allows for the possibility of settling without the necessity of a judicial proceeding but they do involve additional expenses to the Department which must be met.

The present fee structure is, in all areas, inadequate to cover the expenses incurred in the permit review process. During fiscal year 1984, the Division of Coastal Resources received a total revenue of approximately $328,000 whereas the total cost of administering the program amounted to about $457,000. In the stream encroachment program, the total loss for this same period was approximately $44,500, while the loss incurred by the Water Quality Management Element in the Division of Water Resources for the implementation of its portion of the program was almost $9,000.

In the Division of Coastal Resources, almost every permit application is distributed to Divisions within the Department, including the Division of Fish and Game and Wildlife and the Division of Water Resources, for their evaluation and comment. It is estimated that the total time involved in coordinating the review of these agencies, in addition to their review time and the review time of the Division of Coastal Resources will, in virtually every instance, exceed five hours.

Comment: One commenter claims that the permit process is too complex, and there is a need to upgrade the service provided.

Response: The Department agrees that the process is complex. It is complex by necessity, however, so that the permit review assures that a project complies with all of the substantive environmental standards which are in place. It should be noted here also that each of these substantive standards was promulgated and adopted after a substantial public participation process to insure that consideration was given to all concerns of the State's citizens and industries, potentially impacted by the rules.

It should be noted that every permit application submitted to the Department pursuant to this program has resulted in the issuance of a permit or a determination of denial, with cause, within the requisite time period.

Comment: One commenter has claimed the statutory provision allowing for the thirty day extension of the 90 day review period, with the result that most permit reviews take 120 days.

Response: This comment, referring to the frequent use of the thirty day extension provision authorized by statute (N.J.S.A. 13:1D-31) is correct. In each case the grant of a time extension is by mutual consent of the Department and the applicant and its purpose is to allow the applicant additional time to cure any deficiency in the project and bring it into compliance with applicable standards so that it may be approved.

Comment: A commenter questioned the need for a $50.00 fee to accompany a request for an extension of time for a construction permit and suggested that administrative costs incurred in allocating the necessary funds would exceed the original amount.

Response: This $50.00 extension fee is a base fee. An additional $50.00 is required for each extension of time requested for a permit for a minor stream encroachment project and $150.00 for each permit extension for a major stream encroachment project.

The purpose of this provision is to provide a means to allow an applicant whose permit has expired, or is about to expire, to obtain an extension of time instead of having to submit a new application. A fee is needed in these cases because any extension request must be reviewed against any additional studies and data that may have been generated since the original issuance of the permit. In some cases the review effort has increased because of additional regulatory requirements such as the Flood Hazard Area Regulations (N.J.A.C. 7:13). Projects which have not substantially commenced are specifically evaluated under these rules for, among other things, wetlands

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involvement, impact of classification as a Project of Special Concern and 20 percent "net fill limitation".

Comment: The maximum fee restriction of $10,000 which is presently imposed upon the permit programs of the Division of Coastal Resources should not be removed. Of specific concern is the proposed Waterfront Development fee of one percent of the construction cost of the project. In some cases the cost of construction could exceed $65 million and, consequently, the permit fee would exceed $650,000.00.

Response: The Department agrees that a permit fee system that is based upon a percentage of construction costs could result in an amount that could far exceed the actual review cost if no upper limit is set. Accordingly the relevant section (N.J.A.C. 7:1C-1.5(a)1) has been changed so that most Waterfront Development fees are set in the same manner as CAFRA fees.

In those remaining cases (that is, projects waterward of the mean high water line) the fee is still based upon a percentage of construction costs, with a maximum, to apply in these cases only, of $10,000.

Comment: Because it is the intent of the Department to have the applicant rather than the general public bear the principal financial burden of compliance and because, moneys for permits applied for by municipalities and counties come from taxes paid by the general public, objection was raised to the increase in fees to be charged to municipalities and counties for permits issued by the Department.

As part of this same issue the County of Morris and the New Jersey Society of Municipal Engineers submit that projects whose primary purpose is to alleviate existing flooding in developed areas should be exempt. Application fees should be assessed only to profit-motivated projects and not to those submitted by a public applicant.

Response: The Department agrees that the applicant and not the general public must bear the financial burden of compliance. It is for this reason that the regulations require that a fee accompany all applications. If no application fee were assessed to a public agency, then the cost of the permit review would be borne by the entire general public instead of the specific public agency and that specific portion of the public which it represents.

Additionally, it is the intent of the program and the enabling legislation under which it functions (N.J.S.A. 13:1D-29 et seq.) that fees be assessed to cover, to the extent possible, the cost of adequately reviewing a permit application. It was not intended that such fees be based upon a project's potential for profit.

Comment: The proposed amendment to 7:1C-1.3(c), which requires that all "projects of special concern", even if classified as minor projects, cannot be exempt from the "notice of intent to file" requirements, should be deleted. It is contended that this requirement is redundant with the notice requirement of the Flood Hazard Area Regulations (N.J.A.C. 7:13) and that such a combination of classifications would be rare and the provision therefore is unnecessary.

Response: The notice requirements pertaining to "projects of special concern" has been reiterated here so that there is no apparent conflict between these rules and the Flood Hazard Area Regulations. Also, while it might be rare that a project which has been classified as minor would also be termed "of special concern", it is not impossible. The regulation must, therefore, address the possibility.

Comment: It was suggested that the definitions of "major" and "minor" stream encroachment projects be clarified and further broken down by either structure type or acreage boundaries. Additionally, the Builder's Association has commented that it is unclear what conditions would warrant a "hydrologic and/or hydraulic review." The Association also comments that the language "does not need to be reviewed for 20 percent net fill limitation" would require that most projects be classified as major, thereby placing an unreasonable burden upon single family dwellings.

Response: It is the intent of the regulations that the fee structure be designed to cover the cost of reviewing the permit application. The classification of "major" and "minor" is therefore based upon, among other criteria, the need for hydrologic/hydraulic review or the need to review any stormwater detention basin for compliance with Stormwater Management Rules (N.J.A.C. 7:8). Any definition based upon structure type or acreage thresholds would not be equitable because it would not necessarily reflect the degree of project review that is done.

Comment: It is unclear what conditions would warrant a "hydrologic and/or hydraulic review". Such a requirement is one of the indicia by which a "major stream encroachment project" is distinguished from a "minor stream encroachment project" as provided by 7:1C-1.5(a)4i(2) and (3).

Response: It is anticipated that a qualified consultant would be able to address this issue and also that any questions regarding the need for a hydrologic, hydraulic or any other review can be answered, on an individual case basis, by pre-application conferences with the Department. Such conferences are always available to an applicant.

Comment: The language "does not need to be reviewed for 20 percent net fill limitation" would require that most projects be classified as major, thereby placing an unreasonable burden upon single family dwelling projects.

Response: The Department agrees that the 20 percent fill limitation requirement is a concern to those with proposed single family dwelling projects. Accordingly, a subparagraph has been added to the rule (at 7:1C-1.5(a)4vii) which provides that no additional fee be charged for reviewing plans for fill associated with the development of a single family residential lot.

Comment: 7:1C-1.5(a)4iv, as amended, would set a review fee of $1,500 for each project element rather than the original fee of $1,000.00 per structure.

Response: It is anticipated that this amendment to what is now 7:1C-1.5(a)4iv will not result in any significant change in the procedure presently in effect. The change in the terminology from "structure" to "project element" was made so that the regulatory language more accurately reflects the review procedure presently being followed by the Division of Water Resources. Because 7:1C-1.5(a)4iv provides that "project element" will include channel work for a distance of 300 feet upstream and downstream, most work will be included as one element.

Comment: The phrase "but not limited to" should be deleted from 7:1C-1.5(a)4iv because it gives the DEP review staff total discretion as to what additional items will be charged for. Additionally, it was stated that the terms, "structure", "retaining wall" and "fill" are too vague and should be deleted.

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Response: As has been stated, the purpose of the fee structure is to provide a means of covering the cost of the application review. The phrase, "but not limited to" in 7:1C-1.5(a)4iv is necessary. The examples of project elements provided in this section are not intended to be all inclusive, but serve as a guide to the types of activities for which a fee would be charged. Any restriction limiting the review fee to those activities specifically enumerated could result in the Department's inability to assess a fee to review an activity which would cause an impact but is not defined and therefore not reviewable.

Comment: A proposed new provision (7:1C-1.5(a)4vi) which requires a $1,000 fee for the review of driveway culverts for residential dwellings is inappropriate and excessive.

Response: This new section does not set a new fee for the review of major projects that consist of individual driveway culverts for residential dwellings. At present the review fee for such a project is $1,000. 7:1C-1.5(a)4iv has been amended so that the review fee for each project element of a major project is raised to $1,500. This new subparagraph (7:1C-1.5(a)vi) specifically addresses individual driveway culverts for residential dwellings and keeps the review fee at the present $1,000.

Comment: 7:1C-1.5(a)4v increases the fee from $1,000 to $1,500 for major projects requiring the establishment of an encroachment line. The question was asked if this fee will always be in addition to the "project element" fee where such elements were part of such a project.

Response: The fee referred to in this section will not always be in addition to the project element fee, but will be imposed on a case by case basis where appropriate.

Comment: The language proposed at 7:1C-1.5(a)4v setting the fee at $1,500 "for each 1,000 foot reach" is unclear. There is some confusion as to how the reach will be measured in those cases where a project involves both sides of a stream.

Response: For the purpose of determining the review fee, a project will be broken down into 100 foot segments or "reaches" and assessed accordingly. Where a project includes both sides of a stream, each reach, as measured by the Department, will include both sides of the stream.

Comment: The proposed amendment to 7:1C-1.5(b) which would allow for a permit extension of up to 10 years for certain projects of unusual size or scope is a necessary and desirable change. It is suggested, however, that the section apply also to Stream Encroachment Permits and Wastewater Allocation Permits.

Response: The Division of Water Resources has found that any Stream Encroachment or Wastewater Allocation project which has not been completed within five years needs to be reevaluated in light of new data or changes of circumstances which may have occurred.

Comment: Allowing the 10 day period for appeal from the grant or denial of a stream encroachment or sanitary sewer permit to commence upon newspaper publication, as an alternative to DEP Bulletin notice, will not provide adequate public notice of the permit decision. Most people do not read legal advertisements and there is no newspaper of Statewide circulation.

Response: This new section (7:1C-1.9(c)) provides that a permittee may publish notice of the issuance of the permit in a newspaper of Statewide and regional circulation. If this is done the permittee must also notify, by certified mail, all those who have requested such notice. The 10 day period within which an appeal may be filed by any party aggrieved by the permit issuance will begin from the date of such publication.

The purpose of this new provision is to allow the 10 day appeal period to begin as soon as possible so that any issues raised by the permit decision can be resolved as quickly as possible. At present, the appeal period runs ten days from publication in the DEP Bulletin. The average time between Department decision and Bulletin publication is approximately two weeks so the total average time during which an appeal may be filed is approximately 24 days. During this period, if a permittee chooses to begin construction it does so at its own risk because, in the event that an appeal is filed and ultimately successful, the permit and therefore the project may be significantly affected. If the permittee chooses to invoke the alternative of newspaper and mail notice this period of uncertainty will, in most cases, be reduced.

The Department does not feel that this alternative will compromise, in any way, the quality of notice provided to the public. The provision requires that a permittee who invokes this option notify, by certified mail, anyone who requested such notice. Any person who does desire notice of a specific decision or any person who has a general interest in the decisions of the Department and desires notice of all such action may so notify the Department and his or her name will be provided to the appropriate permittees. N.J.A.C. 7:1C-1.9(c) has been supplemented so that it is clear that this list is available from the Department.

The Department agrees that there is presently no single newspaper of Statewide circulation. Statewide coverage can be obtained, however, with a relatively small number of newspapers of regional circulation. A list of such newspapers is available from the Department.

Comment: The language in 7:1C-1.5(a)5 is unclear.

Response: Changes have been made to this provision which clarify the language and provide a better description of the projects to which the provision applies.

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

7:1C-1.1 Purpose

This chapter implements P.L. 1975, Chapter 232 (N.J.S.A. 13:1D-29 et seq.), to secure timely decisions by the Department of Environmental Protection on construction permit applications as defined therein, to assure adequate public notice of procedures thereunder, and to continue effective administration of the substantive provisions of other laws.

7:1C-1.2 Definitions

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

"Act" means P.L. 1975 Chapter 232, N.J.S.A. 13:1D-29 et seq.

"Applicant" means any person requesting a construction permit who has submitted an application to the department.

"Application" means DEP Application Form CP-1 and the appropriate agency supplement.

"Appropriate agency" means:

1. The Division of Coastal Resources for:

i. Approval of plans for the development of any waterfront upon any tidal or navigable waterway pursuant to N.J.S.A. 12:5-3 (Waterfront Development Permit);

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ii. Permits for a regulated activity under the Wetlands Act of 1970, P.L. 1970, c. 272 (N.J.S.A. 13:9A-1 et seq.); and

iii. Permits issued pursuant to the Coastal Area Facility Review Act, P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.).

2. The Division of Water Resources for:

i. Stream encroachment permits under N.J.S.A. 58:16A-55 or 55.2, and

ii. Approvals for the construction, alteration or extension of sanitary sewage collection systems pursuant to N.J.S.A. 58:10A-1 et seq. and N.J.A.C. 7:14A-12.1 et seq.

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection.

"Construction cost" means the project cost, not including financing or insurance charges, of that portion of a project which is subject to review for a construction permit.

"Construction permit": means

1. Approval of plans for the development of any waterfront upon any tidal or navigable waterway pursuant to N.J.S.A. 12:5-3;

2. A permit for a regulated activity pursuant to "The Wetlands Act of 1970," P.L. 1970, c.272 (N.J.S.A. 13:9A-1 et seq.);

3. A permit issued pursuant to the "Coastal Area Facility Review Act," (CAFRA) P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.);

4. A permit issued pursuant to the "Flood Hazard Area Control Act", P.L. 1979, c.359 (N.J.S.A. 58:16A-55 or 55.2) and the "Flood Hazard Area Regulations" (N.J.A.C. 7:13 et seq.; or 55.2;

5. A wastewater allocation permit which approves the construction, alteration or extension of sanitary sewage collection systems that is, treatment works approval) issued pursuant to N.J.S.A. 58:10A-1 et seq. and N.J.A.C. 7:14A-12.1 et seq., excluding all those for which Federal grants have been requested pursuant to P.L. 92-500 as amended (The Federal Clean Water Act as amended).

Note: "Construction permit" does not include any approval of or permit for an electric generating facility or for a petroleum processing or storage facility, including a liquified natural gas facility, with a storage capacity of over 50,000 barrels.

"Department" means the New Jersey Department of Environmental Protection.

"DEP Bulletin" means the official publication of the Department of Environmental Protection required by N.J.S.A. 13:1D-34, listing the status of pending construction permit applications.

"Person" means corporations, companies, associations, societies, firms, partnerships, and joint stock companies, as well as individuals, the State, and all political subdivisions of the State or any agencies or instrumentalities thereof.

"Structure" means any assembly of materials above or below the surface of land or water, including but not limited to buildings, fences, dams, pilings, breakwaters, fills, levees, bulkheads, dikes, jetties, embankments, causeways, culverts, pipes, pipelines, roads, railroads, bridges and the facilities of any utility or governmental agency. Trees or other vegetation shall not be considered to be structures.

7:1C-1.3 Pre-application procedure and requirements

(a) As a means of expediting permit review, potential applicants are encouraged to request an optional pre-application conference with the appropriate agency. At the voluntary pre-application conference a potential applicant may present a conceptual description of the proposed project, discuss his proposed project informally with the appropriate agency, and obtain guidance on the permit process; however, the conference is not a forum for preliminary approval or rejection of the proposed project. However, if the appropriate agency determines that the proposed project is exempt from the permit requirement, the agency shall issue a written statement of such finding which shall be binding in the agency.

(b) Prior to submitting an application to the Department, the applicant shall, if required by the appropriate agency, notify the following local agencies of intent to file an application by mailing them a completed DEP Form CP-1 and shall obtain an acknowledgement of receipt of notification by Certified Mail, Return Receipt Requested:

1.-4. (No change.)

5. If applicable, those agencies which are required to be notified in accordance with the provisions of N.J.A.C. 7:13-2.2(a).

Note: The foregoing requirements may be postponed or modified by the appropriate agency in cases of emergency as the public interest dictates.

(c) Applicants for minor stream encroachment projects are exempt from the provisions of (b) above (unless they are projects of special concern (See N.J.A.C. 7:13-5.2)).

(d) Applicants for a wastewater allocation permit require the endorsement of the affected sewerage authority and/or municipality.

7:1C-1.4 Application for construction permit

(a) To apply for a permit, the applicant shall prepare and submit a formal application to the appropriate agency.

1. The application shall consist of a complete and acknowledged DEP construction permit Standard Application Form CP-1, the fee required by N.J.A.C. 7:1C-1.5, and other materials of a format and content as specified by rules or otherwise for individual permit programs.

2. Any inaccurate material which could affect the outcome of a permit decision or falsification of information submitted shall be cause for rejection of the application at any time during the review procedure, or voiding a permit approved before the misinformation was discovered.

7:1C-1.5 Fees

(a) Fees shall be charged for the review of any application for a construction permit in accordance with the following schedule.

1. Waterfront development: The fee for any work consisting solely of capital repairs or reconstruction with all work taking place ***above the mean high water elevation*** on piles or ***other support structures*** or *[above]* ***taking place landward of*** the mean high water line ***or the identical structural replacement of piles or other supports in the same location*** shall be $250.00. *[For all other waterfront development projects, the fee shall be one percent of the construction cost, or a minimum of $100.00.]*

i. For all other waterfront development projects with work taking place landward of the mean high water line, the fee shall be as set forth in (3) below.

ii. For all other waterfront development projects with work taking place waterward of the mean high water line the fee shall be one percent of the construction cost, or a minimum of $100.00. The maximum fee charged pursuant to this subsection shall be $10,000, except for unusually large scale or complex projects where the Division of Coastal Resources determines, after consultation with the applicant, that additional fees are necessary for a proper review of the application.*

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2. Wetlands permits:

i. The fee for a Type A permit (N.J.A.C. 7:7-2.2) shall be one half of one percent of the construction costs, or a minimum of $100.00.

ii. The fee for a Type B permit (N.J.A.C. 7:7-2.2) shall be one half of one percent of the construction costs, or a minimum of three hundred dollars $300.00.

3. CAFRA permits:

i. The fee for Residential Facilities shall be $1,000.00 plus $10.00 per dwelling unit.

ii. The fee for Non-Residential and Mixed-Use facilities shall be $1,500.00 plus $10.00 per acre to be developed.

4. Stream encroachment:

i. As used in this paragraph, the following terms shall have the following meanings:

(1) "Drainage area" means the total area contributing runoff to a specified point, expressed in acres or square miles;

(2) "Minor stream encroachment project" means an encroachment project that does not require hydrologic and/or hydraulic review to determine the impact on flood carrying capacity; does not require review of any stormwater detention basin for compliance with Stormwater Management Regulations, N.J.A.C. 7:8; does not increase potential for erosion or sedimentation in stream and does not require substantial channel modification or relocation; and does not need to be reviewed for 20 percent "net fill" limitation as specified under N.J.A.C. 7:13-4.7(d). These shall include but are not limited to major desnagging and stream clearing, minor dredging projects, dug ponds without structure, outfall structures, minor water intake facilities, minor regrading, utilities in the floodplain, each channel crossing of utility, bank stabilization at grade, minor bank reestablishment and/or protection projects , footbridges, bridge deck replacements, recreation and habitat management structures of the Division of Fish, Game and Shellfisheries, farming practices (including ditches) approved by the Soil Conservation Service, and projects whose major purpose is mosquito control pursuant to N.J.S.A. 26:9-1 et seq. Governmental agencies may combine their minor projects for a calendar year and submit them as one project which will be considered a minor project.

(3) "Major stream encroachment project" means a project that requires hydrologic and/or hydraulic review to determine the impact on flood carrying capacity of the stream or review of stormwater detention basin(s) for compliance with Stormwater Management Regulations (N.J.A.C. 7:8) or involves fill or structures necessitating review for compliance with 20 percent "net fill" limitation specified in N.J.A.C. 7:13-4.7(d). In addition, developments involving more than one acre in flood plain for commercial use and subdivision of more than ten acres for residential development shall also be classified as major projects.

ii. For minor stream encroachment projects, the fee shall be $150.00 except that no fee shall be charged for such projects in a drainage area of less than 320 acres which has been approved by the appropriate municipal or county engineer, or a professional engineer for State agency projects, and the certification of such approval has been submitted to and acknowledged by the department. An additional $200.00 shall be charged for minor stream encroachment projects that are projects of special concern (See N.J.A.C. 7:13-5.2.).

iii. No fee shall be charged for major projects located in a drainage area of less than 150 acres which has been approved by the appropriate municipal or county engineer, or a professional engineer for State agency projects, and the certification of such approval has been submitted to and acknowledged by the department.

iv. For each project element of major projects, the fee shall be $1,500.00 for each project element that is to be reviewed. These project elements shall include but not be limited to the following: bridges, culverts, small dams, channel modification, stream enclosures, stormwater detention basins, fill, structures, and retaining walls more than four feet high, channel realignment, and channel relocation. The fee for major projects such as culverts or bridges shall include channel work for a distance of 300 feet upstream and downstream.

v. For major projects outside the channel but within the 100 year floodplain and requiring the establishment of an encroachment line, the fee shall be $1,500.00 for each 1,000 feet reach of the channel or portion thereof.

vi. For major projects that consist of individual driveway culverts for residential dwellings, the fee shall be $1,000.00 for each project.

vii. No additional fee shall be charged for projects involving fill associated with the development of a single family residential lot or for fill associated with bridges and culverts.

5. Wastewater Allocation ***(Sanitary Sewer Facility)*** Permit ***or Domestic Treatment Works Approval***: The fee for ***Wastewater Allocation** (*sanitary sewer* **facility) or Domestic Treatment Works*** approvals shall be six-tenths of one percent of the construction costs up to $250,000, plus three-tenths of one percent of the construction costs ***which are*** in excess of $250,000 *[up to]* ***but are not greater than*** $1,000,000 plus fifteen one-hundredths of one percent ***of those construction costs which are*** in excess of $1,000,000. A minimum fee of $150.00 shall be charged.

(b) Each extension of time requested must be accompanied with a $50.00 non-refundable base fee. Each extension, if granted, will be for a maximum period of one year. No permit will be extended beyond a total of five years from the original date of the permit, except for projects of unusual size or scope or for projects which are delayed due to circumstances beyond the permittee's control (such as a delay in the funding of a public works project), in which case the appropriate agency may, upon request of the applicant prior to the expiration of the original permit, extend the permit for a total of 10 years from its original effective date. This exception shall not apply to Stream Encroachment or Wastwater Allocation Permits.

1. Besides the base fee, an additional $50.00 shall be charged for each extension of time requested for a permit for a minor stream encroachment project and $150.00 for each extension of time requested for a permit for a major stream encroachment project.

(c) Each request for an approval of a major modification of the approved project must be accompanied with a fee equal to one-half of the total permit fee attributable to that portion of the project to be modified. For the purposes of this section, a major modification is one which will result in a significant change in the scale, use, design or impact of the project as approved.

(d) The department may also charge additional fees to engage such essential expertise as may be necessary for the processing and review of large scale and complex projects. The applicant will be consulted before imposition of such fees.

(e) Where a public hearing is conducted, the cost thereof, including but not limited to court reporter attendance fees, transcript costs, hearing officer fees and hearing room rental, shall be borne by the applicant unless otherwise determined by the department for good cause shown.

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(f) All fees shall be paid by check, made payable to the "Treasurer State of New Jersey—Environmental Services Fund" and shall accompany the application.

7:1C-1.6 DEP bulletin
(a) (No change.)

7:1C-1.7 Review of application
(a) Within a maximum of 20 working days of receipt of the application, the appropriate agency shall:
1. Accept the application for filing, assign an agency project number, and proceed to review on the merits; or
2. Assign an agency project number, accept the application for filing, but request in writing that the applicant submit within a specific period of time, additional information to assist in its review. In such cases, the application will not be considered complete until all the additional information has been received and deemed acceptable for review; or,
3. Return the application without filing, explaining why it is unacceptable for review, and return the filing fee upon notification that the applicant does not intend to reapply.
4. Following the assignment of the agency project number, the initial application status report will be published in the DEP Bulletin.
5. The Department shall consider written initial comments from public agencies and other interested persons, received within five working days of publication of the initial project status report in the "DEP Weekly Bulletin."
(b) The appropriate agency shall hold the public hearing required by the "Coastal Area Facility Review Act," N.J.S.A. 13:19-1 et seq., and may schedule public hearings for other construction permit programs within the time limits prescribed by these regulations.
(c) An application for waterfront development permit is not complete unless and until the applicant has in his possession a legal document setting forth the person's right to use or occupy the riparian land, including but not limited to grants, leases or licenses.

7:1C-1.8 Decision on permit application
(a) The Department shall approve, condition or disapprove an application for a construction permit, other than a CAFRA permit, within 90 days after the application has been accepted for filing, except when additional information has been requested in accordance with N.J.A.C. 7:1C-1.7(a)2. In the latter case, the Department shall make a decision on the permit within 90 days after such additional information has been accepted.
(b)-(d) (No change.)
(e) This time period may be extended for a one time only 30 day period by the mutual consent of the applicant and the appropriate agency, provided that the applicant or the appropriate agency, request from the other such an extension at least 15 days prior to the expiration date for the approval, conditioning, or disapproval of such an application.
(f) (No change.)

7:1C-1.9 Appeals
(a) An appeal from an action of the Division of Coastal Resources pursuant to N.J.S.A. 12:5-3, N.J.S.A. 13:19-1 et seq. or N.J.S.A. 13:9A-1 et seq. shall be to the Commissioner in accordance with the procedures of N.J.A.C. 7:7-5.
(b) Any interested person who considers himself aggrieved by the approval or denial of a stream encroachment permit or sanitary sewer approval may, within 10 days of publication of notice of the decision in the DEP Bulletin, or within 10 days of publication of notice of the decision by the permittee pursuant to (c) below, whichever occurs first, request a hearing by addressing a written request for such hearing to the Commissioner, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625.
1. The written notice of request for hearing on appeal shall include the appropriate agency project number and where the appeal is taken by someone other than the applicant, evidence that a copy of the written request for hearing an appeal has been mailed to the Applicant.
2. The person appealing the decision shall, within 14 days of the date on which the initial hearing request was postmarked, submit an additional statement describing, in detail, how that person is aggrieved by the decision, and which findings of fact and conclusions of law are being challenged.
(c) A permittee may, if it so desires, publish notice of the final decision in a newspaper of Statewide circulation and a newspaper of regional circulation which includes the municipality in which the project site is located, and by certified mail to any person who requested such notice. The Department shall maintain a list of such newspapers ***and a list of all persons who have requested notice of the decision***.
(d) Pending the decision on appeal by the Commissioner and upon a typewritten request with stated reasons therefore, the Commissioner may stay the issuance of the permit, for good cause shown, upon such terms and conditions as are deemed proper. The request for stay of issuance of the permit shall be made within 21 days of the issuance of the decision of the Commissioner on the permit application.
(e) Where a request for a hearing on appeal has been granted, the request shall be referred to the Office of Administrative Law for the holding of a fact finding hearing pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), after which the decision on appeal shall be rendered by the Commissioner within the time frame specified in N.J.S.A. 52:14B-10.

7:1C-1.10 Other state statutes, rules and regulations
(No change.)

7:1C-1.11 Severability
If any section, subsection, provision, clause or portion of this Chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Chapter shall not be affected thereby.

7:1C-1.12 Implementation of these rules and regulations
This Chapter shall apply to all construction permit applications submitted to the Department on or after December 22, 1975.

7:1C-1.13 Over-the-counter processing
(a) As a means of expediting permit review for certain minor projects, the Department will fast process, to the extent possible, reasonable, and practical, and unless emergencies dictate otherwise, minor stream encroachment and sewer extension projects.
(b) Stream encroachment rules are as follows:
1. The Department will provide, workload and staff permitting, a 24-hour processing service for certain "minor" stream encroachment permits (listed below). Projects must be in-house by 9:30 A.M., and may be picked up at 4:30 P.M., otherwise the permit will be mailed, or can be picked up the next day. Pre-application conferences are recommended to ensure that all necessary material will be submitted. An appointment must be made for the over-the-counter submittal, review and permit issuance. Over-the-counter processing will be limited to one project per day per applicant. Projects may

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not be divided in order to qualify for over-the-counter processing.

2. The construction permit "Standard Application Form (CP-1)" must be properly completed, but it does not need to be forwarded to any county or municipal agency. An Engineering Data Sheet (DWR-086) must be completed for all stream encroachment projects.

3. Minor stream encroachment projects are defined in N.J.A.C. 7:1C-1.5(a)4v(2).

i. (No change.)

(8) Bridge deck replacements (see paragraph (b) 3 above);

(9) Farming practices (including ditches) approved by the Soil Conservation Service;

(10) Projects whose major purpose is mosquito control pursuant to N.J.S.A. 26:9-1 et seq.;

(11) "Over-stream" utility crossings "attached" to an existing bridge or culvert above the underclearance or within the superstructure.

ii. Minor stream encroachment projects which will not be processed on an "over-the-counter" basis shall include:

(1)-(5) (No change.)

(6) Combined projects of government agencies submitted as one minor project for a calendar year will not be considered as a minor project for "over-the-counter" permit purposes; and

(7) Projects of special concern.

(c) Wastewater Allocation rules are as follows.

1. The Department of Environmental Protection has a 24-hour processing service for "minor" sewer extension projects. "Minor" sewer extension projects must be:

i. A length of 1,200 linear feet or less;

ii. At a cost of $50,000 or less;

iii. Of a sewage flow per day of 12,000 gallons or less.

