

# NEW JERSEY REGISTER



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## THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 20 NUMBER 1

January 4, 1988 Indexed 20 N.J.R. 1-124

(Includes adopted rules filed through December 11, 1987)

**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: OCTOBER 19, 1987.**

**See the Register Index for Subsequent Rulemaking Activity.**

**NEXT UPDATE WILL BE DATED NOVEMBER 16, 1987.**

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185 W. STATE ST.  
TRENTON, NJ.

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# INTERESTED PERSONS

**Interested persons** may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **February 3, 1988**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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## NEW JERSEY REGISTER

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

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

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

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

# RULE PROPOSALS

## EDUCATION

### STATE BOARD OF EDUCATION

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

#### (a)

#### School Facility Planning Services

#### Proposed Amendments: N.J.A.C. 6:22-1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 2.1, 2.2, 2.3, 2.4, 2.5, 3.1, and 4.1

Authority: N.J.A.C. 18A:1-1, 4-15, 18A-16, 18A-18, 18A-39, 20-36, 33-1 *et seq.* and 52:27D-130.

Proposal Number: PRN 1988-2.

Submit comments by February 3, 1988 to:

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

The agency proposal follows:

#### Summary

On September 4, 1985, the State Board of Education adopted new rules pertaining to School Facility Services, N.J.A.C. 6:22-1.1 *et seq.* On June 6, 1986, the Board adopted additional rules, N.J.A.C. 6:22-2.4, pertaining to pre-manufactured units (trailers and vans) intended for use as instructional spaces.

The application of the rules has indicated that several minor clarifications are necessary. A major clarification is necessary in N.J.A.C. 6:22-3.1(i)2i(7) wherein off-site, rented or leased facilities will be required to install automatic fire detection systems that are tied into the electrical system of the building. Off-site, rented or leased facilities which have existing manual fire alarms will be required by the start of the fourth year of use to comply with the requirement for automatic inter-connected systems.

Another clarification codifies the authority of the department to vary site sizes under the code. N.J.A.C. 6:22-1.7(b) is amended to also reference N.J.A.C. 6:22-1.2, Approval of land acquisition, as a code section, the requirements of which can be varied. The inclusion of N.J.A.C. 6:22-1.2 into the code clarifies long-standing variance practice wherein the Manager, Bureau of Facility Planning Services has approved variances to site sizes, given appropriate justification.

This code applies to school buildings owned or leased by private schools for handicapped pupils and the Department of Human Services for State Facilities for handicapped pupils, as a result of an opinion by the New Jersey State Attorney General.

Also, since the previous adoption of N.J.A.C. 6:22-1.6, the Office of Administrative Law has determined that standards which have to be met by local boards of education must be established through administrative code adoption, rather than through guidelines. Therefore, recommendations to use guidelines have been purged from the code except where reference to the guidelines provides clarification or assistance to local districts in decision making.

One of the affected publications, the School Capacity bulletin, contains the square feet requirements and student capacity for all instructional and support spaces for elementary, middle and secondary schools. This bulletin has been in use for over 15 years and was last adopted in revised form by the State Board of Education as its policy in 1978. For 15 years prior to adoption of the bulletin, guidelines were used by the department to regulate the size and capacity of school buildings.

N.J.A.C. 6:22-1.2(c) changes site size criteria. It eliminates any set number of acres for a site and establishes criteria for sites of all school types.

N.J.A.C. 6:22-1.2(d) has been added. It establishes a requirement to resubmit a request for school site approval if more than 18 months elapses between approval by the bureau and the district obtaining authority to acquire it. This action is necessary in case site circumstances are altered in the intervening time period.

N.J.A.C. 6:22-2.4(h)4 has been clarified to specifically include facilities for early intervention programs, a type of pre-kindergarten program for handicapped youngsters.

N.J.A.C. 6:22-3.1(i)2v has been amended to require toilets in the classroom of substandard facilities for early intervention, pre-kindergarten and kindergarten programs only. This standard is consistent with that for all other facilities.

N.J.A.C. 6:22-2.5 has also been added. This section establishes square feet standards and capacities that must be adhered to by all public schools, private schools for handicapped pupils and State facilities for handicapped pupils. The standards are consistent with the State Uniform Construction Code.

#### Social Impact

The continuance in the administrative code of the standards which for many years were contained in the School Capacity bulletin will extend the provision of safe, healthy and adequate education facilities.

The square foot standards take into account the number of students in a class or other activity, fire code requirements for existing space for the variety of instructional activities employed by teachers, the furniture and equipment, both built-in and movable, needed to implement instruction and any other factors, such as storage and seating requirements, which are unique to a space.

The social impact of the administrative code will be no greater than that related to the requirements of the School Capacity bulletin and guidelines over the last three decades.

The addition to N.J.A.C. 6:22-1.5, School closings, wherein the maintenance of racial balance must be assured even with school closings, is an important social factor.

The availability of the Educational Facilities Publication Series as described in N.J.A.C. 6:22-1.6 provides additional information to assist local districts in making decisions.

The changes to N.J.A.C. 6:22-1.2(c), which address school site criteria, will assure that the safety and educational adequacy of sites is equal in all districts.

The requirement to provide electrical powered smoke detectors in N.J.A.C. 6:22-2.4(i)1i(12) provides assurance of staff and student safety in all new pre-manufactured units and applies requirements of the State Uniform Code. Existing pre-manufactured units are also required to be equipped with electrical powered smoke detectors. Districts have one year in which to install these smoke detectors.

The inclusion of early intervention program facilities under the toilet requirement for pre-kindergarten and kindergarten will insure that all pupils below grade one will be provided with safe and appropriate facilities.

The reorganization of N.J.A.C. 6:22-2.4 into subsections, such as Electrical and Safety, will make it easier for the user of the code to locate information.

#### Economic Impact

There will be an economic impact on specific private schools for the handicapped as a result of the square feet and student capacity standards in N.J.A.C. 6:22-2.5.

Historically, such schools did not build or lease facilities according to public school standards. An opinion of the New Jersey Attorney General, however, has directed that the private schools for handicapped pupils must meet the same standards as the public schools. Even though the standards are being reduced, an estimated 53 classrooms in the private schools are below the minimum space size of the proposed square feet requirements. Enrollments, and thus revenue, could, therefore, be reduced in these schools.

The square feet and student capacity requirements will cause a relatively lesser economic impact on special education facilities in the public schools. It is estimated, according to the 1985-86 Special Education Plan, that two to three percent of the 8,313 classrooms now in use are below the minimum space requirements that will be required by the new code.

State facilities for handicapped students, operated by the Department of Human Services, will require upgrading. There are an estimated 111 instructional spaces which do not meet the proposed amendments.

The cost of the resubmission of a request for school site approval could provide an economic impact if the site conditions change from the original submission. Any specific cost estimates are not feasible since any changes would vary according to each site.

## EDUCATION

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The Uniform Fire Code requirement for electric smoke detectors has been in effect and enforced since July, 1986. This requirement added \$30.00 to the cost of a pre-manufactured unit and approximately \$150.00 to the cost of existing units.

The new school site criteria proposed in N.J.A.C. 6:22-1.2(c) could result in the approval of sites with fewer acres. If so, the cost of sites will be reduced.

The economic impact of N.J.A.C. 6:22-2.5, which establishes space sizes, is projected as negligible since application of the standards indicates that the total square feet required in a school building will nearly equal that required in the past.

The economic impact on all future special education classrooms will be positive since the minimum space requirements are lower than those currently in existence.

The economic impact of the three clarifications of existing code, where-in windowless classrooms will require air conditioning, science laboratories and shops in which open burning occurs will be required to have an emergency cold-water shower and the requirement for automatic fire detection systems in leased and rented buildings will be minimal.

#### Regulatory Flexibility Statement

A small number of private schools for the handicapped, operating as small businesses, will be affected by the proposed amendments and additions to the code. These private schools should not be exempt from compliance with these rules, since the safety and welfare of the children served by the regulated facilities is of primary importance. Action to reduce enrollment is necessary in a total of 53 classrooms (5.6 percent of 940 private special education classrooms in the State). A total of 87 students will be affected, representing 1.2 percent of the total enrollment in the private schools. Of the total, one school will have to reduce enrollment by 31 of the 87 students in 16 of the 53 classrooms.

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

#### 6:22-1.1 Approval of plans and specifications

(a) **Educational specifications describing the programs and activities to be housed in the proposed facility, the types, numbers and sizes in square feet of the spaces within the proposed facility and the spatial relationships between and among the spaces shall be submitted at the same time as the schematic architectural plans. The educational specifications shall bear the signature of the president of the district board of education and chief school administrator as evidence of certification of approval by the district board of education.**

[(a)](b) Plans and specifications for the temporary and permanent construction, erection, reconstruction, alteration, [and] conversion **and renovation** of public school facilities, **including private schools for handicapped pupils and State facilities for handicapped pupils**, shall be submitted to the **Department of Education, Bureau of Facility Planning Services**, [Department of Education] whenever a review for **compliance with this chapter** [educational adequacy] is necessary. An architect or engineer licensed in New Jersey shall submit the plans and specifications on behalf of the district board of education, **governing body of a private school for handicapped pupils or the State Department of Human Services** as follows:

1. One set of schematic plans shall be **approved** [submitted] before funds are authorized locally **via a bond referendum, lease-purchase agreement, gift or any other means of financing building construction, erection, reconstruction, alteration, conversion or renovation**. This set of plans shall be submitted with a **project** cost estimate, site plan, educational specifications[,] and an updated long-range [facilities] facility plan, **except that the long-range facility plan shall not be required for private schools for handicapped pupils or State facilities for handicapped pupils**. The review for educational adequacy shall take into consideration the suitability of the site; size, location and number of instructional and ancillary spaces; furniture and equipment; circulation patterns; provisions for the handicapped; maintenance, security[,] and energy conservation; and locations of future additions. Room sizes shall meet or exceed minimum acceptable **net and gross areas** [in the "School Capacity" publication of the Department of Education.] **as required in N.J.A.C. 6:22-2.5.**

i. **Schematic plans shall include layouts of the built-in and movable furniture and equipment drawn to a scale of no less than 1/8 inch or a list of the built-in and movable furniture which shows the dimensions and square feet of each item for an instructional space which is typical**

**of any kind of instructional space.**

2. One set of preliminary plans shall be submitted after funds are authorized locally. This set of plans shall include room layouts, a statement regarding the method of heating and [ventilating] **ventilation**, a description of lighting[,] and building elevations. For additions, a floor plan of the existing building showing the present and proposed use of all areas, **including the identification in writing on the plans of all areas**, and documentation that the Department of Environmental Protection is reviewing the methods of sewerage disposal and water supply shall be included. The preliminary plan review for educational adequacy is an extension of the schematic review for educational adequacy.

3. Four sets of signed and sealed final plans and specifications shall be submitted for review and approval after the architect and district board of education have received preliminary plan approval. This submission shall include the following:

i.-vi. (No change.)

vii. The approval letters from the New Jersey Department of Environmental Protection regarding [sewerage] **sewage** disposal, water supply, gas installations, major excavations[,] and air contaminant control apparatus or equipment.

4. [Upon release of the plans from the New Jersey Department of Education, the district board of education shall apply to the local municipal construction enforcing agency for the required permit.] **Bids may be advertised for and received only after the release of final plans from the Department of Education, Bureau of Facility Planning Services. Following approval of said bids by the Bureau, the district board of education may sign contracts and apply to the municipal construction enforcing official for the required building permits.** The local municipal construction enforcing [agency] **official** will issue the construction permit, collect 80 percent of [their] **the** total construction permit fee, perform the required inspections during construction[,] and issue the required certificate of occupancy upon completion of the project. The district board of education **or governing body of a private school for handicapped pupils** shall send to the New Jersey Department of Education, **Bureau of Facility Planning Services** a copy of the certificate of occupancy obtained from the local construction agency. [if the project was reviewed by the New Jersey Department of Education.]

5. When there are practical difficulties involved in meeting the requirements of the State Uniform Construction Code, the designated and licensed construction official in the **Department of Education, Bureau of Facility Planning Services** may vary the rules [upon application of the district board of education or its representative,] provided [that] the spirit and intent of the rules are observed[,] and the public[']s welfare and safety [shall be] is ensured. Variations to the State Uniform Construction Code may be acted **upon** in accordance with N.J.A.C. 5:23-1.1 et seq.

6. Before construction contracts are awarded, the district board of education shall submit **for approval** to the Department of Education [for approval] a list of the contractors which have been selected, the amount of each contract, [and] the amount of each contractor's uncompleted contracts **and a copy of the contractors' prequalification and classification statement.**

7. A copy of each contract shall be filed with the Department of Education, **Bureau of Facility Planning Services.**

8. All plans and specifications for public school construction projects shall be prepared by an architect or professional engineer licensed to practice in the State within the limits covered by such registration. The Department of Education, **Bureau of Facility Planning Services** shall accept plans for review only from licensed professionals who have been retained by the district board of education for the project. [(See N.J.S.A. 52:32-3).] Each page of the plans and the title page of the specifications shall bear the signature and embossed seal of the architect and/or professional engineer. The name, signature[,] and embossed seal of the consulting professional engineers shall be placed on their own plans.

[(b)](c) Types of work requiring a review [for educational adequacy] **by the Department of Education** shall consist of the following:

1.-3. (No change.)

4. A change in the dimensions (volume[,] and/or area) of any instructional space:

- [5. The relocation of any instructional space;]
- 5. A change in the age group or grade level of the students assigned to the school;
- 6. A change in [the] use [of an existing instructional space] requiring the conversion of a space from one function to another causing physical renovation to satisfy educational program needs and/or the Uniform Construction Code;
- 7. (No change.)
- 8. [Any] A change in locker and toilet rooms including those contained within field houses, weight rooms and game rooms;
- 9. [Any] A change to the athletic fields and tracks;
- 10. The utilization of [mobile units;] pre-manufactured trailers and vans;
- 11. Any site or building change or alteration for the purpose of making the site and school barrier free and accessible to handicapped persons as per N.J.A.C. 5:23 and Section 504 of the federal Rehabilitation Act of 1973.

[11.]12. (No change in text.)  
 [(c)](d) (No change in text.)  
 [(d)](e) All buildings and structures and parts thereof, both existing and new, shall be maintained in a safe, sanitary[,] and energy efficient condition. All service equipment, means of egress, devices[,] and safeguards which are required by the State Uniform Construction Code in a building or structure[,] or [which] were required by a previous statute for a building or structure, when erected, altered or repaired, shall be maintained in good working order.

6:22-1.2 Approval of land acquisition

- (a) No district board of education may conduct a referendum for land acquisition, secure board of school estimate approval, enter into a lease agreement [for] or otherwise acquire land without prior school site approval [of] from the Department of Education, Bureau of Facility Planning Services [of the Department of Education].
- (b) Before any action is taken to purchase or otherwise acquire or lease land, [the district board of education shall receive] approval of the adequacy of the land from the Department of Education, Bureau of Facility Planning Services is required. To consider the approval of such land [acquisition by a district board of education] the manager of the Bureau of Facility Planning Services shall be provided with the following:
  - 1. A written request [from the district board of education] for such approval, which includes a statement indicating the immediate and ultimate proposed uses of the land in terms of grade organization and potential maximum enrollment[.];
  - 2. A statement from the State Department of Environmental Protection or a local or county water/sewerage agency that the land can be adequately provided with the necessary water and an acceptable sewerage disposal system for the proposed ultimate maximum enrollment[,] and that the project has no potential for a substantially adverse environmental impact[.];
  - 3. A statement from an architect or engineer indicating that the land to be acquired is suitable for the proposed use[.];
  - 4. A complete plot plan of the land to be acquired, showing topographical and contour lines, all adjacent properties [(on all sides),] and access roads. The acreage and dimensions of the tract proposed for acquisition shall be included[. In] as per the application of the following standards for minimum acceptable school site sizes[, the bureau shall take into consideration the proximity and extent of non-school open land and availability of nearby athletic fields and parking areas;] and on it shall be shown the intended location of the school and a layout of the locations of all other structures, play and recreation areas, athletic fields, walkways, roadways, access roads, buffer and set back zones, and parking areas.

Standards for Minimum Acceptable School Site Sizes

District Population Density (Persons per Square Mile)	Required Acres, Base		
	Elementary School	Middle School	High School
Below 500	10	20	30
500-1000	8	16	24
1001-5000	6	12	18
5001-10,000	4	8	12
Above 10,000	2	4	6

Added Acres/Each 100 Pupils	Examples (Building Capacity)		
	Elementary School (500)	Middle School (1000)	High School (1500)
1.0	15	30	45
0.8	12	24	36
0.6	9	18	27
0.4	6	12	18
0.2	3	6	9

- 5. A map of the school district showing the location of the land and the location of existing schools in the district[.];
- 6. Recommendations of the county superintendent of schools based on [criteria contained in the Department of Education's publication entitled "School Sites: Selection, Development and Utilization" and] the requirements specified in this subchapter[.];
- 7. A [pupil distribution] map showing [gross distribution of residencies;] the attendance area to be served by the school and the number of pupils who reside therein.
- 8. If existing buildings are located on the land to be acquired, the intended use and/or disposition of these buildings shall be indicated. Any building to be acquired and used must comply with the State Uniform Construction Code and all procedures and rules of the State Board of Education which apply to the construction of a new building[.];
- 9. Data regarding the impact of such a facility upon racial balance within the district's [public schools] boundaries.
- 10. Recommendations of the local planning board[s] in the municipality which has an approved master plan or portion thereof [(in municipality where the site is located and in adjacent municipality, if proposed school site is along the municipality's boundary line).] as required by N.J.S.A. 40:55D and 18A:18-49.
  - (c) School site sizes shall be directly related to the acreage required for the structures and activities to be situated thereon. Except where specifically noted, the acres shall be considered for single use. Only where specifically noted can the acres be designated for multiple use, for example, using the same acres for sports which occur at different times of the year. School site sizes shall include the following:
    - 1. An elementary school site shall have sufficient acreage for:
      - i. The placement of the school building;
      - ii. Expansion of the school building to its maximum capacity;
      - iii. The placement of all other structures such as storage buildings, school bus maintenance buildings or garages and any other structure, above or below ground, which is to be placed thereon;
      - iv. A basic all-purpose play and recreation field(s);
      - v. Walkways and roadways on which people and vehicles traverse the site;
      - vi. Public and service access roads onto the site including, where warranted; a one-way school bus road of 30 feet width or a two-way road of 36 feet width; a school bus drop-off area; and, 18 feet wide lanes for fire apparatus;
      - vii. The provision for fire apparatus of a 30 feet wide access around the entire building as per BOCA National Building Code 502.2; and
      - viii. Building set back and buffer zones as required by local and state codes.
    - 2. An elementary school site may include the following, for which sufficient acreage shall be provided:
      - i. Parking for faculty, staff and the public;
      - ii. Landscaping and aesthetics;
      - iii. Community use facilities such as tennis courts; "tot lots" and basketball courts;
      - iv. Other structures or activities required by the educational program; and
      - v. A separate kindergarten play area.
- 3. A junior high or middle school site shall have sufficient acreage for the following:
  - i. The placement of the school building;
  - ii. Expansion of the building to its maximum capacity;
  - iii. The placement of all other structures such as storage buildings, school bus maintenance buildings or garages and any other structure, above or below ground which is to be placed thereon;
  - iv. A basic multi-purpose physical education and recreation field(s);
  - v. Walkways and roadways on which people and vehicles traverse the site;

## EDUCATION

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vi. Public and service access roads onto the site including, where warranted; a one-way school bus road of 30 feet width and a two-way road of 36 feet width; a school bus drop off area; and, 18 feet wide lanes for fire apparatus;

vii. A 30 feet wide access around the entire building for fire apparatus as per BOCA National Building Code 502.2; and

viii. Building set back and buffer zones as required by local and state codes.

4. A junior high or middle school site may include the following, for which sufficient acreage shall be provided:

i. Parking for faculty, staff and the public;

ii. Landscaping and aesthetics;

iii. Community-use facilities such as tennis courts and basketball courts;

iv. Athletic fields with proper geographical orientation for practice and competition in selected sports such as football, soccer, baseball, softball, field hockey; multi-use of fields may be possible and are permitted here; and

v. Spectator facilities as related to the sports activities.

5. A senior high or junior-senior high school site shall have sufficient acreage for the following:

i. The placement of the school building;

ii. Expansion of the building to its maximum capacity;

iii. The placement of all other structures such as greenhouses, storage buildings, school bus maintenance buildings or garages and any other structure, above or below ground, which is to be placed thereon;

iv. A basic multi-purpose physical education and recreation field(s);

v. Walkways and roadways on which people and vehicles traverse the site;

vi. Public and service access roads onto the site including, where warranted; a one-way school bus road of 30 feet width and a two-way road of 36 feet width; a school bus drop off area; and, 18 feet wide lanes for fire apparatus;

vii. A 30 feet wide access around the entire school for fire apparatus as per BOCA Basic Building Code 502.2; and

viii. Building set back and buffer zones as required by local and state codes.

6. A senior high or junior-senior high school site may include the following, for which sufficient acreage shall be provided:

i. Parking for faculty, staff, students and the public;

ii. Landscaping and aesthetics;

iii. Community-use facilities such as tennis courts and basketball courts;

iv. Athletic fields and facilities for practice and competition in selected sports such as track and field, football, soccer, baseball, softball, and field hockey; practice and competition related to marching band activities (multi-use fields may be possible and are permitted here); and

v. Spectator facilities as related to the sports activities.

(d) If, after 18 months from the date of approval of a school site by the bureau, a district board of education does not have authority to acquire it by bond referendum, an approved lease-purchase agreement or other statutory means, the district board of education shall re-submit the information required in (b) above for consideration and approval before any action is taken to conduct a bond referendum, or, purchase, lease-purchase or otherwise acquire the site.

#### 6:22-1.3 Disposal of land

If an approved school site[,] on which there is an operational school building[,] is to be altered through sale, transfer[,] or exchange of all or part of the total acreage, written application for approval shall be made to the Department of Education, Bureau of Facility Planning Services, except that this action is not required for private schools and State facilities for handicapped pupils. [of the Department of Education.] A copy of the application shall be sent to the county superintendent of schools who shall make recommendations to the [b]Bureau, with a copy of the recommendations to the district board of education.

#### 6:22-1.4 Acquisition of existing buildings

A district board of education and governing body of a private school for handicapped pupils planning to acquire any existing building or facility through purchase, gift, lease or otherwise[,] shall comply with

all procedures and rules pertaining to the appropriation and use of capital funds [(] as required by N.J.S.A. 18A:20-4 [et seq.]) and 18A:20-4.2 and shall also have the building approved in accordance with the rules of this chapter which apply to the construction of a new building.

#### 6:22-1.5 School closings

(a) The district board of education shall supply the Department of Education, Bureau of Facility Planning Services [shall be supplied] with information as delineated in 1. [and] 2. and 3. below which assures [the Department of Education] that with the closing of a school or schools:

1. Sufficient school building capacity[, computed as per instructions in the "School Capacity" bulletin of the Bureau exists in the remaining schools] as calculated according to N.J.A.C. 6:22-2.5(a)i. and ii. exists to house district students following such closing; [and]

2. The use of substandard spaces in the remaining schools does not result or increase from an overall facilities shortage caused by school closings[.]; and

3. The re-assignment of pupils to other schools in the district neither produces, sustains nor contributes to unlawful segregation, separation or isolation of student populations on the basis of race or national origin.

(b) A letter of approval from the Bureau is required to close a school.

(c) The information required in (a) above [for the Bureau to respond] shall be provided before a final district board of education decision is made.

#### 6:22-1.6 Planning [standards for educational adequacy] recommendations

(a) The Bureau of Facility Planning Services, Department of Education shall develop publications which provide assistance in the planning of public school facilities. The publications shall be [When planning for the educational adequacy of the various instructional spaces, district boards of education and any consultant employed by them shall apply the standards] contained in [the publications in] the Educational Facility Publication Series [of the Bureau of Facility Planning Services in the Department of Education, including] which includes, but is not limited to, the following:

1. [""Education Specifications[""];

2. [""Greenhouses for Schools[""];

3. [""Instructional Media Center[""];

4. [""School Capacity[""];

5. [""School Sites: Selection, Development and Utilization[""]; and

6. [""Science[""].

(b) (No change.)

#### 6:22-1.7 Appeals and hearing process

(a) Appeals arising from action of the Bureau of Facility Planning Services of the Department of Education may be requested[,] by the district board of education, the governing body of a private school for handicapped pupils or the State Department of Human Services and an opportunity given for an informal [fair] hearing before the [b] Bureau manager or other designated official. A request for an informal hearing must be made within 30 days of Bureau action. In the event of an adverse decision after such an informal hearing, appellants may request within 90 days of an informal hearing a formal hearing pursuant to N.J.S.A. 18A:6-9, 18A:6-24[,] and 18A:6-27. Such hearings will be governed by the provisions of the Administrative Procedure Act [(see] N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).

(b) Requests for variances [to] from the [educational facility standards of the] Department of Education requirements as specified in N.J.A.C. 6:22-1.2 and [(] N.J.A.C. 6:22-2.4)] and the State Uniform Construction Code [(] as specified in N.J.A.C. 5:23-1.1 et seq.[)] may be made in writing by the district board of education, governing body of a private school for handicapped pupils or State Department of Human Services or its designated representative to the manager of the Bureau of Facility Planning Services. The manager may [vary the educational facility planning standards] approve variances from department requirements provided [that] the spirit and intent of the standards are observed. Variations [to] from the State Uniform Con-

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struction Code [may] shall be acted upon in accordance with N.J.A.C. 5:23-1.1 et seq.

## SUBCHAPTER 2. APPLICATION OF THE UNIFORM CONSTRUCTION CODE

## 6:22-2.1 Model code adoption

(a) The State Board of Education hereby confirms that public school construction shall be done in accordance with the State Uniform Construction Code, hereafter referred to as the U.C.C.

1. This document is available for review at the Bureau of Facility Planning Services, Department of Education, 1676 N. Olden Avenue, Trenton, New Jersey [08038,] **08625** or at the Office of Administrative Law, CN 301, Trenton, New Jersey 08625.

2. This document may be purchased from the New Jersey Department of Community Affairs, CN 805, Trenton, New Jersey 08625.

## 6:22-2.2 Definitions

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

“Academic classroom” means an instructional space approved for use for general instructional purposes. This term differentiates the space from specialized instructional uses such as science labs and shops.

“Change-of-use” means any change in educational function, such as from a classroom to a laboratory or other specialized activity space[,] and/or change in age group of occupants as from prekindergarten or kindergarten to elementary[,] or elementary to secondary.

“Core facilities” means those spaces in a school building which serve directly or indirectly all or most of the students on a regular basis, such as library (IMC), auditorium, gymnasium, cafeteria or administrative offices.

“Department” means, with regard to these enhancements, the New Jersey Department of Education, specifically, the Bureau of Facility Planning Services.

“Open space” means any portion of a building up to 30,000 square feet, other than a gymnasium, auditorium[, and] or cafeteria, designed for multiple teaching which may be subdivided into smaller areas by use of partial partitions, moveable partitions[,] or moveable furniture and does not have defined permanent corridors.

“Pre-engineer[ing]ed, modular classroom” means a unit which is manufactured in modular sections[,] or in pre-cut and pre-sized components which are assembled on a school site. It is designed to be a permanent facility, is non-relocatable and is set upon a permanent foundation.

“Relocatable classroom” means a modular or prefabricated unit which is designed to be used at more than one location during the life of the facility. Wheels and axles are not a part of the facility[,] and the facility is designed to be set upon a permanent foundation.

“School capacity formula” means the computational formula used in computing the capacity of a school building to derive the [functional] capacity for the building as per N.J.A.C. 6:22-2.5(a) i and ii. [Official prescriptions are in the “School Capacity” bulletin. This document may be purchased from the Department of Education, Office of Central Services, CN 500, Trenton, New Jersey 08625.]

## 6:22-2.3 Enhancements to Uniform Construction Code (U.C.C.)

(a) Under the authority granted to it in Chapter 496, Laws of 1983, the State Board of Education hereby adopts the following enhancements to the U.C.C. [(see N.J.A.C. 6:22-2.1).]

1.-4. (No change.)

5. An automatic fire detection system shall be installed in all new buildings of use group E (educational), as designated in BOCA 301.1 in accordance with applicable National Fire Protection Association standards. The system shall utilize:

i. [A c]Combination fixed-temperature and Rate of Rise device[s] in classrooms and other spaces not covered in ii. below; or

ii. Devices to detect abnormal visible smoke densities or gaseous products of combustion are required in corridors and exit stairs; [or]

iii. An automatic fire suppression system and, in areas where suppression is deleted, automatic detection devices [are installed]; or

iv. A combination of the three types of detection devices except that a fixed-temperature detector shall be permitted in approved locations, such as a boiler room or incinerator.

6. (No change.)

7. Each instructional space and room of assembly which is illuminated with the use of high intensity discharge (HID) sources, [(such as mercury vapor, high pressure sodium[, and metal halide lamps]),] shall also be provided with a second source of illumination to provide illumination instantly upon activation of the circuit. [These] All high intensity discharge (HID) lamps shall be of the fail-safe type which will [be] permanently extinguish[ed] within two minutes after the outer glass of the bulb is broken. All lamps shall be provided with a glass or plastic lens to protect the bulb.

8. All school buildings shall be equipped with a mechanical air supply and exhaust ventilation system which will provide, during periods of occupancy, standard tempered outdoor air supply and mechanical exhaust at the minimum rates set forth in [table M-1602.1 of] the [1984] BOCA Basic National Mechanical Code.

## 6:22-2.4 Educational facility planning standards

(a) The educational facility planning standards delineated in (b) below shall, in conjunction with the Uniform Construction Code, form the requirements for the design and construction of public schools.

(b) General design and construction requirements are as follows:

[1. Open space educational areas shall comply with the following: An open space area of noncombustible or fire resistive construction shall not exceed 30,000 square feet in undivided area. A solid wall or smoke-stop noncombustible or fire resistant partition may have smoke-stop doors therein consistent with the U.C.C.;

[2.] [When an i]Instructional rooms [has] with windows[, the major window wall] shall have no exterior obstructing wall within 20 feet of [it.] the major window wall.

[3.] [Every i]Inner courts used for instructional purposes shall have a minimum width of 20 feet.