2. No projects with pump stations, force mains, siphons, gallonage transfers, or holding tanks will be processed over-the-counter. Projects cannot be located in areas under sewer ban or administrative order, or subject to litigation. Projects may not be divided in order to qualify for over-the-counter processing.

3. Projects must be in-house by 9:30 a.m., and all administrative documents must be in proper order. Pre-application conferences are strongly recommended. Over-the-counter projects will be processed by appointment only.

4. Applicants must include in the application package proof of a prior approval, endorsement, or a letter of no objection from all required local agencies prior to filing application with the State.

5. An "engineer's report" form, available from the Bureau of Municipal Waste Management of the Division of Water Resources, must be completed and certified by a licensed New Jersey professional engineer and submitted with the application.

7:1C-1.14 Related regulations

(a) This Subchapter does not supersede or preempt specific rules and regulations establishing procedures for the individual construction permit programs administered by appropriate agencies within the Department, unless the context so requires or specific provisions so prescribe. In order to assist applicants in the use of this subchapter and the specific programmatic rules and regulations, this section sets forth the provisions in the programmatic rules which are in addition to or supercede this subchapter.

(b) For waterfront development permits wetlands permits and CAFRA permits, reference should be made to the following:

1. For pre-application procedures, N.J.A.C. 7:7-3 supercedes this Subchapter;

2. For permit review procedures, N.J.A.C. 7:7-4 supercedes this Subchapter; and

3. For appeals; N.J.A.C. 7:7-5 supercedes this Subchapter.

(c) For a stream encroachment permit, reference should be made to the following:

1. For pre-application notice procedures, the requirements of N.J.A.C. 7:13-2.2 in addition to 7:1C-1.3;

2. For pre-application conferences, the requirements of N.J.A.C. 7:13-2.3 are in addition to 7:1C-1.3;

3. For permit application review procedures, N.J.A.C. 7:13-2.8 supercedes this Subchapter;

4. For appeals, the requirements of N.J.A.C. 7:13-2.11 are in addition to N.J.A.C. 7:1C-1.9, except that the applicant or the person making the hearing request shall comply with N.J.A.C. 7:13-2.11(b); and

5. For application information, the requirements of N.J.A.C. 7:13-2.1 are in addition to N.J.A.C. 7:1C-1.4.

(d) The requirements of this Subchapter concerning appeals governs Wastewater Allocation Permits, not N.J.A.C. 7:14A.

(a)

DIVISION OF WATER RESOURCES

Flood Hazard Area Delineation Redelineation of the Delaware River in Harmony Township, Warren County

Adopted Amendment: N.J.A.C. 7:13-7.1 (formerly N.J.A.C. 7:13-1.11)

Proposed: January 21, 1985 at 17 N.J.R. 151(a).
Adopted: May 24, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: May 28, 1985 as R.1985 d.319, **without change**.

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

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): May 4, 1989.
DEP Docket No. 077-84-12.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

OFFICE OF ADMINISTRATIVE LAW NOTE: The Floodway and Flood Hazard Area Delineation Map and corresponding flood profile plates, which depict the redelineation for the Delaware River Basin (see N.J.A.C. 7:13-7.1(c)17), are available for review at the Office of Administrative Law at Quakerbridge Plaza, Building Number 9, Quakerbridge Road, and at the Bureau of Flood Plain Management at 1911 Princeton Avenue, Lawrenceville, New Jersey.

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(a)

DIVISION OF WATER RESOURCES

Flood Hazard Area Delineations
Delineated Floodway along North Branch Foulerton's Brook, Borough of Roseland, Essex County

Adopted Amendment: N.J.A.C. 7:13-7.1 (formerly N.J.A.C. 7:13-1.11)

Proposed: September 17, 1984 at 16 N.J.R. 2398(a).
Adopted: May 21, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: May 28, 1985 as R.1985 d.320, **without change**.

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

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): May 4, 1989.
DEP Docket No. 058-84-08.

Summary of Public Comments and Agency Responses:

This amendment was originally proposed on August 15, 1983 at 15 N.J.R. 1313(a). The Department of Environmental Protection held a public hearing on September 15, 1983 at the Roseland Borough Hall, Eagle Rock Avenue at Harrison Avenue, Roseland, New Jersey. A representative of the Department explained the proposal and its positive impact on the stream. One other person spoke at the hearing in support of the proposal. No other comments were received at the hearing or during that comment period. No public hearing was held on the reproposal and no written comments were received.

Full text of the adoption follows.

7:13-7.1 Delineated floodways
(a)-(c) (No change.)
(d) A list of delineated streams in the Passaic-Hackensack Basin and a list of delineated streams in the Raritan Basin follow:
1.-49. (No change.)
50. The floodway and flood hazard area of the North Branch Foulerton's Brook for approximately 750 feet from Eagle Rock Avenue Bridge upstream to Becker Farm Road Bridge.

(b)

DIVISION OF WATER RESOURCES

New Jersey Pollutant Discharge Elimination System Permit Program
Fee Schedule for Permittees
1984-85 Annual Fee Report and Proposed Fee Assessments

Adopted Amendment: N.J.A.C. 7:14A-1.8

Proposed: January 7, 1985 at 17 N.J.R. 13(a).
Adopted: May 28, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: May 28, 1985 as R.1985 d.315, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 58:10A-1 et seq.

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No.: 66(1978): June 9, 1988.
DEP Docket No. 073-84-12.

Summary of Public Comments and Agency Responses:

Notice of the proposed amendments to the NJPDES Permit Program Fee Schedule for Permittees, the 1984-85 Annual Fee Report, and the proposed 1984-85 fee assessments was published at 17 N.J.R. 13(a) on January 7, 1985 as DEP Docket No. 073-84-12. Approximately 1800 copies were mailed to permittees, applicants and interested parties throughout the State. Copies were also available at all 75 New Jersey depository libraries for State documents and at the Division of Water Resources in Trenton.

Four meetings were held with the NJPDES Task Force prior to publication of the proposal. A public hearing concerning the proposed amendments to the rules and the proposed 1984-85 fee assessments was held at the Labor Education Center, Cook College, Rutgers, the State University, (New Brunswick) on February 8, 1985 beginning at 9:30 A.M. Comments received at that hearing and during the public comment period (January 7 to February 11, 1985) became part of the official record of administrative procedure.

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 NJPDES Permit Program Fee Schedule Regulations", which includes statements of the issues raised, the Department's response, and, where necessary, a discussion of the response.

Most comments raised issues requiring 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 document and/or the proposal itself. This latter type of comment was included in the response document 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 dealt with matters outside the scope of the proposed rules; these comments were not included. 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:

Administrator
Water Quality Management
NJPDES Permit Administration
Division of Water Resources
Department of Environmental Protection
CN 029
Trenton, N.J. 08625

The major comments are summarized below, by subject area; for detailed responses, see the Response to Comments document discussed above.

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1. Monitoring Requirements—Most commenters disagreed with the Department's intention to add a monitoring requirement for Chemical Oxygen Demand (COD), Total Kjeldahl Nitrogen (TKN), and flow through the fee regulations. The Department has deleted these requirements from the fee regulations, and will pursue the additional monitoring requirements through the permit process. (N.J.A.C. 7:14A-1.8(d)12).

2. Bioassays—Several commenters protested the use of bioassays based upon either or both of two main issues: the costs and value of the current bioassay test methods, and the results achieved through application of a bioassay factor in the fee formulas. The Department has decided to maintain the use of the bioassay test and the resultant bioassay factor as they appeared in the proposal because it is the best procedure available to measure the overall environmental toxicity (N.J.A.C. 7:14A-1.8(f)).

3. Significant Industrial Users (SIUs)—Two issues were raised. First SIU permit fees are excessive when compared to the POTWs that treat the SIUs waste, and second, the Department should waive the SIU permit fees for industries which participate in NJDEP approved pretreatment programs.

With respect to the first issue, SIU permit fees do not exceed the estimated costs involved in administering, monitoring and permitting the facilities in the SIU category. The fees are based on the complexity of the SIU discharge and the treatment provided at the POTW. Further, the SIU category and budget are separate and distinct from the POTW budget. The Department will consider combining all categories of surface water dischargers in future revisions to the fee schedule.

With respect to the second issue, the Department has amended the regulations governing SIUs so that facilities within a designated POTW area will, in general, not be issued permits by the Department. The Department will issue permits for facilities as described in 7:14A-10.5(a). Permits which were issued prior to this rule change will be reviewed when the permits expire. The Department may allow a NJPDES/SIU permit to expire after the initial term of the permit is over in accordance with N.J.A.C. 7:14A-10.5(g).

4. Pollutant risk factors—There were quite a few questions and comments concerning this area. One commenter wanted to know why the Department utilized the pollutant risk factors and a bioassay factor. The pollutant risk factors were added to the fee formulas this year in response to the litigation of PSE&G et al. vs NJDEP (A-2798-82T2, April 25, 1984). The court determined that a fee structure which was based solely upon the pollutant discharged in the greatest quantity did not adequately consider the relative environmental risk of the discharge. The inclusion of the pollutant risk factors multiplied by the pollutant loading charges those facilities which pose the greatest potential hazard to the environment, the greatest fee. The inclusion of the risk factors and the bioassay factor consider the overall risk to the environment posed by the discharge. Therefore, a facility whose discharge is composed primarily of relatively non-toxic pollutants such as suspended solids will pay a lower fee than a facility whose discharge contains small quantities of relatively high risk pollutants.

Many commenters inquired as to how the Department established the ranking for the pollutants. The general consideration in arranging the pollutants in the risk categories were the potential toxicity to aquatic organisms, known toxicity to aquatic organisms, acutely toxic or suspected carcinogens, known carcinogens or neurotoxics and persistence in the environment. Other comments received have all been addressed in the Response to Comments document. (N.J.A.C. 7:14A-1.8, Table One)

5. Minimum Fees—Several commenters questioned the rationale for assessing a minimum fee of $10,000 for an Industrial Waste Management Facility or a Hazardous Waste Facility.

Upon reconsideration, the Department has decided to amend N.J.A.C. 7:14A-1.8(e)10 and charge the $10,000 minimum fee only for groundwater discharges and not surface water discharges or SIUs. This change more accurately reflects the Department's rationale for this minimum fee: the Department believes that facilities with an actual or potential discharge to groundwater pose the greatest environmental risk. The current estimate of time involved permitting these facilities is two man-years per facility. The other facilities which have been eliminated from this minimum fee category shall be calculated according to N.J.A.C. 7:14A-1.8(f)2 (DSW-industrial pollutants) or N.J.A.C. 7:14A-1.8(k)1 (SIUs).

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

7:14A-1.8 Fee schedule for NJPDES Permittees and applicants

(a) Annual fee:

1. The Department shall collect annual fees which shall be based upon the estimated cost of administering the NJPDES Permit program, which includes processing, monitoring, and administering the permits. Except for the laboratory certification portion of the fee, the yearly fee for a discharge shall be computed according to a sliding scale formula. *[The fee is determined on the basis of the estimated administrative cost for permit management, processing, issuance, surveillance and monitoring.]* In general, the fee relates these costs to the total quantity of specific pollutants discharged by the permittee and the relative risks associated with the discharge of these pollutants.

2. In addition to any fees assessed pursuant to this section, a permittee owning a certified laboratory or a laboratory applying for certification shall be assessed, as the laboratory certification portion of the NJPDES fee, the appropriate fee for the category or categories in which it is certified or is seeking certification based upon the fee schedule set forth in N.J.A.C. 7:18-2.6. This portion of the annual NJPDES fee shall be billed separately.

3. A permittee failing to pay the laboratory certification portion of its NJPDES fee or failing to pay it in a timely manner may have its certification suspended or revoked in accordance with N.J.A.C. 7:18-2.12.

(b) Annual evaluation of fees:

1. The Department in an Annual Fee Schedule Report shall establish the values for the coefficients of the fee formulae in order to account for changing conditions and costs. The Department shall hold an annual public hearing concerning the fees to be assessed for the following year. The hearing shall be held prior to the actual assessment of the fees.

2. Thirty days prior to the holding of the hearing, the Department shall use best efforts to mail notice of the hearing to each known discharger with a DSW, SIU, IWMF or DGW permit and any applicant for a DGW, SIU, IWMF or DSW permit. Such notice shall include a copy of the fee schedule report and the permittee's proposed fee for the following year.

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3. The fee schedule report shall be prepared annually by the Department and shall include the following:

i. A detailed financial statement showing the anticipated costs for the following year. The statement shall include a breakdown by totals for account title (e.g., printing and office expenses, vehicular, and maintenance of vehicles) and include a breakdown by totals for types of discharge (e.g., industrial DSWs, municipal DSWs, thermal DSWs and DGWs);

ii. A detailed financial statement of the previous year's expenditures including a breakdown by account titles, breakdown by totals for types of discharges, actual amount of fees collected, any surplus which can be credited, or any deficit which must be assessed when determining next year's fees

iii. A report on the previous year's activities including the following:

(1) A list of permits issued;

(2) The number of compliance sampling inspections (24 hour monitoring) undertaken, the facilities inspected and a summary of the results thereof;

(3) The number of wasteload allocations completed;

(4) A list of facilities inspected;

(5) The number of administrative orders and consent orders issued by the Department including a breakdown by type of order, resolution and type of discharge involved; and

(6) A summary of Section 316 variance request activities; and

iv. A list of Section 316 variance requests which are expected to be processed in the following year.

(c) Annual fee for dischargers to surface waters (DSW) and to groundwaters (DGW):

1. Any person who submits a NJPDES permit application, received a NJPDES permit prior to the adoption of these regulations, or is issued a NJPDES permit based upon information available to the Department pursuant to N.J.A.C. 7:14A-2.1(c), shall be assessed a fee in accordance with (e), (f), (g), (h), (i), (j) and (k) below. Such fee shall be assessed as follows:

i. The fee shall be based upon information submitted to the Department in the application or available to the Department, in accordance with (f) thru (k) below. Failure of an applicant to submit information necessary to calculate the fee or to pay the fee within 30 days of assessment may result in return of the application, permit denial, and/or appropriate enforcement action;

ii. *[The fee assessment shall be pro-rated based upon the date of application submittal and the number of remaining days in the fee year minus 120 days]* ***Within 30 days of the receipt of the permit application a fee for the minimum fee for the category of discharge will be assessed***.

iii. *[The next year's fee shall be adjusted based upon the facility's actual performance and the date the final NJPDES permit is issued]* ***When the final permit is issued, the annual fee shall be assessed and pro-rated for period of the fee year remaining. The minimum fee already paid shall be subtracted from the pro-rated annual assessment***.

iv. Neither the pro-rated fee nor adjustment shall result in payment of a fee less than the minimum. If a final permit has not been issued in the first fee year, *[a credit for the number of days in excess of 120 which remained in the first fee year shall be applied to the next year's fee]* ***the minimum fee shall apply and the second year's fee shall be pro-rated***.

v. Any delay in review of the application caused by the applicant not submitting a complete application or additional information, as required b N.J.A.C. 7:14A-2.1(c) and 7.3(b) shall not be eligible for credit purposes in determining the next year's fee. The period of delay shall be based upon the date of request to the date of receipt of the information;

vi. Whenever a NJPDES permit denial is issued, the permit fee shall be retained and any re-application within one year will not result in assessment of a fee.

2. All fees are payable within 30 days of assessment.

3. The annual fee for a DSW shall be based on the following:

i. For domestic treatment works which have DSWs the average daily biochemical oxygen demand (BOD_5)

ii. For dischargers of industrial pollutants which have DSWs the average daily quantity of (as expressed in kilograms per day) all the pollutants. Limited in the permittee's NJPDES Permits and the risk factors associated with each pollutant (See Table I).

iii. To determine the quantities of pollutants for (c)3ii above, the Department shall calculate the average daily quantity of those pollutants which are limited in the permittee's NJPDES permit, and if the permit has no limits, then the average daily quantity of those pollutants for which the permittee monitors as required by the NJPDES permit. The quantity may be determined on a net basis provided this has been authorized pursuant to N.J.A.C. 7:14A-3.14(h).

iv. For non-contact cooling water, the heat loading.

4. The annual fee for a DGW, exclusive of land application of residuals, landfills, and community on site subsurface disposal systems, shall be based upon the following:

i. The total loading of all pollutants required to be monitored;

ii. Risk Factors associated with each pollutant required to be monitored (See Table I); and

iii. The Aquifer Rating (See Table II).

iv. To determine the quantities of pollutants for (c)4i above, the Department shall calculate the average quantity (average flow x concentration) of those pollutants which are monitored as required by the NJPDES permit. For surface impoundments, capacity will be substituted for flow to determine the quantity of pollutants.

(d) Monitoring:

1. All DSW and SIU dischargers shall report on Discharge Monitoring Reports (DMRs) and on Monitoring Report Forms (MRFs). The data for the appropriate parameters shall be monitored and submitted as frequently as required by the discharger's NJPDES permit, the requirements of the treatment works approval, and the requirements for the licensed operator (N.J.A.C. 7:10-13.12).

2. For all DGWs, the dischargers shall monitor and report groundwater monitoring data to the Department in accordance with the discharger's NJPDES permit on Monitoring Report Forms (MRFs).

3. Monitoring Report Forms may be obtained from:

Administrator
Water Quality Management
NJPDES Permit Administration
Division of Water Resources
CN 029
Trenton, New Jersey 08625

4. Wastewater flows shall be reported in millions of gallons per day (mgd). BOD_5 and the other pollutants in (c)3i, ii, and (c)4i above shall be reported in micrograms per liter (ug/l) or milligrams per liter (mg/l) or kilograms per day (kg/day), as required by the discharger's NJPDES permit. Temperature shall be reported in degrees Celsius (°C).

5. Each DTW shall report every month the average daily flow (Q) and BOD_5 for that month.

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6. Industrial and commercial dischargers, except for those dischargers covered by (d)8 below, shall report monthly the average daily flow (Q) and the amount discharged for that month of any of the pollutants in (c)3ii and (c)4i.

7. Permittees with DSW discharges consisting solely of non-contact cooling water shall report monthly on MRFs the average temperature (T_a) upstream from the point of discharge. (Temperature shall be reported in degrees Celsius (°C)). This point should be located outside the influence of the thermal plume. Where the intake water source is the receiving stream, intake water temperature shall be used instead of upstream water temperature. Where the average daily ambient temperature is not provided by the permittee, the ambient water temperature shall be considered to be 5.57°C (November—April) and for summer it shall be considered to be 18.87°C (May—October).

8. Permittees with discharges to to surface water of non-process, nonthermal ground water from continuous dewatering operations of mining where the quality does not meet the ambient surface water quality standards of the receiving water shall report monthly the average daily flow (Q) and the average daily Total Suspended Solids (SS). Temporary dewatering operations needed for construction purposes are exempt from the requirements of this paragraph and of the fee requirements of this section.

9. Permittees with discharges consisting of a mixture of cooling water and industrial and/or commercial process water shall report as required by (d)6 and 7 above.

10. Only for the purposes of fee calculation, average daily discharge rate, BOD_5 mass loading, the average daily mass loading of the other pollutants in (c)3ii and (c)4i *[i]* above, and average daily heat loading shall be computed as follows:

i. *[The reported average daily BOD_5 or the concentration of the discharge of the other pollutants in (c)3ii and 4i above, as submitted to the Department on MRFs or DMRs, shall be multiplied by the average daily discharge flow rate and the appropriate unit conversion factors to yield the average daily mass loading of each pollutant for the reporting period as specified in the permittee's NJPDES permit. If the average daily loading is reported to the Department, this figure will be used. The reported average daily ambient temperature T_a shall be subtracted from the reported average daily discharge temperature T_d, and the result shall be multiplied by the reported average daily discharge flow rate and the appropriate unit conversion factors to yield the average daily thermal loading for the reporting period.]*

***With respect to the pollutant parameter average mass load, the loading, reported to the Department on MRFs or DMRs, shall be utilized. Otherwise, the pollutant's concentration, reported to the Department on MRFs or DMRs, shall be multiplied by the reported average flowrate to obtain a loading. Lacking this information, the Department will estimate the parameter loading from NJPDES permit limits and/or reported values. Appropriate conversion factors will be applied so that all loadings shall be in the same units of mass per unit time, typically kilograms per day.**

With respect to the average thermal load, the loading, reported to the Department on MRFs or DMRs, shall be utilized. Otherwise, the discharger's temperature difference, reported to the Department of MRFs or DMRs, shall be multiplied by the reported average flowrate and the specific heat of water to obtain a thermal loading. If this information is not available then the discharger's effluent temperature, reported to the Department on MRFs or DMRs, shall be utilized with an assumed stream temperature to calculate an estimated temperature difference; this temperature difference shall be multiplied by the reported average flowrate and the specific heat of water to obtain a thermal loading. Lacking this information, the Department will estimate the thermal loading from NJPDES permit limits and/or reported values. Appropriate conversion factors will be applied so that all thermal loadings shall be in the same units of heat per unit time, typically million BTU (British Thermal Units) per hour.*

For surface impoundments where no capacity is indicated in the permit application, the Department shall use total permitted surface area multiplied by an assumed depth of nine feet. The appropriate conversion factors will be used to determine the capacity in units of millions gallons. The permittee may submit supplemental information documenting the actual capacity.

ii. The average daily mass loading of each pollutant or the average daily thermal loadings computed in (d)10i above shall be summed for the reporting year.

iii. The appropriate sum of the average daily loadings computed in (d)10ii shall be divided by the sum of the reporting periods to obtain a daily average for the year. For the purposes of fee calculation, this daily average shall be interpreted as the average mass loading of BOD_5 or the other pollutants in (c)3ii or (c)4 above per day or as the average heat loading per day for the discharge. These daily averages shall be summed by type of pollutant over all the discharges for the facility to yield the average daily man loading of BOD^5 or the other pollutant in (c)3ii or (c)4i or average daily heat loading to be used in the fee calculation within each discharge category.

iv. With the exception of an initial NJPDES permit, if the discharge has been in operation less than one year, the average daily mass or heat loading shall be based on the actual number of months of operation. The annual fee shall be proportional to the number of months of operation but not less than the minimum fee for the discharge category.

11. The reporting year means the year ending with the period for which the most recent MRF or DMR submitted prior to the date of fee proposal is available on the Department's data management system.

12. *[Dischargers to surface water (DSW) and dischargers to ground water (DGW) shall monitor and report on a monthly basis Chemical Oxygen Demand (COD), total Kjeldahl nitrogen and flow.]*

Delete the current text of (e) through (l) found in the New Jersey Administrative Code and replace with the following new text.

(e) General provisions for fee calculations:

1. The general fee formula is given by:

i. Fee = A + B E

ii. Where E is the environmental impact value for the particular facility.

2. The general fee formula contains A and B coefficients which are identified constants for each category of discharge. These coefficients define the slope of the line which represents the distribution of the budget among all permittees in a category. The values for A and B are determined by simultaneously solving two of the equations below which consider total environmental impact, maximum environmental impact, total budget for the category and maximum fee for the category; they are subject to a minimum fee equal to the minimum fee for that category. In the industrial category, when a discharge results in an environmental impact equal to 0, equation (iii) will be used.

i. $\sum_{i=1}^{N}$ Budget For That Discharge Category

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ii. $A + B E_{max}$ = Maximum Fee For That Discharge Category

iii. $A + B \bullet E_{min}$ = Minimum Fee For Industrial Discharges (Category B)

(1) Where E_i is the environmental impact value for facility i.

(2) Where E_{max} is the highest environmental impact value of all the facilities in that discharge category.

(3) Where E_{min} = an environmental impact of 0.

3. Public and private schools, churches, and charitable institutions shall not be assessed a fee.

4. Where a facility has a combined treatment process including both a DSW and DGW by land disposal, the fee shall be assessed as follows:

i. Water treatment plants with surface impoundments used in the water treatment process shall be assessed the minimum fee of $350.00 for the DGW/surface impoundment fee.

ii. Facilities which combine*[s]* surface impoundments with final disposal of wastewater by a DSW or DGW (final disposal includes spray irrigation, overland flow, infiltration-percolation lagoons and subsurface disposal systems but excludes landfills and land application of residuals) shall be assessed the minimum fee of $350.00 for the surface ***impoundment***.

iii. Facilities with infiltration-percolation (I/P) lagoons and final disposal by DSW shall be assessed a fee for each category of discharge. Flow shall be determined based upon the measured difference between monitored flow to the lagoon and monitored flow to the surface water. Facilities that *[do not]* ***are not required to*** report flow for both the I/P lagoon and surface water discharges shall be assessed $1000 for both the I/P lagoon and the total flow will be used to calculate the surface water fees.

5. For permittees with discharges to surface water of non-process, nonthermal discharges of ground water from dewatering operations of which quality is not worse than the ambient surface water quality standards for the receiving waters, there shall be no annual fee assessed. In order to qualify for this exception, a facility must submit a written request within thirty (30) days of receipt of the initial bill, which will be subject to the approval of the Department. Such a request must be accompanied by sampling data showing that the discharge is of the required quality.

6. For the purpose of assessing a fee based upon a new application initial permit, or where the permittee has failed to report data, the Department will use the fee formula for the appropriate category of discharge. In order to insert the appropriate variables the Department will use an assumed value determined by the methods outlined below. The method chosen will be determined by following the sequence in which the methods are listed below until a first value can be determined.

i. For industrial dischargers, either:

(1) The average of the values reported by the permittee;

(2) The average or maximum daily pollutant value (Quantity or concentration; concentration will be used in conjunction with reported or limited flow.) which is authorized to be discharged in the NJPDES permit.

(3) The average daily pollutant loading for other dischargers within the same general SIC Code; or

(4) The average of all reported values by all permittees for that pollutant.

ii. For domestic treatment works:

(1) 30 mg/l BOD for secondary treatment or a higher level of treatment; or

(2) 100 mg/l BOD for primary treatment.

7. If a discharger believes that the Department has made an error in computation or that the fee is based on incorrect data in the discharger's DMR or MRF, the discharger must request an adjustment of the fee and provide documentation (inlcuding DMRs/MRFs) or other reliable basis for such request in writing within 30 days of receipt of the initial bill. The fee remains payable on the due date. A refund will be issued to reflect any adjustment which has been approved by the Department.

8. The Department will not entertain requests for recalculations if a permittee has failed to submit the monitoring data required by the permittee's NJPDES permit or regulations.

9. Where a facility has separate or combined discharge of industrial pollutants *[and/or domestic wastes]* with noncontact cooling water, a fee shall be assessed for each category of discharge.

10. The minimum fee for any NJPDES/IWMF (DGW*)* *[, DSW, or SIU)]* or a NJPDES permit issued for a discharge at a Hazardous Waste Facility (HWF) as defined by N.J.A.C. 7:26-12 and meeting the requirements of N.J.A.C. 7:14A-4.2(b)*[(1)]* shall be $10,000.

(f) Fee calculations for DSWs

1. For domestic treatment works except for those covered by (e)*[4]* ***3***, the annual fee in U.S. dollars is given by the general formula in (e)*[2]* ***1*** above and computed according to the procedures described in (d)10 above; the minimum annual fee shall be $300.

i. $E = (\text{Load})^{1/3}$ (Bioassay Factor)

ii. Load = (D) (BOD_5);

iii. D = Pollutant Risk Factor;

iv. The Bioassay Factor is determined by formula below:

(1) Bioassay Factor = 50/percent effluent resulting in 96 Hour LC_{50}

(2) If no bioassay data Bio. Fac = 1.00

2. For dischargers of industrial pollutants, the annual fee in U.S. dollars is given by the general formula in (e)*[2]* ***1*** above and computed according to the procedure described in (d)10 above; the minumum annual fee shall be $350.00

i. The environmental impact value (E) is calculated as follows:

$$\text{ii. } E = \sum_{\text{Pipe 1}}^{\text{Pipe n}} \left[\sum_{\text{Parm i}}^{\text{Parm j}} ((Li)\ (Di))^{1/3} \right] \text{(Bioassay Factor)}$$

iii. D = pollutant risk factor of paramater i

iv. L_i = average load (kg/day) of paramater i discharged in pipe 1

v. The Bioassay Factor is determined by formula below:

(1) Bioassay Factor = 50/ % effluent resulting in 96 Hour LC_{50}

(2) If no bioassay data Bio. Fac = 1.00

3. For dischargers of non-contact cooling water, the annual fee in U.S. dollars is given by the general formula in (e)*[2]* ***1*** above (where E is the Pollutant Risk Factor (Di) multiplied by the average daily heat load expressed as million BTUs (British Thermal Units) per hour computed according to the procedure described in (d)10 above and divided by 24; the minimum annual fee shall be $250.00)

i. E = (Average *[Daily Heat Load]* ***mBTU's per hour ⅓***)

ii. In addition to the fee assessed in accordance with 3 above, an additional fee shall be assessed against a discharger of non-contact cooling water for the processing and administering of the discharger's Section 316 variance request. Said fee shall be based upon the proposed budget for the following

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year and/or notification of the Department's estimated costs to administer, review, process, and issue a Section 316 decision. The discharger's current year's fee may be debited or credited in line with the Department's actual expenses for processing and administering the variance request.

4. Permittees whose only discharges are storm sewers or combined sewers (STR) will be assessed a minimum fee of $350.00 in U.S. dollars.

5. Discharges from oil/water separators (OWS) of stormwater will be assessed a minimum fee *[F_1]* of $350.00 in U.S. dollars.