[4. Minimum clear widths for primary corridors in elementary schools, grades kindergarten through eight, shall be:

i. Seven feet, wall-to-wall without lockers or wardrobes;

ii. Eight feet, wall to locker face with lockers or wardrobes on one side;

iii. Nine feet six inches, locker face to locker face with lockers or wardrobes on both sides;

5. Minimum clear widths, at any point in secondary schools, grades seven through 12, shall be:

i. Seven feet six inches, wall to locker without lockers;

ii. Eight feet six inches, wall to locker face with lockers or wardrobes on one side;

iii. Ten feet locker face to locker face with lockers or wardrobes on both sides.]

[6.] 3. Concrete floors in all instructional areas, except shops, shall be covered with a resilient floor covering.

[7. A check valve shall be installed in the line supplying gas to each classroom, laboratory, shop, or other area where gas is used by students, except home economics rooms.

8. The conduit of gas supply lines shall extend at least four inches outside and be vented above grade. Vent pipes shall terminate outside the building at a point not less than two feet measured vertically or horizontally from any window or other building opening. The outer end of vent pipes shall terminate in a weatherproof and securely fastened vent cap. They shall terminate sufficiently above the ground to avoid being obstructed with snow and shall be secured firmly to the building. The entire installation shall be secured firmly to the building. The entire installation shall be such that the gas piping can be readily replaced without damage to the building. Vents in courts shall be extended to not less than five feet above the roof.

9. There shall be a push-type emergency cut-out switches provided at appropriate locations within shops to de-energize the electrical supply to machinery. These switches shall be provided on the basis

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on one for each 1,000 square feet or fraction thereof of floor area in the shop, but not less than two. Reset of the interrupted service shall be by a key-operated switch located within the shop. The cut-off and reset circuits shall be designed and installed to negate the possibility of the control circuit being de-energized thereby being inoperative.

10. All non-portable motorized equipment and machinery shall be provided with magnetic-type switches to prevent machines from automatically restarting upon restoration of power after an electrical failure or activation of the above emergency cut-off.

11. Installed artificial lighting intensity shall comply with the following minimum footcandles which shall be maintained on the task at any time:

**INSTALLED LIGHTING INTENSITY**

	Minimum Acceptable Footcandles
Locations	
Classroom and instructional areas—on work surface	50
Study halls, lecture rooms, art rooms, offices, libraries, conference rooms, work rooms, shops, laboratories, and secondary school cafeterias	50
Drafting, typing and sewing rooms	70
Locations	
Reception rooms, gymnasiums, auditoriums, cafeterias, all-purpose rooms, and swimming pools	30
Locker rooms, washrooms, toilet rooms, corridors containing lockers, stairways	10
Corridors without lockers, and storerooms	5
Classrooms for the partially seeing	70]

[12.]4. (No change in text.)

[13.]5. The average ceiling height of an academic classroom or other instructional space containing more than 300 square feet in area shall [not be less than] **average** nine feet six inches [in height] and no part shall be lower than eight feet. Instructional spaces of less than 300 square feet and areas of larger spaces devoted to clothing alcoves, storage or work space may have ceilings eight feet in height. [It is recommended that an additional two inches in height be provided to allow for inadvertent variations in materials or construction which could result in the finished ceiling height not meeting this requirement.]

[14.]6. The ceiling height in an academic classroom shall be not less than nine feet six inches. **Minimum** [C]eiling heights in other areas shall be [at least the following]:

Gymnasium (Elementary) .....	18 feet
Gymnasium (Middle) .....	20 feet
Gymnasium (High School) .....	22 feet
Auxiliary Gymnasium .....	14 feet
Music Room (Vocal and/or Instrumental) [18]12 feet or eight feet from the highest riser to the ceiling but in no case less than 9'6"	
Multipurpose Room .....	18 feet
Cafeteria .....	12 feet
Industrial Arts and Vocational Shop	<b>12 to 15 feet</b>

[15.] 7. Public school corridors shall have a minimum ceiling height of [not less than] eight feet.

[16. The New Jersey Department of Education "School Capacity" bulletin shall be used to determine the capacity of a school building for the purpose of determining numbers of plumbing fixtures.

17. General pupil toilet rooms are those designed and labeled for pupil use, containing at least two of each required fixture, and which are directly accessible from a corridor or an open plan instructional space whenever the building is occupied. Pupils housed within an instructional space, which is in excess of 300 square feet, shall not be required to travel through any other space, except a corridor to reach a general pupil toilet room.

18. There shall be at least one general toilet room for each sex, containing at least two of each respective fixture, on each floor occupied by pupils or all instructional rooms shall have individual

toilet rooms. Where classrooms, shops or physical education rooms are provided with self-contained individual facilities (water closet, lavatory, and drinking fountains), the pupil capacity of these rooms shall not be counted in computing the number of fixtures required in the general pupil toilet rooms.

19. At least one individual toilet room shall be provided in each kindergarten and prekindergarten room. The water closet shall not exceed 10 inches in height.

20. Entrance to toilet rooms and locker rooms shall be screened to prevent visibility into the room.

21. Water closets shall be separated by individual stall partitions including doors which are of a smooth impervious material to permit effective cleaning.

22. Floors of all toilet rooms, shower rooms and drying rooms shall be water-tight and impervious to moisture. Floors shall be provided with an integral cove base at least four inches high.

23. Flooring materials of ceramic tile, quarry tile, sheet vinyl (except for showers) and plastic coatings designed for this purpose shall be deemed to meet the requirements of this subchapter; resilient tiles or exposed concrete are not acceptable in toilet rooms.

24. Where showers are provided, they shall be as follows: 15 to 20 square feet per pupil in a supporting locker room; benches shall be 30 inches apart; one shower head for each 4 to 5 girls; shower head of five feet for girls and six feet for boys; and, 12 square feet per shower head.

25. Chemistry laboratories shall be equipped with an emergency shower.

26. Drinking fountains shall be provided in kindergarten and prekindergarten rooms.

27. Instructional places shall be provided with sufficient outlets (receptacles) to satisfy the program need but in no case shall there be less than two duplex outlets remotely located.

28. Large group areas such as assembly rooms, auditoriums and other large group instructional spaces shall be provided with a convenience outlet at the probable location of portable projectors, and built-in speaker cables at the above location as well as stage and platform areas.]

[29.]8. A health unit shall be provided and shall include a **nurse's area**, waiting area, an examination [room] **area**, a rest area with privacy[,] and toilet facilities sized and arranged so that physically handicapped persons requiring assistance will be able to receive such aid.

[30.]9. Instructional greenhouses shall meet the following standards in addition to the U.C.C. standards and requirements of the Fire Prevention Code:

i-iii. (No change.)

iv. The storage of pesticides shall be in a locked metal cabinet and vented to the exterior[.];

[v.]10. Wherever chemicals are stored or used, an eyewash **fountain or similar device**, [facility] **capable of providing a 15-minute continuous water flow**, shall be provided.

[31.]11. Small group instruction areas of **less than 300 square feet** shall meet the following standards in addition to the U.C.C. standards:

i. No part of the ceiling shall be lower than eight feet[, six inches];

ii. A number of electrical outlets sufficient to satisfy the program need, but in no case fewer than two duplex outlets[,] shall be provided;

iii.-iv. (No change.)

[v. No small group instructional room shall be less than 150 square feet.]

[32. In a public school facility, the conversion of a space from one function to another causing physical renovation to satisfy educational program needs and/or the rules of the U.C.C. (for example, the conversion of a classroom into a science laboratory) shall be considered a change in use and subject to review and approval by the Department of Education. In a public school facility wherein the age group or grade level of the users change (for example, the intended use as a junior high or middle school of a school constructed as an elementary school) shall also be considered a change in use and subject to review and approval by the Department of Education.

33. Pre-manufactured educational units, vans and/or other mobile

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units:

i. Pre-manufactured units shall be reviewed and approved by the Bureau of Facility Planning Services and shall:

(1) Have a seal affixed by the manufacturer which indicates that it meets the educational construction standards for BOCA use group B in accordance with N.J.A.C. 5:23-4.25;

(2) Contain square footage appropriate to its use as specified in the School Capacity bulletin of the Bureau of Facility Planning Services, Department of Education;

(3) Meet code requirements for educational buildings as specified in the U.C.C. and in N.J.A.C. 6:22-2.3 and 6:22-2.4;

(4) Have two means of clear and unblocked egress, if the unit is a trailer in excess of 20 feet in length, which are remote from each other; otherwise it shall have a single means of egress;

(5) Sturdy steps provided with a handrail, except if the unit is to be used by a physically handicapped person it shall be barrier free;

(6) Have electric heat which provides a temperature of 68 degrees to 72 degrees Fahrenheit in the most extreme cold weather;

(7) Have a ceiling height as follows: vans or other mobile units—seven feet; trailers of 150 square feet—no less than seven feet; trailers of 151 to 300 square feet—no less than seven feet, six inches; trailers in excess of 300 square feet—no less than eight feet;

(8) Be furnished with provisions for the storage of students' clothing;

(9) Have a chalkboard and display board appropriate to the instructional program;

(10) Have floor covering of either carpet or asbestos-free vinyl tile;

(11) Have interior ceiling and wall materials which are certified free of non-toxic materials; and

(12) Be situated on an approved site.

(13) A maximum of 30 days shall be permitted to correct the code deficiencies listed in (1) through (12) above which are found during an evaluation of any pre-manufactured unit placed in service after the enactment of these regulations or of a subsequent future inspection of a unit approved according to these regulations. Staff of the Bureau of Facility Planning Services or county offices of education may order a unit immediately abandoned if, as a result of an evaluation, it is concluded that a clear and present danger exists for students and staff. A clear and present danger shall be defined as deficiencies involving code requirements relating to construction materials, fire safety or exiting. Failure or inability to correct code deficiencies shall be cause to permanently abandon a pre-manufactured unit.

ii. Pre-manufactured units in service prior to the enactment of these regulations will be evaluated by the Bureau of Facility Planning Services. If such evaluation indicates that a unit cannot meet the provisions of this section and/or the requirements of the BOCA code as summarized in specifications of the Department of Education for trailers, it shall be abandoned. If the evaluation indicates that code deficiencies can be corrected, districts will be permitted up to three years in which to correct the deficiencies. If the deficiencies are not corrected, the unit shall be abandoned.

iii. A pre-manufactured trailer unit being utilized as an emergency, temporary replacement for a regular classroom facility may be utilized for a maximum of two school years. As a pre-condition to the approval for the use of a trailer, a school district must have a plan approved by the county superintendent of schools for the provision of permanent facilities, including an implementation schedule. A trailer to be used for the delivery of basic skills services to nonpublic school students under the Federal Education Consolidation Improvement Act, Chapter I, Chapter 192 and 193 L. 1977 may be used as long as it meets the standards of this section and is evaluated and approved annually by the county superintendent of schools.

iv. A self-propelled van and/or other mobile unit used for instruction shall:

(1) Have mechanical ventilation and exhaust which provides 10 cfm air change per occupant per hour;

(2) Have interior ceiling and wall materials that are certified non-toxic and non-combustible;

(3) Contain a minimum of 100 square feet;

(4) Have electric heat which provides a temperature of 68 degrees

to 72 degrees Fahrenheit in the most extreme cold weather;

(5) Provide at least 50 footcandles of uniformly distributed artificial illumination;

(6) Have a ceiling height no lower than seven feet;

(7) Have two means of clear and unblocked egress which are remote from each other; if the exit is not at grade level, sturdy steps with a handrail shall be provided, except if the unit is to be used by a physically handicapped person it shall be barrier free;

(8) Be provided with door hardware which is lever-operated and which is fully operable from the interior and exterior at all times;

(9) Be provided with a single station smoke detection unit which has an annunciator that can clearly be heard within the unit;

(10) Be furnished with an electric hook-up cable which is copper, a maximum of 28 feet in length and contain a 220 volt four-prong receptacle which is plugged into an approved twist-type outlet;

(11) Be furnished with a 2A-10BC fire extinguisher which is maintained in operating order at all times;

(12) Be furnished with electrical fixtures which meet the National Electrical Code, Section 551;

(13) Have electrical wire of a minimum size to meet the National Electrical Code;

(14) Have floor covering of either carpet or asbestos-free vinyl tile;

(15) Be furnished with furniture and equipment which is stabilized while in transit;

(16) Pass an annual inspection by the New Jersey Division of Motor Vehicles;

(17) Be evaluated and approved annually by the county superintendent of schools; and

(18) Be furnished with wheel chocks to assure that the unit will not move in any direction when parked.

(19) A maximum of 30 days shall be permitted to correct the code deficiencies listed in (1) through (18) above which are found during an evaluation of any van and/or other mobile unit placed in service after the enactment of these regulations or of a subsequent future inspection of a van and/or other mobile unit approved according to these regulations. Staff of the Bureau of Facility Planning Services or county offices of education may order a van and/or other mobile unit immediately abandoned if, as a result of an evaluation, it is concluded that a clear and present danger exists for students and staff. A clear and present danger shall be defined as deficiencies involving code requirements relating to construction materials, fire safety and exiting. Failure or inability to correct code deficiencies shall be cause to order a permanent abandonment of a van and/or other mobile unit.

v. Pre-manufactured units in service prior to the enactment of these regulations will be evaluated by the Bureau of Facility Planning Services. If such evaluation indicates that a unit cannot meet the provisions of this section and/or the requirements of the BOCA code as summarized in specifications of the Department of Education for vans or other mobile units it shall be abandoned. If the evaluation indicates that code deficiencies can be corrected, districts will be permitted up to three years in which to correct the deficiencies. If the deficiencies are not corrected the unit shall be abandoned.

vi. A self-propelled van or other pre-manufactured mobile unit being utilized as an emergency, temporary replacement for a regular classroom facility may be utilized for a maximum of two school years. As a pre-condition to the approval for the use of a van/other mobile unit, a school district must have a plan approved by the county superintendent of schools for the provision of permanent facilities, including an implementation schedule. A van/other mobile unit to be used for the delivery of basic skills services to non-public school students under the Federal Education Consolidation Improvement Act, Chapter I, Chapter 192 and 193 L. 1977 may be used as long as it meets the standards of this section.]

(c) Exit requirements are as follows:

1. Minimum clear widths for primary corridors in elementary schools, grades kindergarten through eight, shall be:

i. Seven feet, wall-to-wall without lockers or wardrobes;

ii. Eight feet, wall to locker face with lockers or wardrobes on one side;

iii. Nine feet six inches, locker face to locker face with lockers or wardrobes on both sides;

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2. Minimum clear widths at any point in secondary schools, grades seven through 12, shall be:

- i. Seven feet six inches, wall to wall without lockers;
- ii. Eight feet six inches, wall to locker face with lockers or wardrobes on one side;
- iii. Ten feet, locker face to locker face with lockers or wardrobes on both sides.

3. Doors from all spaces used by students and school staff, excluding lavatories and locker rooms, shall swing into the corridor and shall have a safety vision strip of 1/4 inch wire glass which is not less than 100 square inches.

(d) Environment requirement is as follows:

1. Windowless classrooms and other windowless instructional spaces shall be air conditioned.

(e) Safety requirements are as follows:

1. Safety glass shall be used in both interior and exterior display cases.

2. A check valve shall be installed in the line supplying gas to each classroom, laboratory, shop or the area where gas is used by students, except home economics rooms.

3. The conduit of gas supply lines shall extend at least four inches outside and be vented above grade. Vent pipes shall terminate outside the building at a point not less than two feet measured vertically or horizontally from any window or other building opening. The outer end of vent pipes shall terminate in a weatherproof and securely fastened vent cap. Vent pipes shall terminate sufficiently above the ground to avoid being obstructed with snow and shall be secured firmly to the building. The entire installation shall be such that the gas piping can be readily replaced without damage to the building. Vents in courts shall extend at least five feet above the roof.

4. Science rooms, laboratories, shops and other instructional spaces in which open burning occurs shall be equipped with an emergency safety cold-water shower and a floor drain or a self-contained water receptacle or catch basin.

(f) Electrical requirements are as follows:

1. Push-type emergency cut-out switches shall be provided at appropriate locations within shops to de-energize the electrical supply to machinery. These switches shall be provided on the basis of one for each 1,000 square feet or fraction thereof of floor area in the shop, but in no case shall there be less than two. Reset of the interrupted service shall be by a key-operated switch located within the shop. The cut-off and reset circuits shall be designed and installed to negate the possibility of the control circuit being de-energized, thereby being inoperative.

2. All non-portable motorized equipment and machinery shall be provided with magnetic-type switches to prevent machines from automatically restarting upon restoration of power after an electrical failure or activation of the above emergency cut-off.

3. Instructional spaces shall be provided with sufficient outlets to satisfy the program need with not less than two duplex outlets remotely located.

4. Large group areas such as assembly rooms, auditoriums and other large group instructional spaces shall be provided with a convenience outlet at the probable location of portable projectors and built-in speaker cables at the above location as well as stage and platform areas.

5. All 125 volt, single-phase, 15 and 20 amp receptacles, when installed outdoors where there is direct grade level access, shall have ground-fault circuit interrupter protection. This shall apply, but is not limited to, all outlets on the exterior of buildings, athletic and playing fields, track areas, picnic areas, tennis courts and other similar areas.

6. All 125 volt, single-phase, 15 and 20 amp receptacles, when installed within a six foot radius of sinks, shall have ground-fault circuit interrupter protection. This shall apply, but not be limited to, classrooms, home economics laboratories, art rooms, science laboratories, vocational education shops, industrial arts shops, photography wet areas and garages.

7. All 125 volt, single-phase, 15 and 20 amp receptacles, when installed in lavatories and shower rooms, shall have ground-fault circuit interrupter protection.

(g) Lighting requirements are as follows:

1. Installed artificial lighting intensity shall comply with the following minimum footcandles which shall be maintained on the task at any time:

INSTALLED LIGHTING INTENSITY

Locations	Minimum Acceptable Footcandles
Classrooms and instructional areas—on work surface	50
Study halls, lecture rooms, art rooms, offices, libraries, conference rooms, work rooms, shops, laboratories and secondary school cafeterias	50
Drafting, typing and sewing rooms	70
Reception rooms, gymnasiums, auditoriums, cafeterias, all-purpose rooms and swimming pools	30
Locker rooms, washrooms, toilet rooms, corridors containing lockers, stairways	10
Corridors without lockers and storerooms	5
Classrooms for the partially sighted	70

(h) Plumbing requirements are as follows:

1. The number of plumbing fixtures, ventilation requirements, capacity of a school building and the student capacity of each instructional space and core facility within a school building shall be in conformance with the provisions of this chapter and be calculated according to N.J.A.C. 6:22-2.5(a)j and ii.

2. General pupil toilet rooms are those which are designed and labeled for pupil use, contain at least two of each required fixture and are directly accessible from a corridor or an open plan instructional space whenever the building is occupied. Pupils housed within an instructional space which is in excess of 300 square feet shall not be required to travel through any other space except a corridor to reach a general pupil toilet room.

3. There shall be at least one general toilet room for each sex which contains at least two of each respective fixture on each floor occupied by pupils or all instructional rooms shall have individual toilet rooms. Where classrooms, shops or physical education rooms are provided with self-contained individual facilities (water closet, lavatory and drinking fountains), the pupil capacity of these rooms shall not be counted in computing the number of fixtures required in the general pupil toilet rooms.

4. At least one individual toilet room shall be provided in each early intervention, pre-kindergarten and kindergarten classroom and meet the following criteria:

- i. Be located and equipped in such a way as to ensure privacy for the pupils;
- ii. Be accessible to physically handicapped students and barrier free in design as per N.J.A.C. 5:23-7;
- iii. Meet all other provisions of N.J.A.C. 6:22-2.4(b) which pertain to toilet room design;
- iv. Contain the following:

(1) A water closet, equipped with an open front seat with a flood rim height no greater than 10 inches from the floor;

(2) A lavatory (sink) with a flood rim height no greater than 26 inches from the floor;

(3) A diaper/clothes changing area (early intervention only);

5. Entrance to toilet rooms and locker rooms shall be screened to prevent visibility into the room.

6. Water closets shall be separated by individual stall partitions including doors which are of a smooth impervious material to permit effective cleaning.

7. Floors of all toilet rooms, shower rooms and drying rooms shall be water-tight and impervious to moisture. Floors shall be provided with an integral cove base at least four inches high.

8. Flooring materials, except for use in showers, of ceramic tile, quarry tile, sheet vinyl and plastic coatings designed for this purpose shall be deemed to meet the requirements of this subchapter. Resilient tiles or exposed concrete are not acceptable in toilet rooms.

9. Where showers are provided, benches shall be 30 inches apart, one shower head for each five to six boys and three to four girls, shower head height of five feet for girls and six feet for boys, and 12 square feet per shower head.

10. Prekindergarten and kindergarten classrooms shall be equipped with a drinking water facility.

(i) Pre-manufactured educational unit, van and/or other mobile unit shall comply with the following:

1. Pre-manufactured units shall be inspected and approved by the

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Bureau of Facility Planning Services and shall:

i. Have a seal affixed by the manufacturer which indicates that it meets the educational construction standards for BOCA use group B in accordance with N.J.A.C. 5:23-4.25;

ii. Contain square footage appropriate to its use as specified in this chapter;

iii. Meet code requirements for educational buildings as specified in the U.C.C. and in N.J.A.C. 6:22-2.3 and 6:22-2.4;

iv. Have two means of clear and unblocked egress, if the unit is a trailer in excess of 20 feet in length, which are remote from each other, otherwise there shall be a single means of egress;

v. Have sturdy steps provided with a handrail, except if the unit is to be used by a physically handicapped person it shall be barrier free;

vi. Have electric heat which provides a temperature of 68 to 72 degrees Fahrenheit in the most extreme cold weather;

vii. Have a ceiling height as follows: vans or other mobile units—seven feet; trailers of not more than 150 square feet—no less than seven feet; trailers of 151 to 300 square feet—no less than seven feet, six inches; trailers in excess of 300 square feet—no less than eight feet.

viii. Have provisions for the storage of students' clothing;

ix. Have a chalkboard and display board appropriate to the instructional program;

x. Have floor covering of either carpet which meets flame spread requirements as per the U.C.C. or asbestos-free vinyl tile;

xi. Have interior ceiling and wall materials which are certified free of toxic materials; and

xii. Be provided with an electric smoke detection unit which has an audible alarm for each 900 square feet or portion thereof or for each instructional space if the trailer is divided into more than one approved instructional space;

xiii. Be situated on an approved site;

xiv. A maximum of 30 days shall be permitted to correct the code deficiencies listed in i. through xiii. above which are found during an evaluation of any pre-manufactured unit placed in service after June 4, 1986 or of a subsequent future inspection of a unit approved according to these regulations. Staff of the Bureau of Facility Planning Services or county offices of education may order a unit immediately abandoned if, as a result of an evaluation, it is concluded that a clear and present danger exists for students and staff. A clear and present danger shall be defined as deficiencies involving code requirements relating to construction materials, fire safety or exiting. Failure or inability to correct code deficiencies shall be cause to permanently abandon a pre-manufactured unit.

2. Pre-manufactured units in service prior to June 4, 1986 will be evaluated by the Bureau of Facility Planning Services. If such evaluation indicates that a unit cannot meet the provisions of this section and/or the requirements of the Uniform Construction Code as summarized in specifications of the Department of Education for trailers, it shall be abandoned. If the evaluation indicates that code deficiencies can be corrected, districts will be permitted up to three years in which to correct the deficiencies. If the deficiencies are not corrected, the unit shall be abandoned.

3. A pre-manufactured trailer unit being utilized as an emergency, temporary replacement for a regular classroom facility may be utilized for a maximum of two school years. As a pre-condition to the approval for the use of a trailer, a school district must have a plan approved by the county superintendent of schools for the provisions of permanent facilities, which includes an implementation schedule. A trailer utilized for the delivery of basic skills services to nonpublic school students under the Federal Education Consolidation Improvement Act, Chapter 1, Chapters 192 and 193 L. 1977 may be used as long as it meets the standards of this section and is evaluated and approved annually by the county superintendent of schools.

4. A self-propelled van and/or other mobile unit used for instruction shall:

i. Have mechanical ventilation and exhaust which provides air change per occupant per hour in accordance with Section 1603.1 of the BOCA National Mechanical code;

ii. Have interior ceiling and wall materials that are certified non-toxic and non-combustible;

iii. Contain a minimum of 100 square feet;

iv. Have electric heat which provides a temperature 68 to 72 degrees Fahrenheit in the most extreme cold weather;

v. Provide at least 50 foot candles of uniformly distributed artificial illumination;

vi. Have a minimum ceiling height of seven feet;

vii. Have two means of clear and unblocked egress which are remote from each other. If the exit is not at grade level, sturdy steps with a handrail shall be provided, except if the unit is to be used by a physically handicapped person it shall be barrier free;

viii. Be provided with door hardware which is lever-operated and fully operable from the interior and exterior at all times;

ix. Be provided with an electric smoke detection unit which has an audible alarm that can clearly be heard within the unit;

x. Be furnished with an electric hook-up cable which is copper, a maximum of 28 feet in length and contain a 220 volt four-prong receptacle which is plugged into an approved twist-type outlet;

xi. Be furnished with a 2A-10BC fire extinguisher which is maintained in operating order at all times;

xii. Be furnished with electrical fixtures which meet the National Electric Code, Section 551;

xiii. Have electrical wire of a minimum size to meet the National Electrical Code;

xiv. Have floor covering of either carpet which meets flame spread requirements of the U.C.C. or asbestos-free vinyl tile;

xv. Be furnished with furniture and equipment which is stabilized while in transit;

xvi. Pass an annual inspection by the New Jersey Division of Motor Vehicles;

xvii. Be evaluated and approved annually by the county superintendent of schools;

xviii. Be furnished with wheel chocks to assure that the unit will not move in any direction when parked; and

xix. A maximum of 30 days shall be permitted to correct the code deficiencies listed in i. through xviii. above which are found during an evaluation of any van and/or other mobile unit placed in service after June 4, 1986 or of a subsequent future inspection of a van and/or other mobile unit approved according to these regulations. Staff of the Bureau of Facility Planning Services or the county superintendent may order a van and/or other mobile unit immediately abandoned if, as a result of an evaluation, it is concluded that a clear and present danger exists for students and staff. A clear and present danger shall be defined as deficiencies involving code requirements relating to construction materials, fire safety and exiting. Failure or inability to correct code deficiencies shall be cause to order a permanent abandonment of a van and/or other mobile unit.

5. Pre-manufactured units in service prior to June 4, 1986 will be evaluated by the Bureau of Facility Planning Services. If such evaluation indicates that a unit cannot meet the provisions of this section and/or requirements of the Uniform Construction Code as summarized in Department of Education specifications for vans or other mobile units, it shall be abandoned. If the evaluation indicates that code deficiencies can be corrected, districts will be permitted up to three years in which to correct the deficiencies. If the deficiencies are not corrected, the unit shall be abandoned.

6. A self-propelled van or other pre-manufactured mobile unit being utilized as an emergency, temporary replacement for a regular classroom facility may be utilized for a maximum of two school years. As a pre-condition to the approval for the use of a van or other mobile unit, a school district must have a plan, including an implementation schedule, approved by the county superintendent of schools for the provision of permanent facilities. A van or other mobile unit to be used for the delivery of basic skills services to non-public school students under the Federal Education Consolidation Improvement Act, Chapter 1, Chapters 192 and 193 L. 1977 may be used as long as it meets the standards of this section.

6:22-2.5 School space sizes and capacity

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

“Capacity” of a school building means:

i. The sum of the capacities of each instructional space which is

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calculated by subtracting the square feet for program activity, furniture and equipment, both built-in and moveable, storage and any other activity or item to be housed from the gross square footage to determine the net square feet per space and dividing that number by the net square feet per occupant as required in (b) below; plus

ii. The sum of the capacities of each instructional space which is calculated by dividing the gross square feet per space by the gross square feet per occupant as required in (b) below.

“Departmentalized elementary school” means a school in which any combination of grades is organized according to a departmentalized structure pursuant to N.J.A.C. 6:3-1.10(1)16 with students moving from teacher to teacher during the day.

“Middle school” means a school which contains any combination of grades from five through eight in which at least two grades are organized according to a departmentalized structure.

“Minimum gross area in square feet” means the least amount of square feet required for a space in a school.

“Minimum square feet per pupil” means the least amount of square feet required for each pupil to be housed in a space in a school.

“Non-departmentalized elementary school” means a school that contains any combination of grades in kindergarten through eight in which pupils spend the majority of instructional time with one teacher.

“Pupil station” means the gross area in square feet required for one pupil.

“Secondary school” means a school in which any combination of grades seven through 12 is contained, including vocational schools, and the organization for instruction is departmentalized.

(b) The minimum square feet for each instructional space shall be determined by the net and gross square feet values shown below together with the definitions of net and gross square feet presented in (c) below. The capacity of a school building shall be calculated according to definitions in (a) above.

Area	Minimum Required Floor Area in Square Feet per Occupant
Classrooms, including early intervention, pre-kindergarten, kindergarten	20 net
Classrooms (students with physical mobility problems, for example, wheelchair)	25 net
Science laboratories	20 net
Shops and laboratories for industrial arts and vocational education	50 net
Small group instruction, including music practice	20 net
Conference rooms	15 net
Auditorium, excluding stage	7 net
Cafeteria and faculty dining	
Food service	15 net
Assembly, unfixed seats	7 net
Gymnasium (all school types)	—
Spectator area	3 net
Physical education-athletics, with spectator area in gymnasium	100 net
Physical education-athletics, with no spectator area	125 net
Assembly, unfixed seats	7 net
Auxiliary gymnasium and/or weight room (20 student capacity base)	40 net
Locker room	20 net
Multi-purpose Room	
Spectator area	3 net
Physical education-athletics	80 net
Food service	15 net
Assembly, unfixed seats	7 net
Instructional Materials Center	—
Reading room	50 net
Seminar—small group	20 net
Stacks (.25 x reading room capacity—elementary)	100 gross
(.33 x reading room capacity—middle, junior/senior high school)	
Other support spaces	20 net
Health Center	—
Cot area	30 net
Examination room	20 net
Offices	60 net, first occupant; 15 net additional occupants

(c) Instructional and non-instructional spaces for which a maximum floor area per occupant is not delineated in (b) above shall be provided with sufficient square feet to accommodate their functions and are subject to approval by the Bureau of Facility Planning Services.