(g) Fee calculations for DGWs, except land application of residuals, landfills, or community subsurface disposal. These fees shall be calculated pursuant to the basic fee formula found at (e)*[2]* **1* above where the environmental impact value (E) is determined by any one or a combination of the following to determine:

1. K – BOD = BOD_5 mass loading in Kg/day
2. D = Risk factor for each specific parameter, see Table I
3. PARM = Parameter concentration
4. AQ = Aquifer rating value, see Table II
5. LF = Loading factor is the flow or volume divided by 365 days.

i. For underground injection (other than subsurface disposal and noncontact cooling water), infiltration/percolation lagoon, spray irrigation, and overland flow of sanitary wastewater:

(1) E*[v]* = [+ (aq + 10)] [(K – DOD) (d)] ⅓

(2) The minimum fee shall be $400.00.

ii. For underground injection (other than noncontact cooling water), infiltration-percolation, spray irrigation, overland flow, and subsurface disposal of industrial/commercial wastewater shall be as follows:

(1) E = [1 + (AQ/10) [Σ;] (PARN)(d)(LS))] ⅓

(2) The minimum fee shall be $400.00.

iii. For surface impoundments (sanitary wastewater):

(1) E = [1 + (AQ/10)) (K – BOD)(d)] ⅓;

(2) The minimum fee shall be $350.00.

iv. For industrial/commercial surface impoundments. The annual fees in U.S. dollars are given by:

(1) E = [(1 + (AQ/10))[Σ)(PARM)(d)(LF)] ⅓;

(2) The minimum fee shall be $350.00. Surface impoundments at mining facilities shall be assessed the minimum fee.

(h) Fees for the land application of sludge and septage and other residuals shall be calculated by the general formula in (e)*[2]* **1* above where the environmental impact value (E) is derived as follows:

1. P is the pathogen reduction factor and is determined as follows:

i. P = 1 where the residual to be land applied satisfies the requirements for Processes to Significantly Reduce Pathogens as per Federal Register 40 CFR 257

ii. P = .8 where the residual to be land applied satisfies the requirements for Processes to Further Reduce Pathogens as per Federal Register 40 CFR 257

2. TAN is the total plant available nitrogen applied to the site in pounds per acre multiplied by the total acres to which residuals may be applied. In terms of TAN, the calculation shall be based on the annual nitrogen application rate based on the proposed crop management plan.

3. TME is the total metal equivalent derived from the weighted average concentration of the heavy metals cadmium, copper, nickel, lead, and zinc in milligrams per kilogram of residuals applied or proposed to be applied per year, on a dry weight basis, multiplied by the relative toxicity value of that metal as follows:

TME = *[10.0 = 0.4 + 1.0 + 1.0 + 0.2]* **10.0(Cd) + 0.4(Cu) + 1.0(Ni) + 1.0(Pb) + 0.2(Zn)***

4. If multiple residuals are applied under a single NJPDES permit, the weighted average of the heavy metals concentration of all sludges applied to the site in the previous year will be used to calculate TME.

5. For those NJPDES applications for which residuals quality cannot be determined, the residuals quality shall be assumed to be the median level. In terms of TME, a value of 713 shall be assumed.

i. For land application of sludge from domestic treatment works and septage, the environmental impact value (E) is determined as follows:

E = (P) $(TAN)^{1/2}$ + TME; the minimum annual fee shall be $500.00;

ii. For sludge from industrial treatment works and nonhazardous residuals not covered under N.J.A.C. 7:14A-1.8(h)5i.

E = $(TAN)^{1/2}$ + TME, the minimum annual fee shall be $1,000; and

iii. For operation of a domestic sludge processing facility which produces a sludge product which meets Federal requirements for a Process to Further Reduce Pathogens in accordance with 40 CFR 257, the fee is based on the total residual processed in dry tons per year.

E = (P) $(TAN)^{1/2}$ + TME; the minimum fee shall be 500.00;

Where the sludge processing facility produces a compost TAN shall be equal to two pounds for every dry ton of compost produced. Where the sludge processing facility is the Zimpro Process TAN shall be equal to ten pounds for every dry ton of compost produced. For other sludge processing facilities TAN shall be determined from an analysis of the finished sludge product to be distributed.

iv. For hazardous waste residuals, the minimum annual fee shall be $5,000.00.

v. For transfer stations for sludge and septage the annual fee shall be $500.00.

(i) Fees for discharges from sanitary landfills are calculated according to the general formual found in (e)*[2]* **1* above where the environmental impact value (E) is determined as follows:

1. The minimum fee shall be $500.00.

2. E shall equal the product of the numerical ratings from each of the four categories listed below and calculated by E*[v]* = (s)(w)(1)(aq):

i. s = Landfill Acreage—Ratings from 1 to 8 are determined based on acreage categories approved under the Solid Waste Registration as follows:

Size, Acres	Points
0.1-3	1
3.1-10	2
10.1-25	3
25.1-60	4
60.1-100	5
100.1-250	6
250.1-500	7
greater than 500	8

ii. w = Type of Waste—Ratings from 1 to 16 are based on various waste type categories under the existing Solid Waste

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Management Regulations and depend on the degree of hazard. w shall be determined by the sum of the points described below:

Waste Types	Points
Types 13, 23 (Bulky wastes, and vegetative wastes)	1
Types 10, 12, 27, 72, 73, 74 (Municipal wastes, dry sewage sludges non-chemical industrial wastes, bulk liquids and semi-liquids, septic tank clean-out wastes and liquid sewage sludges)	2
Types 18, 25 (Dry non-hazardous chemical wastes, animal and food processing wastes)	4
Types 26, 70 (Oil spill clean-up wastes, waste oil and sludges)	8
Types 17, 28, 76, 77 (Dry hazardous wastes, liquid hazardous wastes, liquid chemical wastes)	16

iii. 1 = Presence or Absence of Impermeable Liner/Leachate Collection—Ratings of 1 or 10 are developed based on presence of a liner collection system beneath the entire fill area or the absence of a complete liner/collection system liner. Ratings shall be determined as follows:

(1) Completely lined with leachate collection system = 1

(2) Unlined = 10

(3) A liner is defined as either: 1) two feet of clay having an in situ permeability of one × ten cm/sec or less; or 2) a 30 mil or greater hypolon liner or equivalent which is acceptable to the Department. When there is a failure in the liner the landfill will not be eligible for the lowest rating.

iv. aq = Geological Setting-Aquifer Location—Ratings are developed based on ground-water yield potential from "None" (1) to "Very Good" (10). Where a facility is located on two formations, the rating for the aquifer with greater ground water yield potential is used in the fee determination for aquifer rating. See table II.

(j) Initial fees for discharges from community onsite subsurface disposal systems shall be assessed on a one time basis by the general formula in (e)*[2]* **1*** above where the environmental impact value (E) is equal to the on-site subsurface disposal system design flow in gallons per day. For each additional year there is a permit, a fee of $300 shall be assessed.

(k) Annual permit fees for discharges to domestic treatment works:

1. Fees for discharges to domestic treatment works by NJPDES permitted significant indirect users or applicants, as defined, shall be assessed by the general fee formula in (e)*[2]* **1*** above where the environmental impact value (E) is determined as follows:

i. E = (Toxic Factor) *(* (COD PASSED)$^{1/2}$)

(1) Toxic Factor = Points associated with the Toxicity Group for that discharger.

(2)

Toxicity Group	Toxic Factor	Designation based upon
I	1	SIC Code
II	2	SIC Code
III	3	SIC Code
IV	4	SIC Code
V	5	SIC Code
VI	6	SIC Code
VII	10	Ground Water Decontamination
VIII	15	Landfill Leachate
IX	20	Hazardous Waste Facilities

For SIC Code Toxicity Group see 1984 Basis and Background Document for Annual Fee Schedule For NJPDES Permittees For Billing Period 1984–1985.

(3) COD PASSED = (COD Effluent (Kg/Day)) (BOD PASS THROUGH)

(4) COD Effluent = the discharge from the SIU to the POTW.

(5) BOD Pass Through = the weighted arithmetic average (weighted by number of months) of POTW BOD (Effluent Load) divided by POTW BOD (Influent Load)

[iii.] **2.*** The minimum fee shall be $500.00.

(l) For the purposes of this section, the billing year shall run from July 1 to June 30.

(m) Emergency permit: The Department shall assess a fee for emergency permits. The fees shall be determined based upon the fee formula for the appropriate category and prorated for the term of the permit. The minimum fee for all emergency permits except emergency domestic sludge storage shall be $1,000. The fee for emergency domestic sludge storage permit will be determined based on the average flow as follows:

Average Flow	Fee
< .999 MGD	$ 400.00
1 MGD–4.999 MGD	$ 800.00
5 MGD–19.999 MGD	$1,600.00
> 20 MGD	$3,200.00

1. Failure to submit the fee as required by the Department shall result in automatic termination of the permit.

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TABLE I
RISK CATEGORIES

Risk Factor 10^0	10^1	10^2	10^3	10^4	10^5
SURFACE WATER					
TDS	TSS	Tin	Styrene	Petroleum hydrocarbons	Lead
Chloride	Phosphorus	Aluminum	Nickel	Arsenic	Mercury
Sulfate	Phtahalic Acid	Antimony	Copper	Beryllium	Cadmium
Fluoride	Sulfide	Barium	Silver	Asbestos	Chromium-hex
Iron	Molybdenum	Chromium-trivalent	Cobalt	Acid fraction compounds	Pesticides
	Bismuth	Oil & Grease	Ammonia	Base-Neutral Compounds	PCB
	Manganese	Surfactants	Cyanide		PBB
	Zinc	N(nitrite, nitrate kjeldhal, diss. & Total)	Selenium		
		Oxidizable Matter			
GROUND WATER					
TSS	TDS	Iron	Silver	Lead	Mercury
Aluminum	Chloride	Manganese	Fluoride	Arsenic	Cadmium
Phosphorus	Sodium	Chromium-trivalent	Barium	Beryllium	Chromium-hex
	Antimony	Zinc	Nitrate	Pesticides	Petroleum hydrocarbons
	Bismuth	Copper	Phenol	Acid fraction compounds	Total Volatile Organics (including TTHM)
	Sulfate	Ammonia	Cobalt	Base-Neutrals	
		Oil & Grease	Selenium		
		Surfactants	Nickel		
		Oxidizable Matter			
		TOC			

TABLE II
FORMATION RATINGS

System	Formation	Potential	Points
Quarternary			
Pleistocene	Glacial drift		
	Mercer, Middlesex	Poor	2
	Other counties	Mod. to Very Good	10
	Cape May	Moderate to Good	8
	Pennsauken	Mod. to Minor	6
	Bridgeton	Mod. to Minor	6
Tertiary			
Pleistocene	Beacon Hill	Poor	2
Pleistocene	Cohansey	Very Good	10
Miocene			
Miocene	Kirkwood	Good to Mod.	8
Eocene	Piney Point	Minor	4
	Shark River	None	1
	Manasquan	Poor	2
Paleocene	Vincentown	Poor to Good	8
	Hornerstown	None to Poor	2
Cretaceous			
	Tinton	None to Poor	2
	Red Bank	Poor to Minor	4
	Navesink	None to Poor	2
	Mt. Laurel	Moderate	6
	Wenonah	Minor	4
	Marshalltown	None to Poor	2
	Englishtown	Good to Mod.	8
	Woodbury	None	1
	Merchantville	None	1
	Raritan-Magothy	Very Good	10

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Triassic			
	Watchung	Minor	4
	Diabase	Minor	4
	Brunswick	Minor to Good	8
	Lockatong	Poor	2
	Stockton	Mod. to Good	8
	Border Conglomerates	Minor	4
Devonian			
	Skunnemunk	Poor	2
	Bellvale	Poor to Minor	4
	Cornwall/Pequanac	Poor	2
	Kanouse	Poor	2
	Marcellus	Poor	2
	Onondaga	Moderate	6
	Schoharie	Minor	4
	Esopus	Poor	2
	Oriskany (includes Glenerie and Port Ewen)	Minor	4
	Becraft (Minisink)	Poor	2
	New Scotland	Minor	4
	Kalkberg (Stormville)	Minor	4
	Coeymans	Minor	4
Silurian			
	Manlius	Minor	4
	Rondout	Minor	4
	Decker	Minor	4
	Bossardville	Minor	4
	Poxono Island	Minor	4
	High Falls	Minor	4
	Longwood	Minor	4
	Shawangunk and Green Pond	Poor	2
Ordovician			
	Jacksonburg	Minor	4
	Ontelaunee	Minor	4
	Epler	Minor	4
	Rickenback	Moderate	6
Cambrian			
	Allentown, Upper	Minor	4
	Lower	Mod. to Very Good	10
	Leithsville	Very Good	10
	Hardyston	Poor	2
Precambrian			
	Franklin	Minor to Mod.	6
	Crystalline Rocks	Minor to Mod.	6

(a)

BOARD OF PUBLIC UTILITIES

Small Water Company Takeover Act Regulations
Acquisition Costs

Notice of Correction: N.J.A.C. 7:19-5.11 (14:9-6.11)

Take notice that an error appears in the April 15, 1985 issue of the New Jersey Register at 17 N.J.R. 913 concerning acquisition costs. N.J.A.C. 7:19-5.11(a) should have appeared as follows:

7:19-5.11 (14:9-6.11) Acquisition costs

(a) If the parties have not agreed to acquisition costs, BPU's and *[DEP's]* ***the Department's*** designed representatives shall convene at least one meeting within 60 days of the issuance of the joint hearing report pursuant to N.J.A.C. [7:19-5.9(i)] ***7:19-5.8(j)*** and again within 15 days after issuance of the joint order prepared pursuant to N.J.A.C. 7:19-5.10. Representatives of the Public Advocate, non-complying small water company and acquiring entity shall be notified of each meeting which will concern the possibility of mutual agreement on compensation for the acquisition and the other details pertaining to takeover of the non-complying small water company by the acquiring entity.

1.-2. (No change.)

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(a)

DIVISION OF WASTE MANAGEMENT BOARD OF PUBLIC UTILITIES

Interdistrict and Intradistrict Solid Waste Flow

Joint Adopted Amendment: N.J.A.C. 7:26-6.5

Proposed: March 4, 1985 at 17 N.J.R. 517(b).
Adopted: May 24, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection, and Board of Public Utilities, Barbara A. Curran, President.
Filed: May 28, 1985 as R.1985 d.317, **without change**.

Authority: N.J.S.A. 13:1B-3, 13:1E-6, 13:1E-23, and 48:13A-1 et seq.

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): December 5, 1987.
DEP Docket No. 009-85-02.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

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

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

(a) Waste flows within, into and out of the Atlantic County District:

1.-7. (No change.)

8. All waste types 10, 13, 23, and 25 generated from within the Atlantic County municipality of Hamilton shall be disposed of at the Hamilton Township Sanitary Landfill-Somers Point Road, facility number 0112B, located in Hamilton Township, Atlantic County, New Jersey.

i. (No change.)

ii. (No change.)

iii. Up to 12 tons per day of waste types 10 and 27 generated at the Atlantic County Community College and the Atlantic County Vocational Technical School, and from other commercial, industrial, and governmental generators as may later be determined by agreement between Atlantic County and relevant generators and haulers, shall be disposed of at the Atlantic County Resource Recovery Facility, facility number of 0112C, located in Hamilton Township, Atlantic County, New Jersey.

9.-13. (No change.)

(b)-(v) (No change.)

(b)

DIVISION OF WASTE MANAGEMENT

Tank Storage Containment Requirements

Adopted Amendment: N.J.A.C. 7:26-10.5

Proposed: January 21, 1985 at 17 N.J.R. 152(a).
Adopted: May 24, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: May 28, 1985 as R.1985 d.318, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1E-6, 58:10A-4.

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): August 6, 1986.
DEP Docket No. 076-84-12.

Summary of Public Comments and Agency Responses and Reasons for Changes:

Comment: Tanks or basins connected to a waste water treatment facility, permitted by the New Jersey Pollutant Discharge Elimination System (NJPDES), should be exempt from the secondary containment regulations.

Response: A waste water treatment tank that is used to treat on-site generated hazardous waste prior to a NJPDES regulated discharge is regulated as an Industrial Waste Management Facility (IWMF), subject to the NJPDES regulations of the Division of Water Resources, N.J.A.C. 7:14A-4.1. As an IWMF activity, such tank is exempted from most hazardous waste facility requirements.

Comment: Small, aboveground tanks (less than 10,000 gallon capacity) that are used to temporarily store wastes oil should be exempt from the proposed requirements.

Response: The Department has classified certain waste oils as hazardous wastes (See N.J.A.C. 7:26-8.13(b)) and believes that storage and treatment of these wastes should be conducted in a manner consistent with other hazardous waste treatment facilities. N.J.A.C. 7:26-12.1(b)5 contains an exclusion from the facility permitting requirements for the storage of less than 1,001 gallons of waste oil, which the Department believes to be a reasonable maximum quantity for exclusion.

Comment: Existing tanks should be exempt from the secondary containment requirements.

Response: The Department realizes that there will, on occasion be significant costs involved in retrofitting existing tanks. However, the purpose of these regulations is to prevent migration of hazardous waste off-site and especially to prevent the contamination of ground water. The Department believes that this purpose and the need for reasonable measures required to achieve it outweigh the costs which will result.

Comment: The requirement for daily removal of accumulated precipitation from a containment system is excessive.

Response: The regulations have been revised so that the daily removal requirement only applies to spilled or leaked waste material. Accumulated precipitation will now only have

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to be removed in a timely manner in order to prevent blockage or overflow of the collection system.

As proposed, the rules apply to above-ground tanks. For tanks which are partly above-ground, it is unnecessary for the containment system to be able to contain the entire volume of the largest tank or ten percent of the total tank storage volume. The below-ground portion of the tank should obviously not be included in the calculations for the capacity of the above-ground containment system. Therefore, the Department has added a clarifying provision at N.J.A.C. 7:26-10.5(d)5.

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

7:26-10.5 Tanks

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

(d) Rules on containment in tank storage areas include the following:

1. Above-ground tank storage areas must have a containment system that is capable of collecting and holding spills, leaks and precipitation. The containment system shall:

i. Have a base underlying the tank(s) which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills and accumulated rainfall until the collected material is detected and removed. The base shall have a permeability rating of no greater than 10^{-7} centimeters per second, in addition to adequate structural integrity to withstand the maximum anticipated stress applied to the base due to activities or structures placed in the containment area. The thickness of the base shall be specified in the permit;

ii. Consist of material compatible with the wastes being stored;

iii. Be sloped or otherwise designed and operated to efficiently drain and remove liquids resulting from leaks, spills and precipitation. Tanks shall be protected from contact with accumulated liquids; and

iv. Have sufficient capacity to contain ten percent of the volume of all of the tanks or the volume of the largest tank, whichever is greater. Additional capacity shall be provided to compensate for any anticipated normal accumulation of rainwater.

2. Run-on into the containment system shall be prevented unless the Department waives this requirement in the permit after determining that the collection system has sufficient excess capacity in addition to that required in (d)1 iv above to accommodate any run-on which might enter the system;

3. Accumulated precipitation shall be removed from the sump or collection area in a timely manner, to prevent blockage or overflow of the collection system; and

4. *[All liquid]* ***Spilled or leaked waste*** shall be removed from the sump or collection area daily.

i. If the collected material is a hazardous waste under N.J.A.C. 7:26-8, it shall be managed as a hazardous waste in accordance with all applicable requirements of this Chapter.

ii. If the collected material is discharged through a point source to waters of the State, it is subject to the requirements of N.J.A.C. 7:14A, regulations concerning the New Jersey Pollutant Discharge Elimination System.

5. Partially above-ground tanks shall be constructed and operated in compliance with 1-4 above, except that the base required by 1 above shall surround the above-ground portion of the tank(s) and the volume of the containment system required in 4 above shall be calculated, based upon the above-ground portion of the tank(s):

(e)-(g) (No change.)

(h) Rules for closure of tanks include the following:

1. At closure, all hazardous waste and hazardous waste residues shall be removed from tanks, discharge control equipment, discharge confinement structures and the containment system; and

2. At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with N.J.A.C. 7:26-8 that the solid waste removed from tank and containment system is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of this Chapter.

(i)-(j) (No change.)

HEALTH

(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: May 18, 1985 by the Drug Utilization Review Council, James Perhach, M.D., Acting Chairman.
Filed: May 20, 1985 as R.1985 d.295, **with portions** of the proposal not adopted but still **pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

Summary of Public Comments and Agency Responses:

Regarding thioridazines:

Sandoz Pharmaceuticals' objected to all of the proposed thioridazines, and specifically cited these failures in the Par product's 50 mg study: 70/70 rule not passed for C-max thioridazine, a statistically significant difference in the thioridazine AUC, a low "power" (0.75) for the thioridazine AUC and a concern that the thioridazine assay method used was faulty. In other words, Sandoz objected that the Par product does not reach the same blood level as Mellaril in 30 percent of the persons tested; there are real differences in the amounts absorbed in the Par product as opposed to Mellaril, and there is a chance that the Par product is not absorbed as extensively as Mellaril.

Sandoz cited the above concerns as evidence that Par's low strength thioridazines would not be bioequivalent to Sandoz's Mellaril.

In regard to the 100 mg thioridazine products by Par, Chelsea, Danbury, and Barr, Sandoz stated that the assay methods were also questionable, that consideration should be given to the metabolites' (sulforidazine and mesoridazine) importance, and that some of the "powers" were also low for these products. In other words, Sandoz objected that the breakdown of products formed when these products are

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taken, as well as the chance that they are not absorbed as extensively as Mellaril, should be considered.

In reply to Sandoz's concerns, the Council noted that all of the proposed thioridazines have received a "therapeutically equivalent" rating by the Food and Drug Administration (FDA), which indicates that the FDA considers differences between Mellaril and these generics to be of no clinical consequence. In addition, the Council agreed with the opinion of one member, Dr. Hutcheon, that the problems cited by Sandoz are inconsequential and that these proposed thioridazines are clearly bioequivalent and therapeutically equivalent to Mellaril. The Council also noted that its technical consultants unequivocally stated that all of the 100 mg generic thioridazines were bioequivalent to Mellaril. On the lower strength thioridazines, although the technical consultants were divided (one counselling caution, the other indicating unequivocal bioequivalency), the Council decided to accept as decisive the extensive comparative data presented by Par.

In summary, Sandoz's objections were considered to be of minimal importance when balanced against the data at hand and the FDA's clear acceptance of the generics.

The following products and their respective manufacturers were **adopted:**

Thioridazine HCL tabs 10, 15, 25, 50, 100 mg	**Par**
Thioridazine HCL tabs 100 mg	**Chelsea**

The following products remain **pending:**

Amitriptyline HCL tabs 10, 50, 75, 100 mg	Purepac/Kalipharma
Spironolactone tabs 25 mg	Purepac/Kalipharma

OFFICE OF ADMINISTRATIVE LAW NOTE: Related notices of adoption appear at 16 N.J.R. 2672(b), 17 N.J.R. 200(b), 17 N.J.R. 957(b) and 17 N.J.R. 1296(a).

(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: May 16, 1985 by the Drug Utilization Review Council, James Perhach, Ph.D., Acting Chairman.
Filed: May 20, 1985 as R.1985 d.296, **with portions** of the proposal not adopted but still **pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

Summary of Public Comments and Agency Responses:

Regarding methyclothiazide:

Abbot Laboratories' representative objected to the proposed methyclothiazide product, emphasizing that the Council's own consultants had stated the product to be "bioinequivalent" to Abbott's product, Enduron.

The Council responded that the Chelsea generic differed from Enduron by a small percentage in only one of the three measures taken. Dr. Hutcheon, a Council member, was of the opinion that the very close values for total urinary excretion indicate that the proposed generic would be therapeutically identical to the product for which it is to be substituted.

Regarding methyldopa:

Merck, Sharp and Dohme objected to the Cord Company's proposed methyldopa substitute for Aldomet, noting that Cord's product contains sodium metabisulfite, a chemical not present in Aldomet tablets, which can cause life-threatening "allergic" reactions in some persons. Merck maintained that the subject of sulfite toxicity has only recently been investigated, thus it would be premature for the Council to accept Cord's methyldopa as a substitute for Aldomet.

The Council basically agreed that the sulfite toxicity problem was a cause for concern and therefore the Council rejected Cord's methyldopa products.

The following products and their respective manufacturers were **adopted:**

Allopurinol tabs 100, 300 mg	**Chelsea**
Amitriptyline tabs 10, 25, 50, 75, 100, 150 mg	**Sidmak**
Chlorpropamide tabs 100, 250 mg	**Lemmon, Danbury**
Methyclothiazide tabs 2.5, 5 mg	**Chelsea**
Phenylbutazone tabs 100 mg	**Cord**

The following products and their manufacturers were **not adopted:**

Chlorthalidone tabs 25, 50 mg	**Superpharm**
Doxycycline tabs 100 mg	**Superpharm**
Methyldopa tabs 250, 500 mg	**Cord**
Spironolactone tabs 25 mg	**Cord**
Spironolactone/Hydrochlorothiazide 25 mg tabs	**Cord**

The following products remain **pending:**

Aspirin, caffeine, propoxyphene caps	Phoenix
Amitriptyline tabs 10, 25, 50, 75, 100 mg	Superpharm
Brompheniramine/Phenylephrine Syrup	Bay
Chlordiazepoxide caps 5, 10, 25 mg	Superpharm
Chlorpropamide tabs 100, 250 mg	Superpharm
Chlorpropamide tabs 250 mg	Drummer/Phoenix
Chlorthalidone tabs 50 mg	Drummer/Phoenix
Diphenydramine caps 25, 50 mg	Superpharm
Diphenoxylate/Atropine tabs	Superpharm
Dipyridamole tabs 25, 50, 75 mg	Par, Sidmak, Superpharm
Hydroxyzine HCL tabs 10, 25, 50 mg	Sidmak
Hydroxyzine Pamoate 25, 50, 100 mg	Superpharm
Meclizine HCL tabs 12.5, 25 mg	Sidmak
Methyldopa tabs 125, 250, 500 mg	Chelsea
Methyldopa tabs 250, 500 mg	Mylan
Prenatal vits (Stuartnatal 1 + 1)	Par
Sodium Polystyrene Sulfonate susp.	Bay
Sulfamethoxazole/Trimethoprim 400/80, 800/160	Chelsea, Heather, Superpharm
Tolbutamide tabs 0.5 g	Superpharm
Vitamin B complex/minerals (Berocca plus Formula)	Kapital

(b)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

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Proposed: October 1, 1984 at 16 N.J.R. 2483(a).
Adopted: May 16, 1985 by the Drug Utilization Review Council, James Perhach, Ph.D., Acting Chairman.
Filed: May 20, 1985 as R.1985 d.297, **with portions** of the proposal not adopted but still **pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

Summary of Public Comments and Agency Responses:

Regarding thioridazine:

In regard to the 100 mg thioridazine products by Danbury and Barr, Sandoz stated that the assay methods were questionable, that consideration should be given to the metabolites' (sulforidazine and mesoridazine) importance, and that some of the "powers" were also low for these products. In other words, Sandoz objected that the statistical tests employed were inadequate, that the breakdown of products formed when these products are taken should be considered, and that the possibility exists that these products are not absorbed as extensively as Mellaril.

In reply to Sandoz's concerns, the Council noted that all of the proposed thioridazines have received a "therapeutically equivalent" rating by the Food and Drug Administration (FDA) which indicates that the FDA considers differences between Mellaril and these generics to be of no clinical consequence. In addition, the Council agreed with the opinion of one member, Dr. Hutcheon, that the problems cited by Sandoz are inconsequential and that these proposed thioridazines are clearly bioequivalent and therapeutically equivalent to Mellaril. The Council also noted that its technical consultants unequivocally stated that all of the 100 mg generic thioridazines were bioequivalent to Mellaril.

In summary, Sandoz's objections were considered to be of minimal importance when balanced against the data at hand and the FDA's clear acceptance of the generics.

The following products and their respective manufacturers were **adopted**:

Thioridazine HCL tabs 100 mg	**Barr, Danbury**

The following products remain **pending**:

Hydrochlorothiazide tabs 50 mg	Quantum
Sulfacetamide Sodium Ophth 10%, 15%, 30%	Solopak
Sulfasalazine tabs 0.5 g	VIP

OFFICE OF ADMINISTRATIVE LAW NOTE: Related notices of adoption appear at 17 N.J.R. 201(a), 17 N.J.R. 957(c) and 17 N.J.R. 1296(b).

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Colleges and Universities Administrative Policies

Readoption as New Rules: N.J.A.C. 9:2-4, -6, -7, -12, -13

Proposed: August 20, 1984 at 16 N.J.R. 2216(*a*).
Adopted: May 22, 1985 by Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Filed: May 23, 1985 as R.1985 d.309, **with substantive changes** not requiring additional public notice and comments (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 18A:3-14, 18A:3-15, 18A:6-26, 18A:66-170, 18A:64-26 et seq.

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): June 17, 1990.

Summary of Public Comments and Agency Responses:

The agency received one comment regarding N.J.A.C. 9:2-5 to the effect that the regulations contained within that subchapter were out of date and in need of a complete revision. The agency determined, after consultation with the Attorney General, that much of the subchapter had become unnecessary due to certain court decisions or had been preempted by certain statutory provisions found outside the higher education laws. Continuation of the subchapter would appear to be duplicative of these other authorities and therefore not required. Therefore the agency has decided not to readopt N.J.A.C. 9:2-5 and has deleted the entire subchapter from its adopted rules.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 9:2-4, 6, 7, 12 and 13.

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

SUBCHAPTER 4. ALTERNATE BENEFIT PROGRAM

9:2-4.1 General provisions
(a)-(c) (No change.)
(d) That the holders of the following positions or their equivalent in the Department of Higher Education shall be eligible to participate in the alternate benefit program:
1. Chancellor;
2. Vice Chancellor;
3. *[Assistance]* ***Assistant*** Chancellor;
4. Deputy *[Assistance]* ***Assistant*** Chancellor;
5. Special *[Assistance]* ***Assistant***;
6. Executive Assistant;
7. Confidential Agent;
8. Director;
9. Associate Director;
10. Assistant Director;
11. Program Officer;
12. Program Assistant;
13. Program Specialist;
14. Administrative Assistant;
15. Administrative Services Assistant;
16. Evaluation Analyst
17. Project Coordinator, Computer Planning and Information Systems
18. Program Development Specialist;
19. Management Compliance Officer;
20. Project Specialist;

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21. Coordinator, Veteran's Programs;
22. Assistant Coordinator, Veteran's Programs;
23. Supervisor, Processing Services;
24. Special Projects Officer;
25. Fiscal Analyst;
26. Graduate Program Coordinator;
27. Supervisor, Program Analysts.