(d) A net square feet per occupant figure is one which establishes the square feet for safety and exit facilities. The gross area in square feet per space is the capacity (highest number of occupants) multiplied by the net square feet per occupant, for activity areas, furniture and equipment (both built-in and moveable), storage and any other activity or item to be housed.

(e) A gross square feet per occupant is one which establishes the required area in square feet for a defined purpose. The gross area in square feet required per space is the capacity (highest number of occupants) multiplied by the gross square feet per occupant.

SUBCHAPTER 3. SUBSTANDARD SCHOOL FACILITIES

6:22-3.1 Emergency provisions for accommodation of school pupils in substandard school facilities

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

(d) All substandard educational facilities shall be initially approved by the county superintendent of schools of the county in which the district board of education is situated, such approval to be given for a maximum period of two years except as prescribed in (b) above. No substandard educational facility, however, shall be approved for more than two consecutive years unless [it is] inspected by the Bureau of Facility Planning Services [in the Division of Finance], Department of Education to ensure that:

1. The facilities meet health, safety and educational adequacy standards for temporary, substandard facilities, as specified in [the School Capacity bulletin:] this chapter;

2. The utilization of the facilities is temporary; and

3. A plan has been developed by the district board of education and approved by the county superintendent of schools to upgrade the facilities to standard, fully approved conditions.

(e) The Bureau of Facility Planning Services and the county superintendent of schools, when considering educational adequacy, shall apply the minimum standards of square feet per space and per pupil as contained in this [sub]chapter [and in the School Capacity bulletin]. In cases where a district board of education feels it must have relief from the minimum square feet requirements, such relief shall be determined upon application to the county superintendent of schools. The county superintendent shall make recommendations to the assistant commissioners of the Divisions of Finance and [of] County and Regional Services who jointly may grant relief upon consideration of educational, health and safety standards.

(f) County superintendents of schools will annually monitor the plans of district boards of education to upgrade facilities to State-approved temporary substandard and/or fully approved, standard status.

(g) District boards of education must provide funds in the next immediate annual budget to correct deficiencies about which they are notified by the Bureau of Facility Planning Services on or before October 1 annually. Failure to budget for the correction of deficiencies and to implement the corrections by the next September 1 [date] following the October 1 notice, except as specified in (h) below, shall result in the facility being abandoned.

(h) If a district board of education cannot afford to correct all identified deficiencies in one budget year because of the total costs associated with large numbers of substandard facilities, the district board's long-range facility plan must include a sub-plan for the correction of the deficiencies. The sub-plan must be updated annually and identify funding sources such as an annual budget or a capital improvement authorization. Inclusion of a sub-plan to correct deficiencies in substandard facilities does not relieve a district board of education from implementing the corrections in the shortest time possible.

(i) In making a determination upon any application for the use of emergency substandard facilities, the following factors shall be taken into account:

1. Accommodations in an existing public school:
- i. Safety factors:

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(1) The floors, walls and ceilings of rooms used for instruction shall be free from moisture, peeling paint, plaster and [materials which are] potentially hazardous **materials**;

(2) Provision shall be made for the storage of pupils' clothing in other than [in] a corridor or exitway;

(3) Each instructional room housing more than 10 pupils and containing more than [400] **300** square feet shall have a door opening directly into the corridor or an exit door opening directly to the exterior[. Any windowless room shall have two separate means of egress leading to an exitway separated by fire doors];

(4) The hardware on doors of any space occupied by pupils shall be of the knob-operated or lever-operated types only, permitting egress from the room at all times. Key-operated locks, thumb-turn locks, hasps or similar types of locking devices shall not be permitted;

(5) Doors opening into the corridor, **transoms and sidelights** shall be glazed with one-quarter inch wire plate glass [only];

(6) Every enclosed space shall be protected by [either] an approved automatic fire or smoke detector or a fire suppression device tied into the total public school fire alarm system;

(7) Each instructional room capable of housing more than 10 pupils shall have an approved exitway with sufficient units of exit available [and] within 150 feet travel distance;

(8) (No change.)

(9) Concrete floors shall be covered with a resilient floor covering, except in shops. Any carpeting, together with its backing or underlayment, shall have passed the flame spread requirements of 75 or less as per the American Society for Testing and Material 84-77.

ii. (No change.)

iii. Heating and ventilation:

(1) The room shall be uniformly heated to a temperature of at least 68[°F] **degrees Fahrenheit** [and not to] **that does not exceed 80[°F] degrees Fahrenheit** when occupied;

(2) Each instructional room shall have natural light with one or more operative window sash [which as a stool height not to exceed four feet six inches;] or the room shall have mechanical air supply and exhaust sufficient to provide not less than [two air changes per hour] **10 cfm of tempered outside air and 15 cfm of recirculated air**.

iv. Toilet facilities and drinking fountains: Toilet facilities shall be available within a reasonable distance, [that is,] not more than one floor away, and shall be equipped with an exterior operating window sash or mechanical exhaust ventilation.

v. Lighting: At least 50 footcandles of uniformly distributed artificial illumination shall be provided. Emergency lighting shall also be provided if the space is windowless and exceeds [400] **300** square feet.

vi. Equipment and supplies: Furniture and equipment **which is in good condition and** suitable for the age and size of the pupils[,] and purposes of instruction [and which is in good condition] shall be provided.

vii. Room size: Each small group instruction room shall provide at least 20 **net** square feet of open floor area per pupil with no dimension less than 10 feet and **total space** not less than [100] 150 square feet. [Rooms housing handicapped pupils shall generally adhere to the] **Boards of education shall consider the recommendations of the [“]School Capacity[”] bulletin and other applicable policy documents of the Department of Education in planning for facilities housing handicapped pupils.**

viii. Instruction:

(1) (No change.)

(2) Sufficient electrical duplex outlets shall be provided to satisfy the [educational] program **need** with not less than one outlet per space.

2. Emergency provisions for accommodation of school pupils in off-site, rented or leased buildings:

i. Safety factors:

(1) The floors, walls[,] and ceilings of rooms used for instruction shall be free from moisture, peeling paint, plaster and [materials which are] potentially hazardous **materials**;

(2) Provision shall be made for the storage of pupils' clothing in other than [in] a corridor or exitway;

(3) Each instructional room [housing more than 10 pupils and] containing more than [400] **300** square feet shall have a door opening

directly into the **corridor or an exit door opening directly to the exterior**[. Any windowless room shall have two separate means of egress leading to an exitway separated by fire doors];

(4) The hardware on doors of any space occupied by pupils shall be of the knob-operated or lever-operated types only, permitting egress from the room at all times. Key-operated locks, hasps or similar types of locking devices shall not be permitted;

(5) Concrete floors shall be covered with a resilient floor covering, except in shops. Any carpeting, together with its backing or underlayment, shall have passed the flame spread requirements of 75 or less as per the American Society for Testing and Material 84-77;

(6) Each exterior exit door serving more than [25 persons] **one classroom** shall be equipped with panic hardware only and shall be free at all times of chains or other restraints;

[7] Every building shall be equipped with a manual fire alarm system with pull stations located at or near each exterior exit door, place of assembly, boiler room, and main office. The system shall be designated to provide continuing ringing automatically with bells located so that the bells are clearly audible in all occupied spaces;]

**(7) An off-site, rented or leased building which does not have a fire detection system shall have an automatic fire detection system which is interconnected to every space in use installed prior to occupancy by students and staff. An off-site, rented or leased building which has an existing manual fire alarm shall, by the start of its fourth year of use, be equipped with an automatic fire detection system which is interconnected to all spaces in use;**

(8) (No change.)

(9) The boiler room shall be enclosed by a floor, wall and ceiling designed to provide not less than a 3/4 hour fire [resistance] **resistive** rating. All openings within the enclosure shall be equipped with a self-closing “C” label fire door lettered “Fire Door Keep Closed [.]”. Provision shall be made for a fresh air intake to supply outside air necessary to support burner combustion.

ii. Ceiling height: The average ceiling height shall be at least eight feet six inches for instructional spaces containing [400] **300** square feet of floor area.

iii. Heating and ventilation:

(1) The room shall be uniformly heated to a temperature of at least 68[°F] **degrees Fahrenheit** [and] **that does not [to] exceed 80[°F] degrees Fahrenheit** when occupied;

(2) Each instructional room shall have natural light with one or more operative window sash [which has a stool height not to exceed four feet six inches;] or the room shall have mechanical air supply and exhaust sufficient to provide not less than [two air changes per hour] **10 cfm of outside air and 15 cfm of recirculated air**.

iv. Lighting: At least 50 footcandles of uniformly distributed artificial illumination shall be provided. Emergency light shall also be provided if the space is windowless. [and exceeds 400 square feet.]

v. Toilet facilities and drinking fountains:

(1) There shall be a minimum of two urinals[, two water closets] and two lavatories [for both boys and girls] **in boys' toilets and a minimum of two water closets and two lavatories in girls' toilets.** [They] **Toilet facilities** shall be available within a reasonable distance, [that is,] not more than one floor away, and shall be equipped with an exterior operating window sash or mechanical exhaust ventilation. [Single t]Toilet facilities [will be permitted] **shall be provided** for students in [grades] **early intervention, pre-kindergarten[,] and kindergarten[, one and two;] programs as per N.J.A.C. 6:22-2.4(h)4.**

(2) At least one drinking fountain for each 50 pupils shall be provided.

vi. Schoolground and play facilities: The **outside** recreational [-outside] play area for students shall include, but not be limited to, sufficient space, equipment and safe surfaces for the building enrollment and program need and be protected from hazards or traffic conditions.

vii. Equipment and supplies: Furniture and equipment **which is in good condition and** suitable for the age and size of the pupils[,] and purposes of instruction [and which is in good condition] shall be provided.

viii. Room size: Each small group instructional space shall provide at least 20 **net** square feet of open floor area per pupil with no dimension less than 10 feet and not less than 100 square feet. [Rooms

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housing handicapped pupils shall generally adhere to the "School Capacity" bulletin and other applicable policy documents of the Department of Education.]

ix. Instruction:

(1) Chalkboard, or other appropriate writing surface, and a display board suitable for the instructional program shall be provided[;].

(2) Sufficient electrical duplex outlets shall be provided to satisfy the instructional program with not less than one outlet per space.

x. Other:

(1) A copy of [an] **the** Occupancy Permit for the facility issued by the local construction official shall be on file in the Department of Education[;], **Bureau of Facility Planning Services.**

(2) A copy of [an] **the annual** inspection report from the local fire official and/or health official approving use of the facility shall be on file in the [Department of Education] **office of the county superintendent of schools.**

**SUBCHAPTER 4. LONG-RANGE FACILITIES PLANS**

**6:22-4.1 Long-range facilities plans**

(a) Long-range facilities plans projecting a five-year estimate of capital construction needs shall be maintained by each school district. [The purpose of the long-range facility plan is to provide the individual district with a tool to use on a regular basis. Updating is required every five years; however, it is strongly recommended that this be used as a planning tool on an annual basis.]

[(b) The original master plan submitted by July 1, 1979 included a thorough description and analysis of local and regional demographic factors which influence general population growth and public school enrollments, a thorough description and analysis of local geographic features, socioeconomic characteristics of the population, community aspirations and financial ability to support education, population mobility, transportation and traffic patterns and facilities, the educational program, administrative structure of the school system, condition and utility of existing educational and recreational facilities, zoning ordinances, land use, utilities available throughout the district and public cultural facilities.]

[(c) Updated long-range facilities plan shall be submitted to the appropriate county superintendent of schools before July 1, 1985, whenever construction plans are sent to the Bureau of Facility Planning Services, and every five years thereafter.]

**(b) Long-range facility plans shall be updated every five years from the original submission date of July 1, 1985 and submitted to the county superintendent of schools.**

**(c) Revised facility plans shall be submitted to the county superintendent whenever construction plans are sent to the Bureau of Facility Planning Services.**

(d) (No change.)

1. (No change.)

2. Anticipated facilities needs on a year-by-year basis.

(e) The following items need to be completed only if changes in these areas have occurred or are anticipated since the [last] submission of a master plan **on July 1, 1979** or long-range facilities plan:

1. (No change.)

2. Changes in the educational program, grade organization[,], and/or facilities including, but not limited to, an addition to a school[;], a new school[;], a new administration building, bus garage[,], or similar facility[;] and the closing of a school;

3. Changes in joint school and/or community use of facilities.

(f) (No change.)

(g) All floor plans and functional capacities included in the long-range facilities plan shall be shown in accordance with the most recent approval of the Department of Education. Temporary or emergency partitions shall not be shown as approved walls.

**(a)**

**Special Education Pilot Project**

**Proposed New Rules: N.J.A.C. 6:28-11**

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 16, 18A:4-23 and 24, 18A:46-1 et seq. and 18A:7A-(5)j.

Proposal Number: PRN 1988-18.

Submit comments by February 3, 1988 to:

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

The agency proposal follows:

**Summary**

On June 6, 1984, N.J.A.C. 6:28 was adopted by the State Board of Education. In January, 1986, a Plan to Revise Special Education in New Jersey was presented to the State Board of Education. The proposed new rules implement the Plan which is designed to improve the special education delivery system through modifications in programs and services, funding and teacher training. The Plan will be implemented in 10 pilot projects (including 13 local school districts) during the 1988-90 school years. Upon completion of the pilot project, decisions will be made regarding statewide implementation.

The goal of the Plan is to improve the delivery of services to all pupils experiencing learning problems by:

(1) Increasing the capacity of regular education to serve pupils with learning problems without having to unnecessarily label them as handicapped;

(2) Increasing the role of the child study team in providing services to pupils and teachers in general education;

(3) Focusing evaluation and placement procedures for handicapped pupils on instructional needs;

(4) Clearly defining eligibility criteria for special education;

(5) Developing a program-based categorical special education system;

(6) Increasing and improving program options available in special education; and

(7) Assuring that all rights of handicapped children and their parents provided under state and federal laws are maintained.

Modifications to the current system focus on the establishment of school resource committees, child study team operations, the use of eligibility criteria, the individualized education program, part-time and full-time special education programs.

**Social Impact**

The proposed new rules will apply only to those 13 districts which have been selected to pilot the Plan during the 1988-90 school years. Those districts have already agreed to all aspects of the Plan and will receive department assistance in preparing to implement school resource committees, child study team changes and program and service delivery changes.

**Economic Impact**

No major economic impact is expected as a result of these new rules as it is anticipated that the Plan can be implemented with existing staff. The pilot districts will continue to be funded under the current procedures. Part of the evaluation of the pilot project will be to analyze the fiscal impact of the programmatic aspects of the Plan. A simulation of the funding recommendations of the Plan will also be conducted.

**Regulatory Flexibility Statement**

The proposed new rules impose no reporting, recording or compliance requirements on small businesses. All requirements of the proposal impact only upon 13 New Jersey public school districts and their pupils.

**Full text** of the proposed new rules follows.

**6:28-11.1 General provisions**

(a) The New Jersey Department of Education has developed the Plan to Revise Special Education in New Jersey (Plan). The Plan is a major initiative of the department and includes a set of recommendations designed to improve the organization and delivery of special education programs and services to handicapped pupils. The Plan is also designed to build the capacity in regular education to serve nonhandicapped pupils with mild learning problems in regular education.

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(b) The Plan to Revise Special Education in New Jersey is being implemented as a pilot project operated by the Department of Education in selected local districts under the authority of N.J.S.A. 18A:7A(5)j during the 1988-1990 school years.

(c) This subchapter shall replace N.J.A.C. 6:28-3.1 through 3.5 and N.J.A.C. 6:28-4.1(a) through (e) and 4.2 and shall apply only to those districts selected by the Department of Education to pilot the Plan. All other provisions of N.J.A.C. 6:28 shall apply to such districts except as specifically noted in this subchapter.

(d) Prior to September 1, 1988, the child study teams of pilot districts shall determine an appropriate eligibility status for all pupils classified according to N.J.A.C. 6:28-3.5(d).

1. The pupil's instructional needs shall be used to determine eligibility for special education and/or related services according to N.J.A.C. 6:28-11.7(d).

2. Parents shall be notified of the eligibility status in (d) above at a conference attended by the pupil's case manager and classroom teacher.

(e) If any provision of this subchapter or the application of such a provision to any person is found invalid, such invalidity shall not affect other provisions or applications of this subchapter which can be given effect. To this end, the provisions of this subchapter are declared to be severable.

**6:28-11.2 School resource committees**

(a) All pilot district boards of education shall establish at least one school resource committee in each of its regular schools. The school resource committee is a standing committee whose purpose it is to assist teachers with strategies for educating non-handicapped pupils with learning and/or behavior problems in regular education. Pilot district boards of education shall develop procedures for requesting the services of the school resource committee, implementing committee recommendations and communicating with parents.

1. The core membership of the school resource committee shall be the building principal or designee with the authority of the principal to implement recommendations, one child study team member and at least one of the following:

- i. A classroom teacher;
- ii. A guidance counselor;
- iii. A school nurse;
- iv. A reading specialist;
- v. A compensatory education teacher; or
- vi. Other certified regular education school personnel.

2. The principal or designee shall serve as chairperson of the school resource committee.

3. Core membership of the school resource committee shall be determined by procedures developed by the chief school administrator of the district. The committee shall include the staff member who requested assistance. No special education staff member, other than the designated child study team member, may serve as a core member of the committee. The committee may be increased to include other school staff when considering the needs of a particular pupil. The committee may call upon other school staff to carry out assistance plans for specific pupils.

(b) The school resource committee shall request health information from the school nurse for all pupils being discussed. The school nurse shall review the pupil's health records and apprise the committee of all educationally relevant information about the pupil being discussed.

(c) The school resource committee shall prepare assistance plans for pupils who require modifications to their regular education program. Those plans shall detail the modification(s) developed for the pupil and be reviewed within eight weeks of their implementation. The recommendation(s) of the assistance plan must be carried out and shall:

1. List the specific modifications to be made;
2. Name the person(s) responsible to implement the recommendations; and
3. Indicate who will review the pupil's progress.

(d) If the recommendations of the school resource committee are ineffective, the assistance plan shall be amended or the pupil may

be referred to the child study team to determine eligibility for special education and/or related services.

(e) Parents shall be notified that their child is to be discussed by the school resource committee and of any changes made in their child's program.

**6:28-11.3 Child study teams**

(a) A child study team is an interdisciplinary group of appropriately certified persons who shall:

1. Evaluate pupil instructional needs and determine eligibility for special education and/or related services for pupils referred as potentially handicapped;

2. Coordinate the development, monitor and evaluate the effectiveness of the individualized education program for pupils determined eligible for special education and/or related services;

3. Deliver appropriate related services to educationally handicapped pupils;

4. Provide preventive and support services to nonhandicapped pupils;

5. Provide services to the regular education staff which include:

i. In-service training, demonstration teaching, curriculum development;

ii. Provision of techniques, materials and programs for pupils experiencing difficulties in learning;

iii. Consultation with school staff and parents;

iv. The design, implementation and evaluation of techniques to prevent and/or remediate educational difficulties;

v. Core membership on the school resource committees.

(b) A child study team shall consist of a learning disabilities teacher-consultant, a school psychologist, a school social worker and a speech-language specialist. All members of the child study team shall be employees of the pilot district board of education, have an identifiable apportioned time commitment to the local school district and be available during the hours when pupils are in attendance.

(c) The child study team shall consult with a school nurse when considering medical diagnostic services.

**6:28-11.4 Identification**

(a) Each pilot district board of education shall adopt written procedures for screening and identifying those pupils between the ages of three and 21 who reside within the local school district, may be educationally handicapped and are not receiving special education and/or related services as required by this chapter. Children below the age of three shall be identified, located and evaluated through programs operated by or through contract with the Department of Education.

1. The identification procedures shall include criteria to identify pupils who may be experiencing physical, sensory, social/emotional, learning, communication or cognitive difficulties.

2. The identification procedures shall provide for participation of the school resource committee, instructional, administrative and other professional staff of the local school district, parents and agencies concerned with the welfare of pupils.

(b) A newly enrolled pupil who is identified pursuant to (a) above, but not classified as educationally handicapped by the school district of previous enrollment, shall be placed in a regular public school program. If the chief school administrator, after consultation with the child study team, determines that such placement of the pupil may do serious harm to the pupil or others, the pupil may be placed on home instruction for a period not to exceed 30 calendar days pending child study team evaluation and determination of special education eligibility. Simultaneously with such placement of a pupil on home instruction, the chief school administrator shall initiate referral to the child study team according to N.J.A.C. 6:28-11.5(a) through (f).

**6:28-11.5 Referral**

(a) Prior to any decision regarding referral of a pupil to a child study team for determination of eligibility for special education programs or services, a certified staff member shall request the school resource committee to recommend interventions in the regular public school program to address educational problems. The following exceptions to this provision apply:

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1. School resource committee intervention is not required for a pupil whose educational problems are such that direct referral to the child study team can be supported.

2. Parents may refer their child to the child study team directly. The child study team shall determine the appropriateness of any such referral.

(b) A written report by the school resource committee of the intervention's effect and other collected data regarding the pupil shall be presented to the child study team upon referral of the pupil.

(c) The parent(s) of a pupil being considered for referral to a child study team shall receive written notification as described in N.J.A.C. 1:6A-1.1 et seq. and 6:28-2.3.

(d) When parental consent for a pupil's referral to the child study team is withheld, the district board of education may request a due process hearing according to N.J.A.C. 6:28-2.7.

(e) Audiometric screening shall be conducted for every pupil referred to the child study team including those referred solely for speech and language services according to N.J.A.C. 6:29-8.

(f) The school nurse shall gather, review and summarize relevant health information including, but not limited to, routine examinations, health records and medical reports and shall recommend a comprehensive medical evaluation, if appropriate, as part of the child study team referral materials.

(g) When a parent identifies a child age three to five as potentially handicapped, the district board of education shall use a screening procedure to determine if the child should be referred directly to the child study team for comprehensive evaluation.

(h) When a child who has been enrolled in an early intervention program attains the age of three, as defined in N.J.A.C. 6:28-1.3, the pilot district board of education shall accept the child as identified and proceed with referral directly to the child study team.

(i) When the Division of Youth and Family Services, Department of Human Services, identifies a potentially educationally handicapped pupil for whom a local school district is responsible, the district shall accept the pupil's identification by the Division of Youth and Family Services and request parental consent to refer the pupil directly to its child study team according to this subchapter.

(j) Pupils referred solely for speech and language services may be referred directly to the speech-language specialist and need not be reviewed by the entire child study team.

#### 6:28-11.6 Comprehensive evaluation

(a) Following receipt of parental consent for referral of a pupil, the child study team shall meet to determine the need for a comprehensive evaluation and, if appropriate, design an evaluation plan and designate a case manager. A determination of the pupil's communication skills and dominance in English and the native language shall be completed as part of the development of the evaluation plan. The purpose of the evaluation shall be to:

1. Determine eligibility for special education and/or related services; and

2. Determine an appropriate educational program and placement for the pupil.

(b) The evaluation plan shall include:

1. The specific information to be obtained, and

2. The child study team members who will participate in the evaluation.

i. The child study team shall gather appropriate data about the referred pupil and determine what additional diagnostic information must be gathered in order to assist in determining eligibility for special education and/or related services and in determining the instructional needs of the pupil.

ii. The child study team shall develop a description of the available data about the pupil and that data which must still be gathered in order to address the concerns expressed in the child study team referral. The child study team shall prepare a statement which supports the basis upon which testing is decided.

iii. Eligibility criteria as listed in N.J.A.C. 6:28-11.8 shall be considered.

iv. Data collection shall include, but not be limited to, an interview with the referring teacher and parent, if direct referral is made by the parent(s).

3. The evaluation procedures necessary to obtain this information;

4. The language(s) or method of communication to be used in the evaluation process;

5. The designation of a child study team member as case manager.

(c) A copy of the evaluation plan shall be sent to the pupil's parent(s).

(d) All evaluations leading to a determination of a pupil's eligibility for special education and/or related services shall be completed without undue delay, in accordance with N.J.A.C. 6:28-2.1.

(e) Changes in the evaluation plan shall be reported to the parent prior to implementation.

(f) All evaluations specified in this chapter shall:

1. Be conducted on an individual basis;

2. Use information from group tests only to supplement individual evaluations;

3. Be conducted in the dominant language or method of communication determined in the evaluation plan; and

4. Consider the pupil's socio-cultural background and adaptive behavior in home, school and community.

(g) A comprehensive evaluation shall consist of the following:

1. A minimum of two child study team members shall evaluate a pupil to determine eligibility for special education and/or related services and the program needs of the pupil. Evaluator selection shall be based upon the nature of the educational problem, available pupil records, eligibility criteria and program planning. A parent shall have the right to receive a third child study team member assessment of their child upon request.

i. The child study team shall determine the need for specialized educational evaluations which are necessary for educational planning. The child study team in consultation with the school nurse and/or school physician shall determine the need for comprehensive, as well as specialized, medical evaluations.

ii. All preschool pupils referred to the child study team shall undergo a comprehensive medical evaluation.

iii. The case manager shall coordinate the evaluation efforts of the team in order to maintain timelines and appropriate parent involvement.

2. Assessment by a child study team member must include an appraisal of the pupil's current functioning and an analysis of instructional implications appropriate to the discipline reporting. The assessment must comply with the eligibility criteria of N.J.A.C. 6:28-11.8, address those areas included in the evaluation plan based upon the presenting problem of the referred pupil, and result in a written report.

(h) Each evaluation must:

1. Consider the requirements for eligibility for special education and/or related services;

2. Be used to determine instructional needs of the pupil; and

3. Consider any relevant medical condition in evaluating the pupil's instructional needs.

(i) Eligibility assessment for speech and language services shall be conducted by the speech-language specialist and others as appropriate and include a written report from the pupil's teacher.

(j) Examination results and findings of other specialists shall be included in the comprehensive evaluation where appropriate.

(k) When reports and/or evaluations of other New Jersey public school district child study team members, a Department of Education approved clinic or agency, child study team members of State-operated programs or facilities or a professional in private practice are accepted by members of the child study team, acceptance shall be noted in writing and become part of the report(s) of the child study team member(s). If a report or evaluation is rejected, a written rationale shall be provided.

(l) A reevaluation to determine the status of each educationally handicapped pupil shall be conducted at least every three years. Reevaluation shall be conducted more often if conditions warrant.

1. The full child study team shall develop an evaluation plan which shall include a determination of needed evaluations based upon demonstrated pupil progress in meeting the goals and objectives of the individualized education program.

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2. The full child study team shall design a reevaluation plan as described in this section. The parent(s) shall be notified in writing of the reevaluation plan.

3. Whenever a change in eligibility status is being considered, written documentation supporting that decision shall be developed by the full child study team and be based upon a reevaluation of the pupil.

(m) By June 30 of a pupil's last year in a program for the preschool handicapped, the child study team shall review available assessment information and obtain additional evaluations, as necessary, to determine eligibility according to N.J.A.C. 6:28-11.7.

## 6:28-11.7 Determination of eligibility

(a) When an evaluation is completed, members of the child study team who participated in the assessment and parent(s) shall meet with the school principal and referring staff member(s), if they choose to participate, in order to:

1. Summarize the pupil's current educational status;
2. Determine whether the pupil is eligible for special education and/or related services;
  - i. If a pupil is determined to be eligible for special education and/or related services, the current educational status statement shall become part of the pupil's individualized education program.
  - ii. Whether or not a pupil is determined eligible for special education and/or related services, the parent(s) and the referring staff member shall be given a written summary of all decisions and any recommended course(s) of action, signed by the participating child study team members.
3. Determine eligibility for special education and/or related services according to N.J.A.C. 6:28-11.8;
4. Complete the individualized education program in accordance with N.J.A.C. 6:28-3.6 and 11.9.

(b) When an educationally handicapped pupil transfers into a pilot school district, review of the pupil's classification and appropriateness of the eligibility status and individualized education program shall be conducted within 30 calendar days.

(c) Pupils determined by the school physician to have temporary health problems which prohibit regular attendance in school need not be classified as handicapped but shall be entitled to receive at least five hours per week of individual instruction at home for a period of time determined by the school physician. After 60 days, the pupil shall be referred to the child study team to determine if the pupil is eligible for special education and/or related services.

(d) Pupils determined eligible for special education and/or related services shall be classified according to the following definitions:

1. Eligible for related services: The pupil shall have met the criteria for one or more domains listed in N.J.A.C. 6:28-11.8 and the child study team shall have determined that a related service is necessary.
2. Eligible for part-time special education: The pupil shall have met the criteria for one or more of the domains and either impact area listed in N.J.A.C. 6:28-11.8 and the child study team shall have determined that the pupil can participate in regular education for the majority of the instructional day.
3. Eligible for full-time special education: The pupil shall have met the criteria for one or more of the domains and either impact area listed in N.J.A.C. 6:28-11.8 and the child study team shall have determined that the pupil requires special education for a majority of the instructional day.
4. When the pupil's instructional day is evenly divided between regular and special education, the child study team shall determine eligibility for full or part time special education based upon the pupil's instructional need.

(e) Pupils enrolled in shared-time special needs vocational programs who are in their home district for one half of the school day may be served in either full-time or part-time programs.

(f) Pupils shall not be eligible for special education solely for cultural or linguistic factors, poor attendance, substance abuse, poor school performance or disciplinary reasons.

6:28-11.8 Eligibility criteria

(a) In order to be eligible for special education and/or related services, a comprehensive evaluation of the pupil shall be made to determine if the pupil meets the criteria in a domain in which a

handicapping condition may manifest itself and an area of educational impact described in (e) below.

(b) The pupil must meet both standard and functional criteria in order to satisfy a domain or an impact area.

1. Most standard criteria are met through the use of standardized tests.

2. Whenever a standardized test is used, it shall:

- i. Be individually administered;
- ii. Have established reliability and validity;
- iii. Be normed on a representative or the same population; and
- iv. Express data as either standard scores with standard deviation used for comparison or norm referenced with cutoff score.