9:2-4.2 (Reserved)
9:2-4.3 (Reserved)
9:2-4.4 (Reserved)

*[SUBCHAPTER 5. PROCEDURES IMPLEMENTING CHAPTER 303, LAWS OF 1968 DEPARTMENT OF HIGHER EDUCATION

9:2-5.1 Purpose

These procedures apply when public employees, at any public institution of higher education to which they are hereinafter made applicable, desire to be represented by an exclusive collective negotiation agent. They are in no way intended to abrogate the right of public employees to refrain from collective negotiation. These procedures effectuate and implement the provisions of Chapter 303 of the Laws of 1968, and to that end they should be liberally construed. They are intended to compliment the rules and regulations of the Public Employment Relations Commission.

9:2-5.2 Scope

The following procedures are applicable to all the public institutions of higher education that are now or hereafter may be established or authorized by law as defined by N.J.S.A. 18A:62-1, unless hereinafter specifically exempted. County colleges, as defined in N.J.S.A. 18A:64A-1, et seq. are not subject to these rules and regulations.

9:2-5.3 Employer

(a) The governing board at each public institution of higher education listed in N.J.A.C. 9:2-5.2 shall constitute the employer for purposes of collective negotiation with all the employees of that institution.

(b) The Department of Higher Education is the employer for purposes of collective negotiation with all employees of the Department of Higher Education.

9:2-5.4 Employee

For purposes of collective negotiation there are these categories of employees:

(a) Professional employees are the teaching, research, administrative and academic support personnel at each public institution of higher education;

(b) Non-professional employees are all other employees at the public institutions of higher education;

(c) Departmental employees are all employees of the Department of Higher Education; and

(d) Managerial executives are the president, vice president, deans and their personal professional staff at each public institution of higher education.

9:2-5.5 Representative

(a) Employer. For purposes of collective negotiation on all economic issues and all issues determined by the employer to be applicable to all public institutions of higher education, the employer's representative is a Negotiating Committee comprised of representatives of the institution or institutions, the Department of Higher Education, and the office of the State Negotiator. On all other issues the employer's representative is the governing board of the public institution of higher education.

(b) Employee. For purposes of collective negotiations on all issues, the employee's representative is the organization or individual selected by a majority of the employees, and recognized or certified under applicable statutory provisions or regulations.

9:2-5.6 Negotiating unit

(a) The employees of the Department of Higher Education shall constitute a negotiating unit.

(b) The full-time teaching, research, administrative and academic support personnel at each public institution of higher education shall constitute a negotiating unit.

9:2-5.7 Determination of employee representatives; definitions

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

"Certification" means the designation of an organization or an individual as the representative of the employees in a negotiating unit by the Public Employment Relations Commission.

"Recognition" means the designation of an organization or an individual as the representative of the employees in a negotiating unit by the employer.

"Selection" means the designation of an organization or an individual as the representative of the employees in a negotiating unit by a majority of the employees in that unit.

9:2-5.8 Selection of employees representatives; method

The selection of employee representatives shall be made in accordance with all applicable rules, regulations, decisions and orders of the Public Employment Relations Commission, duly authorized and lawfully made.]*

SUBCHAPTER 5. (RESERVED)

(a)

HIGHER EDUCATION ASSISTANCE AUTHORITY

Guaranteed Student Loan Program Prohibition: Institutional Fees

Adopted Amendment: N.J.A.C. 9:9-1.6

Proposed: December 3, 1984 at 16 N.J.R. 3281(b).
Adopted: May 22, 1985 by New Jersey Higher Education Assistance Authority, Jerome Lieberman, Chairman.
Filed: May 24, 1985 as R.1985 d.311, **without change**.

Authority: N.J.S.A. 18A:72-10.

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): October 3, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

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9:9-1.6 Insurance and origination fees

(a) (No change.)

(b) No educational institution may charge an applicant a fee for processing an application for a Guaranteed Student Loan or a PLUS Loan.

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Public Assistance Manual
Temporary Absence of Children from Home

Adopted Amendment: N.J.A.C. 10:81-3.34

Proposed: January 21, 1985 at 17 N.J.R. 163(a).
Adopted: May 24, 1985 by George J. Albanese, Commissioner, Department of Human Services.
Filed: May 28, 1985 as R.1985 d.312, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Effective Date: June 17, 1985.
Operative Date: July 1, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): July 20, 1988.

Summary of Public Comments and Agency Responses:

Comment: Comment was received from the Middlesex County Legal Services Corporation. Objection was expressed as to two areas of the proposal. First, the rule does not recognize current practices in family court regarding custody litigation in situations where additional proceedings are instituted following a court order; thus, terminating the assistance grant of a child who is, for 30 days or more, absent from the home pursuant to a court order may not necessarily mean that the child will not later be returned by the court to the custody of the recipient. The commenter suggests that the rule be revised to include the recognition of the possibility that custody proceedings may be pending and that the child not be deleted from the grant during this time.

The second concern dealt with the requirement that county welfare agencies (CWAs) determine whether there exists a "reasonable prospect for return of the child in the near future." The commenter felt that CWAs would be prejudging custody cases and questions the qualifications of CWA personnel to evaluate the legal merits of custody cases.

Response: While the Department recognizes the difficult position of a parent who is involved in litigation concerning the return of children, it must also be cognizant of the requirements and purposes of the AFDC program, specifically with respect to the need to provide funds for the support of children by payment to the parent with whom those children are in fact living. To provide funds to the parent with whom such children should be living while knowing that the children are actually residing elsewhere would be a program abuse. Thus, the Department is compelled to recognize factual situations.

The Department cannot realistically justify the issuance of assistance, for an indefinite period of time, to a parent or parent-person who does not have an otherwise eligible child living with him or her. Accordingly, some guidelines must be established in order that a determination can be made as to how long AFDC benefits may be provided to such a parent or parent-person. To go beyond the time frames established, except for unusual situations which must be referred to the State office to continue an absent child on the grant, would not be consistent with the intent of the regulation which specifically deals with the concept of temporary absence.

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

10:81-3.34 Absence for reasons other than institutional

(a) Children: Temporary absence of a child which has not lasted more than 30 consecutive days does not affect eligibility or level or grant entitlement.

1. It shall be presumed, subject to rebuttal, that a child who is absent from the home is absent with consent of the recipient parent or parent person or pursuant to legal process. In accordance with that presumption, if the child is known to be in the custody or control of a relative as specified in N.J.A.C. 10:81-3.11, the CWA shall delete the child from grant status, subject to adverse action notice requirements, after 30 days of absence from the home. Similarly, if the child is not known to be in the custody or control of such a relative, the CWA shall delete the child from grant status after 60 days of absence from the home.

2. When it comes to the attention of a case worker that a child or children have been taken from the recipient's custody without permission, or that a child or children have not been returned to the recipient's custody within the agreed time, the Agency shall inform the recipient that he or she may file a complaint for Interference with custody in the Municipal Court in the town in which he or she lives pursuant to the provisions of N.J.S.A. 2C:13-4, that the recipient may institute proceedings for custody in the Superior Court, Chancery Division, Family Part in the county in which the recipient resides, and that the recipient may seek legal assistance in recovering physical custody of the child through the Legal Aid or Legal Service Office in the county in which the recipient resides.

3. Upon successful rebuttal of the presumption of consentual or legal transfer in (a)1 above, the CWA shall not reduce or discontinue assistance because of the absence.

i. In such event, where absence will continue beyond 60 days, the CWA shall refer the matter to the State office for a determination of continued eligibility. The CWA shall not reduce or discontinue assistance by reason of the absence except upon the instruction of the State office.

4. The presumption of consentual transfer set forth in (a)1 above is successfully rebutted if all of the following exist:

i. There is satisfactory evidence that the transfer was without the consent, express or implied, of the recipient parent or parent person; and

ii. Legal action for the return of the child has been initiated; and

iii. There is a reasonable prospect for the return of the child in the near future.

(1) If within 90 days the child's whereabouts are unknown, it is to be understood that there is no reasonable prospect for the return of the child in the near future.

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(2) However, for unusual situations which will continue for longer than 90 days, the CWA shall obtain approval from the State office to continue a child in the grant.

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

(a)

DIVISION OF PUBLIC WELFARE

Assistance Standards Handbook
Initial Grant Computation

Adopted Amendment: N.J.A.C. 10:82-2.2

Proposed: March 4, 1985 at 17 N.J.R. 546(b).
Adopted: May 20, 1985 by George J. Albanese, Commissioner, Department of Human Services.
Filed: May 20, 1985 as R.1985 d.299, **without change**.

Authority: N.J.S.A. 44:7-6 and 44:10-3; 45 CFR 206.10(a)(6)(i)(D).

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): July 20, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

10:82-2.2 Initial grant

(a) When eligibility has been determined, the initial grant shall be computed as follows:

1. All income which has been received or which will be received in the month of application shall be counted in accordance with the best estimate policy found at N.J.A.C. 10:90-2.4(a). The countable income shall be subtracted from the appropriate monthly assistance standard and the result shall be prorated by multiplying that amount by the factor appropriate for the date of application in the table below. If the result is not a whole dollar amount, the amount shall be rounded to the next lower whole dollar.

Date of Application	Multiplication Factor	Date of Application	Multiplication Factor
1	1.000	16	.5000
2	.9666	17	.4666
3	.9333	18	.4333
4	.9000	19	.4000
5	.8666	20	.3666
6	.8333	21	.3333
7	.8000	22	.3000
8	.7666	23	.2666
9	.7333	24	.2333
10	.7000	25	.2000
11	.6666	26	.1666
12	.6333	27	.1333
13	.6000	28	.1000
14	.5666	29	.0666
15	.5333	30 and 31	.0333

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

(b)

DIVISION OF PUBLIC WELFARE

General Assistance Manual
Suits and Claims

Adopted Amendment: N.J.A.C. 10:85-3.4

Proposed: March 4, 1985 at 17 N.J.R. 548(a).
Adopted: May 20, 1985 by George J. Albanese, Commissioner, Department of Human Services.
Filed: May 20, 1985 as R.1985 d.298, **without change**.

Authority: N.J.S.A. 44:8-111(d).

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): July 25, 1988.

Summary of Public Comments and Agency Responses:

Comment: The only comment received was submitted by a municipal welfare director who suggested that eligibility for assistance be denied if a client does not sign an agreement to repay the agency incident to settlement of a suit or claim. Additionally, the commenter suggests that clients should be required to repay any grants of assistance which were received while awaiting Social Security payments, Veteran's benefits, workers' compensation, temporary disability benefits and Supplemental Security Income (SSI) payments not repayable in accordance with a valid Form GA-30.

Response: There is no authority under New Jersey Statute to mandate that, as a factor in determining eligibility, clients must sign an agreement to repay upon liquidation of any interest in a claim or suit. To the contrary, the signing of an agreement must be voluntary on the part of the client. However, municipal welfare agencies should make every effort to secure an agreement, but it should have no influence on eligibility for or amount of assistance granted.

With regard to repayment of grants of assistance received while awaiting benefits from the programs listed at N.J.A.C. 10:85-3.4(f), it should be noted that, with the exception of SSI payments authorized in accordance with a valid Form GA-30, those benefits are not subject to repayment and are protected by law *(Philpott et al. v. Essex County Welfare Board)*.

Full text of the adoption follows.

10:85-3.4 Resources

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

(e) Suits and claims: Where a member of the eligible unit is, at time of application, or subsequently becomes the owner of an interest in a suit or claim arising out of an accident, inheritance or legacy, insurance on the lives of relatives or others, statutory benefits or pensions, unfulfilled contracts or obligations, and so forth, such interests constitute personal property and are potential resources which must be recognized.

1. Where assistance is extended during the period that the receipt or liquidation of such interest is pending, the MWD shall make every effort to obtain the signature(s) of the applicant(s)/recipient(s) on an agreement whereby the eligible unit will, when liquidation occurs, repay the agency the amount of assistance granted since the incident or claim occurred, or the amount received as the result of the claim, whichever is less. The MWD will explain to the applicant(s)/recipient(s) that the

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agreement is entirely voluntary and the signing or not signing will have no influence on eligibility or on the amount of assistance to be granted, if any.

(f) The following are not subject to repayment to the MWD: retroactive Social Security (RSDI) payments, Veteran's benefits, workers' compensation, temporary disability benefits, and SSI payments not repayable to the DPW/MWD in accordance with a valid Form GA-30. However, when such monies are received, they shall be recognized as countable income and the client's eligibility shall immediately be redetermined.

(a)

DIVISION OF PUBLIC WELFARE

Food Stamp Program
Noncompliance with Other Programs

Readopted Amendment: N.J.A.C. 10:87-5.7

Proposed: April 15, 1985 at 17 N.J.R. 986(a).
Adopted: May 28, 1985 by George J. Albanese, Commissioner, Department of Human Services.
Filed: May 28, 1985 as R.1985 d.313, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:4B-2; Omnibus Budget Reconciliation Act of 1982 (Public Law 97-253) and 49 FR 48677.

Effective Date: May 28, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): March 1, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Summary of Changes Subsequent to Proposal:

Additional language has been added at N.J.A.C. 10:87-5.7(c) to clarify that disregarded child support (DCS) payments, in an amount up to $50.00 per month, are not included as income in the AFDC program, but are counted as income for food stamp purposes. This clarification is necessary to comport with Federal regulations at 7 CFR 273.9(b)(2)(iii) which require that child support or alimony payments made directly to the household be counted as unearned income. Federal regulations at 7 CFR 273.9(b)(5) provide that child support payments shall not be counted as income only to the extent that such payments are transferred to the Title IV-D agency in order to maintain AFDC eligibility.

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

10:87-5.7 *[Treatment of moneys used to repay overpayments]* ***Treatment of recovery moneys and Title IV-D child support payments***

(a) Moneys used for restitution of overpayments: Moneys withheld from earned income, or other income source, or moneys received from any income source (except as specified in (b) below) which are voluntarily or involuntarily returned to repay a prior overpayment that is not excludable under N.J.A.C. 10:87-5.9 shall not be counted as income. Moneys withheld from an assistance grant to repay a prior overpayment that is the result of an inadvertent client error or agency error shall not be counted as income.

(b) Moneys used for recovery of overpayments caused by intentional noncompliance with requirements of other programs: Moneys withheld from a Federal, State, or local assistance grant such as AFDC, GA, or SSI, for the purpose of recovering a prior overpayment which resulted from recipient fraud or intentional failure to comply with program requirements shall be included as income.

1. For the purpose of this provision intentional noncompliance shall be defined as follows:

i. AFDC, SSI and GA programs: In the AFDC, SSI, and GA programs, intentional noncompliance shall be an action determined to be fraud pursuant to a judicial determination.

ii. Other means-tested programs: For all other programs, intentional noncompliance shall be determined by such other program in accordance with that program's governing regulations and procedures.

2. Benefit determination in cases with recovery due to fraud or intentional noncompliance: The CWA shall ensure that there is no increase in food stamp benefits to households on which a penalty resulting in a decrease in assistance payments has been imposed for fraud or intentional failure to comply with a Federal, State, or local welfare program such as AFDC, SSI or GA. Procedures for determining food stamp benefits when there is such a decrease in assistance are as follows:

i. When a recipient's benefits under a Federal, State, or local assistance program are decreased to recover a prior overpayment caused by fraud or intentional noncompliance, the CWA shall identify that portion of the recovery which is due to intentional noncompliance.

(1) For AFDC, SSI and GA, the first collections after the judicial determination of fraud shall be considered the amount of recovery for fraud.

2. For other programs, the penalty shall be that portion of the decrease attributed to the repayment of benefits overissued as a result of the household's intentional noncompliance.

ii. The CWA shall count the amount of the recovery as income in calculating the food stamp benefit.

(c) Child support under Title IV-D: Child support payments received by AFDC recipients which must be transferred to the CWA pursuant to Title IV-D of the Social Security Act to maintain AFDC eligibility shall not be counted as income*[.]* ***except for the following:***

1. Disregarded child support payments: An amount up to the first $50.00 per month of child support payments received for an AFDC family through the child support and paternity (Title IV-D) process is disregarded in the AFDC program and is paid to the AFDC family in the form of disregarded child support (DCS) payments. The amount of the DCS payment shall be counted as unearned income for food stamp purposes in accordance with N.J.A.C. 10:87-5.5(a)5, as are any child support payments received directly by a food stamp household.*

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(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Child Care
Manual of Standards for Child Care Centers

Adopted Amendments: N.J.A.C. 10:122-2.3, 2.6, 3.2, 3.3, 4.1, 4.3, 4.6, 6.8 and 6.9
Adopted New Rule: N.J.A.C. 10:122-3.2

Proposed: March 4, 1985 at 17 N.J.R. 548(b).
Adopted: May 28, 1985 by George J. Albanese, Commissioner, Department of Human Services.
Filed: May 28, 1985 as R.1985 d.314, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:5B-1 to 15.

Effective Date: June 17, 1985.
Operative Date: September 1, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): September 19, 1988.

Summary of Public Comments and Agency Responses:

The Division of Young and Family Services (DYFS) received six letters of comment on the proposal: one from the Association for Children of New Jersey (ACNJ), based in Newark; one from Catholic Community Services, also based in Newark; one from the Department of Human Services' Office of Public Information; and one each from the Commissioners of the New Jersey Departments of Education, Health and Labor, who commented pursuant to N.J.S.A. 30:5B-1 to 15. In addition, the DYFS Assistant Director and staff of the Division's Bureau of Licensing conducted several meetings during the period that the proposal was being prepared with representatives of groups and organizations in the State's child care community in order to discuss the proposal and secure their reactions and comments. The meetings were with the Child Care Advisory Council established pursuant to N.J.S.A. 30:5B-1 to 15; the Statewide officers and area chapter presidents of the New Jersey Association for the Education of Young Children (NJAEYC); the DYFS Day Care Policy Development Board (PDB); the Division on Women Task Force on Child Care; the New Jersey Statewide Head Start Director's Association; and the Directors of the 16 DYFS-operated child care centers. Many of the comments and recommendations made by these groups and organizations were incorporated in the proposal that was published in the New Jersey Register on March 4, 1985.

All of the comments received, both verbal and written, generally supported the proposed regulations, although some suggestions for improvements and clarifications were made. The majority of changes made as a result of the comments received on the proposal are not substantive; rather, they constitute for the most part technical changes in language in order to clarify and improve the meaning of a provision.

COMMENT:
The Department of Human Services (DHS) Office of Public Information commented that the new rules on information to parents appear to suggest that the parents would be entitled to report suspected violations of child care licensing regulations to the Division's Bureau of Licensing only after discussing their concerns first with the center director. The Office of Public Information suggested that the provision be clarified so that parents understand that they may address their concerns to the Bureau of Licensing, regardless of whether they first wish to discuss these concerns with the center administration. (N.J.A.C. 10:122-3.2(a)4.)
RESPONSE:
This provision has been amended to clarify that parents may convey their concerns over possible licensing violations to the Bureau of Licensing, regardless of whether they discuss these concerns with the center director.

COMMENT:
Under the new provision that requires centers to provide parents of enrolled children with information on the statutory obligation of all persons to report suspected child abuse/neglect/exploitation to the Division, the DHS Office of Public Information suggested that the language be amended to reflect the idea that any person who has reason to believe that a child has been abused, neglected or exploited by anyone, regardless of whether they work at the center or not, must report that to the Division, as required by State Child Abuse and Neglect Law. As written in the proposal, the provision focuses only on the reporting of suspected abuse/neglect/exploitation by center administrators and/or staff members.

The Department of Education raised a similar concern over the emphasis in the regulations on the reporting of institutional abuse (abuse allegedly occurring at the center); since most child abuse occurs in the child's home, the Department suggested that an attempt be made to strike a greater balance between the reporting of institutional abuse and abuse/neglect occurring in non-institutional settings. (N.J.A.C. 10:122-3.2(a)12.)
RESPONSE:
This provision has been modified to indicate that centers must inform parents in their written informational materials that any person who has reasonable cause to believe that child abuse/neglect/exploitation has been committed by anyone, regardless of whether or not the alleged perpetrator works at the center, must report that to the Division.

COMMENT:
The Department of Education commented that the new rule requiring centers to secure the written consent of parents to take their children on any field trip, outing or special event away from the center appears to permit blanket parental consent for any excursions, so long as information about each event is transmitted in advance to the parents. The Department suggested that the language be clarified to require that parental consent be secured for each outing. (N.J.A.C. 10:122-3.2(a)11.)
RESPONSE:
This provision has been amended in keeping with the suggestion of the Department of Education so that it clearly states that parents must be informed of any consent to each field trip, outing or special event away from the center prior to that event.

COMMENT:
The Association for Children of New Jersey (ACNJ) suggested that the rule on information to parents also include a requirement that centers distribute to parents information concerning the physical and behavioral indicators of child

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abuse, which would be helpful in educating parents about the subject. (N.J.A.C. 10:122-3.2(a)13.)

RESPONSE:

A provision under this rule has been added that will require centers to advise parents that they may secure information about child abuse and neglect by contacting the Community Education Office of the Division of Youth and Family Services, which, upon request, will supply informational material on this subject. The Division felt it would be more appropriate to require centers to advise parents of the availability of information through the Division's Community Education Office in keeping with DYFS's statutory responsibility as the State's child protection agency, rather than obligating centers to prepare and/or disseminate information and materials on the subject directly.

COMMENT:

The DHS Office of Public Information suggested that the provision which enables centers to convey required information to parents by including it in the center's own manual/handbook/pamphlet/brochure be amended slightly to enable centers to convey such information also through other informational materials that they may make available to parents. (N.J.A.C. 10:122-3.2(f).)

RESPONSE:

This provision has been modified in keeping with the suggestion by the Office of Public Information, since it allows the center additional flexibility in meeting the requirements.

COMMENT:

The Department of Education suggested that certain proposed amendments to the children's records section were confusing and even contradictory in that they required centers to maintain listings of any person(s) authorized by the custodial parent(s) to take the child to and from the center and to assume responsibility for the child in an emergency, as well as listings of any person(s) specifically not authorized by the custodial parent(s) to visit the child at the center or to take the child from the center. The Department of Education suggested that centers be required only to retain a listing of person(s) whom parent(s) authorize to visit or to take a child to or from the center, since a listing of unauthorized person(s) would be potentially longer and administratively burdensome for the center. (N.J.A.C. 10:122-3.4(b).)

RESPONSE:

In keeping with this suggestion, the Division has amended the language in this section so that centers are only required to maintain listings of any person(s) authorized by custodial parents to visit the child at the center and/or to take the child from the center. However, the adopted regulation will still require that if a non-custodial parent is not listed by the custodial parent as authorized to visit or pick up the child at the center, the record must include written documentation that the non-custodial parent has been denied or granted limited access to the child by a court order.

COMMENT:

The Department of Health questioned the necessity of requiring centers, when reporting unusual incidents involving children at the center to their parents, to advise parents of single, isolated changes in behavior. As an alternative, the Department suggested that it might be more appropriate for center staff to report abrupt changes in a child's behavior that persist for days or weeks or that are brought on by a particular situation, activity, person or event. (N.J.A.C. 10:122-3.2(h).)

RESPONSE:

This requirement is intended to ensure that centers report to parents any unusual incidents or episodes involving their child while at the center and of which the parents should be aware. The requirement states specifically that centers are to report those changes in a child's personality, behavior or habits that are significant or unanticipated—changes that would not fall within the child's normal range of behavior or routine. The Division feels that the center should not be required to wait until a persistent pattern of personality or behavioral change is manifested by the child before informing the parent. Therefore, the Division determined not to modify this provision further.

COMMENT:

The Department of Health suggested that the provisions of the amended regulations establishing governing boards or advisory committees for centers to include parents and community representatives be modified to require that such boards or committees review the records and backgrounds of all new staff members at the center as a means of protecting against the potential hiring of undesirable persons. (N.J.A.C. 10:122-6.9.)

RESPONSE:

While the Division supports effective measures to screen inappropriate staff from employment at child care centers, the regulations do not specifically obligate centers to establish a governing board or advisory committee consisting of parents and community representatives. Rather, the establishment of such boards or committees is among a range of options available to centers aimed at ensuring parent participation in the center's operations and activities. Thus, mandating governing boards or advisory committees to review staff records would be an inappropriate and inequitable requirement, since only those centers that choose one of these options in order to meet the parent participation requirements would be bound by it. For that reason, the Division did not amend these provisions. It should be emphasized, however, that the list of suggested activities for such governing boards and advisory committees includes staff recruitment and selection.

COMMENT:

The Department of Health also suggested that it might be appropriate for centers to submit directly to the Bureau of Licensing the records and background disclosures of any new employees as a means of screening inappropriate persons. (N.J.A.C. 10:122-4.1(e).)

RESPONSE:

The large number of centers and their staff members (more than 1,700 centers statewide employing an estimated 14,000 persons) and the significant rate of staff turnover in centers would make such a procedure impractical and extremely burdensome administratively, for both the centers and the Bureau of Licensing. For this reason, the regulations hold center directors responsible for ensuring the appropriateness and suitability of any staff hired at the center as a condition of the center's licensure; the Bureau of Licensing is responsible for ensuring that center directors meet the staff qualifications requirements.

COMMENT:

The Department of Education commented that certain requirements in various subchapters appear to be repeated in the section on Records. (N.J.A.C. 10:122-3.4.)

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RESPONSE:

A number of rules that appear in other subchapters of the manual require centers to provide documentary evidence of compliance with them. Thus, several rules have corollaries in the recordkeeping sections, ensuring that documentary evidence of compliance is available for verification by the Bureau of Licensing. For example, the subchapter on Staff Qualifications requires every center director and staff member to make a full background disclosure; the section on personnel records requires the centers to maintain copies of written disclosures on the director and all staff for review by the Bureau of Licensing.

COMMENT:

The Department of Education questioned whether the unusual incidents that must be reported to parents include those in which the child is subjected to misfortune or those in which the child victimizes or acts out against another child or both. (N.J.A.C. 10:122-3.2.).

RESPONSE:

This provision calls for the center to advise the parents of any unusual incident involving the child that occurs at the center, and does not intend to specify the role of the child in the incident. As such, the Division did not feel that it was necessary to modify or clarify the requirement.

COMMENT:

The ACNJ suggested that as part of the information to parents requirements, centers be obligated to provide parents with a copy of the center's statement of philosophy on its disciplinary practices and procedures. (N.J.A.C. 10:122-6.8(f); 3.2(a)8.).

RESPONSE:

The revised regulations require centers to provide all staff members with a copy of the center's statement of philosophy on discipline, to post a copy of the statement in a location of prominence in the center, and to provide a copy of the statement to parents upon request after advising them of its availability. The Division did not feel that additional requirements in this area were necessary.

COMMENT:

Catholic Community Services suggested that the establishment of a governing body to include parent representatives may not be feasible or appropriate in all cases, since: (1) some centers may already have a governing body that does not include parental representation; or (2) the center may be part of a larger multi-service agency overseen by a governing body responsible for the operations and activities of the larger agency. In such cases, the composition of the governing body may not be able to be reconstituted or altered to meet the requirements in the regulation. (N.J.A.C. 10:122-6.9.)

RESPONSE:

The establishment of a governing body to include parent representatives constitutes only one of a number of options that a center could select to ensure parent participation, as required under the revised regulations. Thus, if a center or agency chooses not to or cannot include parent representation in its governing body, it has the option of selecting one of the other alternatives to meet the parent participation requirements. In view of this, the Division did not feel it was necessary to modify this provision.

COMMENT:

Catholic Community Services suggested that the provision allowing the parents of enrolled children to visit the center at any time, while acceptable in concept, could be disruptive to the center's operation and could impinge on contractual agreements between the parents and the center. (N.J.A.C. 10:122-3.2(a)10.)

RESPONSE:

The Division feels that the ability of parents to visit their children in a child care setting at any time without prior approval of the center is crucial to protect the rights of parents to ensure that their children are receiving good, safe and healthy care at the center at all times. It was designed specifically to provide additional safeguards for the children from potential abuse/neglect/exploitation. The Division determined not to modify this requirement in any way.

Finally, the Division chose on its own to amend the provision that called for center directors to report unusual incidents to the DYFS when the director has reason to believe that informing the child's parent may potentially subject the child to abuse or neglect. The provision has been modified to require center directors to report unusual incidents whenever the director has reasonable cause to believe that an unusual incident involving a child was caused by or is the result of parental abuse or neglect. (N.J.A.C. 10:122-3.2(i).)

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

10:122-2.3 Causes for denial, suspension or revocation of a license

(a) A child care center's license may be denied, suspended or revoked for good cause, including but not limited to the following:

1.-4. (No change.)

5. Refusal to permit an authorized representative of the Division to gain admission to the center during normal operating hours;

6. Failure to provide a developmental or age-appropriate program that meets the physical, social, emotional and cognitive needs of the children in the center as required by this chapter; or

7. Failure by the director or any staff member to comply with the requirements as specified in N.J.A.C. 10:122-3.3(b)3. and in 10:122-4.1(a) and (b).

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

10:122-2.6 Complaints

(a) Whenever the Bureau receives a report questioning the licensing status of a child care center or alleging violations of this chapter at the center, the Bureau shall investigate the allegation within 10 working days to determine whether the complaint is substantiated. The Bureau shall notify the sponsor in writing of the results of the complaint investigation within 15 working days after the report of the Bureau's investigation has been finalized. Such notification shall include the results of the investigation, in keeping with the State Public Records Law (N.J.S.A. 47:1A-1 to 4), with the exception of any information not permitted to be disclosed under the Child Abuse and Neglect Law (N.J.S.A. 9:6-8).

(b) If the complaint is substantiated or if any other violations are found as a result of the investigation, the center shall be required to abate the violations and come into full compliance with provisions of the State Child Care Center Licensing Law and of this chapter.

(c) Any individual filing a complaint may do so anonymously. If the complainant reveals his/her identity, the name of the complainant, together with a description of the complaint and its status, shall be included in the Bureau's records and shall be available for public review upon completion of

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the investigation by the Bureau, in keeping with the State Public Records Law, with the exception of any information not permitted to be disclosed under the Child Abuse and Neglect Law.

(d) Whenever the Bureau receives a report alleging child abuse/neglect of a child at a center, the Bureau shall immediately refer the matter to the Division's Institutional Abuse Unit, which is responsible for investigating allegations of child abuse/neglect of children in out-of-home settings, in accordance with provisions of the Child Abuse and Neglect Law. That unit shall notify the sponsor in writing of the results of its investigation.

(e) Whenever the Division conducts complaint inspections as specified in (a) and (d) above, the center shall cooperate with the Division's investigators.

10:122-3.2 Information to parents

(a) The center shall provide the parent(s) of every enrolled child with a written statement/pamphlet indicating that:

1. The center is required to be licensed by the Bureau of Licensing of the New Jersey Division of Youth and Family Services (DYFS) pursuant to State law (N.J.S.A. 30:5B-1 to 15);

2. The center is required by law to comply with all applicable provisions of the Manual of Standards for Child Care Centers;

3. The center is required to retain a current copy of the Manual of Standards and to make it available for the review and perusal of parents of enrolled children;

4. Parents of enrolled children are encouraged to bring to the attention of and discuss with the center director any questions/concerns about the policies of the center or the meaning, application or alleged violations of the Manual of Standards. If *[, after discussing their concerns with the director,]* the parents believe or suspect that the center is in violation of any provision of the Manual of Standards, they are entitled to report such alleged violations to the Bureau of Licensing;

5. Any parent may secure a copy of the Manual of Standards by contacting the Bureau of Licensing of the Division of Youth and Family Services, One South Montgomery Street, CN 717, Trenton, New Jersey 08625. A nominal fee is charged for the manual, in keeping with Department policy;

6. The center is required to make available for review by parents of enrolled children the Bureau of Licensing's Inspection/Violation Reports on the center;

7. The center is required to post its license in a prominent location within the center; as specified in N.J.A.C. 10:122-2.2(h);

8. The center is required to post a copy of its written statement of philosophy on the disciplining of children in a prominent location within the center, as specified in N.J.A.C. 10:122-6.8(f), and to make a copy of it available to parents upon request.

9. The center must afford the parent(s) of enrolled children ample opportunities to participate in and to observe the operation and activities of the center, as specified in N.J.A.C. 10:122-6.9(a);

10. Parents of enrolled children may visit the center at any time without having to secure the prior approval of the center;

11. The center must inform the parent(s) in advance of *[any]* ***every*** field trip, outing or special event away from the center that it plans for the children and must secure the prior written consent of the parent(s) before taking a child on *[such a]* ***each*** field trip, outing or special event; and

12. Any person who has reasonable cause to believe that a child enrolled in the center has been/is subjected to any form of hitting, corporal punishment, abusive language, ridicule, or harsh, humiliating or frightening treatment, or any other kind of child abuse/neglect/exploitation by *[center administrators and/or staff members]* ***any person, whether working at the center or not,*** is required by State law to report such allegations to the Division of Youth and Family Services Office of Child Abuse Control (toll-free hotline (800) 792-8610). Such reports may be made anonymously.

13. Parents may secure information about child abuse and neglect by contacting the Community Education Office of the Division of Youth and Family Services, One South Montgomery Street, CN 717, Trenton, New Jersey 08625.

(b) The center shall comply with the requirements specified in (a) above by providing the statement/pamphlet to every parent of an enrolled child no later than five days after the child begins attending the program.

(c) The sponsor shall maintain in files located at the center a single copy of the statement/pamphlet specified in (a) above and a record indicating:

1. The date the statement/pamphlet was issued to every parent; and

2. The parent's signature attesting to his/her receipt of the statement/pamphlet on that date.

(d) The center may satisfy the record keeping requirement specified in (c) above by including in its child enrollment, application or registration form the parent's signature attesting to his/her receipt of the statement/pamphlet and the date of receipt.

(e) A copy of the statement/pamphlet specified in (a) above shall be posted in a location of prominence within the center.

(f) The center shall comply with the provisions of N.J.A.C. 10:122-3.2 either by distributing copies of a model statement/pamphlet, to be prepared by the Bureau, or by including the required information, as noted above, in the center's own manual/handbook/pamphlet/brochure*[.]* ***or informational material.***

(g) At the time of enrollment and thereafter as the need arises or at the request of the parent(s), the director or staff member shall discuss with each parent the child's habits, activities and schedules while at home and at the center and any special concerns about the child's behavior and development.

(h) The center director or staff member shall advise the parent(s) of any unusual incident involving the child that occurs at the center, preferably on the same day of the occurrence, but by no later than 24 hours afterwards. Such incidents would include, but not be limited to: unusual sexual activity; assaultive, violent or destructive behavior; or sudden significant or unanticipated change(s) in the child's personality, behavior or habits.

(i) If the director or his/her designee*[, based on knowledge of and/or experience with the particular family,]* has reasonable cause to believe that *[informing the parent(s) of the unusual incident will subject the child to]* ***an unusual incident involving a child or a change in a child's personality, behavior or habits was caused by or is the result of*** parental abuse or neglect, the director or his/her designee shall report the incident to the Division's Office of Child Abuse Control (toll-free 800-792-8610) or, for children under the Division's supervision, to the Division caseworker assigned to the family, rather than to the parent, as specified in (h) above.

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(j) When a child has been identified by the center as having a handicapping condition, or suspected handicapping condition, the director or staff member shall inform the parent(s) of their child's right to a special education program and related services and shall refer the parent(s) to the special toll-free telephone number (800) 322-8174 for a possible comprehensive evaluation and individual service plan development for the child.

(k) When a child has been identified by the center as having a handicapping condition, or suspected handicapping condition, the director or staff member shall inform the parent(s) of the availability of the Special Child Health Services Program at (609) 292-5676 for a possible comprehensive medical evaluation for the child.

10:122-3.3 Reporting requirements

(a) The sponsor, director or any staff member shall verbally notify the Bureau and the Office of Child Abuse Control (toll-free 800-792-8610) immediately whenever there is reasonable cause to believe that an enrolled child has been subjected to abuse and/or neglect by a staff member(s) or any other person, as specified by the Child Abuse and Neglect Law (N.J.S.A. 9:6-8.9, 8.10, 8.13 and 8.14). Under provisions of this law, any person who has reasonable cause to believe that a child has been subjected to child abuse/neglect/exploitation must report this to the Division. Copies of the law and information about it are available from the Division, upon request.

(b) The center shall notify the Bureau verbally of any of the following changes or events within 24 hours after the center learns of their occurrence, to be followed with written notification to the Bureau within five working days:

1. Injury or illness that is not caused by child abuse/neglect and that results in the death or admittance to a hospital of any child which occurred while the child was on the premises of the center or while under the official supervision of center personnel;

2. Unanticipated temporary or permanent closing of the center;

3. Any convictions of the director or of any staff member;

4. Legal action against a center or staff member which involves or affects any child or the operation of the center; and

5. Damage to the premises of the center caused by fire, accident or the elements.

(c) (No change.)

10:122-3.4 Records

(a) General requirements:

Records required to be maintained by the center pursuant to this chapter shall be kept on file at the center. If the sponsor operates more than one center and maintains records in a central file, a duplicate individual file for each child shall also be kept at each center.

1. Records shall be open for inspection by an authorized representative of the Bureau.

2. The center shall ensure the confidentiality of records, in accordance with State law.

(b) Children's records: The sponsor shall maintain in files located at the center an up-to-date record on each child which shall be conveyed and made available to appropriate staff members and shall include:

1. The child's full name, address, birth date, and date of enrollment;

2. Name, home address, employment address, and telephone number of parent(s);

3. Instructions for reaching parent(s);

4. Name(s), address(es), and telephone number(s) of any person(s) authorized by the custodial parent(s) to ***visit the child at the center and/or to*** take the child to or from the center and to assume responsibility for the child in an emergency if the parent(s) cannot be reached immediately*[;]* *.*

[5. Name(s) and address(es) of any person(s) specifically not authorized by the custodial parent(s) to visit the child at or to take the child from the center. If the list of unauthorized persons includes a non-custodial parent,] ***If a non-custodial parent is not included among those persons so authorized by the custodial parent,*** the record shall include written documentation from the custodial parent that the non-custodial parent has been denied ***or granted limited*** access to the child by a court order;

[6.] ***5.*** Name, address, and telephone number of the child's physician;

[7.] ***6.*** Health information, as specified in N.J.A.C. 10:122-6.1;

[8.] ***7.*** Written authorization from parent(s) for emergency medical care;

[9.] ***8.*** Injury and illness record, including reports of any accidents, of treatment by a physician, or of injury or death of a child while on the premises or in the care of the center; and

[10.] ***9.*** For a center that serves any child having a cognitive, or socio-emotional or physical handicap, including mental retardation, social maladjustment, perceptual impairment, neurological impairment, auditory handicap, emotional problems, communication handicap, or orthopedic handicap, a record(s) from a health, education or social service agency or professional which documents the existence or suspected existence of a handicapping condition. The record(s) shall be obtained prior to or as soon as possible following the child's admission. The record(s) shall indicate the particular nature of the child's handicap and any program or environmental modification that is required to meet the exceptional child's needs.

(c) Personnel records: The sponsor shall maintain in files located at either a central administrative office or the center an up-to-date personnel record of the director and of every staff member for as long as that individual is working at the center. The record shall include:

1. Name, address, and telephone number;

2. Information on health, as specified in N.J.A.C. 10:122-4.2;

3. Dates of employment or work;

4. A full written disclosure of the director's and of every staff member's background, previous work experience, schooling, and convictions, if any. Such information shall be placed in the individual's personnel record at the time she/he first joins the center's staff and shall be updated whenever a change occurs in any area noted above; and

5. At least two character references on the director and every staff member, as specified in N.J.A.C. 10:122-4.1(b).

(d) Administrative records:

1. The sponsor shall maintain in files located at either a central administrative office or the center the following administrative records:

i. A copy of the center's insurance coverage including:

(1) Comprehensive liability insurance; and

(2) If applicable, vehicle insurance, as specified in N.J.A.C. 10:122-7.5;

ii. Transportation records, if the center provides transportation, as specified in N.J.A.C. 10:122-7.4; and

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iii. A written record of the performance of required monthly fire drills, as specified in N.J.A.C. 10:122-5.2(b)9.

2. The sponsor shall maintain in files located at the center the following administrative records:

i. A copy of the statement/pamphlet providing information to parents, as specified in N.J.A.C. 10:122-3.2(a);

ii. A written record of the parent's receipt of the statement/pamphlet, as specified in N.J.A.C. 10:122-3.2(c) and (d);

iii. A record of prior written consents from the parents of enrolled children for the center to take their children on a field trip, outing or special event away from the center;

iv. A copy of the center's statement of philosophy on the disciplining of children, as specified in N.J.A.C. 6.8(f).

v. A written record of each staff member's receipt of the statement of philosophy on the disciplining of children, as specified in N.J.A.C. 10:122-6.8(g).

vi. A copy of records pertaining to parent/community participation, as specified in N.J.A.C. 10:122-6.9(a);

vii. Current employee work schedules and time sheets;

viii. Daily attendance records for the children enrolled;

ix. A written plan specifying the procedures to be followed in the event that the parent(s) or other person(s) authorized by the parent(s) fails to pick up or is late in picking up a child at the time of the center's daily closing. The plan shall insure that:

(1) The child is supervised at all times by center staff members;

(2) Every effort is made by center staff members to contact the custodial parent(s) and/or other person(s) authorized by the parent(s) to care for the child; and

(3) Whenever the custodial parent(s) and/or other person(s) authorized by the custodial parent(s) fails to pick up the child one hour or more after closing time, and provided that the center staff members have been unable to make other arrangements for returning the child to his/her custodial parent(s), a center staff member shall call the Division's 24-hour Child Abuse Hotline (800-792-8610) to seek assistance in caring for the child until his/her custodial parent(s) or other person(s) authorized by the custodial parent(s) is available to care for the child; and

x. For a drop-in center, a record of the daily time of arrival and time of departure for each child.

10:122-3.5 Telephone

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

10:122-4.1 General requirements for director/staff members

(a) The director and every staff member shall:

1.-2. (No change.)

3. Be in sufficient physical, mental and emotional health to perform his/her job duties satisfactorily; and

4. Be qualified by professional education, knowledge, training and/or experience to carry out the functions of the position to which she/he is assigned and possess such other skills, attributes and characteristics necessary to the proper performance of the job in an effective and suitable manner.

(b) Prior to the hiring of a director or staff member the sponsor shall insure that two written character references on that person are secured and verified, attesting to the individual's fitness and suitability to fulfill the responsibilities and duties of his/her position or to serve or deal with children in an appropriate manner, as specified in (a) above. If the sponsor is unable to obtain written character references prior to the individual's hiring, the sponsor shall:

1. Secure the character references verbally and place written documentation of those in the center's personnel records prior to that person's beginning date of employment; and

2. Have the written character references submitted to the center within 30 calendar days and included in the center's personnel records, as specified in N.J.A.C. 10:122-3.4(c)5.

(c) A staff member's failure to comply with the requirements as specified in (a) above and/or any evidence demonstrating a staff member's unfitness or unsuitability to fulfill the responsibilities and duties of his/her position or to serve or deal with children in an appropriate manner shall constitute grounds for the possible removal of such staff member from his/her position, termination from the job, and suspension or revocation of the center's license, or all of the above. Evidence of conviction for crimes of violence, anti-social behavior and/or child abuse/neglect/exploitation shall be among those actions that are considered in determining a staff member's fitness and suitability to serve in a staff position in a center.

(d) Evidence of conviction of a crime, in itself, shall not automatically preclude a person from working in the center and shall not automatically result in the removal or termination of a director or staff member from his/her position or job. Such determinations shall be made in keeping with the provisions of the State Rehabilitated Convicted Offenders Act (N.J.S.A. 2A:168A-1 et seq.), which provides that a person convicted of a crime may not be disqualified or discriminated against by a licensing authority unless the conviction relates adversely to the occupation, trade, vocation, profession or business for which a license is sought.

(e) The sponsor shall be responsible for insuring that the director meets the requirements as specified in (a) and (c) above and the director shall be responsible for insuring that all staff members of the center meet the requirements as specified in (a) and (c) above. The director's failure to do so shall constitute grounds for his/her possible termination from the center.

(f) Whenever the Division's Institutional Abuse Unit, during the course of investigating an allegation of child abuse/neglect, determines that in order to protect the children it is necessary to remove or suspend the affected staff member(s) from the center or reassign him/her to other duties that do not involve contact with the children, the sponsor shall carry out that recommendation. Such suspension, removal or reassignment shall remain in effect until such time as the results of the investigation have been determined. Substantiation of the child abuse/neglect allegation by the Institutional Abuse Unit shall not, in itself, automatically result in the termination of the accused staff member from his/her position in the center, but shall constitute grounds for possible termination if the person's continued employment at the center would place the children at risk. Such determination shall be made by the Bureau of Licensing after considering information provided by the sponsor, the affected employee(s) and the Institutional Abuse Unit.

10:122-4.3 Types, responsibilities and qualifications of staff

(a) General requirements:

1. Every sponsor shall appoint a director who is responsible for the actual operation and management of the center and who shall:

i.-ii. (No change.)

2.-3. (No change.)

4. When the director is absent from the center for any reason, she/he shall designate a responsible person to super-

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vise the center's operation. The director or his/her designee shall be on the premises at all times when the center is operating.

(b)-(h) (No change.)

10:122-4.6 Staff training and development

(a) (No change.)

(b) The director shall insure that all staff are trained in implementing the center's statement of philosophy on the disciplining of children and in recognizing and reporting directly to the Office of Child Abuse Control (toll-free 800-792-8610) any incident in which there is reasonable cause to believe that an enrolled child has been subjected to abuse/neglect/exploitation.

(c) As resources permit, the Bureau shall provide technical assistance, materials and information to all licensed centers in fields relevant to the center's program and the children served.

10:122-6.8 Discipline

(a) The center shall adopt one of the following options to insure parent participation in the activities and operations of the center and to promote community participation as well:

1. A governing board responsible for approving, reviewing and monitoring the center's policies, budget, staff recruitment and selection, physical environment, and program activities. Such a board shall consist of parents and community representatives, including persons from the civic, business, educational and child care community. The board shall meet at least quarterly during the operating year and the center shall keep on file a list of the board's current membership and a record of its meetings; or

2. An advisory committee that offers advice and counsel to the center on its policies, staff recruitment and selection, physical environment and program activities. Such a committee shall consist primarily of parents and should include community representatives, including persons from the civic, business, educational and child care community. The committee shall meet quarterly and the center shall keep on file a list of the committee's current membership and a record of its meetings; or

3. A written policy providing for the direct involvement of parents in the center's operation and activities, and which should include community representatives, including persons from the civic, business, educational and child care community. The center shall keep on file a copy of this policy and records documenting its implementation. The policy should reflect such activities as:

i. The use of parents and/or community representatives as volunteers to help in the center's program;

ii. Periodic meetings between parents/community representatives and center administrators and staff;

iii. Open houses, to which parents/community representatives are invited for the purpose of visiting and observing the center;

iv. Presentations/talks by local officials and professionals in the community to enhance the center staff's and the children's knowledge of community services, programs and resources;

v. Presentations by center staff members at community functions; and/or

vi. Use of the center's facilities for community meetings and functions.

4. Sponsors choosing the options spelled out in 2. or 3. above shall retain the authority to make final decisions on all matters involving the policies, budget and operation of the center.

(b) The center shall allow the parent(s) of enrolled children to visit the center at any time to observe its operation and program activities without requiring the parent(s) to secure the prior approval of the center.

(c) The center shall inform the parent(s) in advance of any field trip, outing or special event away from the center that it plans for the children and shall secure the written consent of the parent(s) before taking a child on such a field trip, outing or special event. A record of these written consents shall be maintained in the center's administrative records, as specified in N.J.A.C. 10:122-3.4(d)2. iii.

LAW AND PUBLIC SAFETY

(a)

DIVISION ON CIVIL RIGHTS

Discrimination Against Handicapped Persons General Provisions; Employment; Real Property; Access to Public Accommodations

Adopted New Rules: N.J.A.C. 13:13-1 through 13:13-4

Proposed: March 18, 1985 at 17 N.J.R. 671(a).

Adopted: May 9, 1985 by Pamela S. Poff, Director, Division on Civil Rights.

Filed: May 22, 1985 as R.1985 d.305, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 10:5-1 et seq., specifically 10:5-8(g) and 10:5-4.1.

Effective Date: June 17, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): June 17, 1990.

Summary of Public Comments and Agency Responses:

Comments were received from the Public Advocate, the Community Health Law Project, the National Hemophilia Foundation, the Division of Vocational Rehabilitation Services, and the Employers Association of New Jersey.

The Public Advocate was generally pleased with the proposed rules but felt that 13:13-2.1(a), which permits employers to state the physical or mental abilities reasonably necessary for the performance of a job, would have the effect of screening out handicapped applicants. The Public Advocate also recommended substituting "essential job tasks" for "the job" in 13:13-2.8(a). The Division on Civil Rights ("agency") believes that 13:13-2.1(c) represents a reasonable balance between the employer's need to describe job requirements and the applicant's right to be free from discriminatory job specifications such as "ablebodied persons wanted." The agency believes that the suggested modification of 13:13-2.8(a) is unnecessary. This section already requires reasonable accommodation, a concept which includes waiver of nonessential job tasks where waiver would not cause an undue hardship to the employer.

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The Community Health Law Project commented that the proposed rules clarify and strengthen the protections afforded by the Law Against Discrimination. The Project objected, however, to 13:13-2.4(e)(2) and 2.8(a)(2) insofar as they permit rejection of a handicapped applicant who cannot, even with reasonable accommodation, perform a job in a "safe or adequate" manner. The agency believes that this language gives content to the statutory standard. If due to a handicap an applicant cannot, even with reasonable accommodation, perform a job in a safe manner (that is, without posing a hazard to the safety or health of the applicant, other employees, clients or customers) or in an adequate manner (that is, taking accommodations into account, performing at the same level which the employer considers acceptable when evaluating other employees) then the person's handicap reasonably precludes job performance. Several other objections by the Project seem to result from a misunderstanding of the intent of the rules. The requirement, 13:13-2.4(e)2, that a preemployment physical take into account the degree to which a handicapped applicant "has compensated for his limitations," as well as the rehabilitation services the applicant has received or is receiving, was intended to require an examining physician to consider on an individualized basis the extent to which an applicant has overcome any disabling effects of a handicap. Similarly, the requirement in 13:13-2.5(b)2 that employers consider the possibility of reasonable accommodation before taking negative employment action respecting a handicapped employee or applicant, was not intended to lessen the requirement of reasonable accommodation. Rather, the rule is intended to encourage employers to engage in a certain thought process whereby they consider reasonable accommodation before refusing to hire, promote, etc. a handicapped person. The Project's objection to use of the term "possessing handicaps" because it only refers to present handicaps, overlooks the fact that through 13:13-1.3 all of the provisions of these rules apply to persons who have been at any time handicapped.

The Division of Vocational Rehabilitation praised the rules as "thorough and responsive," but suggested a reference to DVR being located in the New Jersey Department of Labor. The agency has incorporated this non-substantive clarification in the rules as adopted, at 13:13-2.1(c)(3).

The National Hemophilia Foundation suggested that the rules be changed to prohibit an employer from firing a handicapped employee for failing to accurately respond to an illegal inquiry about handicaps. The agency believes that these situations should be addressed on a case by case basis.

The Employers Association of New Jersey objected to several aspects of the rules, including the requirement of reasonable accommodation. The agency believes that a requirement of reasonable accommodation is implicit in the statutory standard that a person may not be refused employment on account of handicap unless the nature and extent of the handicap "reasonably precludes" job performance. Such an interpretation is also fully consistent with the well-established legal principle that, absent business necessity, employers may not maintain job criteria or requirements which have a disproportionately exclusionary effect on a protected class of people. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). The Association also objected to the agency's restrictions on employer inquiries about an applicant's handicaps. The agency's response is that the Law Against Discrimination prohibits employers from discriminating on the basis of handicap, N.J.S.A. 10:5-12(a), or from making any inquiry in connection with prospective employment which expresses directly or indirectly any specification, limitation, or discrimination as to handicap unless based on a bona fide occupational qualification N.J.S.A. 10:5-12(e). Therefore, inquiries about handicaps should only be made in a context in which the applicant's response is likely to be used for a nondiscriminatory purpose. The comment also asserted that 13:13-2.6(c) regarding medical insurance was confusing; the agency believes that the provision is clear. An employee may not, on account of handicap, be denied the opportunity to participate in a medical insurance program which the employer offers to its employees. The regulations make clear, however, that an employer may legally offer a plan to all of its employees which does not cover preexisting illnesses, a common provision of many medical insurance plans. The Association also objected to 13:13-2.4(e)1 as unduly restricting an employer's ability to require an applicant to take a medical examination prior to extending a job offer. The agency response is that this section does not absolutely preclude an employer from requiring medical evidence of an applicant's ability to perform a job, prior to making a job offer, where the employer through lawful means becomes aware that an applicant has a handicap of a type which raises legitimate questions as to the applicant's ability to perform the job in question. In such a situation the rule would not preclude the employer from asking the applicant to provide a medical opinion regarding whether he or she can perform the job despite the handicap. The employer should provide the applicant or the applicant's doctor with an accurate job description so that the doctor can make an informed determination as to whether the nature and extent of the handicap would reasonably preclude job performance. In such cases, of course, the rule does not insulate the employer from liability if the employer acts unreasonably. In contrast, by complying with 13:13-2.4(e), an employer can be certain of following a lawful procedure.

Full text of the adoption follows (addition to proposal shown in boldface with asterisks ***thus***).

CHAPTER 13

REGULATIONS PERTAINING TO DISCRIMINATION ON THE BASIS OF HANDICAP

SUBCHAPTER 1. GENERAL PROVISIONS

13:13-1.1 Purpose

This chapter is designed to implement the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq. ("the act" or "the statute") as it pertains specifically to discrimination on the basis of physical and mental handicap.

13:13-1.2 Construction

(a) Consistent with the public policy underlying the Law Against Discrimination and with firmly established principles for the interpretation of such remedial legislation, the remedial provisions of the statute will be given a broad construction and its exceptions construed narrowly.

(b) The provisions of these regulations are severable. If any provision or the application of any provisions of these regulations to any person or circumstances is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

13:13-1.3 Definitions

"Handicap" as used in this chapter will have the same meaning as that term is given by N.J.S.A. 10:5-5(q). It is also unlawful to take any action prohibited by these regulations:

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1. Because of a perception or belief that an individual suffers from a handicap, whether or not that individual is actually handicapped, or

SUBCHAPTER 2. EMPLOYMENT

13:13-2.1 Job advertising and solicitation

(a) It is unlawful to print or cause to be printed any advertisement which has the effect of discouraging handicapped persons from applying for a job for which they are qualified, despite a particular disability or which contains the words "ablebodied persons wanted," or their equivalent. An employer may include a statement of the particular physical or mental abilities reasonably necessary for the performance of the job.

(b) The publication by any communications medium of any notice or advertisement relating to employment, or to membership in a labor organization, indicating any preference, limitation, specification, or discrimination based on handicap is unlawful unless such notice or advertisement falls within one of the exceptions enumerated by N.J.A.C. 13:13-2.8.

(c) All employers, labor organizations and employment agencies should conduct job vacancy, membership recruitment and employment referral programs in such a manner as to assure that all persons, including the handicapped, are given fair and adequate notice of job vacancies, membership opportunities and employment referral opportunities:

1. Employers and labor organizations are encouraged to place notices or advertisements relating to employment, or to membership in a labor organization, in the newspaper having the largest circulation in the relevant labor market, unless the position sought to be filled requires specialized training, education, experience or licensing of a type not commonly found among members of the workforce in the relevant labor market.

2. Employers should encourage their referral sources to seek and refer qualified handicapped individuals.

3. Employers are encouraged to list all job openings and requests for referrals with institutions, agencies, and organizations of or serving the handicapped, including the Division of Vocational Rehabilitation Services ***in the New Jersey Department of Labor***.

13:13-2.2 Job referrals

(a) The knowing use by an employer of any employment agency or recruitment source which does not refer handicapped individuals or which discriminates against handicapped individuals is an unlawful act of discrimination.

(b) The failure or refusal of any employment agency or labor organization to refer for employment any individual because that individual possesses a handicap is an unlawful employment practice. It is unlawful for an employment agency or labor organization to comply with an employer's request for referrals if such a request indicates either directly or indirectly that the employer will discriminate against persons possessing handicaps.

(c) It is an unlawful employment practice for any employment agency or labor organization to classify handicapped individuals in any way which deprive or have the effect of depriving handicapped persons of employment opportunities or otherwise affect employee status.

13:13-2.3 Employment criteria

(a) It is an unlawful employment practice for any employer, employment agency or labor organization to make use of any employment test or other selection criterion that screens out or has the effect or screening out handicapped persons unless:

1. That test score or other selection criterion is shown to be job related for the position in question; and

2. Alternative job-related tests or criteria that do not screen out or have the effect of screening out fewer handicapped persons are not available.

(b) An employer, employment agency or labor organization shall select and administer tests concerning employment which accurately reflect, with the benefit of reasonable accommodation, the applicant's or employee's job skills, aptitude or competency, rather than reflecting the applicant's or employee's impaired sensory, manual or speaking skills (except where those skills are the factors that the test purports to measure, and are necessary to perform the job in question).

13:13-2.4 Pre-employment inquiries

(a) It shall be an unlawful practice for an employer, employment agency or labor organization to elicit or attempt to elicit, either verbally or through the use of an application form, any information which would tend to divulge the existence of a handicap or health condition not reasonably related to the individual's fitness to perform the duties of the particular job sought; provided, however, an inquiry may be made as to whether an applicant for employment has any handicaps or health problems which will impede work performance in the job being sought. An employer shall not, however, make any inquiry of an applicant regarding whether the individual has a handicap or health problem which will impede work performance, without providing the applicant with an accurate description of the duties of the job applied for and without also obtaining information from the applicant as to reasonable accommodations which could be made if the inquiry reveals that the applicant has a handicap.

(b) It is not unlawful for an employer to invite applicants for employment to indicate whether and to what extent they are handicapped, if such an inquiry is made in conjunction with required or voluntary remedial action to correct past discrimination or in compliance with instructions or requirements of an agency or agencies of local, state or federal government. In such cases the employer must state clearly in writing that the information requested is intended for use solely in connection with its remedial obligations or its voluntary or affirmative action efforts or its compliance with governmental instructions, that the information is being requested on a voluntary basis, that it will be kept confidential, and that refusal to provide it will not subject the applicant to any adverse treatment.

(c) It is not an unlawful employment practice to record any data required by law or by the rules and regulations of any state or federal agency or acquired in connection with voluntary or affirmative action efforts conducted in accordance with these regulations, provided such records are maintained on separate forms that shall be accorded confidentiality, are kept in good faith for the purpose of complying with the law, and are not used for the purpose of discrimination in violation of the act.