3. Functional assessment shall include:

i. A minimum of one structured observation of not less than 20 minute duration by each of two child study team members as required for each domain or area listed in N.J.A.C. 6:28-11.8;

ii. An interview by an appropriate child study team member with the pupil's parent in order to provide information to be considered as part of the evaluation by the child study team;

iii. One or more informal measure(s) which may include:

- (1) Check lists;
- (2) Analysis of work samples;
- (3) Trial teaching;
- (4) Self report;
- (5) Sentence completion;
- (6) Criterion referenced tests;
- (7) Curriculum based assessment; or
- (8) Informal rating scales;

iv. Review of pupil development/educational history including records and interviews; and

v. A review of interventions documented by the classroom teacher(s) and/or the school resource committee.

(c) The following special considerations shall apply to eligibility criteria for preschool pupils:

1. Preschool evaluations need not use the school setting as the reference for meeting the functional criteria. In such cases the home, institution or community setting shall be substituted.

2. The learning domain in (d)2 below shall not be required.

3. The child study team must determine that the pupil requires a full-time special education program.

4. The criteria for educational impact need not be demonstrated.

(d) The following criteria are established for each domain:

1. Cognitive criteria are as follows:

i. Standard criteria: The pupil's general level of cognitive functioning on a standardized intelligence test administered by a school psychologist shall be at least two standard deviations below the norm.

ii. Functional criteria: The pupil's general level of cognitive functioning within the school setting shall be significantly discrepant from the typical pupil and/or appropriate norms. This cognitive deficit shall include an inability to demonstrate personal independence and social responsibility according to age and sociocultural group expectations and any of the following: an inability to generalize/transfer information skills and concepts; an inability to appropriately solve problems; or an inability to formulate appropriate judgments and inferences.

iii. Assessment areas for the cognitive domain shall include:

(1) The pupil's general level of cognitive functioning.

iv. Assessment shall be by at least:

- (1) A school psychologist; and
- (2) One other child study team member.

2. Learning criteria are as follows:

i. Standard criteria: The pupil demonstrates a significant discrepancy in one or more academic area(s) between current achievement and expected achievement based upon level of intellectual functioning.

ii. Functional criteria: The pupil demonstrates a significant discrepancy in one or more academic area(s) between current achievement and expected achievement which manifests itself within the school setting.

iii. Assessment areas for the learning domain shall include:

- (1) Basic reading skills;
- (2) Reading comprehension;

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- (3) Mathematic computation;
- (4) Mathematic reasoning; and
- (5) Written expression.
- iv. Assessment shall be by at least:
  - (1) The school psychologist; and
  - (2) The learning disabilities teacher-consultant.
- 3. Social/emotional criteria are as follows:
  - i. Standard criteria: The pupil demonstrates a pervasive or chronic inability to build or maintain satisfactory relations with peers, teachers and/or school personnel that severely interferes with one or other pupil's social/emotional growth within the school setting.
  - ii. Functional criteria: The pupil shall demonstrate a pervasive or chronic inability to build or maintain satisfactory relations with peers, teachers and/or school personnel that severely interferes with the pupil's own or with other's social/emotional growth within the school setting. The behavior is significantly discrepant from the typical pupil and/or age appropriate norms.
  - iii. Assessment areas for the social/emotional domain shall include:
    - (1) Pupil's perception of self and world;
    - (2) Relationships with peers and adults;
    - (3) Affective behavior; and
    - (4) Atypical behavior.
  - iv. Assessment shall be by at least:
    - (1) A school psychologist; and
    - (2) A school social worker.
- 4. Physical criteria are as follows:
  - i. Standard criteria: The pupil has received a diagnosis describing a physical condition which interferes with the pupil's ability to function independently in a school setting.
  - ii. Functional criteria: The pupil's physical condition requires strategies, materials and/or equipment in order to compensate for the physical condition and to be able to function in the school environment.
  - iii. Assessment areas for the physical domain shall include:
    - (1) Standard assessment areas, as follows:
      - (A) Health; and
      - (B) Physical stamina.
    - (2) Functional assessment areas, as follows:
      - (A) Physical stamina.
      - (B) Physical performance in communication;
      - (C) Manipulation of materials;
      - (D) Mobility; and
      - (E) Safety.
  - iv. Assessment shall be by at least:
    - (1) A licensed physician; and
    - (2) Two child study team members.
- 5. Sensory-hearing criteria are as follows:
  - i. Standard criteria: The pupil's performance on an audiological examination shall indicate a loss in the speech range of 30 decibels or greater in the better ear when aided.
  - ii. Functional criteria: The pupil's auditory functioning requires special strategies, materials and/or equipment in order to compensate for the auditory deficit and to be able to function in the school environment.
  - iii. Assessment areas for the sensory-hearing domain shall include:
    - (1) Standard assessment areas, as follows:
      - (A) Pure tone including air and bone conduction with masking when appropriate;
      - (B) Speech reception and detection;
      - (C) Speech discrimination;
      - (D) Tolerance levels; and
      - (E) Use of hearing aids.
    - (2) Functional assessment areas, as follows:
      - (A) Auditory performance in communication including speech and language; and
      - (B) Safety.
  - iv. Assessment shall be by at least:
    - (1) An otolaryngologist or licensed audiologist; and
    - (2) Two child study team members.
- 6. Sensory-vision criteria are as follows:

- i. Standard criteria: The pupil's visual acuity is 20/70 or less in the better eye after correction or demonstrates a severe restriction of the field of vision which interferes with learning.
- ii. Functional criteria: The pupil's visual functioning requires special strategies, materials and/or equipment in order to function safely and effectively in the school setting.
- iii. Assessment areas for the sensory-vision domain shall include:
  - (1) Standard assessment areas, as follows:
    - (A) Visual acuity;
    - (B) Field of vision.
  - (2) Functional assessment areas, as follows:
    - (A) Sensory performance (i.e., print requirements, eye fatigue, distance) in reading and other activities;
    - (B) Safety; and
    - (C) Mobility.
- iv. Assessment shall be by at least:
  - (1) A licensed optometrist or ophthalmologist; and
  - (2) Two child study team members.
- 7. Communication criteria are as follows:
  - i. Standard criteria for the communication domain shall include:
    - (1) Articulation—Pupil's performance on a standardized articulation test falls at least 1.5 standard deviations below the mean or the pupil exhibits one or more errors of sound production beyond the age at which 90 percent of the population has achieved mastery according to developmental norms.
    - (2) Language—Pupil's performance falls at least 1.5 standard deviations below the mean or below the 10th percentile in at least two standardized language tests.
    - (3) Voice—The pupil's performance on a formal rating scale is below the normed level for voice quality, pitch, resonance, loudness or duration.
    - (4) Fluency—The pupil demonstrates at least a mild rating or its equivalent on a formal fluency rating scale or the pupil exhibits moments of stuttering on five percent or more of the words spoken.
  - ii. Functional criteria: The pupil's communication within the school setting is significantly discrepant from the typical pupil and/or age appropriate norms in one or more of the following:
    - (1) Pervasive and chronic inability to use language, including semantic, morphological and phonological aspects of language;
    - (2) Articulation disorder;
    - (3) Fluency; and
    - (4) Voice disorders including volume, pitch, resonancy and/or quality that interfere with the listener's ability to comprehend.
  - iii. Assessment areas for the communication domain shall include:
    - (1) Language;
    - (2) Articulation;
    - (3) Fluency; and
    - (4) Voice.
  - iv. Assessment shall be by at least:
    - (1) A speech language specialist; and
    - (2) One other child study team member.
- v. Pupils referred solely for speech and language services shall require at least the evaluation and observation of the speech-language specialist and information from the pupil's teacher.
- (e) The following criteria are established for each educational impact area:
  - i. Achievement criteria are as follows:
    - i. Standard criteria: The pupil's performance in one or more area(s) on a standardized achievement test individually administered by a learning disabilities teacher-consultant is below the State minimum level of proficiency in grades 3-12 or is below the district norm for grades K-2 as described in N.J.A.C. 6:8-3.4.
    - ii. Functional criteria: The pupil's academic performance in the school setting is significantly discrepant from grade appropriate norms.
    - iii. Assessment areas for achievement are:
      - (1) Basic reading skills;
      - (2) Reading comprehension;
      - (3) Math computation;
      - (4) Math reasoning; and
      - (5) Written expression.

iv. Assessment shall be by at least:

- (1) A learning disabilities teacher-consultant; and
- (2) One other child study team member.

2. Behavior criteria are as follows:

i. Standard criteria: The pupil demonstrates behaviors which interfere with the pupil's ability to function in the school setting and is either a danger to self or others and has a chronic or pervasive interference with own or others' academic growth.

ii. Functional criteria: The pupil's behavior in the school is significantly discrepant from the typical pupil or age appropriate norms as to be either a danger to self or others or has a chronic or pervasive interference with own or others' academic growth.

iii. Assessment areas for behavior are:

- (1) Relationships with children and adults;
- (2) Affective behavior; and
- (3) Atypical behavior.

iv. Assessment shall be by at least:

- (1) A school psychologist; and
- (2) A school social worker.

(f) Pupils who do not meet the standard eligibility criteria but do meet functional criteria may be considered as eligible for special education if the child study team determines that the pupil is educationally handicapped and requires special education and/or related services. The child study team must show evidence why the standard criteria are inappropriate for the pupil and how the other evaluation data support a decision to classify the pupil.

(g) When the parent of a pupil eligible for special education and/or related services requests a classification designation as stated in N.J.A.C. 6:28-3.5(e), the child study team shall select an appropriate classification type based upon the evaluation completed according to N.J.A.C. 6:28-11.7 and any specialist required by N.J.A.C. 6:28-3.5(e).

#### 6:28-11.9 Individualized education program

(a) The individualized education program for each educationally handicapped pupil shall consist of a basic plan and an instructional guide, pursuant to N.J.A.C. 6:28-3.6 and this subsection.

1. The basic plan of the individualized education program shall be developed at a meeting attended by the child study team members who evaluated the pupil, the pupil's parent(s), teacher(s) having knowledge of the pupil's educational performance and the pupil, if appropriate. The referring certified school personnel, the school principal or designee and other appropriate individuals may participate in the meeting.

2. The basic plan of the individualized education program shall conform with N.J.A.C. 6:28-3.6 and shall also include the following:

i. A statement of the pupil's eligibility for special education and/or related services based upon the eligibility criteria.

ii. A statement of current educational status which describes the pupil's present levels of educational performance in terms of instructional needs related to curriculum areas.

iii. A statement of annual pupil goals and short term objectives which describe the instructional entry level and anticipated outcome at the end of one year. Annual goals shall be related to each curriculum area and be derived from the pupil's current educational status statement. Short term objectives shall be measurable intermediate steps between the pupil's current level of educational performance and the annual goal.

3. The instructional guide shall describe both the learning characteristics of the pupil and the related instructional characteristics of the pupil's learning environment. The instructional guide shall include those requirements stated in N.J.A.C. 6:28-3.6(g) and the following:

i. A description of curriculum areas that lead to the achievement of the desired outcome goals;

ii. Educational strategies that address the pupil's specific learning characteristics;

iii. Techniques and activities that accommodate the use of those strategies;

iv. A description of the pupil's weekly schedule of instruction, related services, instructors and responsible person(s).

(b) Pupils determined to require placement in a county day training facility shall be classified as eligible for day training according to N.J.A.C. 6:28-3.5(d)5iii based upon the child study team evaluation completed under N.J.A.C. 6:28-11.6(g).

(c) Annually, or more often if necessary, the case manager, parent(s), teacher(s), and the pupil if appropriate, shall meet to review and revise the instructional guide and the basic plan of the individual education program as specified in this subchapter.

1. Reevaluation of pupils already classified according to N.J.A.C. 6:28-3.5 shall be undertaken within three years of the date of the pupil's last classification and be completed according to N.J.A.C. 6:28-11.6 and 11.7.

2. Termination of a pupil's eligibility for special education and/or related services shall be made only after a reevaluation of the pupil by the child study team as required by N.J.A.C. 6:28-11.6 and 11.7.

3. Eligibility criteria described in N.J.A.C. 6:28-11.8 shall apply only to pupils being referred to special education for the first time. The child study team shall document the reason(s) for continuing a pupil in special education and/or related services when the pupil no longer meets the eligibility criteria.

(d) A copy of the individualized education program shall be signed by members of the child study team who participated in its development and shall be provided to the parent(s) in their native language according to N.J.A.C. 6:28-2.4.

#### 6:28-11.10 Provision of programs

(a) Each pilot district board of education shall provide educational programs and related services for handicapped pupils in accordance with their individualized education programs.

(b) Special education programs shall be consistent with the special education plan submitted by the district board of education and approved by the Department of Education.

(c) A pilot district board of education's proposal to establish, change or eliminate special education programs or services shall be approved by the Department of Education prior to any such action.

(d) Appropriate facilities shall be provided for educationally handicapped pupils according to N.J.A.C. 6:22-1 et seq.

(e) Each full time class type shall be described in individual class profiles that are reviewed and approved by the county office and the Division of Special Education acting jointly. Appropriate written curricula shall be developed and appropriate materials shall be provided for educationally handicapped pupils served in full-time class types.

(f) Each pilot district board of education, through appropriate personnel, shall participate in the process to evaluate its special education programs and services according to N.J.S.A. 18A:7A-4 through 16.

#### 6:28-11.11 Program options

(a) Educational program options shall include the following:

1. Related services;

2. Instruction in school which complements regular class programs through part-time special education including:

i. Modification of a regular program through the use of in-class support instruction, in-class replacement instruction, out-of-class support instruction and out-of-class replacement instruction;

3. A full-time special class program in the pupil's local school district;

4. A special education program in the following settings:

i. Another local school district;

ii. A vocational and technical school;

iii. A county special services school district;

iv. An educational services commission; or

v. A jointure commission.

5. Programs in hospitals, convalescent centers or other medical institutions;

6. A program operated by a department of New Jersey State government;

7. Vocational rehabilitation facilities;

8. An approved privately operated special class in the continental United States, when it is not appropriate to provide services according to (a)1 through 7 above. Placement in a privately operated special

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class shall only be made with the prior written approval of the Department of Education through its county office; and

9. Individual instruction at home or in school, excluding home instruction for temporary medical reasons, with the prior written approval of the Department of Education through its county office, when it is not appropriate to provide a full-time special education program for an educationally handicapped pupil according to (a) through 8 above.

(b) The following program criteria shall be met:

1. Speech and language services provided to educationally handicapped pupils shall be in addition to the regular instructional program and shall meet the following criteria:

i. Speech and language services may be given individually or in groups not to exceed three pupils.

ii. Speech and language services shall be provided by a certified speech-language specialist.

2. Part-time special education programs shall provide individual and small group instruction to pupils eligible to receive part-time special education and shall meet the following criteria:

i. There shall be resource centers in sufficient numbers to provide programs for pupils in part-time programs. Each center shall be approved by the Department of Education.

ii. An educationally handicapped pupil in a resource center shall be enrolled on a regular public school class register with his or her chronological peers.

iii. The teacher(s) assigned to the resource center shall be certified as teacher of the handicapped. When the resource center serves only blind or deaf pupils, the resource center teacher shall hold certification as a teacher of the blind/partially sighted or teacher of deaf/hard of hearing.

iv. A resource center teacher providing support instruction shall be provided time for consultation with the regular teaching staff.

v. Types of part-time programs shall be designated as follows:

(1) In-class support is assistance provided in the regular classroom by a resource center teacher to pupils requiring remedial support in order to benefit from regular class instruction.

(2) Out-of-class support is assistance provided in the resource center by a resource center teacher to pupils requiring remedial support in order to benefit from regular class instruction.

(3) In-class replacement is direct instruction in content areas by the resource center teacher in place of instruction by the regular class teacher, provided to the pupil in the regular class.

(4) Out-of-class replacement is direct instruction in content areas by the resource center teacher in place of instruction by the regular class teacher, provided to the pupil in the resource center.

vi. The number of pupils provided replacement instruction at any given time shall not exceed six in an elementary group or eight in a secondary group. The group size in out-of-class replacement instruction may be increased by one-third with the addition of a classroom aide by obtaining the approval of the Department of Education through its county office. The group size in secondary out-of-class replacement instruction may be doubled when a regular teacher joins the resource center teacher in instructing the group. No more than one content area may be taught in an individual period of replacement instruction.

vii. Group size for pupils provided support instruction shall not exceed five. Support and replacement instruction may not be provided to the same group at the same time.

viii. Pupils eligible for part-time special education shall participate in regular education programs for the majority of the pupil's instructional day.

3. Full-time special class programs shall meet the following criteria:

i. Full-time class types shall provide a specific focus in terms of instruction and curriculum. This focus shall include specific:

- (1) Emphasis in instruction;
- (2) Adaptation to the environment of the class;
- (3) Instructional delivery;
- (4) Specialized services;
- (5) Related services; and
- (6) Curriculum.

ii. An educationally handicapped pupil eligible for full-time special education shall be enrolled on a special class register.

iii. Pupils eligible for full-time special education programs shall be the primary instructional responsibility of the special education teacher of the class type designated for the pupil.

iv. Pupils must spend the majority of their instructional day in the full-time class type.

v. Teachers in full-time class types shall work cooperatively with other teachers to whom the educationally handicapped pupil may be assigned for portions of his or her educational program.

vi. Depending on the class type designation of the full-time special class program, the special class teacher shall hold certification as teacher of the handicapped, teacher of blind or partially sighted or teacher of deaf or hard of hearing. Teachers of the preschool handicapped shall additionally hold nursery school endorsement.

vii. Class types providing services to preschool pupils must meet the requirements of the preschool handicap class type as well as the specialized class type.

6:28-11.12 Full-time class types

(a) Preschool handicap class types shall meet the following requirements:

1. This class type shall provide an environment in which the preschool pupil's school readiness needs are the primary focus.

2. The program shall emphasize:

i. Developing/improving gross and fine motor readiness skills, such as hopping, cutting, and coloring;

ii. Developing/improving communication skills, such as articulation, receptive and expressive language;

iii. Developing/improving school appropriate behaviors, such as attending and following directions;

iv. Developing/improving self-help skills, such as dressing skills, feeding skills and toileting skills;

v. Developing/improving social skills, such as interaction with peers in appropriate play behavior; and

vi. Developing academic readiness skills, such as color recognition and letter recognition.

3. Instruction shall be provided by a certified teacher of the handicapped and nursery school.

4. Age span shall be two years.

5. Maximum Class Size shall be eight.

6. Staff/Pupil Ratio shall be 1:4.

7. Related services shall include counseling and/or training services for parents.

(b) Learning disabilities class types shall meet the following requirements:

1. This class type shall provide an environment in which the pupil's identified academic needs are the primary focus.

2. The program shall emphasize:

i. Improving reading skills;

ii. Improving language arts skills;

iii. Improving mathematics skills;

iv. Improving general organizational skills, study skills and strategies;

v. Decreasing distractibility and activity level;

vi. Improving social skills; and

vii. Assisting pupils in coping with academic difficulties and failure.

3. Instruction shall be provided by a certified teacher of the handicapped.

4. Age span shall be four years for both elementary and secondary.

5. Maximum class size shall be 10 for both elementary and secondary.

6. Staff/pupil ratio shall be 1:10 for both elementary and secondary.

7. No related services are required for this class type.

(c) Communication handicap class types shall meet the following requirements:

1. This class type serves pupils free of significant hearing and acuity problems and shall provide an environment in which the pupil's identified communication needs are the primary focus.

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2. The program shall emphasize:
  - i. Improving the processing of receptive language, e.g., following oral directions, responding appropriately to questions;
  - ii. Improving the organization and production of expressive language;
  - iii. Acquiring a vocabulary and linking words together appropriately; and
  - iv. Improving voice, fluency and/or articulation.
3. Instruction shall be provided by a certified teacher of the handicapped.
4. Age span shall be four years for both elementary and secondary.
5. Maximum class size shall be eight for elementary and 10 for secondary.
6. Staff/pupil ratio shall be 1:8 for elementary and 1:10 for secondary.
7. Related services shall include speech/language therapy.
- (d) Moderate cognitive handicap class types shall meet the following requirements:
  1. This class type shall provide an environment in which the pupil's identified cognitive needs are the primary focus.
  2. The program shall emphasize:
    - i. Improving functional academic skills;
    - ii. Improving functional life skills;
    - iii. Improving functional vocational skills; and
    - iv. Improving social skills.
  3. Instruction shall be provided by a certified teacher of the handicapped.
  4. Age span shall be four years for both elementary and secondary.
  5. Maximum class size shall be 10 for both elementary and secondary.
  6. Staff/pupil ratio shall be 1:10 for both elementary and secondary.
  7. No related services are required for this class type.
- (e) Moderate behavior handicap class types shall meet the following requirements:
  1. This class type shall provide an environment in which the pupil's identified behavioral needs are the primary focus.
  2. The program shall emphasize:
    - i. Improving ability to build or maintain satisfactory relationships with others;
    - ii. Decreasing behaviors which interfere with other pupils' social/emotional or academic growth;
    - iii. Decreasing behaviors which present a danger to the pupil or other;
    - iv. Increasing self-control;
    - v. Increasing social skills for successful group participation; and
    - vi. Improving pupils' sense of personal adequacy and independence.
  3. Instruction shall be provided by a certified teacher of the handicapped.
  4. Age span shall be four years for both elementary and secondary.
  5. Maximum class size shall be 10 for both elementary and secondary.
  6. Staff/pupil ratio shall be 1:10 for both elementary and secondary.
  7. Related services shall include:
    - i. Counseling; and
    - ii. Counseling and/or training services for parents.
- (f) Severe behavior handicap class types shall meet the following requirements:
  1. This class type shall provide an environment in which the pupil's identified behavioral needs are the primary focus.
  2. The program shall emphasize:
    - i. Reducing atypical behavior patterns, such as hand flapping, twirling, ritualistic movements;
    - ii. Increasing responsiveness to people, such as, eye contact, smiling, touching;
    - iii. Improving communication skills, such as reducing inappropriate noises, laughter;
    - iv. Decreasing bizarre responses to aspects of the environment, such as, inappropriate use of objects, object fixation, need for sameness; and

- v. Reducing severe acting out behavior which results in a danger to self or others, such as, head banging, biting, scratching.
3. Instruction shall be provided by a certified teacher of the handicapped.
4. Age span shall be two years for preschool and four years for elementary and secondary.
5. Maximum class size shall be six for preschool, eight for elementary and 12 for secondary.
6. Staff/pupil ratio shall be 1:2 for preschool, 1:4 for elementary and 1:6 for secondary.
7. Related services shall include:
  - i. Counseling and/or training services for parents; and
  - ii. Speech/language therapy.
- (g) Severe physical handicap class types shall meet the following requirements:
  1. This class type shall provide an environment in which the pupil's identified physical needs are the primary focus.
  2. The program shall emphasize:
    - i. Increasing functional/independent living skills, such as, dressing, cooking;
    - ii. Increasing functional/independent ambulation, and using adaptive equipment and prosthetic devices where needed.
  3. Instruction shall be provided by a certified teacher of the handicapped.
  4. Age span shall be 2 years for preschool and 4 years for elementary and secondary.
  5. Maximum class size shall be 6 for preschool, 8 for elementary and 10 for secondary.
  6. Staff/pupil ratio shall be 1:3 for preschool, 1:4 for elementary and 1:5 for secondary.
  7. Related services shall include:
    - i. Physical therapy; and
    - ii. Occupational therapy.
- (h) Severe cognitive handicap type classes shall meet the following requirements:
  1. This class type shall provide an environment in which the pupil's identified cognitive needs are the primary focus.
  2. The program shall emphasize:
    - i. Improving motor skills, such as, positioning, grasping, balance, rolling;
    - ii. Improving ability to attend, such as, eye contact;
    - iii. Improving ability to imitate verbally and non-verbally;
    - iv. Improving ability to respond verbally and non-verbally, such as, smiling or vocalizing on request;
    - v. Improving ability to recognize, such as, smiling at a familiar person; and
    - vi. Improving feeding skills.
  3. Instruction shall be provided by a certified teacher of the handicapped.
  4. Age span shall be 6 years for all levels.
  5. Maximum class size shall be 9 for all levels.
  6. Staff/pupil ratio shall be 1:3 for all levels.
  7. Related services shall include:
    - i. Speech/language therapy;
    - ii. Occupational therapy;
    - iii. Physical therapy;
    - iv. School nurse services; and
    - v. Counseling and/or training services for parents.
- (i) Auditory handicap type classes shall meet the following requirements:
  1. This class type shall provide an environment in which the pupil's identified auditory needs are the primary focus.
  2. The program shall emphasize:
    - i. Utilizing the visual modality as the primary channel for instruction;
    - ii. Assisting in auditory habilitation;
    - iii. Improving language skills;
    - iv. Improving social skills to facilitate pupils' integration into the environment; and
    - v. Insuring/facilitating participation of pupils in school-wide activities.

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3. Instruction shall be provided by a certified teacher of the deaf/hard of hearing.

4. Age span shall be 2 years for preschool and 4 years for elementary and secondary.

5. Maximum class size shall be 8 for preschool and elementary and 10 for secondary.

6. Staff/pupil ratio shall be 1:4 for preschool, 1:8 for elementary and 1:10 for secondary.

7. Related services shall include:

- i. Auditory training; and
- ii. Speech/language therapy.

(j) Auditory/visual handicap type classes shall meet the following requirements:

1. This class type shall provide an environment in which the pupil's combined auditory and visual needs are the primary focus.

2. The program shall emphasize:

- i. Developing optimal use of residual vision and hearing;
- ii. Developing effective and efficient communication skills;
- iii. Improving mobility and orientation skills;
- iv. Increasing skills in activities of daily living with emphasis on the development of optimal independence; and
- v. Improving social skills to facilitate integration into the community.

3. Instruction shall be provided by a certified teacher of the handicapped who is certified as one of the following: teacher of the deaf/hard of hearing or teacher of the blind/visually impaired.

4. Age span shall be 2 years for preschool and 4 years for elementary and secondary.

5. Maximum class size shall be 6 for all levels.

6. Staff/pupil ratio shall be 1:2 for preschool and 1:3 for elementary and secondary.

7. Related services shall include:

- i. Auditory training;
- ii. Vision training;
- iii. Speech/language therapy;
- iv. Adapted physical education;
- v. Mobility and orientation training; and
- vi. Parent training.

(k) Class type maximum class size for all types except severe behavior, severe physical and severe cognitive handicap may be increased by no more than one-third with the addition of a classroom aide by obtaining prior approval from the Department of Education through its county office.

(l) Required related services are those which each program must provide for each pupil pursuant to (a) through (j) above. Pupils must also receive any other related service specified in their individualized education program.

(m) Pupils enrolled in full-time class types may be instructed in regular classes in accordance with their individualized education program. The number of educationally handicapped pupils enrolled in a full-time class register who can attend any given instructional period in such classes shall be limited to four if program modification is required.

(n) In secondary full-time class types, enrollment may be increased by one-half the maximum instructional group size allowed for that specific class type as noted in N.J.A.C. 6:28-11.12(c). For instructional purposes, no group shall contain more than the maximum number for that class type. Pupils may be of only one class type.

(o) County vocational schools and approved local area vocational school districts providing full-time special education programs may operate special needs shop classes which are open to pupils from all full-time class types. Pupils shall be placed in special needs shops based upon vocational needs, skills and assessment. Group size shall not exceed 10 but may be increased to 15 with the addition of a classroom aide and the approval of the Department of Education through its county office. Teachers in these shops shall hold vocational certification.

6:28-11.13 Program approval

(a) Annually, each pilot district shall apply for approval of its special education program by completing a report which describes:

- 1. The related services it provides;

2. The part-time programs it offers; and

3. Profiles of each of the full-time class it operates which include:

i. A description of the learning characteristics of the pupils in the class type, including, but not limited to, ability ranges, behavior and levels of cognitive function; and

ii. A description of the instructional characteristics of the class type which include, but are not limited to, curriculum, methods and strategies, materials, supplies and equipment and instructional personnel.

(b) Approval shall be requested in accordance with procedures established by the Division of Special Education and the county office.

(c) A pupil classified as educationally handicapped by a child study team may have the individualized education program implemented through individual instruction at home when it can be demonstrated that no other program option is appropriate at that time. This provision shall not apply to pupils suffering from temporary medical problems such as, but not limited to, pregnancy or fractures. Pupils suffering temporary medical problems shall be provided instruction individually through regular education and need not be eligible for special education.

1. Prior written approval to provide home instruction shall be obtained from the Department of Education through its county office.

2. Approval shall be obtained for a maximum of 60 calendar days.

(d) Pupils may be placed in out-of-district facilities upon the recommendation of the child study team, when an appropriate program is not available within the local district.

(e) Any exceptions regarding the requirements of these operational specifications shall be made only with prior written approval of the Department of Education through its county office and the Division of Special Education.

1. Pupils received by the pilot district or placed in out-of-district facilities such as, but not limited to, other New Jersey public schools, approved private schools for the handicapped within or outside of New Jersey, and State operated programs shall be granted a waiver regarding classification by the Department of Education through its county office.

2. The waiver shall establish the pupil's classification as that of the type of class program which is being considered for placement.

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### (a)

#### DIVISION OF COASTAL RESOURCES

#### Minor Corrections to Proposed Freshwater Wetlands Protection Act Rule

##### N.J.A.C. 7:7A-8.1(a)

**Take notice** that the Department of Environmental Protection is making minor typographical corrections to proposed new rule N.J.A.C. 7:7A-8.1(a), published in the December 21, 1987 New Jersey Register at 19 N.J.R. 2330(a), in order to clarify inconsistencies in the rule as proposed. The proposal addresses Nationwide General Permits in the Summary, in N.J.A.C. 7:7A-8.1(a), and in N.J.A.C. 7:7A-8.2. Because of a typographical error in N.J.A.C. 7:7A-8.1(a), this subsection is inconsistent with the information in the Summary and in N.J.A.C. 7:7A-8.2.

N.J.A.C. 7:7A-8.1(a) lists by number the Nationwide General Permits rejected, adopted, and/or modified by the Department in the Freshwater Wetlands Protection Act Rules proposal. The list summarizes Department decisions on the 26 Nationwide General Permits, and is followed by the complete text of those Nationwide General Permits proposed for adoption and/or adoption with modifications. Because of the typographical errors in N.J.A.C. 7:7A-8.1(a), the list of adopted Nationwide General Permits in that subsection does not correspond with the subsequent complete text. Although the Summary and the complete text of the adopted Nationwide General Permits in N.J.A.C. 7:7A-8.2 indicate clearly which Nationwide General Permits are adopted and/or modified, the typographical error in N.J.A.C. 7:7A-8.1(a) may cause confusion by incorrectly summarizing the contents of the text which follows in N.J.A.C. 7:7A-8.1 and 8.2.