(d) The act does not prohibit any officially recognized agency from keeping necessary records in order to provide services to individuals requiring rehabilitation or employment assistance.

(e) It is not unlawful for an employer to condition an offer of employment on the results of a medical examination held subsequent to such offer and prior to the employee's entrance on duty, provided that:

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1. All entering employees are subjected to such examination; and

2. The results of such an examination are used in accordance with these regulations and are not used to disqualify an applicant except to the extent that any disability discovered would, even with reasonable accommodation, preclude the safe or adequate performance of the job in question, as defined in N.J.A.C. 13:13-2.8. An examination should consider the degree to which the person has compensated for his limitations and the rehabilitation services he has received or is receiving.

13:13-2.5 Reasonable accommodation

(a) All employers shall conduct their employment procedures in such a manner as to assure that all handicapped persons are given equal consideration with non-handicapped persons for all aspects of employment including but not limited to hiring, promotion, tenure, training, assignment, transfers, and leaves on the basis of their qualifications and abilities. Each individual's ability to perform a particular job must be assessed on an individual basis.

(b) An employer must make a reasonable accommodation to the limitations of a handicapped employee or applicant, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business. The determination as to whether an employer has failed to make reasonable accommodation will be made on a case-by-case basis.

1. Under circumstances where such accommodation will not impose an undue hardship on the operation of an employer's business, examples of reasonable accommodation may include:

i. Making facilities used by employees readily accessible and usable by handicapped persons;

ii. Job restructuring, part-time or modified work schedules;

iii. Acquisition or modification of equipment or devices; and

iv. Job reassignment and other similar actions.

2. An employer shall consider the possibility of reasonable accommodation before firing, demoting or refusing to hire or promote a handicapped person on the grounds that his or her handicap precludes job performance.

3. In determining whether an accommodation would impose undue hardship on the operation of an employer's business, factors to be considered include:

i. The overall size of the employer's business with respect to the number of employees, number and type of facilities, and size of budget;

ii. The type of the employer's operations, including the composition and structure of the employer's workforce;

iii. The nature and cost of the accommodation needed; and

iv. The extent to which accommodation would involve waiver of an essential requirement of a job as opposed to a tangential or non-business necessity requirement.

13:13-2.6 Wages and fringe benefits

(a) An employer's wage scale must be unrelated to the existence of handicap, except where permitted by state or federal law.

(b) Occupational training and retraining programs, including but not limited to, guidance programs, apprentice training programs and executive training programs, shall not be conducted in such a manner as to discourage or otherwise discriminate against persons possessing handicaps.

(c) It is an unlawful practice for an employer to discriminate between persons who are handicapped and those who are not, with regard to fringe benefits provided either directly by an employer or through contracts with insurance carriers. Fringe benefits as used in this section include, but are not limited to, medical, hospital, accident and life insurance, retirement benefits, profit sharing and bonus plans, and leave.

This subsection does not, for example, prohibit any employer from providing medical insurance which does not cover the cost of any medical condition arising out of preexisting illnesses, which costs are incurred following an employee's date of hire. Rather, whatever medical insurance is made available to non-handicapped employees must be equally available to handicapped employees.

(d) Regulations promulgated pursuant to the Law Against Discrimination shall supersede any inconsistent term of a collective bargaining agreement.

13:13-2.7 Labor organizations

(a) It is unlawful for any labor organization to exclude or expel any individual from membership or from any apprenticeship program because that individual possesses a handicap.

(b) It is an unlawful employment practice for any labor organization to discriminate on the basis of a person's handicap in respect to hiring, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances or any other matter directly or indirectly related to membership in or employment by such an organization.

(c) It is unlawful for a labor organization to cause or to attempt to cause an employer to discriminate against an individual because of a handicap.

(d) It is unlawful to engage in any activity proscribed by (a), (b), or (c) above notwithstanding that activity is authorized or required by the constitution or by-laws of a labor organization or by a collective bargaining agreement or other contract to which the labor organization is a party.

13:13-2.8 Exception

(a) It shall be lawful to take any action otherwise prohibited under this section where it can reasonably be determined that an applicant or employee, as a result of a handicap, cannot presently perform the job even with reasonable accommodation.

1. Refusal to refer, admit to membership, hire, or transfer a handicapped person may be lawful where the nature or extent of the handicap presently reasonably precludes the performance of the particular employment. Such a decision, however, must be based upon an objective standard supported by factual evidence rather than on the basis of general assumptions that a particular handicap would interfere with the individual's ability to perform the duties of the job.

2. Refusal to select a handicapped individual may be lawful where it can be demonstrated that the employment of the handicapped person in a particular position would presently be hazardous to the safety or health of such individual, other employees, clients or customers. Such a decision must be based upon an objective standard supported by factual or scientifically validated evidence, rather than on the basis of general assumptions that a particular handicap would create a hazard to the safety or health of such individual, other employees, clients or customers. A "hazard" to the handicapped person is a materially enhanced risk of serious harm.

3. The burden of proof is upon the employer, employment agency or labor organization to demonstrate in each case that

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the exception relied upon is based upon an objective standard supported by factual evidence, but no exception shall be based on:

i. A refusal to select a handicapped individual because of the preferences of co-workers, clients, customers or the employer.

ii. A refusal to select a handicapped individual because of the increased cost of insurance whether actual or anticipated, under a group or employee insurance plan provided in accordance with the law or as a fringe benefit.

iii. A refusal to select a handicapped individual because of an assumption not supported by factual documented proof that such individual will incur a high rate of absenteeism in the future.

SUBCHAPTER 3. REAL PROPERTY

13:13-3.1 Application

This subchapter on discrimination in real property applies to vendors and lessors of property and their agents, real estate brokers, agents and salespersons, and lending institutions. For the purpose of this subchapter lending institutions include banks, building and loan associations, insurance companies and any other enterprise whose business consists in whole or in part in the making of commercial loans or other forms of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations.

13:13-3.2 Advertising and solicitation

(a) It is unlawful for any person to make, print or publish or cause to be made, printed or published any notice, listing statement or advertisement with respect to the sale, rental or lease of real property which indicates any preference, limitation, specification or otherwise discriminates based upon a handicap.

(b) It is unlawful for any real estate broker, agent or salesperson to accept for listing any housing accommodation when the seller or lessor or his agent has expressed, directly or indirectly, an intention to discriminate against handicapped persons.

(c) It is not unlawful for any person, to make, print or publish or cause to be made, printed or published any notice, listing, statement, or advertisement which indicates that barrier free accommodations are available for sale, rent, lease or occupancy.

13:13-3.3 Inquiries

It is unlawful for any person to make or cause to be made any written or oral inquiry or record concerning the handicap of any prospective purchaser, tenant or prospective occupant of any real property, unless such information is required by an agency of local, state or federal government and the person states clearly that the information requested is intended for use solely by the government agency.

13:13-3.4 Sale or rental

(a) It is unlawful for any person to discriminate on the basis of handicap in the actual showing, sale, rental or lease of available real property. For example, a representation to any person, because that person possesses a handicap, that real property is not available for inspection, sale or rental when such real property is in fact so available is a violation of the act.

(b) It is unlawful for any broker, agent or salespersons to misrepresent the price of real property listed for sale, rent or lease or to fail to communicate to the seller or lessor any offer made by a prospective buyer or lessor because the applicant or prospective occupant possesses a handicap.

(c) It is unlawful for any person to fail or refuse to show, rent or lease any real property to a person because he or she has a sight or hearing disability and must be accompanied by a guide or service dog. Policies which restrict the availability of housing accommodations to persons without pets shall be void with respect to the above-mentioned segment of this protected class.

(d) It is unlawful for any person to discriminate against any individual because of handicap in the price, terms, conditions or privileges of the sale, rental or lease of real property or in the provision of services for facilities in connection therewith. Handicapped persons shall not be required to pay extra compensation or additional security deposits as a result of their maintaining or requiring special practices or accessories though such persons may be liable for any specific damage which may be done to the premises by virtue of their requirement.

1. This provision does not require a landlord to install or bear the expense of any such special accessories or practices. Apart from requiring payment for specific damage which may be done to the premises, however, a landlord may not charge a handicapped person an extra fee, for example, for keeping a guide or service dog or maintaining special equipment such as a shower bar.

(e) It is unlawful for any person to fail or refuse to rent to, or to impose different terms of tenancy upon, any handicapped individual because that individual is a recipient of federal, state or local assistance, including medical assistance or housing subsidies.

13:13-3.5 Eviction

It is an unlawful act of discrimination for any person to evict a tenant because the tenant possesses a handicap.

13:13-3.6 Financing

It is unlawful for any lending institution or person to discriminate against an individual seeking a loan or other form of financial assistance whether in the initial extension of credit or in the terms and conditions of the obligation because that individual or an intended occupant of real property possesses a handicap. An application for loans or other forms of financial assistance means and extends to the purchase of an existing property, the reconstruction of new buildings and the rehabilitation, repair or maintenance of existing property.

SUBCHAPTER 4. ACCESS TO PUBLIC ACCOMMODATIONS

13:13-4.1 Application

The term "person" as used in this subchapter shall mean the owners, lessees, proprietors, managers, superintendents, agents or employees of any place of public accommodation.

13:13-4.2 General practices

(a) It shall be unlawful for any person to refuse, withhold from or deny an individual, either directly or indirectly, on account of a handicap, access to any of the accommodations, advantages, facilities or privileges of a place of public accommodation. It shall be unlawful for any person to discriminate against a handicapped person in the price, terms, or conditions upon which access to such accommodations, advantages, facilities or privileges may depend.

(b) It shall be unlawful for any person to refuse, withhold or deny either directly or indirectly the right of visually handicapped or deaf persons to be accompanied by guide or service

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dogs, especially trained for the purpose, in any place of public accommodation. Such visually handicapped or deaf persons shall be liable for any damage done to the premises or facilities by such dogs.

(c) It shall be unlawful for any person to publish, circulate, issue, display, post or mail or cause to be printed, circulated, issued, displayed, posted or mailed any written, printed or broadcast notice indicating directly or indirectly that the right of a handicapped person to have equal access to a place of public accommodation will be denied or abridged.

(a)

DIVISION OF MOTOR VEHICLES

Licensing Service

General Provisions; Mandating Disclosure of Social Security Numbers on License and Registration Applications

Adopted New Rules: N.J.A.C. 13:21-1.3, 1.4 and 1.5

Proposed: October 15, 1984 at 16 N.J.R. 2746(a).
Adopted: May 9, 1985 by Robert S. Kline, Acting Director, Division of Motor Vehicles.
Filed: May 22, 1985 as R.1985 d.307, **without change.**

Authority: N.J.S.A. 39:2-3, 39:3-4, 39:3-10 and 42 U.S.C. §405(c)(2)(C).

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): June 17, 1990.

Summary of Public Comments and Agency Responses:

The Division of Motor Vehicles received four comments concerning its proposed new rules. Those persons commenting were: Deborah H. Karpathin, Esq., representing the American Civil Liberties Union; Edward H. Tetelman, Esq., representing the Department of the Public Advocate, State of New Jersey; Paul H. Till, Esq.; and Robert Saul Molnar, Esq.

The responses can be summarized into five comments which are set forth below with the respective response by the Division of Motor Vehicles.

I. Comment: Submission of Social Security numbers cannot be mandated by regulation adopted by an administrative agency but can only be done by statute.

Response: Pursuant to 5 U.S.C. §552(a) note, state agencies requesting disclosure of Social Security numbers must inform the individual ". . . by what statutory or **other authority** such number is solicited . . ." Congress is certainly aware that state agencies promulgate administrative regulations as part of their statutory powers.

Additionally, 42 U.S.C. §405(c)(2)(C)(i) and (iii) permits states that required Social Security numbers by regulation prior to January 1, 1975, to continue doing so despite added restrictions. There appears to be no limitation placed on states prohibiting the adoption of regulations concerning the collection of Social Security numbers for motor vehicle purposes.

II. Comment: Pending legislation would make the submission of Social Security numbers optional and the Division should not adopt a regulation contrary to pending legislation.

Response: The Division is aware that there are three bills pending in the State Legislature concerning submission of Social Security numbers. Senate Bill number 1726 and Assembly Bill number 2178 both make submission of Social Security numbers optional. Assembly Bill number 2516 makes submission of numbers mandatory. The aforementioned bills show that the Legislature has not decided whether submission should be voluntary or mandatory. Additionally, the Division notes that the Legislature had 60 days in which to review these regulations and has failed to take action to prohibit their adoption.

Finally, the Division knows of no authority that prohibits an administrative agency from promulgating and adopting regulations solely because there is pending legislation concerning the same matter.

III. Comment: Collection of Social Security numbers is not an effective nor efficient method for enforcing the motor vehicle laws.

Response: The present driver license number is based on a person's name, month and year of birth and eye color. Persons who have common names and dates of birth often have problems with the fact that two or more persons may have the same license number. This leads to incorrect violations being added to driver records. While the Division realizes that certain persons may obtain multiple or fictitious Social Security numbers, nonetheless they will aid the Division in enforcing the motor vehicle laws.

IV. Comment: Philosophically, Social Security numbers should not be used as identificaiton numbers and the use of these numbers should be limited rather than expanded.

Response: The Division of Motor Vehicles did not establish the Social Security number system, nor did the Division permit their use by the states for motor vehicle records. Arguments concerning the Social Security number system and the uses thereof should be made to Congress, not to this agency.

V. Comment: There is no need to require Social Security numbers from persons applying for permits rather than licenses.

Response: There is a definite need to require this information from persons applying for permits since these persons are in fact being issued a temporary "license" to operate by virtue of the permit. Additionally, such persons are subject to all of the provisions in Title 39 pertaining to the operation of motor vehicles. Finally, a person applying for licensure in New Jersey may be under suspension in another state, and it would not make sense to allow a person to operate a motor vehicle in this State if their license was suspended elsewhere.

After reviewing all of the comments received, the Division is not persuaded that it should not adopt the regulation as proposed.

Full text of the adoption follows.

13:21-1.3 Mandatory disclosure of social security number

(a) An applicant for learner's permit, examination permit, driver's license or registration shall disclose his or her social security number(s) upon the application form furnished by the director.

(b) A learner's permit, examination permit, driver's license or registration shall not be issued unless the applicant there-

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fore discloses his or her social security number(s) upon the application form.

(c) This section shall not apply to persons who are exempt from applying for a social security number.

13:21-1.4 Restricted use of social security numbers

(a) The Division of Motor Vehicles shall, in the administration of the driver's license and motor vehicle registration laws of this State, utilize social security numbers for the purpose of establishing the identification of individuals affected by such laws.

(b) The Division of Motor Vehicles shall utilize social security numbers for the purpose of establishing the identification of individuals who are indebted to the Division for unpaid motor vehicle fees and for the purpose of satisfying such indebtedness in accordance with N.J.S.A. 54A:9-8.1 et seq.

(c) The Division of Motor Vehicles shall utilize social security numbers to determine whether an individual is indigent for the purpose of authorizing the payment of insurance surcharges on an installment basis in accordance with the "New Jersey Automobile Insurance Reform Act of 1982" (N.J.S.A. 17:29A-33 et seq.).

(d) The Division of Motor Vehicles shall utilize social security numbers as a secondary identifier in the administration and enforcement of the "Driver License Compact" (N.J.S.A. 39:5D-1 et seq.) and N.J.S.A. 39:3-10 for the purpose of determining through the National Driver Registry whether a driver license applicant has had his driver's license suspended in any other State.

(e) The Division of Motor Vehicles shall not utilize social security numbers for any purpose other than those specified in this section.

(f) The Division of Motor Vehicles shall inform an individual required to disclose a Social Security Number that disclosure is mandatory under N.J.A.C. 13:21-1.3 and shall inform the individual of the uses that will be made of that number under this section.

13:31-1.5 Public record exception; disclosure prohibited

(a) Social security numbers recorded on applications for drivers' licenses and motor vehicle registrations are not public records and are not accessible for public examination pursuant to the "Right to Know Law" (N.J.S.A. 47:1A-1 et seq.).

(b) Social security numbers shall not be disclosed by the Division of Motor Vehicles in any manner or any circumstance other than those specified in N.J.A.C. 13:21-1.4. Social security numbers shall not be disclosed on driver license or motor vehicle registration abstracts prepared by the Division.

(a)

BOARD OF MORTUARY SCIENCE

Rules of the Board of Mortuary Science

Adopted New Rules: N.J.A.C. 13:36-2.12 and 4.13

Adopted Amendments: N.J.A.C. 13:36-2.10, 4.4, 5.1 and 5.6

Adopted Repeals: N.J.A.C. 13:35-5.9, 6.8, 7.1 and 7.2

Proposed: April 1, 1985, at 17 N.J.R. 797(a).
Adopted: May 7, 1985, by Board of Mortuary Science, Paul Ippolito, President.
Filed: May 15, 1985 as R.1985 d.293, **without change.**

Authority: N.J.S.A. 45:7-38.

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): August 6, 1989.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

13:36-2.10 Return of intern identification card

Upon completion or termination of an internship for any reason, the intern shall be charged with the responsibility of returning his intern identification card immediately to the Board.

13:36-2.12 Extension of internship

No intern shall be permitted to continue his or her period of practical training as a registered intern for more than three years.

13:36-4.4 New installations

(a) Except as provided in N.J.A.C. 13:44-4.13, any person desiring to operate, maintain or use a mortuary after adoption of these rules and regulations, shall first apply to the Board for a new installation inspection and an application for certificate of registration.

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

13:36-4.13 Use of a registered mortuary owned by another

(a) A person who owns a registered mortuary may use another registered mortuary without obtaining a certificate of registration or complying with new funeral home installation requirements, provided, however, that the number of times an owner may permit such use of the owner's mortuary by another or that the owner of a registered mortuary shall use a mortuary owned by someone else shall be limited to three times a year, regardless of location. The Board may waive this limit upon receipt of a special application showing good cause for the waiver.

(b) All parties involved in such a special use agreement shall immediately forward written notice to the Board by certified mail before each use of the establishment. This notice shall include the following information:

1. Title and address of the firm being used and the name of the manager;
2. The name and address of the firm using the establishment and the name of the licensee in charge;
3. Name of decedent and date of death;
4. The exact date(s) the establishment is to be used; and
5. A brief explanation of why the facility is needed.

(c) The name of the establishment using the facility is not to be inserted in obituary and death notices unless the name of the firm registered at that location is also inserted.

13:36-5.1 Display of "Manager" sign

(a) Whenever a firm is required to be operated under the supervision, management and control of a licensed manager, the name of the manager shall be conspicuously displayed with the title "manager" on a sign at or about the main entrance of the establishment or on the firm sign, provided, however, that at the option of the firm the term "senior

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director" may be substituted for "manager". This sign shall contain legible letters that are no less than 1-1/2 inches in height.

(b) The name of the licensee in charge must also appear with the title "manager" or "senior director" on all stationery, billheads, advertising and in all other instances where the firm name is used.

(c) Whenever the manager's services are terminated, the Board is to be notified, in writing, immediately by the manager and the establishment.

13:36-5.6 Equipment requirements

(a) (No change.)

(b) All instruments and appliances used in embalming shall be thoroughly cleansed and sterilized immediately after the conclusion of each individual case.

13:36-5.9 (Reserved)

13:36-6.8 (Reserved)

SUBCHAPTER 7. (RESERVED)

(a)

DIVISION OF CONSUMER AFFAIRS

Deceptive Watercraft Repair Practices

Adopted New Rule: N.J.A.C. 13:45A-23.1 and 23.2

Proposed: March 18, 1985 as N.J.A.C. 13:45A-22 at 17 N.J.R. 680(a).

Adopted: May 10, 1985 by James J. Barry, Jr., Director, Division of Consumer Affairs.

Filed: May 22, 1985 as R.1985 d.306, **without change**.

Authority: N.J.S.A. 56:8-1 et seq., specifically 56:8-4.

Effective Date: June 17, 1985.

Expiration Date pursuant to Executive Order No. 66(1978): June 17, 1990.

Summary of Public Comments and Agency Responses:

On March 18, 1985, the Division of Consumer Affairs ("Division") caused proposed new rule, N.J.A.C. 13:45A-23.1 and 23.2, governing Deceptive Watercraft Repair Practices, to be published in the New Jersey Register at 17 N.J.R. 680(a). In addition, the Division distributed a press release to the news media, including newspapers of general circulation, and issued notice to several industry or trade publications, including Soundings, Boat U.S., New Jersey Boater and Bow Waves. The Division afforded all interested persons an opportunity to submit data, views or argument, in writing, by April 17, 1985. As a result of this notice, the Division received only one written submission consisting of comments presented by Ed Harrison, owner of Baywood Marina. Moreover, as a result of this written submission, a conference was held on April 18, 1985 at the Division's office among James J. Barry, Jr., Director of the Division, Stanley Tafil, Chief—Office of Consumer Protection, James Sconamilio, Investigator II—Office of Consumer Protection, Ed Sweikart, Executive Director of the Marine Trades Association ("Association") and Harrison, who serves as the President of the Association. The record of the public comments can be inspected at the Division's office located at 1100 Raymond Boulevard, Room 504, Newark, New Jersey 07102.

COMMENT: The commenter expressed concern with the definition of "repair of watercraft" as that term so defined excludes certain repair work (for example, "lubrication, oil changes, installing light bulbs, and other such minor accessories and services"), but also permits inclusion of a service or accessory to be installed for purpose of the rule ". . . if the Director determines that performance of the service or the installation of an accessory requires mechanical expertise, has given rise to a high incidence of fraud or deceptive practices or involves a part of such watercraft essential to its safe operation." The commenter maintained that such a definition was "too vague" and submitted the situation where a " 'simple' job is performed—the customer subsequently complains and the Director decides then that this repair falls under the jurisdiction of the law". The commenter thus proposed that the Division determine and specify those repairs encompassed or not encompassed by the rule.

The commenter also expressed concern with the rule's requirement governing written and/or oral estimates and authorizations for repair work. Specifically, the commenter expressed concern regarding repair situations in which ". . . a repair is started causing disassembly of a unit and one of two things happens: 1. additional work-needed is found" or "2. a major part breaks unexpectedly and at no fault of dealer." The commenter submitted the situation where reassembly is required, but reassembly includes the replacement of additional parts and labor beyond that to which the customer gave his consent.

Finally, the commenter expressed concern regarding the customer's waiver of his right to a written estimate, such waiver to be in a written statement and signed by the customer and further requiring an oral approval from the customer to be evidenced by a writing prepared by the watercraft repair dealer. According to the commenter, this would present a burden to watercraft repair dealers who utilize repair order forms without the information required by the rule.

RESPONSE: After fully examining the commenter's submission and giving due consideration to the concerns expressed therein and to the concerns expressed at the April 18, 1985 conference, the Division is of the opinion that the rule adequately resolves those concerns and that no changes are required.

First, the Director's determination to include certain work within the rule's prescriptions will continue to be based upon such objective criteria as a large volume of complaints relating to a specific type of repair work which seriously affects the consuming public. This has been the established determination of the Director in the context of the similar rights and protections afforded to customers of automotive repair dealers pursuant to N.J.A.C. 13:45A-7.

Second, the rule only forbids work done or parts supplied in excess of any estimated price in the absence of advance oral or written consent given by the customer. This can easily be accomplished by the watercraft repair dealer by a telephone call to the customer in which the additional work or parts is discussed and oral authorization is given. Moreover, the rule permits the watercraft repair dealer to charge the customer for the cost of diagnosis so long as such a charge is disclosed and agreed upon, in advance, by the customer. Further, if a part of the watercraft breaks unexpectedly during repairs at no fault of the watercraft repair dealer, the Division will continue to regard such occurrences as not indicative of a deceptive act

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or practice so long as a reasonable, timely and accurate disclosure is made to the customer by the watercraft repair dealer.

Third, the use of repair order forms with provisions similar to those required by the rule have been required by the Division for over 10 years in the context of automotive repairs. Such forms have not presented any unreasonable economic burden upon such dealers and have not been found to be impracticable. Instead, customers and dealers alike have benefitted from the full and meaningful disclosure afforded by such forms.

Full text of the adoption follows.

SUBCHAPTER *[22.]**23.* DECEPTIVE PRACTICES CONCERNING WATERCRAFT REPAIR

13:45A-*[22.1]**23.1* Definitions

"Customer" means the owner, or any family member, employee or any other person whose use of the watercraft is authorized by the owner.

"Director" means the Director of the Division of Consumer Affairs.

"Repair of watercraft" means all maintenance and repair to such watercraft, its engine or motor, but excluding lubrication, oil changes, installing light bulbs, and other such minor accessories and services. No service or accessory to be installed shall be excluded for purpose of this rule if the Director determines that performance of the service or the installation of an accessory requires mechanical expertise, has given rise to a high incidence of fraud or deceptive practices or involves a part of such watercraft essential to its safe operation.

"Watercraft" includes but is not limited to any craft, boat or vessel, powerboat, sailboat, motor sailer, mono hull, catamaran or trimaran, documented or registered (if required) in the State of New Jersey or by any other agency having authority to document or register watercraft.

"Watercraft repair dealer" means any person who, for compensation, engages in the business of performing or employing persons who perform maintenance, diagnosis or repair services on any watercraft, its propulsion system (internal combustion or electrical, inboard or outboard) or the replacement of parts including, but not limited to, hull planking, fiberglass sections and standing rigging, and shall include but not be limited to: boat dealers, repair shops (fixed, mobile or marina) and marinas where such maintenance, diagnosis or repair services are available. Excluded are those persons who engage in the business of repairing watercraft of commercial or industrial establishments or government agencies, under contract or otherwise, but only with respect to such accounts.

13:45A-*[22.2]**23.2* Deceptive practices: watercraft repairs

(a) Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and to afford customers of watercraft repair dealers similar rights and protections afforded to customers of automotive repair dealers, N.J.A.C. 13:45A-7.1 et seq., the following acts or omissions shall be deceptive practices in the conduct of the business of a watercraft repair dealer, whether such act or omission is done by the watercraft repair dealer, its employees, agents, partners, officers, or members, or by any third party who performs such service at the request of the watercraft repair dealer.

1. Making or authorizing in any manner or by any means whatever any statement, written or oral, which is untrue or misleading, and which is known or, which by the exercise of reasonable care should be known to be untrue or misleading.

2. Commencing work for compensation without securing one of the following:

i. Specific written authorization from the customer which states the nature of the repair requested or problem presented; or

ii. If the customer's watercraft or any part thereof as defined in N.J.A.C. 13:45A-22.1 is presented to the watercraft repair dealer during other than normal working hours or by one other than the customer, or in other than distress circumstances, oral authorization from the customer to proceed with the requested repair or problem presented, evidenced by a notation on the repair order and/or invoice of the repair requested or problem presented, date, time, name of person granting such authorization and the telephone number if any, at which said person was contacted.

3. Commencing work for compensation without either:

i. One of the following:

(1) Providing the customer with a written estimated price to complete the repair, quoted in terms of a not-to-exceed figure; or

(2) Providing the customer with a written estimated price quoted as a detailed breakdown of parts and labor necessary to complete the repair. If the dealer makes a diagnostic examination, the dealer has a right to furnish such estimate in a reasonable period of time thereafter, and to charge the customer for the cost of diagnosis. Such diagnosis charge must be agreed to in advance by the customer. No cost of diagnosis which would have been incurred in accomplishing the repair shall be billed twice if the customer elects to have the dealer make the repair. Should it be necessary to haul the watercraft and or transport it to the repair facility where the maintenance, diagnosis or estimate is to be made (in all but distress circumstances), charges for such hauling and/or transportation shall be disclosed in advance and itemized separately on the estimate or invoice; or

(3) Providing the customer with a written estimated price to complete a specific repair, for example "repack stuffing box;" or

(4) Obtaining from the customer a written authorization to proceed with repairs not in excess of a specific dollar amount. For the purpose of this subchapter, said dollar amount shall be deemed the estimated price of repairs; or

(5) If the customer waives his right to a written estimate in a written statement, signed by the customer, obtaining from the customer oral approval of an estimated price of repairs, evidenced by a notation on the repair or invoice of the estimated price of repairs, date, time, name of person approving such estimate, and the telephone number if any, at which such person was contacted; or

ii. If the customer's watercraft or any part thereof as defined in N.J.A.C. 13:45A-22.1 is presented to the repair dealer during other than normal working hours or by one other than the customer, obtaining from the customer either:

(1) A written authorization to proceed with repairs not in excess of a specific dollar amount. For the purpose of this subchapter, said dollar amount shall be deemed the estimated price of repairs; or

(2) Oral approval of an estimated price of repairs evidenced by a notation on the repair order or invoice of the estimated price of repairs, date, time, name of person approving such estimate and the telephone number, if any, at which such person was contacted.

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4. Failure to provide a customer with a copy of any receipt or document signed by him, when he signs it.

5. Making false promises of a character likely to influence, persuade or induce a customer to authorize the repair, diagnosis, service or maintenance of any craft or its propulsion system.

6. Charging the customer for work done or parts supplied in excess of any estimated price given, without the oral or written consent of the customer, which shall be obtained after it is determined that the estimated price is insufficient and before the work not estimated is done or the parts not estimated are supplied. If such consent is oral, the watercraft repair dealer shall make a notation on the repair order and on the invoice of the date, time, name of person authorizing the additional repairs and the telephone number called, if any, together with a specification of the additional parts and labor and total additional cost. The watercraft repair dealer shall obtain the consent of any customer before any additional work not estimated is done or parts not estimated are supplied.

7. Failure to return replaced parts to the customer at the time of completion of work, provided that the customer, before work is commenced, requests such return, and provided that the parts, by virtue of their size, weight or other similar factors, are not impractical to return. Those parts and components, that are replaced and that are sold on an exchange basis and those parts that are required to be returned by the watercraft repair dealer to the manufacturer or distributor, are exempt from the provisions of this section.