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## ENVIRONMENTAL PROTECTION

Two other typographical errors in N.J.A.C. 7:7A-8.1(a), although not actually inconsistent with other portions of the proposal, may cause confusion and are also being corrected at this time. These errors are the omission of two Nationwide General Permits, numbers 14 and 15, from the list of Nationwide General Permits not being proposed for adoption in N.J.A.C. 7:7A-8. These two Nationwide Permits, numbers 14 and 15, are correctly listed in the Summary of the proposal as still being under consideration, and thus not proposed for adoption at this time. In addition, it is easily inferred from the absence of these Nationwide General Permits in both the numerical list of adopted general permits, and in the full text of adopted permits in N.J.A.C. 7:7A-8.1 and 8.2, that they are not being proposed for adoption. This inference notwithstanding, the omission of any mention of two of the 26 Federal Nationwide General Permits in subchapter 8 may be confusing, and thus this error is being corrected as indicated below. Additions to N.J.A.C. 7:7A-8.1(a) are indicated in boldface **thus**, and deletions in brackets [thus].

7:7A-8.1 Nationwide Permits adopted as Statewide General Permits

(a) All 26 United States Army Corps of Engineers Nationwide Permits which were approved under the Federal Act as of November 13, 1986 have been considered by the Department. Nationwide Permits numbers one, two, five, eight, nine, 10, 11, 15, 19, 21 and 24 pertain only to navigable waters of the United States or, in the case of number 21, only to coal mines and, therefore, are not appropriate or applicable for adoption in this chapter. Nationwide Permits numbers four and six have been exempted from regulation under the Act as discussed at N.J.A.C. 7:7A-2.7. Nationwide Permit numbers seven, 13, **14**, 17, 18, 23, 25, and 26 have not been adopted in this chapter except that parts of 26 have been adopted as required by the Act at N.J.A.C. 7:7A-8.2. Nationwide Permit numbers three, 12, 16, [21] **20**, and 22 have been proposed for adoption in N.J.A.C. 7:7A-8.2, as modified, as Statewide Permits numbers one to five respectively. The following activities allowed in freshwater wetlands and State regulated waters under Nationwide Permits are hereby allowed under Statewide General Permits:

1.-5. (No change.)

(a)

## DELAWARE AND RARITAN CANAL COMMISSION

### Delaware and Raritan Canal State Park Review Zone

#### Proposed New Rules: N.J.A.C. 7:45

Authorized By: Delaware and Raritan Canal Commission,  
Benjamin B. Kirkland, Chairman, and Richard T. Dewling,  
Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:13A-10.

DEP Docket Number: 060-87-11.

Proposal Number: PRN 1988-3.

**Public hearings** concerning this proposal will be held on:

January 19, 1988 at 7:30 P.M.

Offices of the Delaware and Raritan Canal Commission

Prallsville Mills

Route 29

Stockton, New Jersey 08559

January 21, 1988 at 7:30 P.M.

South Brunswick Township Municipal Building

Monmouth Junction Road

Monmouth Junction, New Jersey 08852

Submit comments by February 5, 1988 to:

Donald J. Stout

Office of Regulatory Services

Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The "Delaware and Raritan Canal State Park Law of 1974" (N.J.S.A. 13:13A-1 et seq.) established the Delaware and Raritan Canal Commission (the Commission) to plan for and protect the Delaware and

Raritan Canal State Park (the Park). The Commission was directed to establish a zone for review of public and private projects that might adversely affect the Park and then to conduct such reviews. To facilitate these duties, N.J.A.C. 7:45 was adopted, effective January 11, 1980. Pursuant to Executive Order No. 66(1978), the rules expired as of January 11, 1985. The Department proposes to readopt the expired rules with amendments, as the rules continue to be necessary, reasonable, adequate and proper for their originally intended purpose.

The expired rules were very effective in managing the increased volume of stormwater runoff as well as providing a means to improve the quality of water adversely affected by intensive development in the drainage area of the Delaware and Raritan Canal (the Canal). Developers were required by the expired rules to manage stormwater runoff in such a manner as to prevent any adverse environmental consequences such as increased flooding, channel and bank erosion, and deterioration of water quality downstream of a proposed development. Additionally, the rules have proved effective in detailing site planning techniques in areas adjacent to the Park, thereby enhancing the natural environment.

All municipalities and counties located within the Review Zone of the Canal have conformed with the expired rules and either approve development projects subject to Commission approval or approve development projects previously approved by the Commission. Compliance with the rules has been mandatory for all developers (private and public).

In the new rules, the Department proposes to expand the scope of the Commission's review of projects and permits to include stream corridor impact and traffic impact.

A stream corridor is defined in the new rules as being the stream and all of the land on either side of the stream which is within the 100 year flood line and all of the land within a 100 feet wide buffer around all 100 year flood lines.

The Department recognizes that the network of streams that are a part of the drainage area of the Delaware and Raritan Canal has a significant effect upon the ability of the Canal to function as a water supply system and upon the ability of the Delaware and Raritan Canal State Park to fulfill its legislative mandate to serve the region as a natural area. The preservation of a corridor of natural land along streams has the following beneficial effect upon the stream:

1. Absorbs excess stormwater runoff before it reaches the stream;
2. Filters pollutants from surface flow before it reaches the stream;
3. Reduces the temperature of stream water;
4. Reduces bank scouring thereby reducing silt loads; and
5. Creates habitat, food, and water for wildlife.

Pursuant to N.J.A.C. 7:45-6.2, all major projects within the Review Zone shall be subject to review by the Commission for stream corridor preservation if the project includes a portion of the stream corridor of any of the following streams or their tributaries:

1. Alexauken Creek
2. Assunpink Creek
3. Beden's Brook
4. Duck Pond Run
5. Fiddler's Creek
6. Heathcote Brook
7. Jacob's Creek
8. Lockatong Creek
9. Millstone River
10. Moore's Creek
11. Shabakunk Creek
12. Shipetauken Creek
13. Simonson Creek
14. Six Mile Run
15. Stony Brook
16. Swan Creek
17. Ten Mile Run
18. Wickecheoke Creek

The Park is currently crossed by approximately 50 vehicular bridges and is paralleled by roads along most of its 60 mile length. The Department recognizes that if traffic patterns are permitted to develop without regard for the Park, it will lose its park-like serenity, it will fail as a natural area and its historic character will be lost. Consequently, in N.J.A.C. 7:45-9, the Department proposes to review all major projects within the Review Zone to review the project's potential traffic impact on the Park. In reviewing major projects, the Commission will consider the project's impact on roads that cross the Park or are in its immediate vicinity. If the Commission determines that a project will have an adverse impact on the Park, the applicant shall include improvements to the region's road pattern that will direct traffic away from the Park.

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The proposed new rules provide as follows:

N.J.A.C. 7:45-1 sets forth the purposes of this chapter, defines the review zones and sets out the scope of project review to address the five following specific types of environmental impacts: storm drainage and water quality, stream corridor, visual, traffic and noise.

N.J.A.C. 7:45-2 establishes the application procedures for review of private and governmental projects.

N.J.A.C. 7:45-3 establishes the requirement that construction cannot begin on any project prior to issuance of a Certificate of Approval by the Commission.

N.J.A.C. 7:45-4 provides that an applicant, municipality or municipal reviewing agency aggrieved by the Commission's Notice of Decision may request an adjudicatory hearing.

N.J.A.C. 7:45-5 sets forth the submission requirements and standards for review of storm drainage and water quality impact within the review zone.

N.J.A.C. 7:45-6 sets forth the purpose and scope of review in evaluating the impact of a project on stream corridors within the review zone. It establishes permitted, prohibited and conditional uses within the stream corridors.

N.J.A.C. 7:45-7 establishes standards for review of detention facilities proposed for flood hazard areas within the review zone which are not located in a stream corridor.

N.J.A.C. 7:45-8 provides the submission requirements and standards of review for evaluation of the visual impact of a project within the review zone.

N.J.A.C. 7:45-9 provides that the Commission may require an applicant to submit a traffic impact study evaluating the impact of the proposed project on the Park. The subchapter also sets forth standards for the review of new crossings of the Canal and proposals for new or improved of roads within the review zone.

N.J.A.C. 7:45-10 provides that the Commission will review all projects wholly or partly located within that part of the review zone designated as Zone A. The subchapter also sets forth the submission requirements and standards for evaluating the anticipated noise impact of the proposed project.

N.J.A.C. 7:45-11 establishes criteria for waiver of storm drainage and water quality, stream corridor, visual and traffic impact review of governmental and private projects. The subchapter also establishes criteria for waiver if the project consists of reconstruction or minor alteration or if application for review would result in extreme economic hardship.

N.J.A.C. 7:45-12 provides that if any part of the chapter is declared unconstitutional the remainder shall not be affected.

**Social Impact**

Adoption of the proposed new rules will allow the Commission to continue to encourage consideration of the natural and recreational resources of the Park and its waterways, and to promote cooperation between the Commission, municipal and county and State reviewing agencies and private users.

**Economic Impact**

The proposed new rules will continue the economic impact associated with the expired rules. Included therewith are administrative costs to the Commission and the costs to applicants of conformity with the Commission's master plan, that is, project costs associated with compliance with standards addressing storm drainage and water quality, visual and natural qualities, noise quality, traffic, and stream corridor preservation. In most instances, compliance will require the construction of a detention facility for storm water runoff, which is slightly more costly than basins required by the municipality. For projects that are in Zone A of the review zone, compliance may require set-backs from the Park, landscape buffers, or special architectural features to assure a harmonious relationship between the Park and adjacent development.

**Environmental Impact**

The proposed new rules will continue the environmental impact associated with the expired rules, that is, preservation of the natural and recreational resources of the Park by requiring project sponsors to give adequate consideration to those values.

**Regulatory Flexibility Statement**

These proposed new rules would apply to any person or governmental agency proposing to undertake construction within the review zone. It is estimated that of the 300 applications reviewed by the Commission in 1986, approximately 260 were submitted by "small businesses" as defined in the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169) and will be impacted. In order to comply with these proposed new rules, the small

businesses will have to comply with the requirements set forth in the "Summary" above. In so doing, it is likely that small businesses will need the services of professional engineers and environmental consultants. It is expected that compliance with these proposed new rules will result in an increase in the cost of construction. However, in developing these proposed new rules, the Department has balanced the need to protect the environment of the Delaware and Raritan Canal State Park against the economic impact of the proposed new rules and has determined that to minimize the impact of the proposed new rules would endanger the environment, public health and public safety, and therefore, no exemption from coverage is provided.

Full text of the proposed new rules follows:

**CHAPTER 45**

**DELAWARE AND RARITAN CANAL STATE PARK REVIEW ZONE**

**SUBCHAPTER 1. REVIEW ZONE OF THE DELAWARE AND RARITAN CANAL STATE PARK**

**7:45-1.1 Purpose**

The Delaware and Raritan Canal Commission was created pursuant to the Delaware and Raritan Canal State Park Law of 1974, N.J.S.A. 13:13A-1 et seq. The Commission is authorized to prepare and adopt a master plan for the physical development of the Delaware and Raritan Canal State Park and to establish zones in which it will review all private and public projects that impact on the Park and insure that the projects conform as nearly as possible to the master plan adopted by the Commission. This chapter establishes the procedure for the review and sets forth the standards that will be considered by the Commission. The rules are intended to encourage consideration of the natural and recreational resources of the Park and its waterways at the earliest stages of land-use planning and to promote cooperation between the Commission, municipal, county and state reviewing agencies, and private land users.

**7:45-1.2 Definitions**

As used in this chapter, the following words and terms shall have the following meanings:

"Act" shall mean the Delaware and Raritan Canal State Park Law of 1974, P.L. 1974, c.118, N.J.S.A. 13:13A-1 et seq.

"Canal" means the Delaware and Raritan Canal, its feeder canal and the abandoned section of the canal in the Township of Hamilton, County of Mercer.

"Class II watershed" means a watershed identified by the Commission as having no history of significantly mingling with the canal water under either normal or storm conditions. The location of these watersheds can be obtained from the Commission's office in Stockton, New Jersey.

"Commission" means the Delaware and Raritan Canal Commission.

"Department" means the Department of Environmental Protection.

"Flood hazard area" means the floodway and flood fringe area of a delineated stream designated by the Department pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.

"Governmental projects" means the undertaking of a public improvement, construction or land-use change by a State department or agency, county, municipality or any other governmental entity except interior alterations to an existing structure involving no change of use.

"Major project" means:

(a) If any part of a project site falls within Zone A, the entire project is "major" if it:

1. Involves construction, development, or redevelopment of four or more dwelling units; or
2. Involves no dwelling units, but will cover with impervious surfaces 10,000 square feet or more of previously uncovered land; or
3. Involves any of the following uses:
  - i. Livestock pens, corrals, or feed lots;
  - ii. Pipelines, storage or distribution systems for petroleum products or chemicals;
  - iii. Liquid waste, storage, distribution or treatment facilities (excluding home septic systems);

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- iv. Solid waste storage, disposition, incineration, or landfill;
  - v. Hazardous waste treatment, storage or disposal;
  - vi. Quarries, mines or borrow pits; or
  - vii. Land application of sludge or effluents.
- (b) If no part of the project site falls within Zone A, but some of it falls within Zone B, the project is "major" if it:
1. Will cover one acre of land with impervious surfaces; or
  2. Involves any of the land uses itemized in (a)3 above.

"Master Plan" means the Delaware and Raritan Canal State Park Master Plan adopted by the Commission in May 1977, including any modification, revision or amendment thereof subsequently adopted by the Commission.

"Minor project" means:

- (a) Regarding Zone A, a project which is not a major project.
- (b) Regarding Zone B, projects other than major projects are not subject to review in Zone B.

"Municipal approving agency" means any body or instrumentality of the municipality responsible for the issuance of permits, which shall include but not be limited to building permits, zoning variances, and excavation permits; or the approval of private projects, which shall include but not be limited to governing bodies, planning and zoning boards, building inspectors, and municipal engineers.

"Net fill" means the total amount of fill created incidental to the completion of the project less the amount of excavated material removed during completion of the project, both measured below the elevation of the edge of the flood hazard area.

"Park" means the Delaware and Raritan Canal State Park as determined by the Department.

"Private projects" means any proposed development, structure or land-use change requiring any municipal approval or permit, except interior alterations to an existing structure involving no change of use or connections to publicly owned sewerage systems.

"Review Zone" means that region designated by the Commission appertaining to and including the Park in which proposed projects may cause an adverse drainage, aesthetic or other ecological impact on the Park. The Review Zone and its subzones designated as Zone A (being the area within one thousand feet on either side of the center line of the Canal) and Zone B (being the balance of the review zone) are delineated on maps available at the Commission's office in Stockton, New Jersey and at the offices of the following counties and municipalities whose boundaries encompass part of the Review Zone:

In Hunterdon County:

Delaware, East Amwell, Franklin, Kingwood, Lambertville, Raritan, Stockton, West Amwell

In Mercer County:

East Windsor, Ewing, Hamilton, Hightstown, Hopewell Borough, Hopewell Township, Lawrence, Pennington, Princeton Borough, Princeton Township, Trenton, Washington, West Windsor

In Middlesex County:

Cranbury, Monroe, New Brunswick, North Brunswick, Plainsboro, South Brunswick

In Monmouth County:

Millstone

In Somerset County:

Franklin, Hillsborough, Manville, Millstone, Montgomery, Rocky Hill, South Bound Brook

"Stream corridor" means the stream and all of the land on either side of the stream which is within the 100 year flood line and all of the land within a 100 foot wide buffer around all 100 year flood lines.

**7:45-1.3 Scope of review**

(a) In the Review Zone, the Commission will review governmental and private projects, and State permits for land-use activities, that impact on the Park. Each project and permit will be reviewed for its conformance with the overall objectives of the Master Plan of the Delaware and Raritan Canal State Park and with the specific standards of this chapter. Review will address five specific types of impact:

1. Storm drainage and water quality impact;
2. Stream corridor impact;
3. Visual and natural quality impact;

4. Traffic impact; and
5. Noise impact.

(b) In each case, the scope and depth of review will depend upon the size and location of the land-use activity.

1. In Zone A:

i. Major projects are reviewed for storm drainage and water quality impact, visual and natural quality impact, stream corridor impact, traffic impact and noise impact.

ii. Minor projects are reviewed for storm drainage and water quality impact, visual and natural quality impact, and noise impact. Submission requirements are significantly less detailed for minor projects than for major projects. They are, however, expected to comply with the general standards in N.J.A.C. 7:45-5 for water quality and visual and natural quality impact.

2. In Zone B, major projects are reviewed for storm drainage and water quality impact, traffic impact and stream corridor impact.

**SUBCHAPTER 2. APPLICATION FOR PROJECT REVIEW**

**7:45-2.1 General provisions**

(a) Each applicant shall submit to the Commission sufficient information to adequately review and consider the project. Application forms are available from the Commission.

(b) Applicants may combine exhibits for any project provided all required information is shown thereon with sufficient clarity to be understood.

**7:45-2.2 Application for review of a private project**

(a) The initial application for a proposed private project within the Review Zone shall be submitted by the applicant to the appropriate municipal approving agency. If approved by the municipal approving agency, the application shall be reviewed by the Commission.

(b) An application for review of a private project may be submitted by the applicant to the Commission:

1. At any time prior to municipal review and approval; or
2. At any time during the planning stages for pre-application discussion with the Commission.

(c) All applications shall be submitted to the Commission by the municipal approving agency after it has approved the project.

(d) No application shall be reviewed by the Commission until it has been determined to be a complete application which, in addition to the pertinent submission requirements in this chapter, shall include a resolution of approval of the proposed project by the appropriate municipal approving agency.

**7:45-2.3 Application for review of governmental projects**

State departments or agencies, counties, municipalities and any other governmental entity shall submit plans for reviewable projects prior to undertaking them and are encouraged to discuss proposed projects with the Commission at the earliest planning stages.

**7:45-2.4 Review of private projects**

(a) The Commission has established a peremptory review procedure to eliminate the overlap of governmental review of private projects under the following conditions:

1. If a county adopts and implements standards which are determined by the Commission to be the equivalent of those of the Commission, the Commission may approve the private project without further review upon receiving notice from the county approving agency that the private project is in compliance with its standards. However, in cases where those standards are relaxed by the county so as to grant approval without full compliance, the notice shall describe in detail the reasons for the relaxation of each standard and, in such cases, the Commission may determine that the private project is not eligible for peremptory review but is subject to full review as provided in (b) below.

2. Where the county has not adopted standards determined by the Commission to be the equivalent of its standards, or where the county does not review the project, but where the project is reviewed by a municipal approving agency which has adopted and implements such standards, the Commission may approve the project without further review upon notification from the municipal approving agency that the project is in compliance with its standards. However, in the cases

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where those standards are relaxed by the municipal approving agency so as to grant approval without full compliance, the notice shall describe in detail the reasons for the relaxation of each such standard, and, in such cases, the Commission may determine that the project is not eligible for peremptory review but is subject to full review as provided in (b) below.

(b) Private projects which are not eligible for peremptory approval:

1. At any time before applying for Commission approval, an applicant may request a pre-application conference to discuss the project with the Commission. The purpose of this conference is to enable the applicant to plan economically for conformity with the Master Plan and its policies and standards and those of this chapter. No requirements are imposed by this chapter as to plans, documents, or data to be presented for discussion at a pre-application conference. However, this chapter contains a list of materials and data required as part of any application for review of each specific impact. It would be advisable that the applicant provide the Commission with as much of this information as practicable for the pre-application conference.

2. A report of the pre-application conference shall be prepared by the Commission and may include:

i. A summary of the strengths and weaknesses of the project as related to the policies and standards of the Master Plan and this chapter.

ii. A recommendation to the applicant and the reviewing municipal agency or official.

3. The Commission's pre-application report shall, upon completion, be mailed to the applicant, the county planning board, and the municipal approving agency.

4. Comments, findings, conclusions, and recommendations of the Commission's pre-application report and statements made during the pre-application conference are for guidance only and shall not be binding upon the applicant or the Commission.

(c) Submission procedures for private projects eligible for peremptory approval are established in (a) above and in N.J.A.C. 7:45-5.2.

(d) For private projects not eligible for peremptory approval, the municipal approving agency shall transmit a copy of the resolution of approval by the municipal approving agency to the Commission. All other forms, documents, and data required for the Commission's review pursuant to N.J.A.C. 7:45-2 may be submitted by the applicant either prior to approval by the municipal approving agency or forthwith upon such approval.

**7:45-2.5 Waiver of submission requirements**

The Commission may waive some of the submission requirements for a particular project if the Commission already has the information or if the applicant establishes to the satisfaction of the Commission that the information is not necessary for the Commission's review of the project.

**7:45-2.6 Project review and decision**

(a) The Commission shall declare the application complete within five working days after receipt of all forms, data, and documents required to be submitted under this chapter. Upon declaring the application complete, the Commission shall notify the applicant by certified mail, shall notify the relevant municipal approving agency, and shall publish notice of the application in "The DEP Bulletin".

(b) Within 45 days from the date when an application has been declared complete, the Commission shall take one of the following actions:

1. Approve the application and advise the appropriate municipal approving agency that the project can proceed as proposed;

2. Reject the application and so advise the appropriate municipal approving agency and the governing body of the municipality; or

3. Approve the application subject to conditions and return the application to the appropriate municipal approving agency which shall be responsible for assuring that the conditions are satisfied before issuing a permit.

(c) If no action is taken by the Commission within a period of 45 days from the date that the application is declared to be complete, the application shall be deemed to have been approved by the Commission.

**7:45-2.7 Review of governmental projects**

(a) The Commission shall review and either approve, reject or conditionally approve any project in the Review Zone proposed by a State department or agency, county, municipality or any other governmental entity.

(b) Any State department or agency, county or municipality planning to undertake a governmental project in the Review Zone:

1. Shall submit its plans and such data required by the Commission for the Commission's review prior to physically undertaking the project; and

2. Is encouraged to informally discuss its plans with the Commission at any time prior to submission of its plans for review; but in any case,

3. Shall submit its plans to the Commission for its review and approval, rejection, or conditional approval not less than 60 days before advertising for bids for the construction of a project or executing a contract therefor, whichever is sooner.

**7:45-2.8 Notice of decision**

(a) The Commission shall notify the Governor of each decision concerning governmental projects within the Park.

(b) For all private projects, the Commission shall notify the applicant of its final decision by certified mail, shall notify the appropriate municipal and county approving agencies, shall publish notice of the decision in the DEP Bulletin, and shall notify all interested persons who specifically requested notice.

(c) The Commission's decision shall be binding on the applicant, the municipality and the municipal approving agency. In the case of any violation or threat of a violation of a Commission decision by a municipality or by the appropriate municipal approving agency, the Commission may institute civil action:

1. For injunctive relief;

2. To set aside and invalidate a decision made by a municipality or appropriate municipal approving agency in violation of the Act, this chapter or the Commission's decision; or

3. To restrain, correct or abate such violation.

**7:45-2.9 Review of State permits**

(a) The Commission shall review and either approve, reject or modify each permit or approval to be issued by any State department or agency to any person or governmental entity if the permit or approval involves any portion of the Park or any activity therein.

(b) Prior to the issuance of each reviewable State permit, a complete permit application together with all supporting information, shall be submitted by the applicant to the Commission, unless the department or State agency involved has already done so. The Commission shall, within 45 days of receiving a copy of the complete permit application and all other information, either approve, reject, or approve with conditions the permit. The Commission shall notify the applicant and the state department or agency of the Commission's decision within 10 days of that decision.

**7:45-2.10 Review of State actions**

(a) The Commission shall approve all State actions within the Review Zone that impact on the Park, and insure that these actions conform as nearly as possible to the Master Plan and relevant local plans or initiatives. The State actions which the Commission shall review include:

1. Actions by the New Jersey Water Supply Authority concerning the improvement, maintenance and operation of the Canal as a water supply facility;

2. Actions by the Division of Parks and Forestry in the Department in the development of the Park for recreational purposes; and

3. Actions by any other State department or agency that impacts on the Park.

**SUBCHAPTER 3. CERTIFICATE OF APPROVAL**

**7:45-3.1 Certificate of approval**

(a) Construction shall not begin on any project nor shall any project be undertaken prior to issuance of the Commission's Certificate of Approval which shall be issued within 10 days of the decision granting approval or conditional approval and receipt of the proof of filing set forth in (g) below.

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(b) A Certificate of Approval shall explicitly state any conditions imposed by the Commission.

(c) Failure to comply with any provision or any condition imposed in a Certificate of Approval shall render the approval null and void.

(d) The applicant shall not deviate from the approved plans and any deviation shall render the approval null and void if the Commission determines that the deviation substantially alters the character of the project or impairs the intent of either the Master Plan or this chapter.

(e) The holder of the Certificate of Approval shall allow the Commission or its authorized agent access to the project site to inspect the project and otherwise determine compliance with the Certificate of Approval and this chapter.

(f) The Certificate of Approval shall lapse:

1. If construction does not commence within three years from the date of the Certificate and no extension is granted by the Commission; or

2. If construction ceases for a period of one year; or

3. If the municipal permits or approvals expire, lapse, or are revoked.

(g) As a condition precedent to the Commission's issuance of a Certificate of Approval, the applicant shall satisfy the Commission that a properly executed Conservation and Maintenance Easement has been filed in the Office of the County Clerk or Registrar of Deeds. The Certificate of Approval shall not be issued until proof of filing is received at the Commission's office. The easement shall incorporate and implement the condition of approval set forth by the Commission in the Notice of Decision on the proposed project.

### SUBCHAPTER 4. ADJUDICATORY HEARINGS

#### 7:45-4.1 Request for an adjudicatory hearing

(a) When the Commission denies or approves with conditions a project, the notice of decision shall advise the applicant, municipality and municipal reviewing agency of the right to request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. The notice shall include the following:

1. Where and to whom hearing requests should be sent;

2. The deadline by which hearing requests must be submitted; and

3. The information that is required to be in the hearing request under (c) below.

(b) Within 30 calendar days following the service of the notice of decision under N.J.A.C. 7:45-2.8, the applicant, municipality or municipal approving agency may submit a request to the Commission for an adjudicatory hearing to contest the denial or approval with conditions of a project.

(c) The hearing request shall contain:

1. The name, mailing address and telephone number of the person making the request and the project number;

2. A clear and concise factual statement of the nature and scope of the interest of the requester;

3. The names and addresses of the persons whom the requester represents;

4. Statement of each legal or factual question alleged to be at issue and their relevance to the decision;

5. Designation of the specific factual areas to be adjudicated and the hearing time established for that adjudication;

6. Information supporting the request or other written documents relied upon to support the request shall be submitted unless it is already in the administrative record;

7. Specific references to the contested conditions, as well as suggested revised or alternative conditions which, in the judgment of the requester, would be required to implement the purposes and policies of the Act and this chapter.

(d) No project may commence pending completion of all appeal processes.

#### 7:45-4.2 Decision on request for hearing

(a) The Department shall determine whether a request for a contested case hearing should be granted. In making such determination, the Department shall evaluate the request to determine whether a

contested case, as defined by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., exists and whether there are issues of fact which, if assumed to be true, might change the Commission's decision. Where only issues of law are raised by a request for a hearing, the request will be denied.

(b) If the Department grants a request for an adjudicatory hearing, the Department shall identify those contested conditions for which an adjudicatory hearing has been granted. The Department shall set forth these conditions in writing and serve notice in accordance with N.J.A.C. 7:45-4.3. Conditions which are not contested or for which the Department has denied the hearing request shall not be affected by or considered at the hearing.

(c) If the Department grants a request for a hearing, in whole or in part, in regard to a notice of decision, then any other request for a hearing in regard to that notice shall be treated as a request to be a party and the Department shall grant any such request which meets the requirements of N.J.A.C. 7:45-4.1(c).

(d) If a request for a hearing is denied in whole or in part, the Department shall briefly state the reasons. Such denial shall constitute the final action of the Department.

#### 7:45-4.3 Notice of hearing

Public notice of the grant of a hearing shall be given by mailing a copy to the applicant, municipality and municipal approving agency.

#### 7:45-4.4 Conduct of hearing

Hearings shall be governed by procedures described in "New Jersey Uniform Administrative Procedure Rules, 1980", N.J.A.C. 1:1.

### SUBCHAPTER 5. STORM DRAINAGE AND WATER QUALITY IMPACT REVIEW

#### 7:45-5.1 Purpose and scope of review

(a) The Commission shall review projects that produce storm water runoff that will drain into the Park, either directly or indirectly through a stream. All projects within Zone A and Zone B of the Review Zone, except those projects expressly exempted by this chapter or waived by the Commission, shall be subject to review for their drainage impact on the Park.

(b) This subchapter requires a degree of detention storage which will provide a positive reduction in runoff from small to moderate sized storms. The Commission will accept, however, as an alternative, municipal or county requirements under which required stormwater detention will control all storms of up to 100 year frequency so that there will be no increase in the maximum rate of runoff which would have occurred from such a storm without the development. In this case, it will not be necessary to provide for a reduction in any storm below that which would have occurred without the development. The retardation of runoff by detention must encourage the holding of storm water runoff on the project's site, as close as practicable to its source. This detention may be accomplished by detention basins, or by equivalent alternative methods, as explained in N.J.A.C. 7:45-5.4.

#### 7:45-5.2 Submission requirements

(a) Projects may be eligible for peremptory approval as described in N.J.A.C. 7:45-2.4. For projects in Zone B which are eligible for peremptory approval, submission materials will be limited to a completed copy of the form supplied by the Commission and the data described in (b), (e), (f)1 and (f)3 below. Projects in Zone A shall comply with all submission requirements regardless of their eligibility for peremptory approval.

(b) Except for minor projects which are additions or alterations to existing structures, the applicant shall submit to the Commission a topographic base map of the site prior to improvement at a scale of one inch = 200 feet or greater, showing two foot contour intervals for slopes of 10 percent or less, and five foot contour intervals for slopes greater than 10 percent. Where such information is not available, the applicant may request Commission approval of some other contour interval. The map shall indicate at least the following:

1. Existing and proposed watersheds;

2. Marshlands;

3. Outlines of woodland cover;

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4. Existing man-made structures;
5. Roads;
6. Utilities;
7. Bearing and distances of property lines; and
8. Significant natural and man-made features not otherwise shown.

(c) Applicants shall submit a map at a scale of one inch = 400 feet or greater to reflect current conditions, showing the relationship of the proposed development to significant features in the general surroundings. The map shall indicate the following:

1. Roads and pedestrian ways;
2. Access to the site;
3. Adjacent land uses;
4. Existing open space;
5. Public facilities;
6. Landmarks and places of architectural and historic significance;
7. Utilities;
8. The Park (or the direction to the Park);
9. Drainage (including, specifically, streams and other surface water shown on USGS maps); and
10. Other significant features not otherwise shown.

(d) The applicant shall submit a written and graphic description of the natural and man-made features of the site and its environs. This description shall include a discussion of soil conditions, slopes, wetlands, and vegetation on the site. Particular attention shall be given to unique, unusual, or environmentally sensitive features and to those that provide particular opportunities or constraints for development.

(e) Except for minor projects which are additions or alterations to existing structures, the applicant shall submit a project description and site plan map (or maps) at the scale of the topographic base map showing changes proposed and a written description of the site plan with a justification of proposed changes in natural conditions. The map shall include:

1. Two foot contours indicating the finished slopes of the land;
2. The location and size of proposed buildings, roads, parking areas, utilities, structural facilities for detaining or recharging storm-water and sediment control, and other permanent structures;
3. The location of any 100 year flood lines on the site;
4. Any streams within 100 feet of any part of the project site;
5. Areas where alterations in the existing terrain, cover and grade are proposed; and
6. Proposed changes in natural cover, including lawns and other landscaping.

(f) For minor projects, details of the proposed plan to control and dispose of surface water shall be submitted. For major projects that will include facilities for storm water detention, the following information, including a map or maps of a suitable scale, shall be provided:

1. Total area to be paved or built upon, estimated land area to be occupied by water detention facilities and the type of vegetation thereon, and details of the proposed plan to control and dispose of surface water;
2. Appropriate measure to control velocity and erosion from outlets or discharge points;
3. Details of all water detention plans during and after construction, including discharge provisions, discharge capacity for each outlet at different levels of detention and emergency spillway provisions with maximum discharge of each spillway;
4. Maximum discharge and total volume of runoff which would occur from the project area without the improvement for the following storms:
  - i. The one and one quarter inch of rainfall occurring within a two-hour storm for determining water quality protection; and
  - ii. The flood and erosion control standard for detention will require 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, 10 and 100 year storm considered individually. These design storms shall be defined as a 24-hour storm using the rainfall distribution recommended by the U.S. Soil Conservation Service procedures (such as U.S. Soil Conservation Service,

“Urban Hydrology for Small Watersheds,” Technical Release No. 55).

5. Maximum discharge and total volume of runoff which would occur from each of the storms described at (f)4i and ii above after complete construction of the proposed improvement and the proposed detention provisions; and

6. Computations fully substantiating the information in this subsection including the assumptions and bases thereof.

(g) The applicant shall submit a statement from a licensed engineer of the State of New Jersey that he has reviewed or prepared the plans for the detention facility and the proposed provisions are satisfactory from a dam safety viewpoint and in accordance with any criteria or rules established by the State.

(h) The applicant shall submit any other information expressly requested by the Commission which may show the extent to which the project is in accord with the standards of review established in this chapter.

(i) Applicants for minor projects need not comply with (c), (d) and (g) above.

**7:45-5.3 General storm drainage and water quality standards**

Plans submitted shall demonstrate careful consideration of the general and specific concerns, values and standards of the Master Plan and shall be based upon environmentally sound site-planning, engineering, architectural techniques, and, whenever feasible, incorporate features to promote on-site recharge of stormwater runoff.

**7:45-5.4 Specific storm drainage and water quality standards**

(a) Each project subject to this chapter shall include facilities for detention of storm runoff through any feasible combination of impoundments, rooftop storage, swales, dry wells, or any other reliable engineering approaches.

(b) The detention facilities shall provide retention of site runoff for any storm up to and including the two, 10 and 100 year storm. In making computations under this subsection and also under (c) below, it shall be assumed that this storm occurs after one inch of prior rainfall during the preceding 24 hours (which may be assumed to have been evacuated). Runoff greater than that for a storm of this size will be passed over an emergency spillway.

(c) The outlet from the detention facility shall require 90 percent of the runoff from 1.25 inches of rainfall, falling in two hours, to be retained so that no more than 90 percent will be evacuated in less than 36 hours. The following exceptions to this subsection will be acceptable:

1. Retention will not be required in any case to any extent which would reduce the outlet size to a diameter of less than three inches.
2. Dry basins serving residential projects may allow evacuation of 90 percent in 18 hours.
3. For Class II watersheds and in cases where runoff is from a single family housing and unimproved areas only and where the runoff enters detention basins after moving by sheet flow for at least 30 feet over lawns or leaf-mulch areas, outlets shall be designed so that detention storage when full will be 90 percent evacuated over 12 hours.

4. In all cases, multiple levels or other fully automatic outlets shall be designated and installed so that discharge rates from the development for storms less severe than the design storm will be substantially reduced from what would occur if the development were not constructed. Outlet waters from the design storm shall be discharged from the development at such locations and velocities so as not to cause additional erosion or to cause additional channels below the development.

5. As soon as more rain than specified in (c) above, but less than in (b) above, has fallen, excess storm water may be released provided that the total rate of releases does not exceed 50 percent of what would have occurred from the given storm with the site in an undeveloped condition.

(d) Runoff from areas uphill or upstream from the project site may be passed across the project site without detention or storage. If it is more convenient, part or all of such water may be passed through the detention means described above and an equal amount of water that originates on the site may be passed downhill or downstream. If any such upstream water enters a detention facility provided as

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specified under (b) above, the amount of detention provided shall be increased accordingly. For watersheds other than Class II this exchange of water is permitted only if the site runoff is not more polluted than the detained runoff from uphill or upstream. The intention is to require retention for the full period specified in (c) above of the actual runoff from the site or its equivalent and not just of an equivalent amount of water (which may be less polluted).

(e) For purposes of controlling site runoff in accordance with (a), (b), (c) and (d) above, the site area shall be taken to include the total gross area of the development site except for the cases described in (e) 1, 2 and 3 below.

1. For residential development, less dense sites will require smaller facilities than densely developed sites of the same size. The following may be used for computation of detention storage on residential projects, computing runoff under provisions of (b), (c) and (d) above for only a part of the total housing area as follows:

- i. One-quarter acre lots or greater density—100 percent of total area;
- ii. One-half acre lots—80 percent of total area;
- iii. One acre lots—65 percent of total area;
- iv. Two acre lots or less density—50 percent of total area;
- v. For the other fractions of acre lots, the corresponding equivalent site areas shall be interpolated.

vi. With regard to the unimproved portions of the site area, the runoff shall be handled in accordance with provisions of (d) above.

2. For nonresidential projects with impervious surfaces covering less than 30 percent of the site, a reduction in area used for computations of detention storage may be allowed, as follows:

- i. Thirty percent or more of site impervious—100 percent of site used;
- ii. Ten percent or less of site impervious—33 percent of site used;
- iii. Intermediate values may be interpolated.

3. Where the project consists of two phases as listed below in (e)3i and ii, the detention requirements for both phases may be computed on the same basis as (i) below:

- i. New construction which requires provision of storm drainage under the terms of this chapter; and
- ii. Repair or rehabilitation of structures and surfaces which does not result in increasing the extent of impervious areas or in rendering existing surfaces less impervious.

(f) If part of the site is permanently dedicated to natural vegetative growth, without restriction, improvement or control of any kind, this area may be excluded from all calculations.

(g) If detention basins or other detention facilities are provided through which water passes at times other than following rainfall, the Commission should be consulted concerning design criteria.

(h) Outlets from detention facilities shall be designed to function without manual, electric, or mechanical controls. Outlet waters shall be discharged at such locations and velocities so as not to cause additional erosion or cause additional channels below the development.

(i) The retention site runoff as required by this chapter will result in the accumulation in the detention basin of considerable amounts of sediment, including particulate polluting substances and debris. Provisions shall be made for periodic removal and disposal of accumulated solid materials in accordance with law. Computations for storage capacity shall include estimates for one year's accumulation of solid materials.

(j) Responsibility for operation and maintenance of detention facilities installed, including periodic removal and disposal of accumulated particulate material and debris, unless assumed by a governmental agency, shall remain with the owner of the property and shall be passed to any successor owner. In the case of developments where lots are to be sold, permanent conservation and maintenance easements satisfactory to the Commission shall be executed to ensure continued performance of these obligations.

(k) If local ordinances or the approved provisions of a water quality management plan require a larger design storm, more detention storage or lower release rates than those specified in this section, then the stricter requirements shall prevail, the provisions specified herein being considered as minima and not maxima.

(1) Where the provisions of separate detention facilities for a number of single sites may be more expensive and more difficult to maintain than provision of joint facilities for a number of sites, the applicant may request that the Commission consider provision of joint detention facilities which will fulfill the requirements of this chapter. In such cases, a properly-planned staged program of detention facilities shall be submitted to the Commission in which compliance with some requirements may be postponed at early stages while preliminary phases are being undertaken and construction funds accumulated.

**7:45-5.5 Alternative standards for Class II watershed**

(a) Detention facilities located in a Class II watershed will be reviewed in accordance with the standards in N.J.A.C. 7:45-5.4(a) with modifications described in N.J.A.C. 7:45-5.4(c) and (d). The applicant will be required to provide detention facilities that regulate flooding but will not be required to address water quality. 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.

**7:45-5.6 Applicability of storm drainage and water quality standards**

(a) The storm drainage and water quality standards do not apply in the following instances:

1. General standards: Zone B minor projects;
2. Standards for storm water retention: Minor projects in both Zones A and B;
3. Alternative standards for certain watersheds: Minor projects in both Zones A and B; and
4. Standards for stream corridors: Minor projects in both Zone A and B.

**SUBCHAPTER 6. STREAM CORRIDOR IMPACT****7:45-6.1 Scope of review**

(a) Except for specific projects expressly waived by the Commission pursuant to N.J.A.C. 7:45-11.2, all major projects within Zone A and/or Zone B of the Review Zone shall be subject to review by the Commission for stream corridor preservation if the project includes a portion of the stream corridor of any of the following streams or their tributaries:

1. Alexauken Creek
2. Assunpink Creek
3. Beden's Brook
4. Duck Pond Run
5. Fiddler's Creek
6. Heathcote Brook
7. Jacob's Creek
8. Lockatong Creek
9. Millstone River
10. Moore's Creek
11. Shabakunk Creek
12. Shipetauken Creek
13. Simonson Creek
14. Six Mile Run
15. Stony Brook
16. Swan Creek
17. Ten Mile Run
18. Wickecheoke Creek

**7:45-6.2 Permitted uses within stream corridors**

(a) Only the following uses shall be permitted within stream corridors:

1. Cultivation and farming (including truck gardening and harvesting of any wild crops such as marsh hay, ferns, moss, berries or wild rice) according to the best management practices of the Soil Conservation Service or the State Soil Conservation Committee.
2. Pasture and controlled grazing of animals in accordance with conservation practices approved by the Soil Conservation Service or the State Soil Conservation Committee.

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3. Outdoor plant nursery, vineyards, and/or orchards in accordance with soil conservation practices approved by the Soil Conservation Service or the State Soil Conservation Committee.

4. Wildlife sanctuary, woodland preserve, and arboretum, except facilities subject to damage by flooding.

5. Game farms, fish hatcheries, or hunting and fishing reserves, operated for the protection and propagation of wildlife, but excluding enclosed structures.

**7:45-6.3 Prohibited uses within the stream corridors**

(a) The following are among the prohibited uses within the stream corridor:

1. New construction or replacement of free standing structures, buildings and retaining walls not in the public interest.

2. On-site sewage disposal systems.

3. Any solid or hazardous waste facilities, as defined in N.J.A.C. 7:26 including but not limited to sanitary landfills, transfer stations, wastewater lagoons and impoundments.

4. Junk yards, commercial and industrial storage facilities and the open storage of vehicles and materials.

5. Barns, stables, feedlots, barnyards, poultry buildings, and farm waste disposal facilities.

6. Parking facilities and roads that are parallel with the stream.

7. Detention or retention basins.

**7:45-6.4 Conditional uses within the stream corridors**

(a) The following uses may be permitted in the stream corridors if the applicant demonstrates to the satisfaction of the Commission that the proposed use complies with the Master Plan and this chapter.

1. Recreational use, whether open to the public or restricted to private membership, such as parks, camps, picnic areas, golf courses, fishing areas, hiking, bicycle and bridle trails, sport or boating clubs, not to include enclosed structures, but permitting piers, docks, floats, or shelters usually found in developed outdoor recreational areas;

2. Outlet installations for sewerage treatment plants and sewage pumping stations;

3. Private or public water supply wells that have a sanitary seal, flood proofed water treatment facilities, or pumping facilities;

4. Quarrying, excavating, digging, dredging or grading when incidental to permitted structures or uses including stream cleaning, and stream rehabilitation work undertaken to improve hydraulics or to protect public health;

5. Dams, culverts and bridges that have received approval from the appropriate municipal, county and State agencies having such authority;

6. Sanitary or storm sewers;

7. Impoundment basins;

8. Utility transmission lines, installed during periods of low stream flow according to soil erosion and sediment control practices approved by the Federal Soil Conservation Service or the State Soil Conservation Committee and in a manner which will not impede flows or pond water;

9. Structures, buildings and retaining walls comprising part of a regional flood retention project, water supply impoundments, culverts, or bridges; and

10. Roads that cross the stream corridor as directly as feasible.

**7:45-6.5 Local stream corridor ordinance**

When the Commission determines that a municipality or county has adopted a stream corridor ordinance that is more stringent than this subchapter, the Commission shall apply the standards set forth in the ordinance for the review of a project for stream corridor impact.

**SUBCHAPTER 7. DETENTION FACILITIES IN FLOOD HAZARD AREAS**

**7:45-7.1 Applicability**

This subchapter applies to those watersheds outside the stream corridor but within the Review Zone.

**7:45-7.2 Standards of review of detention facilities in flood hazard areas**

(a) The following standards pertain to the review of detention facilities in flood hazard areas:

1. Whenever practicable, developments and their storm water detention facilities should be beyond the extent of the flood hazard area of a stream. Whenever that is not feasible and detention facilities are proposed to be located partially or wholly within the flood hazard area or other areas which are frequently flooded, some storm conditions will make the facility ineffective at providing retention of site runoff. This will happen if the stream is already overflowing its banks and the detention basin, causing the basin to be filled prior to the time it is needed. In such cases the standards established in this chapter for "Storm Drainage and Water Quality" (N.J.A.C. 7:45-5) will be modified in order to give only partial credit to detention capacities located within a flood hazard area. The credit will vary in a ratio intended to reflect the probability that storage in a detention basin will be available at the time a storm occurs at the site.

2. Detention storage provided below the elevation of the edge of the flood hazard area will be credited as effective storage at a reduced proportion as indicated in the table below:

Elevation	Size of Drainage Area *Less than		
	Five mi <sup>2</sup>	Five-100 mi <sup>2</sup>	Greater than 100 mi <sup>2</sup>
Less than two feet below	40 percent	65 percent	90 percent
Between two feet and four feet below	25 percent	50 percent	75 percent
Over four feet below	10 percent	25 percent	50 percent

\*Area contributing floodwaters to the flood hazard area at the site in question.

This effective detention storage will be required to provide for drainage of the developed land in accordance with the criteria already established in this chapter. However, the gross storage considered for crediting will not exceed that which would be filled by runoff of a 100 year storm from the site.

3. As an alternative to (a)2 above, if the applicant can demonstrate to the satisfaction of the Commission that the detention provided would be effective, as provided in N.J.A.C. 7:45-5, during runoff from a three inch—six hour storm, peaking simultaneously at the site and on the flood hazard area, the plan will be accepted as complying with provisions of (a)2 above.

4. In making computations under (a)2 or 3 above, the volume of net fill added to the flood hazard area portion of the project's site will be subtracted from the capacity of effective detention storage provided.

5. Where detention basins are proposed to be located in areas which are frequently flooded but have not been designated by the Department as flood hazard areas, the provisions of either (a)2 or 3 above will be applied, substituting the elevation of a computed 100 year flood for the elevation of the edge of the flood hazard area in (a)2 above.

6. Highways and bridges crossing flood hazard areas from side to side are exempt from this subchapter.

7. Applicants shall comply with stream encroachment and flood plain rules promulgated by the Department.

**SUBCHAPTER 8. VISUAL AND NATURAL QUALITY IMPACT**

**7:45-8.1 Submission requirements**

(a) The following shall be submitted to the Commission for review of the visual impact of all projects:

1. A plan showing the location, type and size or dimension of existing trees with a diameter at breast height of three inches or greater, rock masses, and other natural and man-made features, with designations of the features which will be retained in the completed development. Sites that are heavily wooded shall indicate the area covered by trees, typical sizes, and types that predominate.

2. A drawing of the structure(s) specifying color and type of surface materials, and showing all elevations visible from the Park.

## PROPOSALS

## Interested Persons see Inside Front Cover

## ENVIRONMENTAL PROTECTION

3. A photograph of each of the existing structure(s) and a drawing showing details of proposed alterations, including notation of colors and materials to be used.

4. A site plan to scale showing the location, dimensions, and arrangements of all open space and yards, type of paving materials, methods to be employed for visual screening, and proposed grades.

### 7:45-8.2 General standards of review for visual and natural quality impact

(a) The Commission shall review all projects in Zone A to determine if the project is in accord with the goals for the Park as defined in the Park's Master Plan. The visual and natural quality impact review is intended to assure that development within Zone A is not harmful to the character of the environmental types identified in the Master Plan as comprising the Park. The environmental types are:

1. Natural: Sign of man's impact are non-existent or slight;
2. Rural: Natural conditions dominate but unobtrusive signs of man's impact exist;
3. Suburban: A dominant feeling of open space, but that space is chiefly defined by man-made structures;
4. Urban: Enclosure by dense development;
5. Transportation: Park squeezed between roads, railroads, and river;
6. Special Node: Small areas with unique characteristics.

### 7:45-8.3 Review of visual and natural quality impact of major projects within Zone A

(a) Major projects are discouraged from those portions of Zone A that comprise the Natural, Rural, Transportation, and Special Node Environments of the Park. Where major projects are proposed for the above-cited Review Zone environments, the Commission will not grant approval unless special compensatory measures that mitigate the project's potential for harmful impact on the Park are provided. Examples of such compensatory measures might include:

1. Increased set-back distances from the Park;
2. Dedication of at least 40 percent of the total project site for open space for recreation or conservation purposes, and location of that open space near the Park;
3. Extensive landscape development;
4. Development of circulation patterns that direct traffic away from the Park;
5. Noise abatement measures;
6. Improvements to adjoining portions of the Park.

(b) In those cases where the far banks of the Delaware River, the Raritan River, and Lake Carnegie are closer than 1000 feet to the center line of the Canal, those banks shall be the limit of Zone A.

### 7:45-8.4 Design standards for review of visual and natural quality impact

(a) Major and minor projects in Zone A shall be set back from the Park sufficiently far so that the visual and natural quality of the Park is not adversely affected. The following setbacks are required unless the Commission approves an alternative:

1. In urban environments there are no minimum setbacks except as may be prescribed by municipal ordinances.
2. In suburban and transportation environments all structures shall be located 200 feet or more from the Park.
3. In natural and rural environments all structures shall be located 250 feet or more from the Park.
4. In any area where existing vegetation does not provide adequate screening, the project shall include landscaping, or a greater setback, or both, to project the Park's visual environment.

(b) Major and minor projects in Zone A shall maintain a reasonable height and scale relationship to nearby structures or vegetation. The following standards will be required:

1. For urban environments, the height of structures may vary according to the height of existing structures that have a visual relationship to the proposed structure.
2. For all other environments, structures shall not be visible above existing tree canopy as viewed from the Park. Where such canopy does not exist, or consists of immature vegetation, structures shall be limited to a height of 40 feet.

(c) For major projects in Zone A the exterior appearances of a project shall be in keeping with the character of the Park's individual environments. The following standards shall apply to the design of the exterior appearance of major projects in Zone A:

1. Colors used shall harmonize with the man-made or natural surroundings of the project and shall be typical of colors found in the Park environment.

2. Building materials and texture shall harmonize with the surrounding man-made and natural materials.

(d) For major and minor projects in Zone A, other visual and natural quality impact standards are as follows:

1. Electric, telephone, cable television, and other such lines and equipment shall be underground or otherwise not visible from the Park. Exception may be requested from the Commission for above-ground terminals, transformers, and similar facilities, and for the extension of service in an existing development.

2. Exposed storage areas, out-buildings, exposed machinery service areas, parking lots, loading areas, utility buildings, and similar ancillary areas and structures shall either be completely concealed from view from the Park or designed according to this chapter applied to other structures.

3. All commercial signs and outdoor advertising structures in excess of two square feet surface area shall comply with the following standards:

- i. In urban and transportation environments, no freestanding signs shall be erected within 200 feet of the Park boundary;
- ii. In natural or rural environment, no sign shall be visible from the Park;
- iii. No signs or other advertising device of any size with moving or moveable parts or with flashing, animated, or intermittent illumination shall be visible anywhere within the Park;
- iv. No freestanding sign or other advertising or part thereof visible from the Park shall be more than 200 feet above ground level.

4. Wherever possible, natural terrains, soils, and vegetation should be preserved. New vegetation and soils should be native to the environment in which they are to be placed.

5. Projects should be compatible in scale, height, site-planning and color with any officially designated Federal, State, or local historic site or district.

## SUBCHAPTER 9. TRAFFIC IMPACT

### 7:45-9.1 Scope of review

Major projects within Zone A and Zone B of the Review Zone will be reviewed for their traffic impact potential on the Park. All proposals for new or widened roads in the Review Zone will be reviewed.

### 7:45-9.2 Review of major projects

In reviewing major projects in any part of the Review Zone, the Commission will consider the impact from these projects on roads that cross the Park or are in the Park's immediate vicinity. The applicant, upon request by the Commission, shall submit a traffic impact study which shows the impact that the Park will receive as a result of the project's completion. If the Commission determines that the project will have an adverse impact on the Park, the applicant shall include improvements to the region's road pattern that will direct traffic away from the Park.

### 7:45-9.3 Review of road construction, road improvements, and new traffic loads

(a) The Commission will not approve projects that include new crossings of the Canal unless the applicant demonstrates to the satisfaction of the Commission that the project conforms with the following goals:

1. A new interstate or similar major road crossing shall relieve congestion on existing local crossings.
2. Any new local crossing shall eliminate an existing local crossing.
3. The materials, colors, size, and design of the crossing shall be compatible with the Park.
4. Recreational access to the Park and recreational continuity within the Park shall be accommodated by new crossings.

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5. Noise retardation measures shall be utilized wherever appropriate.

6. Connections between new crossing roads and existing or new parallel roads shall not increase traffic flow on the parallel roads.

(b) Proposals for new or improved roads in Zone A and B that will substantially increase vehicular traffic to roads adjacent to the Canal will not be approved unless the applicant can demonstrate to the satisfaction of the Commission that:

1. Recreational access to the Park is not impeded;
2. Historic features of the Park are not adversely impacted;
3. The ecological character of the Park is not adversely impacted; and
4. The increased traffic will not have a visual or noise impact on the Park.

### SUBCHAPTER 10. NOISE CONTROL

#### 7:45-10.1 Scope of review

The Commission shall review all major and minor projects which are wholly or partly within Zone A to determine their noise impact on the Park.

#### 7:45-10.2 Noise impact statement

For each project described in N.J.A.C. 7:45-10.1, the applicant shall submit to the Commission a noise impact statement describing the anticipated noise impact of the project on the Park, and indicating by reference to site plan diagrams, architectural plans or other documents required by the Commission, how the noise produced or likely to be produced by the project will be abated.

#### 7:45-10.3 Standards for review of noise impact

The applicant shall establish to the satisfaction of the Commission that the noise produced or likely to be produced by the project will be abated to levels in accordance with N.J.A.C. 7:29-1 and N.J.A.C. 7:29B-1 promulgated by the Department pursuant to the Noise Control act of 1971, N.J.S.A. 13:1G-1 et seq. Federal Highway Administration/New Jersey Department of Transportation standards shall be applied in the review of highway noise.

### SUBCHAPTER 11. WAIVER OF GOVERNMENTAL AND PRIVATE PROJECTS REVIEW

#### 7:45-11.1 Waiver of storm drainage and water quality impact review for governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for storm drainage and water quality impact may be waived from such review if the applicant establishes to the satisfaction of the Commission that:

1. The project will not adversely affect the surface waters of the Park under either storm or normal conditions; and
2. The groundwater effects produced by the project are unlikely to measurably affect the quality of the surface waters or groundwaters of the Park.

#### 7:45-11.2 Waiver of stream corridor impact review for governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for stream corridor impact may be waived from such review if the applicant establishes to the satisfaction of the Commission that:

1. The project will not have a harmful effect upon the stream corridor's present ability to function as a buffer for the stream's ecological health and as a natural area; or
2. The project incorporates environmentally sound site planning techniques, or preserves other natural areas, either of which can be demonstrated to have an equivalent effect as would compliance with this chapter.

#### 7:45-11.3 Waiver of visual and natural quality impact review for governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for visual and natural quality impact may be waived from such review if the applicant establishes to the satisfaction of the Commission that visual screening will continue to exist in the future, and:

1. The topography of the land screens the entire project; or
2. Existing structures screen the entire project; or
3. Vegetation screens the entire project during the winter season.

#### 7:45-11.4 Waiver of traffic impact review for private and governmental projects

Private and governmental projects otherwise subject to review by the Commission for traffic impact will be waived for such review if the applicant establishes to the satisfaction of the Commission that the project will not have a direct traffic impact on the Park.

#### 7:45-11.5 Waiver of reconstruction or minor alteration review for governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for reconstruction or minor alterations may be waived from such review if the applicant establishes to the satisfaction of the Commission that:

1. The project consists solely of the reconstruction of a previously existing structure which was partially destroyed by fire, flood, or other natural disaster, and that the reconstruction will not increase the use or the exterior dimensions of the structure. Structures which are totally destroyed by such natural disasters are not eligible for waiver and remain eligible for review; or
2. The project consists solely of alterations to an existing structure and will not increase the use or the exterior dimensions of the structure.

#### 7:45-11.6 Hardship waiver for governmental and private projects

The Commission may, at its discretion, waive review or waive any requirement of this chapter, upon a clear and convincing demonstration by the applicant that application of the review procedure, or of a specific requirement of this chapter, would result in extreme economic hardship or extraordinary and unjustified expense, and that the project will not impair the intent and purpose of the Master Plan or this chapter.

#### 7:45-11.7 Exclusivity of waiver

Waiver of review for a specific impact of a governmental or private project does not constitute a waiver of review for any other impact pursuant to this chapter.

### SUBCHAPTER 12. SEVERABILITY

#### 7:45-12.1 Severability

If any portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

## HEALTH

### (a)

#### **NARCOTIC AND DRUG ABUSE CONTROL** **Refilling of Prescriptions for Substances in** **Schedules III and IV**

#### **Withdrawal of Proposed Amendment: N.J.A.C.** **8:65-7.14**

The Commissioner of Health, pursuant to the authority of N.J.S.A. 24:21-9 to promulgate rules and regulations for the enforcement of the provisions of the New Jersey Controlled Dangerous Substances Act, had proposed to amend the Administrative Code, cited as N.J.A.C. 8:65-7.14 in the New Jersey Register at 19 N.J.R. 1612(a).

The proposed amendment would be in direct conflict with prescription filling practices governed by the New Jersey Pharmacy Practices Act and those set forth by the Bureau of Pharmaceutical and Medical Services in the Department of Human Services.

Therefore, the Department of Health is withdrawing its proposal to amend N.J.A.C. 8:65-7.14.

**HIGHER EDUCATION****(a)****STUDENT ASSISTANCE BOARD****Student Assistance Programs****Student Assistance Board; General Provisions;  
Tuition Aid Grant Program; Garden State Scholars;  
Public Tuition Benefits Program; Garden State  
Graduate Fellowship Program; Veterans Tuition  
Credit Program; Vietnam Veterans Tuition Aid  
Program; Congressional Teacher Scholarship  
Program****Proposed Readoption with Amendments: N.J.A.C.  
9:7-1 through 9:7-9**

Authorized By: Student Assistance Board, M. Wilma Harris,  
Chairperson.

Authority: N.J.S.A. 18A:71-15.2, 18A:71-15.3, 18A:71-26.8,  
18A:71-48, 18A:71-76.6, 18A:71-77, 18A:71-15.3, Title V, Part  
E of the Higher Education Act of 1965, as amended by the  
Human Services Reauthorization Act of 1984, 20 U.S.C.  
§1119d-1119d-8.

Proposal Number: PRN 1988-13.

Submit comments by February 3, 1988 to:

Grey J. Dimenna, Esq.  
Administrative Practice Officer  
Department of Higher Education  
225 West State Street  
CN 542  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 9:7 expires on April 13, 1988. The Department of Higher Education and the members of the Student Assistance Board, in consultation with representatives of the higher education community, have reviewed the rules proposed for re-adoption and determined them to be necessary, reasonable and proper for the efficient operation of the financial aid programs for which they were originally promulgated, as required by the Executive Order.

In 1978, the Student Assistance Board was created (N.J.S.A. 18A:71-15.1 et seq.) to administer designated State grant and scholarship programs and empowered to establish rules for the operation of such programs. In addition, the Board was given the responsibility of establishing eligibility, application and payment requirements for the student assistance programs enacted at that time and for all subsequent programs legislated under its authority. In March, 1978, the Student Assistance Board (SAB) adopted rules for the Tuition Aid Grant (TAG) Program, the Garden State Scholarship (GSS) Program, and the Garden State Graduate Fellowship Program. In July, 1980, the SAB adopted rules for the Public Tuition Benefits (PTB) Program. The Veterans Tuition Credit Program (VTCP) rules were adopted in April 1986, and rules for the Vietnam Veterans Tuition Aid Program (VVTAP) were adopted in November, 1985. In April, 1987, the Federally funded Congressional Teacher Scholarship Program rules were promulgated by the SAB in accordance with Federal legislation and regulations.