8. Failure to record on an invoice all repair work performed by a watercraft repair dealer or for a customer, itemizing separately the charges for parts and labor, and clearly stating whether any new, rebuilt, reconditioned or used parts have been supplied. A legible copy shall be given to the customer.

9. The failure to deliver to the customer, with the invoice, a legible written copy of all guaranties, itemizing the parts, components and labor represented to be covered by such guaranty or in the alternative, delivery to the customer of a guaranty covering all parts, components and labor supplied pursuant to a particular repair order. A guaranty shall be deemed false and misleading unless it conspicuously and clearly discloses in writing the following:

i. The nature and extent of the guaranty including a description of all parts, characteristics or properties covered by or excluded from the guaranty, the duration of the guaranty and what must be done by a claimant before the guarantor will fulfill his obligation (such as returning the product and paying service or labor charges); and

ii. The manner in which the guarantor will perform. The guarantor shall state all conditions and limitations and exactly what the guarantor will do under the guaranty, such as repair, replacement or refund. If the guarantor or recipient has an option as to what may satisfy the guaranty, this must be clearly stated; and

iii. The guarantor's identity and address shall be clearly revealed in any documents evidencing the guaranty.

10. Failure to clearly and conspicuously disclose the fact that a guaranty provides for adjustment on a pro rata basis, and the basis upon which the guaranty will be pro-rated; that is, the time, the part, component or item repaired has been used and in what manner the guarantor will perform. If adjustments are based on a price other than that paid by the customer, clear disclosure must be made of the amount. However, a fictitious price must not be used even where the sum is adequately disclosed.

11. Failure to post in a conspicuous place, a sign informing the customer that the watercraft repair dealer is obligated to provide a written estimate when the customer physically presents such watercraft to the dealer during normal working hours and, in any event, before work is commenced except in distress circumstances. In addition, copies of any receipts or document signed by the customer, a detailed invoice, a written copy of any guaranty and the return of any replaced parts that have been requested must be provided. The sign is to read as follows:

"A CUSTOMER OF THIS ESTABLISHMENT IS ENTITLED TO:

1. When a watercraft, its propulsion system (internal combustion, electrical, inboard or outboard) or any part thereof is presented during normal working hours, and in any event before work begins, a written estimate price stated either:

(A) PRICE NOT TO EXCEED $ and given without charge; or

(B) As an exact figure broken down as to hauling, transporting, parts and labor. This establishment has the right to charge you for this diagnostic service, although, if you then have the repair done here you will not be charged twice for any part of such charge necessary to make the repair.

(C) As an exact figure to complete a specific repair.

2. For your protection, you may waive your right to an estimate only by signing a written waiver.

3. Require that this establishment not start work on your watercraft, its propulsion system (internal combustion, electrical, inboard or outboard) or any part thereof until you sign an authorization stating the nature of the repair or problem if you physically present the watercraft here during normal working hours.

4. A detailed invoice stating charges for parts and labor separately and whether any new, rebuilt, reconditioned or used parts have been supplied.

5. The replaced parts, if requested before work is commenced, unless their size, weight or similar factors make return of the parts impractical.

6. A written copy of any guaranty."

12. Nothing in this section shall be construed as requiring a watercraft repair dealer to provide a written estimate if the dealer does not agree to do the repair.

13. Any other unconscionable commercial practice prohibited pursuant to N.J.S.A. 56:8-1 et seq.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Routes 17 (Ridge Road) in Bergen County, 28 in Somerville, U.S. 30 in Camden and Atlantic Counties, 33 in Mercer County, 47 in Cumberland County, 71 in Monmouth County, 77 in Cumberland County, U.S. 206 in Somerset and Mercer Counties, and U.S. 40-322 in Atlantic County

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Adopted Amendments: N.J.A.C. 16:28A-1.9, 1.19, 1.21, 1.23, 1.33, 1.38, 1.41 and 1.57

Adopted New Rule: N.J.A.C. 16:28A-1.104

Proposed: April 1, 1985 at 17 N.J.R. 802(b).
Adopted: May 7, 1985 by Jarret R. Hunt, Assistant Chief Engineer, Traffic and Local Design.
Filed: May 16, 1985 as R.1985 d.294, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and 39:4-199.

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

16:28A-1.9 Route 17
(a)-(b) (No change.)
(c) The certain parts of State highway Route 17 (Ridge Road) described in this section shall be designated and established as "no parking" zones for street cleaning purposes during certain designated days and hours except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs.
1. No parking (Street Cleaning) in North Arlington Borough, Bergen County:
i. No parking 7:00 A.M. to 8:00 A.M. Tuesday and Friday, along the east side entire length of Ridge Road.
ii. No parking 7:00 A.M. to 8:00 A.M. Monday and Wednesday, along the west side entire length of Ridge Road.

16:28A-1.19 Route 28
(a) (No change.)
(b) The certain parts of State highway Route 28 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:
1.-14. (No change.)
15. Along the southerly (eastbound) side in Somerville Borough, Somerset County:
i. Far side bus stops:
(1) South Doughty Avenue (110 feet)
(2) South Bridge Street (11 feet)
(3) Hamilton Street (110 feet)
16. Along the northerly (westbound) side in Somerville Borough, Somerset County:
i. Far side bus stops:
(1) North Gaston Avenue (150 feet)
(2) Davenport Street (100 feet)
(3) North Doughty Avenue (90 feet)
ii. Near side bus stop:
(1) Grove Street (166 feet)
(c)-(e) (No change.)

16:28A-1.21 Route U.S. 30
(a) (No change.)
(b) The certain parts of State highway Route U.S. 30 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:
1. (No change.)
2. Along the eastbound on the southerly side in Absecon City, Atlantic County:
i. Near side bus stop:
(1) Station Avenue—Beginning at the westerly curb line of Station Avenue and extending 105 feet westerly therefrom.
ii. Far side bus stop:
(1) Michigan Avenue—Beginning at the prolongation of the easterly curb line of Michigan Avenue and extending 100 feet easterly therefrom.
3. Along the westbound on the northerly side in Absecon City, Atlantic County:
i. Near side bus stop:
(1) Michigan Avenue—Beginning at the easterly curb line of Michigan Avenue and extending 105 feet easterly therefrom.
4. Along (White Horse Pike) southbound on the westerly side in Oaklyn Borough, Camden County:
i. Near side bus stop:
(1) West Holly Avenue (105 feet);
ii. Far side bus stop:
(1) West Clinton Avenue (140 feet);
5. Along (White Horse Pike) northbound on the easterly side in Oaklyn Borough, Camden County:
i. Far side bus stop:
(1) Haddon Avenue (100 feet);
(2) Beechwood Avenue (100 feet);
6. Along (White Horse Pike) westbound on the northerly side in Berlin Borough, Camden County:
i. Mid-block bus stops:
(1) Taunton Road—Beginning at a point 250 feet west of the westerly curb line of Taunton Road and extending 135 feet westerly therefrom.
(2) Linden Avenue—Beginning 236 feet east of the prolongation of the easterly curb line of Linden Avenue and extending 135 feet easterly therefrom.
(3) Florence Avenue—Beginning 275 feet west of the prolongation of the westerly curb line of Florence Avenue and extending 135 feet westerly therefrom.
(4) Washington Avenue near Berlin Fire Company—Beginning 160 feet east of the easterly curb line of Washington Avenue and extending 135 feet easterly therefrom.
(5) Franklin Avenue in front of Mt. Carmel Church—Beginning 222 feet east of the easterly curb line of Franklin Avenue and extending 135 feet easterly therefrom.
ii. Far side bus stops:
(1) East Taunton Avenue—Beginning at the westerly curb line of East Taunton Avenue and extending 105 feet westerly therefrom.
(2) Broad Avenue—Beginning at the westerly curb line of Broad Avenue and extending 105 feet westerly therefrom.
(3) Thackara Avenue in front of Municipal Building—Beginning at the prolongation of the westerly curb line of Thackara Avenue and extending 116 feet westerly therefrom.
(4) North Cedar Avenue—Beginning at the westerly curb line of North Cedar Avenue and extending 105 feet westerly therefrom.
(5) North Arlington Avenue—Beginning at the westerly curb line of North Arlington Avenue and extending 105 feet westerly therefrom.

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(6) Ellis Avenue—Beginning at the prolongation of the westerly curb line of Ellis Avenue and extending 105 feet westerly therefrom.

iii. Near side bus stops:

(1) Cross Keys Road—Beginning at the easterly curb line of Cross Keys Road and extending 105 feet easterly therefrom.

(2) Dill Avenue—Beginning at the easterly curb line of Dill Avenue and extending 105 feet easterly therefrom.

(3) Malan Avenue—Beginning at the easterly curb line of Malan Avenue and extending 105 feet easterly therefrom.

7. Along (White Horse Pike) eastbound on the southerly side in Berlin Borough, Camden County:

i. Far side bus stops:

(1) South Arlington Avenue—Beginning at the westerly curb line of South Arlington Avenue and extending 105 feet easterly therefrom.

(2) Dill Avenue—Beginning at the prolongation of the easterly curb line of Dill Avenue and extending 105 feet westerly therefrom.

(3) Cross Keys Road—Beginning at the easterly curb line of Cross Keys Road and extending 105 feet easterly therefrom.

(4) East Taunton Avenue—Beginning at the easterly curb line of East Taunton Avenue and extending 105 feet easterly therefrom.

(5) Broad Avenue—Beginning at the easterly curb line of Broad Avenue and extending 105 feet easterly therefrom.

ii. Mid-block bus stops:

(1) Washington Avenue—beginning 160 feet east of the easterly curb line of Washington Avenue and extending 135 feet easterly therefrom.

(2) Florence Avenue in front of K-Mart—Beginning 322 feet west of the westerly curb line of Florence Avenue and extending 135 feet easterly therefrom.

(3) Linden Avenue in front of Hospital—Beginning 236 feet east of the easterly curb line of Linden Avenue and extending 135 feet easterly therefrom.

(4) Taunton Road—Beginning 150 feet west of the westerly curb line of Taunton Road and extending 135 feet westerly therefrom.

iii. Near side bus stops:

(1) Ellis Avenue—Beginning at the westerly curb line of Ellis Avenue and extending 105 feet westerly therefrom.

(2) Malan Avenue—Beginning at the prolongation of the westerly curb line of the Malan Avenue and extending 105 feet westerly therefrom.

(3) North Cedar Avenue—Beginning at the prolongation of the westerly curb line of North Cedar Avenue and extending 105 feet westerly therefrom.

(4) Thackara Avenue—Beginning at the westerly curb line of Thackara Avenue and extending 105 feet westerly therefrom.

16:28A-1.23 Route 33

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

(c) The certain parts of State highway Route 33 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-3. (No change.)

4. Along (Greenwood Avenue—Nottingham Way) on the northerly (westbound) side in Hamilton Township, Mercer County:

i. Mid-Block bus stop:

(1) Ward Avenue—Beginning at a point 400 feet west of the westerly curb line of Ward Avenue and extending 135 feet west therefrom.

ii. Near side bus stop:

(1) Klockner Road—Beginning at the easterly curb line of Klockner Road to a point 120 feet east therefrom.

16:28A-1.33 Route 47

(a) (No change.)

(b) The certain parts of State highway Route 47 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. (No change.)

2. Along the northbound (easterly) side in the City of Millville, Cumberland County:

i. Near side bus stop:

(1) East Vine Street—Beginning at the southerly curb line of East Vine Street and extending 105 feet southerly therefrom.

16:28A-1.38 Route 71

(a) The certain parts of State highway Route 71 described in this section are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-6. (No change.)

7. No stopping or standing in Deal Borough, Monmouth County:

i. (No change.)

ii. Along the westerly (southbound) side:

(1) From 40 feet north of, to 40 feet south of the following intersections:

(A)-(B) (No change.)

(C) Parker Avenue.

(D) Phillips Avenue.

iii. Along the easterly (northbound) side:

(1) From the northerly curb line of Roosevelt Avenue to the Deal Borough—City of Long Branch Corporate Line.

(2) From 40 feet south of, to 40 feet north of the following intersections:

(A) Brighton Avenue

(B) Phillips Avenue

(C) Poplar Avenue

(D) Morgan Avenue

(E) Parker Avenue

8.-9. (No change.)

(b) (No change.)

(c) The certain parts of State highway Route 71 described in this section shall be designated and established as "Time Limit Parking" zones where parking is prohibited except as specified. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established Time Limit Parking Zones:

1. Time limit parking zone—2 hours, 8:00 A.M. to 8:00 P.M. in Deal Borough, Monmouth County:

i. Along the east side (Norwood Avenue):

(1) Between Poplar Avenue and Roosevelt Avenue.

16:28A-1.41 Route 77

(a) (No change.)

(b) The certain parts of State highway Route 77 described in this section shall be designated and established as "no

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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.-2. (No change.)

3. Along the southbound (westerly) side in Upper Deerfield, Cumberland County:

i. Far side bus stop:

(1) Parsonage Road—Beginning at the southerly curb line of Parsonage Road and extending 100 feet southerly therefrom.

ii. Mid-block bus stop:

(1) Between Cornwell Drive and Logan Lane—Beginning 449 feet south of the southerly curb line and extending 135 feet southerly therefrom.

4. Along the northbound (easterly) side in Upper Deerfield, Cumberland County:

i. Mid-block bus stop:

(1) Between Landis Avenue and Rasenhayn Avenue—Beginning 440 feet south of the southerly curb line of Landis Avenue and extending 135 feet southerly therefrom.

ii. Near side bus stop:

(1) Parsonage Road—Beginning at the southerly curb line of Parsonage Road and extending 105 feet southerly therefrom.

(c) (No change.)

16:28A-1.57 Route U.S. 206

(a) The certain parts of State highway Route U.S. 206 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.-24. (No change.)

25. No stopping or standing in Somerville Borough, Somerset County:

i. Along both sides:

(1) For the entire corporate limits of Somerville Borough, including all ramps and connections.

(b) The certain parts of State highway Route US 206 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-9. (No change.)

10. Along the northerly (westbound) side (South Broad Street) in Hamilton Township, Mercer County:

i. Mid-block bus stop:

(1) Beech Avenue—Beginning at a point 130 feet west of the westerly curb line of Beech Avenue and extending 135 feet therefrom.

16:28A-1.104 Route U.S. 40-322

(a) The certain parts of State highway Route U.S. 40-322 described in this section shall be designated and established as "no parking" zones where 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 Pleasantville City, Atlantic County:

i. Along both sides (Black Horse Pike).

(1) Beginning at a point 700 feet west of the westerly curb line of Chestnut Avenue and extending easterly to a point 100 feet east of the easterly curb line of Hampden Court.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

General Administration
Purchases; Employee Pay-All

Adopted Amendment: N.J.A.C. 17:1-4.11

Proposed: April 15, 1985 at 17 N.J.R. 900(a).
Adopted: May 20, 1985 by Douglas R. Forrester, Director, Division of Pensions.
Filed: May 28, 1985 as R.1985 d.321, **without change.**

Authority: N.J.S.A. 52:18A-95 et seq.

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): June 6, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

17:1-4.11 Purchase terms; computation; employee pay-all

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

(e) Pursuant to the provisions of Chapter 223, Laws of 1984, the following shall apply:

1. At the time of purchase request, an estimated cost for purchase of service will be calculated based on factors supplied by the actuary. This cost will be communicated to the member in a manner such that is clearly understood that an additional lump sum cost may be requested at retirement to consummate the purchase.

2. Upon application by the member for retirement, the actual cost of the service purchased will be calculated. The difference between this actual cost and any monies accumulated based upon the estimated cost will have to be paid in a lump sum.

3. If a required final payment is not made but the member is eligible to retire based on actual service, the purchase will be cancelled, the member will be retired with a benefit based on actual service and any monies accumulated for the purchase will be refunded.

4. If a required final payment is not made and the member is not eligible to retire based on actual service, the application for retirement will not be approved pending completion of the purchase.

(b)

STATE LOTTERY COMMISSION

Reasons for Denial, Revocation, Suspension or Imposition of Civil Penalties

Adopted Amendments: N.J.A.C. 17:20-5.1, 5.2, 5.3
Adopted Repeal: N.J.A.C. 17:20-5.4 to 5.7

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Proposed: February 4, 1985 at 17 N.J.R. 272(b).
Adopted: April 25, 1985 by Joseph A. Mule, Acting Secretary, State Lottery Commission.
Filed: May 23, 1985 as R.1985 d.308, **without change.**

Authority: N.J.S.A. 5:9-7(a), (b).

Effective Date: June 17, 1985.
Expiraton Date pursuant to Executive Order No. 66(1978): November 7, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows (the sentence shown in **boldface** was a part of the proposal but was inadvertently not shown in boldface as new text).

17:20-5.1 Reasons for denial, revocation, suspension or imposition of civil penalties

(a) An application may be denied or a license suspended, revoked or its renewal rejected by the Director in the exercise of discretion for any one or more of the following reasons:

1. Whenever the application for a license or renewal thereof contains knowingly false or misleading information or is incomplete;

2. Whenever the agent violates any of the provisions of the Act or these rules and regulations or the instructions of the Lottery;

3. Whenever a person has been indicted, arrested for or convicted of a crime or a disorderly persons offense relating adversely to the duties of a lottery agent, or has been the subject of a complaint or accusation for such offense, or has failed to notify the Director in writing within five days of any of the above actions;

4. Whenever an agent engages in conduct detrimental to a sound business relationship between the agent and the Lottery;

5. Whenever it is determined that such action would be in the best interest of the Lottery based on actions which reflect upon the agent's moral character or affect the integrity of the Lottery;

6. Whenever an applicant does not, or an agent can no longer satisfy the criteria set forth in N.J.S.A. 5:9-11 or these regulations for the issuance of a license;

7. Whenever ownership has been changed without the Director's approval;

8. Whenever the agent fails to meet minimum sales quotas set by the Director;

9. Whenever the agent fails to make prompt and timely payment of a civil penalty imposed under N.J.A.C. 17:20-9.1, et seq.

(b) The Director may suspend a license for up to five consecutive days without prior notice if such suspension is deemed imminently necessary

1. To prevent a breach of security;

2. In the event of the misuse of a lottery machine or other lottery equipment, or

3. To protect the lottery from economic harm.

(c) Notices of suspension, including the reasons therefor, shall be given to agents as promptly as possible and by means deemed most effective by the Director.

(d) The Director may impose civil penalties pursuant to N.J.A.C. 17:20-9.1, et seq., in addition to any other action, for violations of this section.

17:20-5.2 Termination procedures

(a) Upon termination of an agent's license by revocation, resignation or cessation of operations, the agent shall appear on a date and at a location designated by the Director to render a final lottery accounting and surrender the license and other lottery property.

(b) Upon the failure of any agent to settle accounts on or before the designated date, the courier shall immediately notify the Director.

17:20-5.3 Hearings

(a) The Director may personally hold hearings required by law and any person entitled to a hearing shall receive one upon proper request. All hearings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1, et seq., and the Uniform Rules of Practice, N.J.A.C. 1:1-1.1, et seq. **Where the suspension has been instituted summarily, the agent shall be entitled to a hearing on an expedited basis.**

(b) The request for a hearing shall:

1. Be in writing, signed by the petitioner or attorney on behalf of the petitioner and include the petitioner's mailing address.

2. Specify the ruling, action or matter on which the hearing is requested and indicate what relief is desired.

(c) A petition or request to the Director for hearing or other relief, unless otherwise required by law or these rules and regulations, must be received by the Director within 15 days after the date of service of the notice of the action.

(d) (Reserved)

(e) If the petitioner without sufficient reasons fails to appear at the scheduled hearing, such failure may be treated as a withdrawal of the petition or request. The Director may in the exercise of discretion dismiss the petition, adjourn the hearing to a future date or take such action as may be just and proper under the circumstances.

(f) All hearings and contested cases will be held in the Main Lottery Office unless otherwise specified by the Director or unless referred to the Office of Administrative Law.

(g) Upon receipt of a request for a transcript of a hearing held before the Director and recorded on audio tape, the Director shall send the appropriate tape or tapes to an outside transcribing service for preparation of the transcript. The cost of preparing said transcript shall be billed to the party making the request, who shall also be responsible for any deposit which may be required by the transcriber or by administrative rule.

17:20-5.4–5.7 (Reserved)

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Local Property Tax
Farmland Assessments

Adopted Amendments: N.J.A.C. 18:15-2.1, 2.2, 2.3, 2.4, 2.5 and 2.6

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Proposed: April 15, 1985 at 17 N.J.R. 903(a).
Adopted: May 22, 1985 by John R. Baldwin, Director, Division of Taxation.
Filed: May 24, 1985 as R.1985 d.310, **without change.**

Authority: N.J.S.A. 54:4-23.21.

Effective Date: June 17, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): August 12, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

18:15-2.1 Persons required to file
In order that land in agricultural or horticultural use may be assessed under the act, the owner of such land must file an application form requesting such assessment with the assessor of the taxing district in which such land is situated on or before August 1 of the pre-tax year.

18:15-2.2 Form FA-1 required
Application for assessment under the act may be made only upon completion of the form prescribed by the Director, identified as Form FA-1. Copies of the form may be obtained, upon request, from the assessor of each taxing district who is required to provide said form for use by applicants.

18:15-2.3 Form FA-1, signature and verification
The application, Form FA-1 is to be filed by the owner of the land at the time the application for farmland assessment is made. In the case of multiple ownership, (except corporate co-owners), one of the owners may sign on behalf of the other co-owners, and such signer will be presumed to have authority to sign on behalf of the other owners. In the case of a corporate owner or owners the full name of the corporation must be filled in, and accompanied by the signature and title of the corporate officer authorized to sign the application on its behalf.

18:15-2.4 Annual filing required
In order that land in horticultural or agricultural use can continue to be assessed as farmland, the owner thereof must annually, on or before August 1 of the pre-tax year, complete and file an application on Form FA-1 with the assessor of the taxing district where such land is situated. See Form FA-1, revised January, 1985. This form supersedes Form FA-1 of prior dates.

18:15-2.5 Extension of time for filing
The owner of land in horticultural or agricultural use may file an application after August 1, but before December 31 of the pre-tax year if the taxing district in which the land is located completes a revaluation of all property in time to be reflected in the assessments for the next succeeding tax year.

18:15-2.6 Application forms; original and two copies
(a) The original of the FA-1 form submitted to the assessor shall be retained in the office of the assessor.
(b) Two copies of each application shall be forwarded to the Local Property and Public Utility Branch by the assessor on or before January 10 of the tax year.
(c) Each triplicate copy of the application form shall, in the space reserved for official use, be signed and dated by the assessor and be marked "approved" or "disapproved."

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EMERGENCY ADOPTIONS

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

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

Adopted Emergency New Rule and Concurrent Proposal: N.J.A.C. 2:24-1.6

Emergency New Rule Adopted: May 30, 1985 by Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): May 28, 1985.
Emergency Rule Filed: May 30, 1985 as R.1985 d.322.

Authority: N.J.S.A. 4:6-20.

Emergency New Rule Effective Date: May 30, 1985.
Emergency New Rule Expiration Date: July 29, 1985.
Concurrent Proposal Number: PRN 1985-335.

Submit comments by July 17, 1985 to:
William W. Metterhouse, Director
Division of Plant Industry
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5441

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 readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

An outbreak of highly pathogenic tracheal mite disease of honey bees has been found in the Township of Hamilton and Hammonton, in Atlantic County resulting from bee colonies brought into the State from South Carolina by two migrating beekeepers. Heavily infested colonies were destroyed and all other colonies were removed from the State. Because of the risk of spreading tracheal mite to the colonies of New Jersey, beekeepers within these two Townships, and to protect all of New Jersey from infestations, a quarantine is being placed on the Townships of Hamilton and Hammonton of Atlantic County, until such time that all colonies of bees in those Townships can be inspected to determine freedom of tracheal mite. Movement of bee colonies, package bees, or queen bees within Townships were infestations were found is prohibited, unless New Jersey Department of Agriculture apiary inspectors examine the bees within each colony to determine freedom of tracheal mite.

Social Impact

This quarantine will have little affect on beekeepers or farmers since bee colonies will be permitted to move upon inspection and certification as to freedom of tracheal mite.

Economic Impact

Since bee colonies will be permitted to move following inspection and certification as to freedom of tracheal mite, minimal economic impact will be placed upon beekeepers or farmers.

Full text of the emergency rule and concurrent proposal follows.

2:24-1.6 Honeybee Tracheal Mite Quarantine in the Townships of Hamilton and Hammonton in Atlantic County

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

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

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

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

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

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

PUBLIC UTILITIES

(b)

OFFICE OF CABLE TELEVISION

Pole Attachment Rate Methodology

Adopted Emergency New Rule and Concurrent Proposal: N.J.A.C. 14:18-2.9

Emergency New Rule Adopted: May 23, 1985 by the Board of Public Utilities, Barbara A. Curran, President.
Gubernatorial Approval (See N.J.S.A. 52:14B-4(c)): May 28, 1985.
Emergency New Rule Filed: May 30, 1985 as R.1985 d.323.

Authority: N.J.S.A. 48:5A-10, 20(b), 21.

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Emergency New Rule Effective Date: May 30, 1985.
Emergency New Rule Expiration Date: July 29, 1985.
Concurrent Proposal Number: PRN 1985-356.

Submit comments by July 17, 1985 to:
Bernard R. Morris, Director
Office of Cable Television
Board of Public Utilities
1100 Raymond Boulevard
Newark, New Jersey 07102
Telephone: (201) 648-2670

This new rule was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 54:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of the emergency new rule are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

The Board of Public Utilities, Office of Cable Television is mandated by Federal regulation to certify to the Federal Communications Commission that its rules and regulations include a specific methodology for regulation of cable television attachments to utility poles which has been made publicly available in the State. 47 *C.F.R.* 1.1414(a)(3). (Effective date, April 28, 1985)

On May 9, 1985, the FCC informed the Office of Cable Television that such certification must be made by May 30, 1985. Although the Board established a publicly available methodology in its generic Decision and Order, dated August 20, 1984, In the Matter of the Office of Cable Television's Investigation into the Practices and Operations of CATV Companies and Certain Utilities Under the Provisions of Sections 20 and 21 of the Cable Television Act, Docket No. 769C-6206, it has not been promulgated as a "rule or regulation." Said order was adopted after lengthy hearings in a proceeding which extended over nearly eight years. To ensure that the State is in compliance with Federal law, the method of calculating pole rental rates for cable television attachments has been formulated as a rule without any substantive change to the original order.

Social Impact

By adopting the Board's existing cable television pole attachment rate methodology, this rule assures that the Board's rules are in conformity with FCC requirements and will enable the Board to exercise its pole attachment jurisdiction without challenges to its certification to the FCC that there are "effective rules and regulations" governing pole attachment methodology.

Decertification would place all questions of pole rental rates in the hands of the FCC rather than State regulators familiar with local pole plant and sensitive to the impact on cable and utility rate payers.

Economic Impact

Because this rule corresponds to the Board's existing generic Decision and Order, it will have no additional economic impact upon adoption.

Full text of the emergency adoption and concurrent proposal follows.

14:18-2.9 Calculation of pole attachment rent

(a) In cases where the Board must determine the appropriate rental rate for cable television attachments on utility poles, it shall be calculated in the following manner:

1. Total percentage of gross plant as annual cost shall be the sum of the following percentages:
   i. Rate of return;
   ii. Depreciation expense;
   iii. Miscellaneous taxes;
   iv. Maintenance expenses;
   v. Administrative expenses;
   vi. Federal income tax.

2. Total yearly ownership expense	=	Unweighted average original installed per pole cost	Multiplied by	Total percentage gross pole plant as annual cost
3. Common space	=	Setting depth plus ground clearance		
4. Usable space	=	Total pole length	minus	common space
5. Footage of usable space allocated to CATV	=	1.0 feet		
6. Footage of common space allocated to CATV	=	1.0 feet / Total usable space on pole	Multiplied by	Total common on pole
7. Percentage of total space allocated to CATV	=	Footage of CATV common space	plus	Footage of CATV usable space
		Total pole length		
8. Annual rental charge per pole	=	Percentage space allocated to CATV	Multiplied by	Total yearly ownership expense

(b) Weighted average original installed per pole cost may be used in (a)2 above, upon mutual agreement of the cable company and the utility; however, should the parties be unable to agree on weighted or unweighted costs, the Board shall employ the unweighted average original installed per pole cost.

(c) The ratio of total common space on the pole to the number of parties on the pole may be used to set the footage of common space allocated to cable television upon mutual agreement of the cable company and the utility; however, should the parties be unable to agree to allocate common space equally, the Board shall employ the formula set forth in (a)6 above.

(d) Any terms not defined by (a) above shall be interpreted in a manner consistent with established Board policies and orders.

(e) The Office of Cable Television shall designate those uniform utility account numbers which are the appropriate sources of data.

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MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on May 1, 1985 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department for the Mount Holly Sewerage Authority to accept and treat sewage from a portion of Westampton Township more particularly described as the area contiguous to the Rancocas (Beverly-Mount Holly) Road to the south and bounded to the east by the New Jersey Turnpike and bounded State Highway Number 295 and designated as Block 1204, Lots 11 and 12 on the Westampton Township Tax Map. The amendment shall show the area as a sewer service area on map 4.3 of the Tri-County Water Quality Management Plan.

(b)

Amendment to the Middlesex County Water Quality Management Plan

Public Notice

Middlesex County has submitted for consideration an amendment to the Middlesex County Water Quality Management (WQM) Plan. This amendment proposes an "Areawide Monitoring and Surveillance Program" that would include regular stream surveys, effluent monitoring and water quality assessments. This program would establish a water quality information base upon which decisions could be founded. Also included is a section entitled, "Sewer Service Areas and Wastewater Facilities Planning" that proposes criteria on which projects would be reviewed. It delineates areas with existing sewer service, areas proposed to be served by the year 2000, and areas suitable for septic systems.