The proposed amendments to the General Provisions for the overall administration of all financial aid programs, N.J.A.C. 9:7-2, provide additional clarification of requirements for eligibility for State student assistance, consistency and clarification of terminology, the elimination of redundant or unnecessary text to simplify interpretation, and the relocation of text to the appropriate subsection or subchapter.

The Tuition Aid Grant (TAG) Program (N.J.S.A. 18A:71-41 et seq.), N.J.A.C. 9:7-3, provides awards to New Jersey residents who enroll as undergraduate students at any approved college or university in New Jersey. The amount of the grant differs in value by college sector and takes into consideration the student's financial need, the tuition charged by the institution, the cost of college attendance, and available appropriations. These grants are renewable annually based upon financial need and satisfactory academic progress. The proposed amendments specify the evaluation process utilized in the determination of the family and/or

student's ability to contribute to the cost of education. Rules have been added which permit part-time students to receive TAG awards. The 1986-87 TAG Award Table has been eliminated since it no longer represents current award payments to eligible students. The rule concerning eligible out-of-state institutions has been deleted since all eligible prior awardees have been grandfathered.

The Garden State Scholarship (GSS) Program (N.J.S.A. 18A:71-26.1 et seq.), N.J.A.C. 9:7-4, provides awards through New Jersey institutions to students who demonstrate high academic achievement based upon their high school records, Scholastic Aptitude Test (SAT) scores, and college records. Recipients must have financial need, attend as full-time undergraduate students at an approved New Jersey college or university and be residents of New Jersey. The Distinguished Scholars Program, also referenced in this subchapter, provides awards to graduating secondary school students who meet the high academic requirements of the program, without consideration of financial need. They must be New Jersey residents and attend an eligible New Jersey college or university as full-time undergraduate students. Proposed amendments permit eligible students to receive State grants and scholarships, such as TAG and GSS awards, as long as these awards and other financial aid do not exceed the cost of attendance as determined by the institution.

The Public Tuition Benefits (PTB) Program (N.J.S.A. 18A:71-77 et seq.), N.J.A.C. 9:7-5, provides free tuition for students and surviving spouses of a member or officer of various police, fire, law enforcement, and civil defense agencies killed in the performance of his or her duties. Eligible dependents who wish to attend any public institution of higher education in New Jersey may enroll free of any tuition charges. Dependents may also attend any independent institution in New Jersey; however, the annual value of their grant cannot exceed the highest tuition charged at a New Jersey public institution. Recipients must enroll on at least a half-time basis in an undergraduate degree program and do not have to demonstrate financial need for these awards. The proposed amendments eliminate the specific categories of eligible emergency service personnel since these areas are already detailed in the statute. The proposed amendments also clarify eligibility requirements and student notification as well as eliminate lengthy and unnecessary text by utilizing more simplified language and consolidation with other appropriate rules throughout the subchapter.

The Garden State Graduate Fellowship Program (N.J.S.A. 18A:71-26.2), N.J.A.C. 9:7-6, provides awards to New Jersey residents who enroll full-time at a New Jersey graduate school in a degree program other than a professional degree program. Fellowships may be awarded without regard to financial need and are renewable for a four-year period based on the recommendation of the graduate school attended. The proposed amendments provide additional clarification of student eligibility requirements and terminology as well as eliminate redundant or unnecessary text and consolidate portions with other appropriate rules within the subchapter.

The Veterans Tuition Credit Program (VTCP) (N.J.S.A. 18A:71-64 et seq.), N.J.A.C. 9:7-7, provides educational benefits to veterans of the armed forces of the United States who wish to further their education on the undergraduate or graduate level in an approved course of study at any eligible academic, professional, or vocational institution in the United States. Veterans must be residents of New Jersey, eligible to receive veterans educational assistance benefits and must also have served on active duty in the armed forces of the United States between December 31, 1960 and August 1, 1974. Benefits are available for half-time as well as full-time attendance. The proposed amendments provide additional clarification of student eligibility requirements, consistency of terminology and the specific period of veterans active duty service for eligibility. The amendments also eliminate text which is unnecessary or which is incorporated in another subchapter.

The Vietnam Veterans Tuition Aid Program (VVTAP) (N.J.S.A. 18A:71-76.1 et seq.), N.J.A.C. 9:7-8, provides full tuition assistance to eligible veterans who are New Jersey residents for attendance at a public institution of higher education in New Jersey and tuition assistance, in an amount not to exceed the tuition charged undergraduate students at Rutgers, The State University, for attendance at any independent college in New Jersey. Eligible veterans must have served in Southeast Asia in the Vietnam conflict, must have received a Vietnam Service Ribbon and also be honorably discharged. A veteran is not required to demonstrate financial need for this assistance but is required to attend an eligible New Jersey college or university as an undergraduate student on at least a half-time basis. The proposed amendments eliminate text which is unnecessary or which is already incorporated in another subchapter.

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The Congressional Teacher Scholarship Program (N.J.S.A. 18A:71-15.3, Title V, Part E of the Higher Education Act of 1965, as amended by the Human Services Reauthorization Act of 1984, 20 U.S.C. §1119d-1119d-8), N.J.A.C. 9:7-9, is a Federally funded program with no matching state fund requirement. This program was established by Congress to encourage highly qualified students to pursue teaching careers. Eligible students must be residents of New Jersey and must attend an approved New Jersey college or university as full-time undergraduates.

**Social Impact**

These rules were enacted to provide financial assistance to New Jersey residents who wish to pursue their college education on the undergraduate as well as graduate level. They establish criteria for student eligibility, outline the academic standards for qualification, and specify the determination of award amounts as well as renewal eligibility and payment. The proposed amendments provide clarification, simplify interpretation and consolidate the requirements for qualifying and maintaining eligibility for State grants and scholarships.

Under the provisions of the need-based programs, the ability of the student and of the student's family to pay for college expenses is evaluated through the analysis of information provided on a financial aid form. The ability to pay is compared to the student's estimated college expenses and awards are then made to help bridge the difference between the ability to pay and the estimated cost. As a result, the grants are awarded to eligible students so that the neediest receive maximum benefits.

Several of the student assistance programs, which include the Garden State Scholarship, Distinguished Scholars and Garden State Graduate Fellowship Programs, recognize the high academic achievements of New Jersey residents and provide awards to students for attendance at New Jersey public or independent institutions. These programs represent an example of the State's interest in and commitment to fund academically qualified students. Other special programs of financial aid recognize the needs of certain students and provide award benefits to dependents of emergency service personnel killed in the line of duty, veterans of the armed forces of the United States and students who wish to pursue their careers in the teaching field.

All State financial assistance programs which are governed by these rules, with the exception of the Veterans Tuition Credit Program, require the utilization of grant and scholarship monies for attendance only at approved colleges and universities in New Jersey. As a result, State monies are concentrated within New Jersey and help to foster the educational system within the State.

General public reaction to these programs of financial aid has been very favorable. Studies which have been conducted on the impact of the various programs indicate that they have permitted individuals to attend college who might have otherwise been unable to attend due to a lack of the necessary finances. The conditions which prompted the creation of these programs by the Legislature continue to exist and have been made more severe by the current national economic situation.

If these rules are not readopted, these needed student assistance programs would cease to operate despite enabling statutes which delegate the administration of the programs to the Student Assistance Board. As a result, thousands of students would be faced with severe hardships in meeting their college expenses and may be forced to increase their loan indebtedness or drop out of college altogether.

**Economic Impact**

In fiscal year 1988, it is estimated that the Tuition Aid Grant Program, which is the major program of student assistance in New Jersey, will provide awards to approximately 37,600 undergraduate students for a total estimated expenditure of \$52,500,000. Awards range in value from \$200.00 to a maximum of \$3,000 a year based on the student's need and tuition charges at New Jersey colleges and universities. Funds are derived primarily from State appropriations and a Federal State Student Incentive Grant allocation of approximately \$2,000,000.

The Garden State Scholarship Program continues to meet some of the financial requirements of New Jersey's academically qualified students who have demonstrated financial need by offering awards which range in value from \$500.00 to \$1,000 a year. It is estimated that 7,000 students will be aided in fiscal year 1988 for a total state expenditure of \$3,950,000. The funding needs of the Distinguished Scholars Program have been met through reserves from the New Jersey Higher Education Assistance Authority. It is estimated that for fiscal year 1988 annual awards of \$1,000 each will be provided to 2,700 students totaling \$2,700,000.

The Public Tuition Benefits Program during the past five academic years has annually aided 20 or more students through the payment of

their full tuition charges at public institutions in New Jersey for an estimated total State expenditure of \$25,000 for the current fiscal year.

The Student Assistance Board stipulated that, beginning with the 1984-85 academic year, the annual stipend for the Garden State Graduate Fellowship Program would be \$6,000. Since the inception of the program, approximately 100 fellows attending New Jersey institutions are funded annually at various class levels. For fiscal year 1988, the estimated state expenditure is \$600,000.

The Veterans Tuition Credit Program has fulfilled the objectives of the legislation to provide assistance to New Jersey veterans and represents the State's interest and commitment to its residents who have served in the armed forces. The program provides annual awards of \$400.00 for full-time attendance and \$200.00 for half-time attendance. The number of eligible veterans making application is diminishing each year and it is believed that this reduction is related to the fact that they have acquired the necessary degree requirements to meet their needs and that many have joined the work force with the educational training and collegiate background provided, in part, by these program benefits. The program has addressed some of the needs of New Jersey veterans and should be continued until all eligible veterans have had an opportunity to receive assistance to further their educations. It is estimated that 400 veterans will receive assistance for the current fiscal year for a total state expenditure of \$100,000.

The 1986-87 academic year represents the second year of operation for the Vietnam Veterans Tuition Aid Program which provides tuition assistance to certain Vietnam veterans. For fiscal year 1988, it is estimated that 130 veterans will be aided for a total state expenditure of \$100,000.

Funding for the Congressional Teacher Scholarship Program is provided in total from Federal sources. The regulations governing the program do not require participating state agencies to match any portion of the Federal allocation. Eligible students who wish to pursue a teaching career may receive an annual award worth up to \$5,000. It is estimated that for fiscal year 1988, 100 students will receive awards totaling \$500,000.

**Regulatory Flexibility Statement**

The proposed readoption does not require a regulatory flexibility analysis since it does not impose any requirements on small businesses. The proposed readoption merely reinforces the rules which were enacted to provide financial assistance to New Jersey residents who wish to pursue their college education on the undergraduate as well as graduate level. The rules establish criteria for student eligibility, award amounts, renewal and payment.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9:7.

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

**9:7-1.2 Creation of Student Advisory Committee**

The Student Assistance Board shall create a Student Advisory Committee whose purpose shall be to advise the Student Assistance Board on the effect of Board policy and regulations; suggest alternative policy and regulations to the Board; and provide a means of communication between the Student Assistance Board and students. The Student Assistance Board shall initially appoint a nine member Student Advisory Committee [for] **from** nominations provided by the student government associations of each individual college in New Jersey. The nine members, all of whom shall be full-time students, shall consist of two students from independent colleges, two students[,] **from** Rutgers, The State University, two students from the [s]State colleges, one student from the New Jersey Institute of Technology, and two students from the county colleges. Students representing each sector shall be chosen such that in any given year one of the representatives shall complete his/her degree requirements within one academic year from the time of his/her selection and one shall be of lower class rank. Members of the Student Advisory Committee shall serve one year terms and their appointments may be renewed according to the initial appointment process. The Student Advisory Committee shall elect a Chairman and Vice Chairman from among its members, one of whom shall be a student at an independent institution and one of whom shall be a student at a public institution, and each of whom shall complete their degree requirements within one academic year from the time of their selection. The

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Chairman and Vice Chairman shall serve as voting members on the Student Assistance Board. In the event of a vacancy on the Student Advisory Committee, the Student Assistance Board may fill the vacancy in the same manner as the original appointment.

9:7-2.1 Undergraduate enrollment

Students must be enrolled or plan to be enrolled as full-time undergraduate students matriculated in a curriculum leading to a degree or certificate in order to be eligible for student assistance, with the exception of Garden State Fellowships which are reserved for graduate students meeting the same enrollment criteria (see N.J.A.C. 9:7-6). Students possessing an undergraduate degree (either a Baccalaureate or Associate degree) are not eligible for student assistance at that degree level. Certification of full-time status is the responsibility of the enrolling institution based on the current institutional definition of full-time status and subject to review and approval by the Student Assistance Board. [Degree or certificate programs must have a minimum requirement equal to the equivalent of 24 semester hours and be at least one academic year in duration.]

9:7-2.2 Residency

(a) Students must be legal residents of New Jersey for a period of not less than 12 consecutive months immediately prior to receiving a grant. The residence of a student is defined in terms of domicile. Domicile is defined as the place where a person has his or her true, fixed, permanent home and principal establishment, and to which, whenever he/she is absent, [he or she] he/she has the intention of returning.

1. A dependent student as defined in N.J.A.C. 9:7-2.6 is presumed to be a legal resident of the State in which his or her parent(s) or guardian(s) is a resident. A dependent student whose parent(s) or guardian(s) is not a legal resident of New Jersey is presumed to be in the State for the temporary purpose of obtaining an education. However, any dependent student who is domiciled in this State and enrolled in an institution of higher education in New Jersey shall continue to be eligible for New Jersey financial assistance despite his or her supporting parent(s) or guardian(s) change of domicile to another state, while such student continues to reside in New Jersey during the course of each academic year.

(b) Residence established solely for the purpose of attending a particular college cannot be considered as fulfilling the definition of domicile. When in question, a student must demonstrate proof of residence by presenting the following documents: driver's [license] license, voter registration form, tax return(s), or other suitable proof. The Office of Student Assistance, Department of Higher Education shall determine the [S]tate of residence for any individual whose residency is not certain. Institutions may provide information to substantiate the student's claim of legal New Jersey residence.

9:7-2.4 Determination of eligibility for and value of student assistance

In order to receive a need-based award students must have demonstrated financial need through submission of a [New Jersey Financial Aid Form] financial aid form approved by the Student Assistance Board in accordance with annually established deadline dates. [The information of the Financial Aid Form will be evaluated by employing the National Uniform Methodology, as represented in the College Scholarship Service system or by approaches modified to meet the purpose of the New Jersey student assistance programs. The evaluation results in an estimate of the family or student's ability to contribute to the cost of education. This estimate is then used to determine eligibility for and value of need-based student assistance.] Students may not receive assistance under the programs administered by the Student Assistance Board if [information is made known that] they owe a refund on a grant or scholarship previously received from a state or [Federal] Federal program through any institution or are in default on any [student] loan made [or insured by the Federal government] under any state or Federal student financial assistance program at any institution. **Students owing a refund on a grant or scholarship or who are in default on a loan may receive State financial assistance if they make arrangements acceptable with the appropriate office to repay the debt.**

9:7-2.5 Student notification

Students will [initially] be notified of grant eligibility through the Student Eligibility Notice issued by the Office of Student Assistance, Department of Higher Education. [The Student Eligibility Notice allows the student to estimate the amount of tuition assistance for which he/she may be eligible at a given institution of higher education. This estimate] **The amount of the grant** is subject to change based on the annual level of [appropriation] appropriations and other resources available to the student (see N.J.A.C. 9:7-2.9). [Students should also be notified in writing, by the institution's financial aid officer, of the content of his or her financial aid package.] The institution's written notification to the student regarding State student assistance shall contain a clause [absolving] **indicating** the State [of any responsibility] **is not responsible** for funding of the grant in the event [that the grant is based upon] of fraudulent, inaccurate or misleading information.

9:7-2.7 Income tax verification of family financial data

Students [who have been found eligible to receive student assistance] must provide an authorization to the Department of Higher Education, Office of Student Assistance, which permits the release of Internal Revenue Service and/or State income tax returns for verification purposes. [This document must be submitted before payment is made and in accord with annually established deadline dates.] Financial data provided on the [New Jersey Financial Aid Form] **financial aid form** will be verified through the comparison of information reported on income tax returns. Discrepancies will require the re-evaluation of the student's eligibility. Students as well as institutions will be notified if an adjustment in the value of aid is required.

9:7-2.8 Renewal eligibility and filing

Students must apply to renew their **need-based** student assistance through the annual filing of a [New Jersey Financial Aid Form] **financial aid form** in accordance with [annually established deadline dates] N.J.A.C. 9:7-2.4. **In addition, filing of the financial aid form is also required to participate in the Vietnam Veterans Tuition Aid Program.** To receive a renewal of State assistance, students must continue to [demonstrate financial need and maintain satisfactory academic progress as evidenced by the approval of the college to continue the student's full-time enrollment] **meet all program eligibility requirements as contained in these rules and applicable statutes.**

9:7-2.9 Award combinations

(a) Students receiving New Jersey State student aid funds may receive combinations of a Tuition Aid Grant, a Distinguished [Scholarship] **Scholars award**, veterans [grants] **awards**, a POW/MIA [grant] **award**, a Public Tuition Benefits [grant] **award**, a Garden State Scholarship or an Educational Opportunity Fund grant. Students cannot simultaneously hold an Educational Opportunity Fund grant and a Garden State Scholarship grant in any single semester.

(b) [Students applying for financial aid at the institution they are attending may not receive aid in excess of their financial need as determined by the uniform methodology. Aid is defined as scholarships and grants based on need, educational loans (except Guaranteed Student Loans and PLUS Loans) College Work-Study Program earnings, tuition reimbursement such as through an employer or military, monies awarded through other legislation such as the Trade Adjustment Act and ROTC scholarships, including the monthly subsistence payment, and vocational rehabilitation assistance. Distinguished Scholarship awards, other scholarships based on merit, other special benefit grants, Guaranteed Student Loans, and PLUS Loans may be used to replace total family contribution. The total assistance received from all sources listed above may not exceed the total college educational budget as defined by the institution.] **State grants and scholarships and other financial aid cannot exceed the cost of attendance as determined by the institution.**

(c) (No change.)

9:7-2.10 Verification of [E]nrollment and [A]cademic [P]erformance

(a) Before payment may be made to an eligible student, the institution shall have satisfactory evidence that the student is eligible for

State grant and/or scholarship assistance, has registered as a full-time student for an academic term, and that the student is meeting minimum standards for academic performance and academic progress. **Degree or certificate programs must have a minimum requirement equal to the equivalent of 24 semester hours and be at least one academic year in duration.**

(b)-(i) (No change.)

[(j) This regulation will become effective for record keeping and academic progress determination for the 1983-84 academic year, and effective for determination of grant eligibility for the 1984-85 academic year.]

9:7-2.12 Refunds [of disbursements made to students]

(a) If a refund is due [to] a student under the institution's refund policy and the student received financial aid under any State student assistance program, the institution shall multiply the institutional refund by the following fraction to determine the amount to be refunded to the [Treasurer,] State [of New Jersey, through the Office of Student Assistance]: amount of State assistance (minus work earnings) awarded for the payment period [ . . . . . ] **divided by** the total amount of financial aid (minus work earnings) awarded for the period.

[1.](b) [The payment] **Payment period [is] as used in (a) above shall mean** the time between the **first day** [a student registers] of classes for an academic term and the end of that term according to the institutional calendar.

(b) The enrollment period is the time between the day a student registers for an academic term and the date the student officially or unofficially withdraws from an institution, is expelled by an institution, or reduces his academic course load such that he is no longer eligible for State assistance.]

(c) The above formula shall be applied if a student reduces his/her academic course load to less than full-time prior to the date full tuition liability is required by the institution. However, if the student reduces his/her academic course load to less than full-time after the date full tuition liability is due to the institution, [and the student budget for the payment period is not reduced by the institution,] a refund to the State is not necessarily required.

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

(f) If a student utilizes any portion of an award, it will be treated the same as a full semester payment in calculating the number of semesters of eligibility. Thus, the institution shall afford the student the opportunity to [the] decline and repay the State award for that payment period.

9:7-2.13 Student's obligation to report changes in institution or financial status

Any changes in college attendance or family financial status which occur after the Student Eligibility Notice has been issued to the student must be reported immediately, in writing by the student, to the Office of Student Assistance, Department of Higher Education,

in order that the student's continued eligibility may be evaluated and prompt payment provided. **Institutions may report these changes on behalf of the student.**

9:7-2.15 Appeals

If, for any reason a student, [or] his/her family or an institution feels that the application of these rules [and regulations] results in an unfair determination of eligibility, an appeal [may] **shall** be filed with the Student Assistance Board within 60 days of notification of ineligibility. Appeals should be in the form of a letter addressed to the Chairman, Student Assistance Board, Attention: Appeals Officer, CN 540, Trenton, New Jersey 08625, and [should] **shall** contain the student's full name, social security number, college of attendance, and a description of the basis for the appeal.

9:7-2.16 [Fiscal responsibilities]

[The Department of Higher Education will audit college records relevant to State student aid programs, according to audit manuals issued by the Department. Institutions shall provide all records which are, in the option of the audit, necessary to the performance of the audit.]

Accounting and auditing standards

(a) **Institutions must maintain separate accounts for each State student assistance program for which funds are received. Institutional student records must also be maintained which include name, address, social security number, date and amount of each State award and such other information as may be defined by the Director of the Office of Grants and Scholarships. Records of receipts and disbursements shall be maintained in accordance with generally accepted accounting principles.**

(b) **As part of the institution's periodic audit by an independent accounting firm, State student assistance programs shall be included to insure compliance with Student Assistance Board rules. The Department reserves the right to conduct its own institutional audit.**

(c) **Institutions shall, upon reasonable notice, make available to the Director of the Office of Grants and Scholarships or his/her representative, access to institutional and student records for audit purposes.**

9:7-3.1 Determination of eligibility for and value of student assistance

**The information on the financial aid form will be evaluated by employing the methodology used to calculate the New Jersey Eligibility Index (NJEI). The evaluation results in an estimate of the family or student's ability to contribute to the cost of education. This estimate is then used to determine eligibility for and value of the Tuition Aid Grant.**

9:7-[3.1] 3.2 Tuition Aid Grant Award Table

(a) The value of the grant is related to the tuition charges of the various institutional sectors in New Jersey and the student's ability to pay for educational costs. [The award tables below show approximate award levels depending upon tuition and ability to pay:]

[1. TUITION AID GRANT (TAG) AWARD TABLE FOR 1986-1987  
APPROXIMATE TUITION AID GRANT VALUES  
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI) A	County Colleges B	State Colleges C	Independent Institutions D	Rutgers Univ. & UMDNJ <sup>1</sup> E	NJ Inst. of Tech. F
Under 950	\$890	\$1280	\$2650	\$1852	\$2132
950-1349	890	1280	2650	1852	2132
1350-1749	840	1230	2500	1800	2040
1750-2149	740	1130	2350	1700	1920
2150-2549	640	1030	2200	1600	1800
2550-2949	540	930	2050	1500	1680
2950-3349	290	680	1750	1250	1410
3350-3749	200	580	1600	1150	1290
3750-4149	0	480	1450	1050	1170
4150-4549	0	380	1300	950	1050
4550-4949	0	280	1150	850	930
4950-5349	0	200	1000	750	830
5350-5749	0	0	850	650	730
5750-6149	0	0	700	550	630
6150-6549	0	0	550	200	530
6550-6949	0	0	400	0	200
6950-7349	0	0	250	0	0
7350-7749	0	0	200	0	0
Over 7749	0	0	0	0	0

<sup>1</sup>Rutgers Engineering, Pharmacy, and Cook College students will have their awards increased to offset the higher tuition charged for these programs of study. Students enrolled in eligible programs at UMDNJ contact the financial aid office for details.]

[2.] TUITION AID GRANT (TAG) AWARD TABLE FOR 1987-88  
APPROXIMATE TUITION AID GRANT VALUES<sup>1</sup>  
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ <sup>2</sup>	NJ Inst. of Tech.
Under 950	100% of tuition	100% of tuition	40-50% <sup>3</sup>	100% of tuition	100% of tuition
950-1349	80-99%	90-99%	91-99%[4]	91-99%	91-99%
1350-1749	70-79%	80-89%	86-90%	86-90%	86-90%
1750-2149	60-69%	75-79%	81-85%	81-85%	81-85%
2150-2549	50-59%	68-74%	76-80%	76-80%	76-80%
2550-2949	40-49%	62-67%	71-75%	71-75%	71-75%
2950-3349	30-39%	55-61%	66-70%	66-70%	66-70%
3350-3749	Minimum	48-54%	61-65%	61-65%	61-65%
3750-4149	0	41-47%	56-60%	56-60%	56-60%
4150-4549	0	34-40%	51-55%	51-55%	51-55%
4550-4949	0	28-33%	46-50%	46-50%	46-50%
4950-5349	0	21-27%	41-45%	41-45%	41-45%
5350-5749	0	Minimum	36-40%	36-40%	36-40%
5750-6149	0	0	31-35%	31-35%	31-35%
6150-6549	0	0	26-30%	26-30%	26-30%
6550-6949	0	0	21-25%	21-25%	21-25%
6950-7349	0	0	16-20%	Minimum	Minimum
7350-7749	0	0	11-15%	0	0
7750-8149	0	0	5-10%	0	0
8150-8549	0	0	Minimum	0	0
Over	0	0	0	0	0

<sup>1</sup>In accordance with State guidelines, the value of [your] a student's grant may decrease dependent upon appropriated funds, [your] and the student's college budget, [your] available resources, and [your] estimated family contribution. [You will] The student shall be notified of any increase in [your] his/her grant if additional funds become available. Additional eligibility (NJEI) cells may be added below the minimum award level dependent upon the current tuition charges and estimated family contribution. For purposes of N.J.A.C. 9:7-[3.1] 3.2, Tuition Aid Grant Award Table, the minimum award for all institutional sectors shall be \$200.00.

<sup>2</sup>Students enrolled in eligible programs at UMDNJ should contact [your] the university's financial aid office for details.

<sup>3</sup>Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY88 Budget Request contains a recommended \$3,000.00 maximum award level in the independent sector for students with an NJEI under 950. [4] Percentages listed for NJEI categories 950 and above represent percentages of the first cell award.

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9:7-3.4 [Eligible out-of-state institutions] (Reserved)

[Students attending out-of-state institutions licensed by that state and accredited by a regional accrediting association recognized by the Council on Postsecondary Accreditation are eligible to receive tuition assistance if they meet the requirements of N.J.A.C. 9:7-2 and the state in which their institution is located has signed an approved reciprocity agreement with New Jersey which specifies that need-based grants of that state may be used at institutions located in New Jersey.]

9:7-3.5 Part-time students

(a) Eligibility for Tuition Aid Grants will be extended on an annual basis to part-time students upon the approval of the Student Assistance Board and the Board of Higher Education depending on the level of appropriated funds.

(b) Eligible students must be enrolled for at least six credits, matriculated in a degree or certificate program, and maintain minimum standards of academic progress as determined by the institution.

(c) The provisions of N.J.A.C. 9:7-2 shall apply to part-time students receiving Tuition Aid Grants except where such provisions specifically refer to full-time students.

(d) Payments to eligible students will be counted for the purpose of the requirements set forth in N.J.A.C. 9:7-2.11 as one-half a semester of payment.

9:7-4.1 Eligibility requirements

(a) Undergraduate Garden State Scholarship recipients must meet minimum academic requirements as defined in N.J.A.C. 9:7-4.6, demonstrate financial need as defined herein, and be selected by the institution they attend or plan to attend. [In addition to the financial need determination explained in N.J.A.C. 9:7-2.4 and 2.9, undergraduate must have demonstrated financial need to qualify for an award. Demonstrated financial need is the difference between the applicant's total resources (Estimated Family Contribution and other aid) and the total cost of college attendance (college budget). The undergraduate's demonstrated financial need will be reviewed annually by the institution to determine renewal eligibility.] Awards shall be provided to eligible students in accordance with the provisions of N.J.A.C. 9:7-2.9.

(b) Distinguished [Scholarship] Scholar recipients must meet the academic requirements as defined by the Student Assistance Board. The academic requirements shall include secondary school ranking in the graduating class and/or a combination of the secondary school ranking and combined Scholastic Aptitude Test (SAT) scores. Where SAT scores are not available, the appropriate equivalent from the American College Testing (ACT) Program may be used. Each year the Student Assistance Board shall determine and publicize the actual academic requirements prior to the distribution of awards. Such scholarships may be awarded on the basis of indicators of academic merit defined by the Board, without consideration of financial need, and must satisfy the requirements as stipulated in N.J.A.C. 9:7-2.9. Distinguished [Scholarship] Scholar recipients must attend an eligible New Jersey institution and may be eligible to receive a Garden State Scholarship or an Educational Opportunity Fund Grant. [Distinguished Scholarship recipients will be selected without regard to their course of study and awards will not be limited by institutions.] Distinguished [Scholarships] Scholar awards are renewable for up to four or five years, depending upon the course of study and providing

the student continues to achieve satisfactory academic progress. Eligible scholars may receive assistance under the Tuition Aid Grant Program.

(c) Garden State Scholarship and Distinguished [Scholarship] Scholar recipients who transfer to another eligible New Jersey institution may transfer their awards provided they have demonstrated satisfactory academic progress. [and, in the case of Garden State Scholarship recipients, have demonstrated financial need at the institution they will attend. Graduate fellows will be selected primarily on the basis of academic merit.]

9:7-4.2 Award amounts

Undergraduate scholarship award amounts shall be a minimum of \$200.00. The maximum Garden State Scholarship award shall be \$1,000 and the Student Assistance Board shall annually establish award amounts in recognition of various levels of academic achievement. The exact amount of the Garden State Scholarship award shall be determined by the college financial aid officer [and take into account the student's financial need as defined] in accordance with N.J.A.C. 9:7-2.9. The Garden State Distinguished [Scholarship] Scholar award [and the graduate fellowship award] amount[s] shall be established annually by the Student Assistance Board.

9:7-4.5 Institutional eligibility, allocations and funding of awards

(a) (No change.)

(b) The Student Assistance Board will annually allocate [scholarship] Garden State Scholarship funds to all eligible institutions [to assist eligible renewal and initial award recipients]. All eligible institutions will be guaranteed a minimum allocation of funds [for undergraduate scholarships] annually by the Student Assistance Board.

(c) (No change.)

9:7-4.6 Academic eligibility for undergraduate scholarships

(a) (No change.)

(b) Academic Index (AI) computation rules: To qualify for a Garden State Scholarship, an applicant must attain a minimum AI of 210. Applicants with a rank in class in the lowest quartile shall be ineligible for a Garden State Scholarship regardless of AI.