This notice is being given to inform the public that a plan amendment has been proposed for the Middlesex County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the Middlesex County Planning Board, 40 Livingston Avenue, New Brunswick, N.J. 08901, in East Brunswick, Dunellen, Old Bridge, Plainsboro and Woodbridge Public Libraries, and the NJDEP, Division of Water Resources, Bureau of Planning and Standards, 25 Arctic Parkway, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Mr. William Kruse, Middlesex County Planning Board, at the Middlesex County address cited above; and Mr. George Horzepa, Bureau of Planning and Standards, at the NJDEP address cited above. All comments must be submitted within thirty days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Planning Board with respect to the amendment request. In addition, if the amendment is adopted by Middlesex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEP during its review. The NJDEP thereafter may approve and adopt this amendment without further notice.

The Middlesex County Board of Chosen Freeholders will hold a public hearing on the Middlesex County WQM Plan amendment. The public hearing will be held on June 20, 1985 at 9:00 A.M. in the Freeholders Meeting Room, 11th floor, Middlesex County Administration Building, J.F. Kennedy Square, New Brunswick, New Jersey.

(c)

Amendment to Mercer County Water Quality Management Plan

Public Notice

Take notice that on May 15, 1985 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Mercer County Water Quality Management Plan for sewer service in West Windsor Township, was adopted by the Department.

(d)

Flood Control Bond Grants Program New Application Period for Flood Control Bond Grants

Public Notice

Robert E. Hughey, Commissioner of the Department of Environmental Protection, pursuant to the Emergency Flood Control Bond Act, P.L. 1978, c. 78 and the Flood Control Bond Grants Regulations, N.J.A.C. 7:23, hereby announces the opening of a new application period for the award of State grants for flood control projects to any municipality or county eligible pursuant to N.J.A.C. 7:23. The new application period shall remain open from the publication of this

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Public Notice until August 20, 1985. **Please note** that limited funds remain available for new flood control bond grants. All new flood control bond grants shall be awarded based on the priority determination procedures set forth at N.J.A.C. 7:23-2.13.

Any questions concerning application procedures for flood control bond grants from interested municipalities and counties should be addressed to:

John O'Dowd, Chief
Bureau of Flood Plain Management
Division of Water Resources
CN 029
Trenton, N.J. 08625

Attention: Flood Control Bond Grant Application—**August 20, 1985**

Please note that the Department of Environmental Protection publishes this Public Notice as a matter of public information.

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of Invitation for Applicants for Lithotripter Demonstration Projects

Take notice that the Commissioner of Health is inviting potential applicants to participate in the Lithotripter Demonstration project. The Lithotripter is a newly FDA-approved medical device designed to treat upper ureter and kidney stones non-invasively. This new device offers both promising benefits to patients and the health care system. Therefore, a demonstration project will provide the Department with an opportunity to evaluate the impact of the new technology. Certificate of Need applications shall be accepted by the Department from July 1 through July 31 for processing in the August 15 certificate of need cycle. The Department is dispensing for this time only with the Letter of Intent requirement.

Criteria for the demonstration project may be found in the rules to be codified at N.J.A.C. 8:33B-1.1 et seq. which have been developed but not yet approved by the Health Care Administration Board.

Copies of the regulation may be obtained from:

John A. Calabria, Coordinator
Health Planning Services
New Jersey Department of Health
CN 360, Room 604
Trenton, New Jersey 08625

Copies of Certificate of Need application forms may be obtained from:

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

TREASURY-TAXATION

(b)

Charitable Agency

Application for Public Employee Charitable Fund-Raising Campaign

Public Notice

Take notice that Michael M. Horn, Treasurer, State of New Jersey, pursuant to the Public Employees Charitable Fund-Raising Act, P.L. 1985, c.140, announces that the Department of the Treasury will be accepting applications until July 31, 1985 from charitable fund-raising agencies wishing to participate in the State Employees' Charitable Fund-Raising Campaign for 1985-86.

For the purposes of this notice, "charitable fund-raising agency" shall mean a voluntary not-for-profit organization that provides health, welfare, or human care services to individuals. A charitable fund-raising agency shall be eligible to participate in the 1985-86 Campaign if it meets the following requirements:

a. if it is an affiliated charitable agency (For this purpose affiliated charitable agency shall mean a charitable agency which is affiliated with a charitable fund-raising organization for the purpose of directly sharing in funds raised by the organization.).

OR

b. the agency is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code;

c. the agency qualifies for tax deductible contributions under Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code;

d. the agency is not a foundation;

e. the agency is incorporated under or subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund-Raising Act of 1971," P.L. 1971, c.469 (C. 45:17A-1 et seq.).

f. the agency demonstrates to the satisfaction of the State Treasurer that a significant portion of funds raised in each of its two fiscal years preceding its application to participate in a campaign consist of individual contributions from citizens of the State.

Copies of the attached applications may be received from the Department of the Treasury, or the information requested therein may be submitted along with a cover letter. Completed applications or requests for application forms should be addressed to:

Michael M. Horn
State Treasurer
Department of the Treasury
State House—CN002
Trenton, New Jersey 08625

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Applications can also be requested by calling (609) 292-8950.

The application form for *affiliated* charitable fund-raising agencies follows:

APPLICATION—AFFILIATED AGENCIES

1. Name of agency and name under which it intends to conduct charitable fund-raising campaigns among public employees.
2. Name and address of the charitable fund-raising organization with which agency is affiliated.

The application form for non-affiliated charitable fund-raising agencies follows:

APPLICATION—NON-AFFILIATED

1. Name of agency and name under which it intends to conduct charitable fund-raising campaigns among public employees.
2. Address for agency and addresses of any agency offices within state.
3. Names and addresses of officers, directors, trustees and executive personnel of agency.
4. Place and date agency was formed.
5. Has agency received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code?
Yes_____ No_____
Please attach a copy of your IRS letter of determination.
6. Is agency a foundation? Yes_____ No_____
7. Date on which fiscal year of agency ends.
8. Has agency registered as a charitable fund-raising organization pursuant to N.J.S.A. 45:17A-1 et seq.? Yes_____ No_____. If no, is agency exempt from registration requirement? Yes_____ No_____
Explanation:
9. Does the agency qualify for tax deductible contributions pursuant to Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code? Yes_____ No_____
Section qualified under _____.
Please attach a copy of your IRS letter of determination.
10. Please attach a copy of the agency charter and all amendments thereto.
11. Please submit and certify the following financial data for each of the two fiscal years preceding this application:
a) amount of funds raised;
b) what percentage of those funds consisted of individual contributions from citizens of New Jersey.

(a)

Charitable Organization Application for Public Employee Charitable Fund-Raising Campaign and Campaign Steering Committee

Public Notice

Take notice that Michael M. Horn, Treasurer, State of New Jersey, pursuant to the Public Employee Charitable Fund-Raising Act, P.L. 1985, c. 140, announces that the Department of the Treasury will be accepting applications until July 15, 1985 from charitable fund-raising organizations wishing to participate in the State Employees' Charitable Fund-Raising Campaign for 1985-86 and the Campaign Steering Committee.

For the purposes of this notice, "Charitable Fund-Raising Organization" shall mean a voluntary not-for-profit organization which receives and distributes voluntary charitable contributions. A charitable fund-raising organization shall be eligible to participate on the Steering Committee and in the 1985-86 Campaign if it meets the following requirements:

a. the organization is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code;

b. the organization qualifies for tax deductible contributions under Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code;

c. the organization is not a foundation;

d. the organization is incorporated under or subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund-Raising Act of 1971," P.L. 1971, c. 469 (C. 45:17A-1 et seq.);

e. the organization demonstrates to the satisfaction of the State Treasurer that a significant portion of funds raised in each of its two fiscal years preceding its application to participate in a campaign consist of individual contributions from citizens of the State;

f. the organization shall have raised at least $60,000 and distributed that sum among at least 15 charitable agencies in each of its two fiscal years preceding its application to participate in a State campaign.

Copies of the following application may be received from the Department of the Treasury, or the information requested therein may be submitted along with a cover letter. Completed applications or requests for application forms should be addressed to:

Michael M. Horn
State Treasurer
Department of the Treasury
State House—CN 002
Trenton, New Jersey 08625

Applications can also be requested by calling (609) 292-8950.

The application form follows:

APPLICATION

1. Name of organization and name under which it intends to conduct charitable fund-raising campaigns among public employees.
2. Address for organization and addresses of any organization offices within state.
3. Names and addresses of officers, directors, trustees and executive personnel of organization.
4. Place and date organization was formed.
5. Has organization received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code?
Yes _____ No _____
Please attach a copy of your IRS letter of determination.
6. Is organization a foundation? Yes _____ No _____
7. Date on which fiscal year of organization ends.
8. Has organization registered as a charitable fund-raising organization pursuant to N.J.S.A. 45:17A-1 et seq.?
Yes _____ No _____ If no, is organization exempt from registration requirement? Yes _____ No _____
Explanation:

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9. Does the organization qualify for tax deductible contributions pursuant to Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code?
Yes _____ No _____ Section qualified under _____.
Please attach a copy of your IRS letter of determination.

10. Provide the names and addresses of charitable agencies affiliated with organization for the purpose of directly sharing in funds raised by the organization from charitable fund-raising campaigns among public employees.

11. Please attach a copy of the organization's charter and all amendments thereto.

12. Please submit and certify the following financial data for each of the two fiscal years preceding this application:

a) amount of funds raised;

b) what percentage of those funds consisted of individual contributions from citizens of New Jersey;

c) names and addresses of charitable agencies to which those funds were distributed and how much to each.

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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. 1407 and 1634	June 18, 1984	16 N.J.R. 3337 and 3518	December 17, 1984
16 N.J.R. 1635 and 1832	July 2, 1984	17 N.J.R. 1 and 140	January 7, 1985
16 N.J.R. 1833 and 2026	July 16, 1984	17 N.J.R. 141 and 236	January 21, 1985
16 N.J.R. 2027 and 2184	August 6, 1984	17 N.J.R. 237 and 338	February 4, 1985
16 N.J.R. 2185 and 2318	August 20, 1984	17 N.J.R. 339 and 502	February 19, 1985
16 N.J.R. 2319 and 2390	September 4, 1984	17 N.J.R. 503 and 634	March 4, 1985
16 N.J.R. 2391 and 2474	September 17, 1984	17 N.J.R. 635 and 762	March 18, 1985
16 N.J.R. 2475 and 2708	October 1, 1984	17 N.J.R. 763 and 858	April 1, 1985
16 N.J.R. 2709 and 2864	October 15, 1984	17 N.J.R. 859 and 1006	April 15, 1985
16 N.J.R. 2865 and 3066	November 5, 1984	17 N.J.R. 1007 and 1158	May 6, 1985
16 N.J.R. 3067 and 3240	November 19, 1984	17 N.J.R. 1159 and 1358	May 20, 1985
16 N.J.R. 3241 and 3336	December 3, 1984	17 N.J.R. 1359 and 1460	June 3, 1985
		17 N.J.R. 1461 and 1608	June 17, 1985

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1, 1:2	Readopt General Hearing and Summary Proceedings rules	17 N.J.R. 2(a)	R.1985 d.292	17 N.J.R. 1403(a)
1:1-11.2, 11.3	Discovery and countervailing factors	17 N.J.R. 1008(a)		
1:21	Trade secret claims	17 N.J.R. 1009(a)		
(TRANSMITTAL 11, dated March 18, 1985)				
AGRICULTURE—TITLE 2				
2:16-2	Seed certification standards	17 N.J.R. 636(a)	R.1985 d.278	17 N.J.R. 1403(b)
2:16-4	Field corn standards (commercial hybrids)	17 N.J.R. 638(a)	R.1985 d.277	17 N.J.R. 1404(a)
2:16-5	Sweetcorn standards (inbred lines)	17 N.J.R. 639(a)	R.1985 d.276	17 N.J.R. 1404(b)
2:16-6	Sweetcorn standards (single cross hybrids)	17 N.J.R. 639(b)	R.1985 d.275	17 N.J.R. 1404(c)
2:16-7	Small grain standards	17 N.J.R. 640(a)	R.1985 d.274	17 N.J.R. 1405(a)
2:16-9	Soybean standards	17 N.J.R. 641(a)	R.1985 d.273	17 N.J.R. 1405(b)
2:16-10	Vegetable standards	17 N.J.R. 641(b)	R.1985 d.272	17 N.J.R. 1405(c)
2:16-13	Turfgrass sod standards	17 N.J.R. 642(a)	R.1985 d.271	17 N.J.R. 1405(d)
2:16-15	Vegetatively propagated grass standards	17 N.J.R. 643(a)	R.1985 d.269	17 N.J.k. 1406(a)
2:16-16	Asparagus seed standards	17 N.J.R. 643(b)	R.1985 d.270	17 N.J.R. 1406(b)
2:16-17	Asparagus crown standards	17 N.J.R. 644(a)	R.1985 d.268	17 N.J.R. 1406(c)
2:16-19	Flatpea certification standards	17 N.J.R. 644(b)	R.1985 d.267	17 N.J.R. 1407(a)
2:24-1.1, 1.2	Disease of bees: repeal Acarine mite quarantine	17 N.J.R. 860(a)	R.1985 d.304	17 N.J.R. 1542(a)
2:24-1.3, 1.4, 1.5	Bee diseases: Tracheal mite quarantine	17 N.J.R. 985(a)	R.1985 d.301	17 N.J.R. 1542(b)
2:24-1.6	Honeybee tracheal mite quarantine	Emergency	R.1985 d.322	17 N.J.R. 1589(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	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	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)	R.1985 d.266	17 N.J.R. 1407(b)
2:70-1	Liming materials: readopt fineness classification	17 N.J.R. 765(a)	R.1985 d.265	17 N.J.R. 1407(c)
2:71-2.2-2.7	Jersey Fresh Logo program	17 N.J.R. 765(b)	R.1985 d.282	17 N.J.R. 1407(d)
2:90-1	State Soil Conservation Committee: readopt General Provisions	17 N.J.R. 1160(a)		
2:90-2.24	Cost share rates for soil and water conservation projects	17 N.J.R. 861(a)	R.1985 d.303	17 N.J.R. 1542(c)

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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)	R.1985 d.302	17 N.J.R. 1543(a)
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BANKING—TITLE 3				
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)
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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)
4:1-16.7	Suspension, fine and demotion for disciplinary purposes	17 N.J.R. 1360(a)		
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)		
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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)		
5:18-1.1, 1.4, 1.5, 1.6, 2.3, 4	Uniform Fire Code, Fire Safety Code	17 N.J.R. 1161(a)		
5:18A-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)		
5:23-3.11, 4.22, 4.24, 4.25	Uniform Construction Code: premanufactured construction	17 N.J.R. 1169(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: private enforcing agencies and trainee positions	17 N.J.R. 341(a)	R.985 d.231	17 N.J.R. 1258(a)
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)	R.1985 d.300	17 N.J.R. 1543(b)
5:28	Readopt State Housing Code	17 N.J.R. 1174(a)		
5:31-7.5	Local authorities: audit reports	17 N.J.R. 504(a)	R.1985 d.283	17 N.J.R. 1409(b)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)
5:80-4	Housing and Mortgage Finance	17 N.J.R. 1174(b)		
5:80-17, 18	Housing and Mortgage Finance: prevailing wages; debarment from contracting	17 N.J.R. 1174(b)		

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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)
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)
6:20-2	Readopt Local Bookkeeping and Accounting rules	17 N.J.R. 1361(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)
6:20-5.3, 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)
6:21-1	Readopt Pupil Transportation Standards	17 N.J.R. 1365(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)	R.1985 d.281	17 N.J.R. 1410(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)
6:30-1.4	Fees for GED test	17 N.J.R. 1367(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)

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ENVIRONMENTAL PROTECTION—TITLE 7				
7:1C-1	90-day construction permits	16 N.J.R. 3243(a)	R.1985 d.316	17 N.J.R. 1544(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)		
7:12-1.3, 1.4	Shellfish-growing water classifications	17 N.J.R. 661(a)	R.1985 d.290	17 N.J.R. 1412(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)51	Floodways along North Branch Raritan (Project U)	16 N.J.R. 1307(a)	Expired	

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7:13-7.1(c)17	Redelineation of Delaware River in Harmony Township, Warren County	17 N.J.R. 151(a)	R.1985 d.319	17 N.J.R. 1550(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)	R.1985 d.320	17 N.J.R. 1551(a)
7:13-7.1(h)	Floodway delineations in Hackensack Basin	17 N.J.R. 1175(a)		
7:13-7.1(i)	Floodway delineations in Central Passaic Basin (Projects G and R)	17 N.J.R. 1176(a)		
7:14A-1.8	Fee schedule for NJPDES permits and applicants	17 N.J.R. 13(a)	R.1985 d.315	17 N.J.R. 1551(b)
7:19-5	Small water company takeover	16 N.J.R. 3380(a)	R.1985 d.182	17 N.J.R. 910(a)
7:19-5.11	Correction: Acquisition costs	———	———	17 N.J.R. 1559(a)
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)	Expired	
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)
7:25-5	1985-86 Game Code	17 N.J.R. 1177(a)		
7:25-7.10, 7.11	Taking of oysters and mussels	16 N.J.R. 3385(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	Readopt Marine Fisheries rules	17 N.J.R. 1188(a)		
7:25-18.5	Marine fisheries: general net rules	Emergency	R.1985 d.240	17 N.J.R. 1334(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)		
7:26-1.7	Solid waste disposal: exemption from registration	17 N.J.R. 1368(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)	R.1985 d.317	17 N.J.R. 1560(a)
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)	R.1985 d.318	17 N.J.R. 1560(b)
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)		
7:27-13.1, 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		

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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)		
7:28-12	Transportation of radioactive material	17 N.J.R. 1369(a)		
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)		
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HEALTH—TITLE 8				
8:13-2.1, 2.4, 2.6–2.11, 2.13, 2.14	Depuration of soft shell clams	17 N.J.R. 1370(a)		
8:19	Readopt Newborn Hearing Screening rules	17 N.J.R. 869(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)		
8:31B-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-3.26, 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)		
8:33	Certificate of Need application and review process	17 N.J.R. 1190(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)		
8:33G-1	Computerized tomography services	17 N.J.R. 1214(a)		
8:33H	Long-Term Care Facilities and Services: readopt Certificate of Need rules	17 N.J.R. 1216(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)
8:43-4	Residential Health Care Facilities: readopt Administration rules	17 N.J.R. 1231(a)		
8:43A	Licensure of ambulatory care facilities	16 N.J.R. 3254(a)		
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)		
8:43E-1	Hospital Policy Manual: Certificate of Need rules	17 N.J.R. 1220(a)		
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)	R.1985 d.264	17 N.J.R. 1414(a)
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	17 N.J.R. 741(a)	R.1985 d.262	17 N.J.R. 1417(b)
8:65-5	Controlled dangerous substances: records and reports of registrants	17 N.J.R. 524(a)		

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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)		
8:65-10.4	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)
8:65-10.5	Reschedule Buphenorphine to Schedule V	17 N.J.R. 1234(a)		
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), 1296(a))	16 N.J.R. 1436(a)	R.1985 d.295	17 N.J.R. 1561(a)
8:71	Generic drug list additions (see 17 N.J.R. 201(a), 957(c), 1296(b))	16 N.J.R. 2483(a)	R.1985 d.297	17 N.J.R. 1562(b)
8:71	Additions to generic drug list (see 17 N.J.R. 1295(a))	17 N.J.R. 158(a)	R.1985 d.296	17 N.J.R. 1562(a)
8:71	Generic drug list additions	17 N.J.R. 1043(a)		

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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, 6, 7, 12, 13	Readopt Administrative Policies for colleges and universities	16 N.J.R. 2216(a)	R.1985 d.309	17 N.J.R. 1563(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)	R.1985 d.311	17 N.J.R. 1564(a)
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)		
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)		
10:49-1.4	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(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)
10:50-1.2, 1.5, 1.6	Invalid coach services: oxygen equipment; carrier charges	17 N.J.R. 1373(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:51-1.13, 1.14, 3.12, App. A	Pharmaceutical services: "vaccine" reimbursement	17 N.J.R. 1237(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)		
10:52-1.16	Termination of pregnancy in licensed health care facilities	17 N.J.R. 1375(a)		
10:52-1.21	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:53-1.1, 1.16	Ambulatory surgical centers	16 N.J.R. 3153(a)		
10:53-1.14	Termination of pregnancy	17 N.J.R. 1375(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)
10:54-1.23	Termination of pregnancy	17 N.J.R. 1375(a)		
10:54-3	Procedure Code Manual: immunizations	17 N.J.R. 546(a)	R.1985 d.211	17 N.J.R. 1094(a)
10:54-3	Procedure Code Manual: fees for laboratory services	17 N.J.R. 1376(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)		
10:60-4	Community Care Waiver Program for Elderly and Disabled	16 N.J.R. 3161(a)	R.1985 d.263	17 N.J.R. 1415(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)		
10:66-1.2, 1.6, 3.3	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:66-1.5	Independent Clinic Manual: mental health services	17 N.J.R. 1377(a)		
10:66-1.6	Termination of pregnancy	17 N.J.R. 1375(a)		
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)
10:81-3.27	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)	R.1985 d.312	17 N.J.R. 1565(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)		
10:81-11.19	PAM: distribution of arrearage payments for child support	17 N.J.R. 1238(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)	R.1985 d.299	17 N.J.R. 1566(a)
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)		

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10:85-3.3	General Assistance rate in residential health care facilities	_____	_____	17 N.J.R. 485(c)
10:85-3.4	GAM: suits and claims	17 N.J.R. 548(a)	R.1985 d.298	17 N.J.R. 1566(b)
10:85-4.1, 9.4	General Assistance payment levels	17 N.J.R. 882(a)		
10:85-5.2	Correction to Administrative Code: General Assistance Manual	17 N.J.R. 1339(b)		
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)
10:87-1.14	Food Stamp Program: disclosure of information	17 N.J.R. 1377(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	17 N.J.R. 986(a)	R.1985 d.313	17 N.J.R. 1567(a)
10:89-2.3	Correction to Administrative Code: Home Energy Assistance Handbook	_____	_____	17 N.J.R. 1444(b)
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)	R.1985 d.291	17 N.J.R. 1416(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)	R.1985 d.314	17 N.J.R. 1568(a)
10:129-2	Confidentiality of child abuse records	17 N.J.R. 885(a)		

(TRANSMITTAL 27, dated March 18, 1985)

CORRECTIONS—TITLE 10A

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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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)		
11:3-8	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)		
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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)
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)		

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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)		
11:10-1	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)		
11:16	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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12:15-1.1	Unemployment Compensation: contributions, records and reports	16 N.J.R. 2488(b)		
12:15-1.1, 1.2	Unemployment and Temporary Disability benefits programs: purpose and scope	17 N.J.R. 1378(a)		
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	17 N.J.R. 741(a)	R.1985 d.262	17 N.J.R. 1417(b)
12:200	Readopt Liquefied Petroleum Gas rules	17 N.J.R. 1379(a)		
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12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1984 d.421	16 N.J.R. 2683(a)
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)
13:1-5.1, 6.1, 8.1	Police officer training and certification	17 N.J.R. 1239(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)	R.1985 d.279	17 N.J.R. 1423(a)
13:2-40	ABC: readopt rules on Issuances of IDs by County Clerks	17 N.J.R. 1380(a)		
13:3-3.5, 3.6, 7.9	Amusement games control	17 N.J.R. 1058(a)		
13:13	Discrimination against handicapped persons	17 N.J.R. 671(a)	R.1985 d.305	17 N.J.R. 1574(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)
3:20-28	Readopt rules on Inspection of New Motor Vehicles	17 N.J.R. 1059(a)		
3:20-32.16	Motor vehicle reinspection centers	17 N.J.R. 676(a)		
3:20-33.6	Glazing inspection standards for motor vehicles	17 N.J.R. 894(a)		
3:21-1.3, 1.4, 1.5	Driver licenses and social security numbers	16 N.J.R. 2746(a)	R.1985 d.307	17 N.J.R. 1579(a)
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)

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13:21-15.6	Auto dealers: acceptance of altered title documents	17 N.J.R. 169(a)		
13:27-8	Certified landscape architects	17 N.J.R. 169(b)	R.1985 d.163	17 N.J.R. 833(a)
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)	R.1985 d.287	17 N.J.R. 1424(a)
13:29-2.1, 2.2, 2.3	Registered municipal accountants	17 N.J.R. 559(a)	R.1985 d.286	17 N.J.R. 1426(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)		
13:30-8.4, 8.6	Dentistry: specialty practice; professional advertising	17 N.J.R. 378(a)	R.1985 d.253	17 N.J.R. 1320(a)
13:35-2.15	Physician-nurse anesthetist standards	17 N.J.R. 796(a)		
13:35-3.1–3.4	Licensing of medical practitioners	17 N.J.R. 561(a)	R.1985 d.224	17 N.J.R. 1131(c)
13:35-6.4	Pre-proposal: professional conduct of Medical Board licensees	17 N.J.R. 894(b)		
13:35-6.13	Medical examiners board: fee schedule	17 N.J.R. 562(a)	R.1985 d.223	17 N.J.R. 1132(a)
13:35-6.14	Therapeutic treatment by unlicensed medical aides	16 N.J.R. 2065(a)	R.1985 d.159	17 N.J.R. 836(a)
13:36-1.6	Mortuary Board fees and charges	17 N.J.R. 50(a)	R.1985 d.175	17 N.J.R. 973(a)
13:36-2.10, 2.12, 4.4, 4.13, 5.1, 5.6, 5.9, 6.8, 7.1, 7.2	Mortuary science rules	17 N.J.R. 797(a)	R.1985 d.293	17 N.J.R. 1580(a)
13:37-1	Programs in nursing education	17 N.J.R. 51(a)	R.1985 d.285	17 N.J.R. 1426(b)
13:38-3.2	Board of Optometrists: reexamination	17 N.J.R. 677(a)		
13:38-5.1	Board of Optometrists: fee schedule	17 N.J.R. 677(a)	R.1985 d.254	17 N.J.R. 1323(a)
13:40-3.2, 4.1, 5.1	Professional engineers and land surveyors: Board rules	17 N.J.R. 799(a)		
13:40-8	Engineers and land surveyors: release of project records	16 N.J.R. 1027(a)	R.1985 d.225	17 N.J.R. 1133(a)
13:40-9	Supervision of engineering and land surveying projects	16 N.J.R. 2067(b)	R.1985 d.222	17 N.J.R. 1134(a)
13:41-1	Board of Professional Planners: readopt Seal rules	17 N.J.R. 1060(a)		
13:41-3.2	Board of Professional Planners: fee schedule	17 N.J.R. 1061(a)		
13:41-4	Board of Professional Planners: readopt preparation of site plan rules	17 N.J.R. 1240(a)		
13:42-1.5	Psychological Board licensees: notification of current address	17 N.J.R. 896(a)		
13:43-3.4	Certified Shorthand Reporting exam: conditional credit	17 N.J.R. 801(a)	R.1985 d.288	17 N.J.R. 1431(a)
13:43-3.5	Shorthand reporting licensees: change of address notification requirement	17 N.J.R. 801(b)	R.1985 d.289	17 N.J.R. 1431(b)
13:44-4.1	Veterinary medicine: training certificate fee	17 N.J.R. 383(a)		
13:44C-1.1	Audiology and Speech Language Pathology Advisory Committee: fees and charges	17 N.J.R. 1062(a)		
13:44D	Public moving and warehousing	17 N.J.R. 1382(a)		
13:45A-9	Merchandise advertising: readopt rules	17 N.J.R. 678(a)	R.1985 d.256	17 N.J.R. 1323(b)
13:45A-16	Home improvement practices: readopt rules	17 N.J.R. 679(a)	R.1985 d.255	17 N.J.R. 1325(a)
13:45A-22	Kosher meat and poultry dealers: inspections and recordkeeping	17 N.J.R. 1241(a)		
13:45A-23	Deceptive watercraft repair practices	17 N.J.R. 680(a)	R.1985 d.306	17 N.J.R. 1581(a)
13:46	Boxing Rules	16 N.J.R. 2962(a)	R.1985 d.284	17 N.J.R. 1432(a)
13:46-4.20, 5.26, -23	Boxing and wrestling standards of conduct	17 N.J.R. 55(a)	R.1985 d.164	17 N.J.R. 837(a)
13:48	Charitable fund raising	17 N.J.R. 1244(a)		
13:70-3.46	Thoroughbred rules: horsemen's bookkeeper account	17 N.J.R. 173(a)	R.1985 d.204	17 N.J.R. 1135(a)
13:70-4.15	Thoroughbred racing: farms and training centers	17 N.J.R. 1393(a)		

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13:70-6.53	Thoroughbred rules: qualification as New Jersey bred	17 N.J.R. 271(a)	R.1985 d.203	17 N.J.R. 1135(b)
13:71-7.26	Harness racing: farms and training centers	17 N.J.R. 1393(b)		

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14:3-7.12, 7.13	Discontinuance of service for non-payment of combined utilities	16 N.J.R. 2747(a)	R.1985 d.166	17 N.J.R. 974(a)
14:3-8.1, 8.2	Suggested formulae for extension of utility service	17 N.J.R. 174(a)	R.1985 d.202	17 N.J.R. 1136(a)
14:3-10.9	Petitions by solid waste collectors	16 N.J.R. 3292(b)		
14:9-6	Small water company takeover	16 N.J.R. 3419(a)	R.1985 d.182	17 N.J.R. 910(a)
14:9-6.11	Correction: Acquisition costs	_____	_____	17 N.J.R. 1559(a)
14:17-6.8, 6.14, 6.17	CATV: system and stock transfers; rate increase filing procedures; public hearing requirement	17 N.J.R. 1062(b)		
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