1. Formula: Academic qualification for a Garden State Scholarship is gauged by an [Academic Index (AI)] AI. The AI is derived by combining two factors, the Scholastic Aptitude Test scores from the College Entrance Examination Board and a converted [high] secondary school rank in class. The formula [or] for combining the two factors is:

$$AI = \frac{\text{Verbal} + \text{Math SAT scores}}{10} + 2 \text{ Converted Rank}$$

2. (No change.)

3. Rank in class:

i. In order to weight [high] secondary school rank equally with SAT scores, the converted rank is multiplied by 2. The rank from whichever semester the institution chooses to use is acceptable.

ii. Conversion of the [high] secondary school rank to a standardized score is necessary in order to combine it equally with the SAT scores which have also been standardized. The following table gives the converted rank multiplied by 2, which is the figure to be combined with the test score sum in the AI formula given in (b) above.

[HIGH] SECONDARY SCHOOL RANK CONVERSION TABLE

Percent Standing	Converted Rank x 2	Percent Standing	Converted Rank x 2	Percent Standing	Converted Rank x 2
00-01	= 150	13-14	= 122	44-47	= 102
02	= 142	15-16	= 120	48-52	= 100
03	= 138	17-18	= 118	53-56	= 98
04	= 136	19-21	= 116	57-60	= 96
05	= 134	22-24	= 114	61-64	= 94
06	= 132	25-27	= 112	65-68	= 92
07	= 130	28-31	= 110	69-72	= 90
08	= 128	32-35	= 108	73-75	= 88
09-10	= 126	36-39	= 106		
11-12	= 124	40-[42]43	= 104		

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(c) Applicants who rank in the top 10 percent of their [high] **secondary** school graduating classes shall be eligible regardless of test scores.

(d) Students who have not attended [high] **secondary** school for a period of at least two years prior to entering college shall be allowed to meet the academic eligibility criterion by earning a 3.6 grade point average (GPA) on a 4.0 grading scale during their first semester of full-time college attendance. Students selected by the means shall begin receiving their scholarships at the beginning of the following academic year.

(e) **Academic eligibility for Distinguished Scholars shall be determined in accord with N.J.A.C. 9:7-4.1.**

9:7-4.7 [Fiscal responsibilities] (**Reserved**)

[Institutions must maintain separate accounts for Garden State Scholarship, Distinguished Scholarship, and Garden State Graduate Fellowship funds received. Institutional records must include full student identification including name, address, social security number, date and amount of the award, the academic index, estimated family contribution (Garden State Scholars), and other information defined by the Student Assistance Board. An accounting must be kept of expended and unexpended funds, the latter being promptly refunded to the State of New Jersey in accordance with the most recent administrative directive.]

## 9:7-4.8 Renewal of scholarships

Students receiving undergraduate [or graduate] scholarship assistance will continue to receive aid provided they continue to meet all of the eligibility criteria as stipulated in the statute and in the [regulations] **rules** adopted by the Student Assistance Board. Award eligibility based upon academic achievement, as defined in N.J.A.C. 9:7-4.6, must only be evaluated when initial awards are being determined and the academic eligibility criteria used at the time scholarships are awarded shall remain throughout the student's remaining period of eligibility.

## 9:7-5.1 General provisions

[(a) Chapter 229, Laws of 1979 as amended by Chapter 300, Laws of 1981 and Chapter 4, Laws of 1983, provide that free tuition will be available at any public institution of higher education in the State and that portion of the tuition at an independent institution in the State not to exceed the highest tuition charged at a public institution of higher education in this State through the Public Tuition Benefits Program (PTB) to any child or surviving spouse of a member or officer of a New Jersey volunteer fire company, volunteer first aid or rescue squad or municipal fire, police, county police or park police department, State Fire Service or of the Division of State Police, or of a permanent, active and full-time officer employee of this State or any political subdivision thereof holding the following titles: State investigator, correction officer, recruiter, senior correction officer, sergeant, lieutenant, captain, correction officer duty keeper, court attendant and sheriff's officer, court attendant and sheriff's officer lieutenant, court attendant and sheriff's officer captain, court attendant and sheriff's officer deputy chief, prosecutor's detective, prosecutor's investigator, narcotics officer, marine patrolman, senior marine patrolman, principal marine patrolman, chief, bureau of marine law enforcement, or who is an inspector, assistant, technician, supervisor or superintendent with respect to the enforcement and regulation of weights and measures, or civil defense or disaster control worker, which member, officer or worker was killed in the performance of his or her duties.]

[(b)] General provisions for all programs administered by the Student Assistance Board (N.J.A.C. 9:7-2) which pertain to residency (2.2), foreign nationals (2.3), payments [to students, student withdrawal or dismissal during period of an award] (2.11), **refunds** (2.12), check endorsements (2.14), and [fiscal responsibilities] **accounting and auditing standards** (N.J.A.C. 9:7-2.16) shall be in effect for the Public Tuition Benefits Program.

9:7-5.2 [Policy responsibility] (**Reserved**)

[Development, coordination, and administration of policies for the PTB Program shall be the responsibility of the Student Assistance Board in accordance with the law. This program shall be coordinated

with other State student assistance programs which provide for similar tuition benefits.]

9:7-5.3 [Application procedure] (**Reserved**)

[(a) The eligible child or surviving spouse should obtain an application for the PTB Program from his/her high school guidance office, public college financial aid officer or by contacting the Department of Higher Education, Office of Student Assistance.

(b) The eligible child or surviving spouse must complete an application and attach proof (if available) that the deceased was killed in the line of duty and submit both documents to:

New Jersey Department of Higher Education  
Public Tuition Benefits Program  
CN 540  
Trenton, New Jersey 08625]

## 9:7-5.4 Eligible institutions

[Tuition benefits are available to eligible students at the following public institutions of higher education located in New Jersey:

County Colleges  
Atlantic  
Bergen  
Brookdale  
Burlington  
Camden  
Commissions  
Cumberland  
Essex  
Gloucester  
Hudson  
Mercer  
Middlesex  
Morris  
Ocean  
Passaic  
Salem  
Somerset  
Sussex  
Union  
Union County Technical Institute  
Warren  
State Colleges  
Glassboro  
Jersey City  
Kean  
Montclair  
Ramapo  
Richard Stockton  
Thomas Edison  
Trenton  
William Paterson  
Independent Institutions  
Assumption  
Berkeley (Garret Mtn)  
Bloomfield  
Caldwell  
Centenary  
College of Saint Elizabeth  
Don Bosco  
Drew  
Edward Williams  
Fairleigh Dickinson  
Felician  
Georgian Court  
Monmouth  
Northeastern Bible  
Princeton  
Rabbinical  
Rider  
Saint Peter's  
Seton Hall

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Stevens Institute of Technology  
 Upsala  
 Westminster Choir  
 Rutgers University, UMDNJ and NJ Institute of Technology  
 Camden College of Arts and Sciences  
 College of Engineering  
 College of Nursing  
 College of Pharmacy  
 Cook College  
 Douglass College  
 Livingston College  
 Mason Gross School of the Arts  
 Newark College of Arts and Sciences  
 Rutgers College  
 UMDNJ  
 University College  
 New Jersey Institute of Technology]

**Tuition benefits are available to eligible students enrolled in an institution of collegiate grade in New Jersey and approved or licensed by the State Board of Higher Education.**

### 9:7-5.6 Student notification

Students will be notified of their eligibility by the Department of Higher Education. Notification to eligible students will specify [that] the **amount of the student's tuition charges [incurred] which will be paid by the State.** In addition, instructions will be provided regarding the manner in which payment will be disbursed for tuition charges.

### 9:7-5.7 Renewal

In order to continue to receive tuition benefits under the program, students must be in good academic standing at their institution. [An annual renewal form will be available to each recipient prior to the start of the next academic year in order that tuition benefits may be continued.]

### 9:7-5.8 [Duration] Period of Eligibility

Eligibility to receive tuition benefits shall be limited to eight years from the date of the death of the member or officer in the case of a widowed spouse [and] or eight years following graduation from [high] **secondary school in the case of a dependent child. Recipients shall not be eligible for more than eight semesters of payment for full-time enrollment or the equivalent for half-time enrollment. Payment for half-time enrollment shall count as one half a semester of payment. Students enrolled in a program of study normally requiring five years to complete shall be eligible for 10 semesters of payment.**

### 9:7-5.9 Verification of enrollment and academic performance

Before payment may be made to an eligible student, the institution must have satisfactory evidence that the student is eligible for tuition benefits, and has registered for an academic term in an undergraduate degree program, and that the student is meeting the minimum standards for academic performance and academic progress at the institution in accordance with N.J.A.C. 9:7-2.10. **Eligible students shall be enrolled on at least a one-half time basis during any term in order to receive payment.**

### 9:7-5.10 [Enrollment status and terms of payment] (Reserved)

[Eligible students shall be enrolled on at least a one-half time basis during any term in order to receive payment. Recipients shall not be eligible for more than eight semesters of payment for full-time enrollment or the equivalent for half-time enrollment. Payment for half-time enrollment shall count as one half a semester of payment. Students enrolled in a program of study normally requiring five years to complete shall be eligible for 10 semesters of payment.]

### 9:7-6.1 [Purpose] (Reserved)

[The prime objective of these awards is to attract and retain the very best academically talented students in New Jersey graduate institutions.]

### 9:7-6.2 General provisions

General provisions for all programs administered by the Student Assistance Board (N.J.A.C. 9:7-2) which pertain to residency (2.2), foreign nationals (2.3), verification of enrollment and academic per-

formance (2.10), payments [to students] (2.11), **refunds (2.12)**, check endorsements (2.14), appeals (2.15), and [fiscal responsibilities] **accounting and auditing standards (2.16)** shall be in effect for the Garden State Graduate Fellowship Program.

### 9:7-6.3 Eligibility

[Consonant with the primary purpose of the Fellowship Program to attract beginning high ability graduate students to New Jersey institutions, applicants] **Applicants** shall not be enrolled for more than six graduate [or professional] credits during the fall term preceding the application deadline and shall not have completed more than 16 graduate [or professional] credits prior to the application deadline. Graduate [or professional] credits earned while enrolled as an undergraduate student[s] shall not be considered in determining the above totals.

### 9:7-6.4 Approved programs

Fellowships shall be awarded only for attendance at institutions in New Jersey offering graduate programs approved by the State Board of Higher Education, except in the case of exempt institutions pursuant to N.J.S.A. 18A:68-6. Approved programs are graduate programs in recognized fields in the humanities, social sciences, and natural and physical sciences. [Professional studies] **Studies** in such areas as law, medicine, and theology shall not be approved programs for Graduate Fellowship support. Degrees [related to] **within** excluded [professional] studies **areas** are: M.D., D.D.S., D.M.D., O.D., D.O., D.Pharm., Pod D., D.P., D.P.M., D.V.M., D.C., D.C.M., LL.B., J.D., B.D., M.Div.

### 9:7-6.5 [Duration] Period of eligibility

Fellowships will be awarded for one academic year, [renewal] **renewable** upon the recommendation of the institution, the continued eligibility of the student, and the availability of appropriated funds. An award holder shall not be eligible for payment for a second masters degree unless such degree progresses directly towards a doctoral degree. In no case shall a graduate student be paid for more than four years of study.

### 9:7-6.6 Attendance

A recipient of a Fellowship award [must] **shall be enrolled full-time and matriculate** in an approved program of study no later than the fall term immediately succeeding the notification of award and continue in regular full-time attendance. After payment has been received by the recipient and the recipient has successfully completed one semester of graduate education, a request for a leave of absence may be made [to the Office of Student Assistance, Department of Higher Education] for a period not to exceed one year. [In accord with the continuous attendance requirement, the Office shall approve leaves only for documented personal or educational reasons.]

### 9:7-6.7 Number of [recipients] awards and amount

The number **and amount** of Fellowship [recipients] **awards** for an academic year shall be determined annually by the Student Assistance Board.

### 9:7-6.8 [Amount of the award] (Reserved)

[Graduate Fellowships may be awarded up to an annual maximum established annually by the Student Assistance Board.]

### 9:7-6.9 Selection

[A committee of graduate faculty members shall select the award holders primarily] **Eligible students shall be selected** on the basis of academic achievement and evidence of further academic promise [;]. [degree] **Degree** of financial need may also be considered. [by the committee. Application requirements, criteria for selection, and the application deadline shall be reviewed and approved by the Student Assistance Board. Awards shall be announced prior to May 1.]

### 9:7-7.1 Residency

(a) For purposes of this program an eligible veteran will be considered a resident of the State of New Jersey if [he] **the veteran:**

1. Had been domiciled in New Jersey at the time of [his] induction into the armed forces; or
2. Was domiciled in New Jersey at the time of [his] separation from active duty; or

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3. Has been domiciled in New Jersey for at least two consecutive years prior to date of application, exclusive of any time spent on active duty.

(b) Domicile has been defined as the place where a person has his/her true, fixed, permanent home and principal establishment, and to which, whenever he/she is absent, he/she has the intention of returning.

9:7-7.2 Approved educational institution

(a) (No change.)

(b) To qualify as an "approved educational institution" any such institution must have been approved for veteran[s] educational assistance pursuant to Federal law.

9:7-7.3 Approved course of study

The eligible veteran [must] **shall** be enrolled in any curriculum or any combination of unit courses or subjects at an educational institution which is [accepted] **approved** for veterans educational assistance pursuant to Federal law.

9:7-7.4 Full-time course requirements

(a) For the purposes of this program:

1. (No change.)

2. An [institution] **institutional** course offered on a [clockwise] **clock-hour** basis below the college level in which theoretical or classroom instruction predominates shall be considered a full-time course when a minimum of 25 hours per week net of instruction (which may include customary intervals not to exceed 10 minutes between hours of instruction) is required;

3.-4. (No change.)

9:7-7.6 Calculation of tuition credit

(a) Each eligible veteran shall be entitled to tuition credit in accordance with the following schedule:

1. For a period of one semester (or the equivalent thereof in part-time tuition credit), in the case of educational institutions regularly operated on the semester system, for each three months or fraction thereof of the veteran's service on active duty from December 31, 1960, and before [the date of termination as proclaimed by the Governor] **August 1, 1974**. If an eligible veteran has served a period of 18 months or more on active duty during such period of time, he/she shall be entitled to tuition credit for a period of eight semesters (or the equivalent thereof in part-time tuition credit)[:]. The maximum credit hereunder shall be for a period of eight semesters; or

2. For a period of one-quarter (or the equivalent thereof in part-time tuition credit) in the case of educational institutions regularly operated on the quarter system, for each two months or fraction thereof of the veteran's service on active duty after December 31, 1960, and before [the date of termination as proclaimed by the Governor] **August 1, 1974**. If an eligible veteran has served a period of 18 months or more on active duty during such period of time, he/she shall be entitled to tuition credit for a period of 12 quarters [:]. The maximum credit hereunder shall be for a period of 12 quarters[.]; or

3. For a period of 1½ months of any tuition period (or the equivalent thereof in part-time tuition credit in the case of educational institutions not operated on the quarter or semester system, for each month or fraction thereof of the veteran's service on active duty after December 31, 1960, and before [the date of termination as proclaimed by the Governor]**August 1, 1974**. If an eligible veteran has served a period of 18 months or more on active duty during such period of time, he/she shall be entitled to tuition credit for 36 months of tuition credit (or the equivalent thereof in part-time tuition credit)[:]. The maximum credit hereunder shall be for a period of 36 months.

(b) If an eligible veteran shall change his/her program of study from an educational institution regularly operated on the quarter or semester system or otherwise, to an educational institution regularly operated on a different system, he/she shall submit a written request to the Chancellor of Higher Education for a [reevaluation] **re-evaluation** of the remaining tuition credits.

9:7-7.7 [Benefits limited] Award amount

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

9:7-7.8 [Application procedure] (Reserved)

[(a) Upon completion of written agreement with the institution and the Chancellor of Higher Education, application forms will be mailed to the eligible institution.

1. The eligible veterans should obtain an application for Veterans Tuition Credit from the official in charge of veteran affairs at the institution attended in New Jersey. For those attending out-of-State institutions, contact the Department of Higher Education for an application.

2. The eligible veteran should complete all areas of the application, sign it, attach a copy of DD form 214 (Report of separation or discharge) and submit both documents to the school official for review and approval.

3. The authorized school official will:

i. Review the application for completeness;

ii. Verify that the course of study indicated is approved for veteran's education assistance pursuant to Federal law;

iii. Indicate enrollment status and tuition charges for each application;

iv. Affix his signature on each application;

4. Applications shall be mailed to:

New Jersey Department of Higher Education

Veterans Tuition Credit Program

CN 540

Trenton, New Jersey 08625]

9:7-7.9 [Payment procedure] (Reserved)

[(a) Upon receipt of the application from each institution, the following steps will be taken:

1. Prepare a listing by institution showing the following information for each eligible veteran:

i. Social security number;

ii. Name and complete address;

iii. Maximum number of tuition credits;

iv. Amount of payment;

v. Total payments.

2. Request the State Treasurer prepare a single check payable to the institution for the total payment shown on the listing.

3. The check and listing will be mailed by the Department of Higher Education to the institution for each term during the academic year.]

9:7-7.10 [Institutional responsibilities] (Reserved)

[(a) Institutional responsibilities are:

1. Maintain a separate account for all funds received from the State of New Jersey for the veterans tuition credit program;

2. Deposit all checks received promptly;

3. Disburse funds received either directly to the veteran or as a credit toward any outstanding balance that may exist;

4. At the request of the Department of Higher Education, prepare an annual report of the funds paid by the State for this program;

5. Provide access to the Chancellor of Higher Education, upon request, to any audit report or books and records of the institution pertaining to this program.]

9:7-8.6 [Duration] Period of eligibility

(No change.)

9:7-8.7 [Application procedure] (Reserved)

[(a) The eligible Vietnam veteran should obtain an application for this program from the Department of Higher Education or the financial aid or veterans affairs office at the institution the student attends.

(b) The eligible Vietnam veteran must complete all sections of the application, sign it, attach a copy of DD Form 214 (report of Separation or Discharge) and submit it to the authorized college official for review and approval.

(c) Students must apply for all other available State and Federal programs of student financial aid by filing the New Jersey Financial Aid Form.

(d) The authorized college official will:

1. Review the application for completeness;

2. Indicate enrollment status and tuition charges for each applicant;

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3. Maintain documentation that the amount of tuition assistance plus other scholarship and grant assistance does not exceed the eligible veteran's educational costs;

4. Maintain in the student's file proof that the residency requirement is met;

5. Maintain proof that the academic standard has been met;

6. Maintain proof that the veteran has applied for State and Federal financial assistance;

7. Affix the authorized college official's signature on each application.

(e) Applications shall be mailed to:

New Jersey Department of Higher Education  
Vietnam Veterans Tuition Aid Program  
CN 540  
Trenton, New Jersey 08625]

## 9:7-8.8 Renewal

In order to continue to receive tuition benefits under this program, the eligible Vietnam veteran must maintain good academic standing. Good academic standing shall be defined in accordance with the standards established and enforced by the institution and approved by the Department of Higher Education, State Approving Agency, pursuant to [Title 38, United States Code, Section] **38 U.S.C. §§1775 and 1776**. [To enable the continuation of tuition benefits an annual renewal form will be available to each recipient prior to the start of the next academic year.]

9:7-8.9 [Payments] (**Reserved**)

[Upon verification of eligibility by the Department of Higher Education, Office of Student Assistance, payments will be made by the Department of Treasury on behalf of eligible veterans to institutions in equal installments over the regular academic year. The number of installments will correspond to the number of school terms. Listings containing the names of eligible students to be credited will accompany the payments to institutions. In some cases, the Student Assistance Board may elect to provide payments directly to individual students.]

9:7-8.10 [Institutional responsibilities] (**Reserved**)

[(a) Institutions shall be responsible for the following:

1. Maintain a separate account for all funds received from the State of New Jersey for the veterans tuition aid program;

2. Deposit all checks received promptly;

3. Disburse funds received either directly to the veteran or as a credit toward any outstanding balance that may exist;

4. Provide access to the Chancellor of Higher Education, upon request, to any audit report or books and records of the institution pertaining to this program.]

9:7-8.11 [Deadlines] (**Reserved**)

[Deadlines under this program will be set pursuant to other programs administered by the Student Assistance Board except during the 1985-86 academic year when the fall and spring term deadline will be March 1, 1986. All summer payments must be submitted to the Department of Higher Education in accordance with annual administrative directives and guidelines.]

## 9:7-9.1 Rules incorporated by reference

The provisions of the following sections of subchapter 2 of this chapter, N.J.A.C. 9:7-2.2 residency, 2.3 foreign nationals, 2.11 payments [to students], 2.14 check endorsements, 2.15 appeals and 2.16 [fiscal responsibilities] **accounting and auditing standards**, governing the programs administered by the Student Assistance Board shall also apply to this program unless they are inconsistent with or otherwise excepted within the provisions of this subchapter.

## CORRECTIONS

(a)

## THE COMMISSIONER

## Security and Control

## Use of Personal Firearms and Use of Force While Off-Duty

## Proposed Repeal and New Rule: N.J.A.C. 10A:3-4.1

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1988-6.

Submit comments by February 3, 1988 to:

Elaine W. Ballai, Esq.

Special Assistant for Legal Affairs

Department of Corrections

CN 863

Trenton, New Jersey 08625

The agency proposal follows:

## Summary

The Department of Corrections adopted new rules N.J.A.C. 10A:3, Security and Control, in the October 6, 1986 issue of the New Jersey Register. N.J.A.C. 10A:3-4, Use of Personal Firearms and Use of Force While Off-Duty, was adopted as a Subchapter within these new rules. Subsequent to the adoption of these rules, requests have been made for the addition of titles of persons listed in N.J.A.C. 10A:3-4.1 who may be sworn in as peace officers.

In order to list the current titles in N.J.A.C. 10A:3-4.1 and adding the new titles of Assistant Commissioner, Division of Juvenile Services, Director of Custody Operations, Trenton State Prison, Superintendent and Assistant Superintendent, Training School for Boys, Jamesburg, and Superintendent and Assistant Superintendent, Training School for Boys, Skillman, in a format that clearly delineates Central Office, Office of Interstate Services, institution and general titles, the Department of Corrections proposes repeal of the present rule at N.J.A.C. 10A:3-4.1, and proposes a new rule incorporating these changes.

## Social Impact

The proposed new rule will have no significant social impact because it merely adds a few administrators to the list of persons who may be sworn in as peace officers, and the change of format merely makes the listing of titles easier to understand.

## Economic Impact

The proposed new rule will have no significant economic impact because additional funding is not necessary to implement or maintain the proposed new rule.

## Regulatory Flexibility Statement

The proposed new rule impacts inmates and the Department of Corrections and does not affect small businesses as defined in the Regulatory Flexibility Act.

**Full text** of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10A:3-4.1

**Full text** of the proposed new rule follows.

## 10A:3-4.1 Who may carry firearms while off-duty

(a) Firearms may be carried off-duty only by Department personnel holding the rank of Senior Correction Officer and higher who also meet the following requirements:

1. Have passed the firearms training course approved by the New Jersey State Police Training Commission, as set forth in N.J.S.A. 2C:39-6(5);

2. Have qualified in the use and handling of approved off-duty firearms; and

3. Have been sworn as a peace officer by taking the Oath of Office and completing Form 156-I (Oath of Office).

(b) Persons with the following Department of Correction titles may be sworn as peace officers:

1. Central office:  
Commissioner

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- Deputy Commissioner
- Assistant Commissioner—Division of Adult Institutions
- Assistant Commissioner—Division of Juvenile Services
- 2. State Prison, Trenton:
  - Administrator Prison Complex
  - Associate Administrator Prison Complex
  - Assistant Superintendent 1, Corrections
- 3. State Prison, Rahway:
  - Administrator Prison Complex
  - Associate Administrator Prison Complex
  - Assistant Superintendent 1, Corrections
- 4. State Prison, Leesburg:
  - Administrator Prison Complex
  - Associate Administrator Prison Complex
  - Assistant Superintendent 1, Corrections
- 5. Mid-State Correctional Facility:
  - Superintendent 1, Corrections
  - Assistant Superintendent 2, Corrections
- 6. Correctional Institution for Women, Clinton:
  - Superintendent 1, Corrections
  - Assistant Superintendent 2, Corrections
- 7. State Prison, Riverfront:
  - Superintendent 1, Corrections
  - Assistant Superintendent 2, Corrections
- 8. Youth Reception and Correction Center, Yardville:
  - Administrator, Prison Complex
  - Associate Administrator, Prison Complex
  - Assistant Superintendent 1, Corrections
- 9. Youth Correctional Institution, Bordentown:
  - Superintendent 1, Corrections
  - Assistant Superintendent 1, Corrections
- 10. Youth Correctional Institution, Annandale:
  - Superintendent 1, Corrections
  - Assistant Superintendent 1, Corrections
- 11. Adult Diagnostic and Treatment Center (A.D.T.C.):
  - Superintendent 1, Corrections
  - Assistant Superintendent 2, Corrections
- 12. Southern State Correctional Facility:
  - Superintendent 1, Corrections
  - Assistant Superintendent 1, Corrections
- 13. Northern State Prison:
  - Superintendent 1, Corrections
  - Assistant Superintendent 1, Corrections
- 14. Juvenile Medium Security Unit:
  - Superintendent 3, Corrections
  - Assistant Superintendent 3, Corrections
- 15. Training School for Boys, Jamesburg:
  - Superintendent 1, Corrections
  - Assistant Superintendent 2, Corrections
- 16. Training School for Boys, Skillman:
  - Superintendent 3, Corrections
  - Assistant Superintendent 3, Corrections
- 17. Newark House:
  - Superintendent, Residential Group Center
  - Assistant Superintendent, Residential Group Center
- 18. Essex Community Service Center:
  - Superintendent, Residential Group Center
  - Assistant Superintendent, Residential Group Center
- 19. Vroom Readjustment Unit:
  - Director
- 20. Office of Interstate Services:
  - Interstate Transportation Officer
- 21. Other Titles within any Facility or Unit:
  - Director of Custody Operations, Trenton State Prison
  - Director of Custody Operations I
  - Director of Custody Operations II
  - Director of Custody Operations III
  - Correction Captain
  - Correction Lieutenant
  - Correction Sergeant
  - Senior Correction Officer
  - Chief Investigator

- Assistant Chief Investigator
  - Principal Investigator
  - Senior Investigator
  - Investigator
- (c) Correction Officer Recruits are excluded from (a) and (b) above and may not carry firearms while off-duty.

## INSURANCE

### (a)

#### DIVISION OF ACTUARIAL SERVICES

#### Optional Coverage for Pregnancy and Childbirth Benefits

#### Proposed New Rules: N.J.A.C. 11:4-19

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, 17:48A-1 et seq., 17B:26-1 et seq., 48-1 et seq., and 17B:27-1 et seq.

Proposal Number: PRN 1988-17.

Submit comments by February 3, 1988 to:

Verice M. Mason  
Assistant Commissioner,  
Legislative and Regulatory Affairs  
Department of Insurance  
CN 325  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

As a result of recommendations made by the Commission on Sex Discrimination in the Statutes, a series of bills (P.L. 1985, c.274, c.275, c.276 and c.277) were enacted to provide for the inclusion in certain types of health insurance, offerings of benefits coverage for expenses incurred in connection with pregnancy and childbirth. N.J.S.A. 17:48A-6.5, 17B:26-2.6, 17:48-6c and 17B:27-46.7 were amended to require that benefits for maternity care be offered in hospital service contracts, medical service contracts and health insurance policies.

More specifically, the above-mentioned laws eliminated the exclusion of pregnancy-related surgery and sterilization from the second surgical opinion contracts and policies of individual and group health insurers as well as medical service corporations. The laws also required that insurers offer benefits coverage for maternity care during pregnancy and childbirth without regard to the marital status of an otherwise eligible person. Maternity benefit coverage was also required to be provided to the same extent as coverage is offered for other covered illnesses.

Additionally, the law excluded the provision which granted a waiting period, not to exceed 10 months, for maternity benefit eligibility. A new section has been added which allows the Commissioner of the Department of Insurance to promulgate the rules and regulations necessary to effectuate the purpose of the law.

Presently pending in the Legislature is Senate bill No. S-2131 which applies to health service corporation contracts. This bill, like the above-mentioned laws, eliminates the exclusion of pregnancy-related surgery and sterilization procedure from second surgical opinion programs and requires that benefits coverage for maternity care be offered to insureds without regard to their marital status. As this bill has not yet been enacted into law, the proposed new rule does not apply to health service corporations.

In accordance with the above mentioned laws and to address the questions received by the Department concerning the law, these new rules are being proposed.

N.J.A.C. 11:4-19.1 and 19.2 establishes respectively the purpose and scope of these rules. N.J.A.C. 11:4-19.3 provides for the inclusion of "pregnancy-related surgery" and "sterilization" in second surgical opinion programs. Described in N.J.A.C. 11:4-19.4 is the manner in which benefits coverage for maternity care is to be offered.

#### Social Impact

The proposed new rules implement the requirements of P.L. 1985, c.274, c.275, c.276 and c.277 which require that health insurers offer benefits for maternity care without regard to the marital status of insureds or other persons covered thereunder, for expenses incurred in pregnancy

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and childbirth to the same extent as benefits are provided for any other covered illness. Also included in certain health insurance second surgical opinion programs are "pregnancy-related surgery" and "sterilization."

Since the purpose of the above-mentioned laws is to prevent unfair discrimination against insureds or prospective insureds, the Department believes that the proposed new rules will accomplish this goal and eliminate the act of denying benefits or coverage on the basis of marital status in the terms and conditions of insurance contracts or policies and in the underwriting criteria of insurance carriers.

**Economic Impact**

By requiring insurers to offer a mandatory option of maternity benefits which an insured could choose to purchase, a balance between equality and health care will be achieved. Maternity benefits as an option rather than a mandatory provision will eliminate a decline in available health insurance and an increase in cost for such mandated benefits.

**Regulatory Flexibility Statement**

Some insurers affected by these proposed new rules are small businesses as that term is defined in the Regulatory Flexibility Act, P.L. 1986, c.169. The rules are designed to implement the requirements of P.L. 1985, c.274, c.275, c.276 and c.277 by making pregnancy-related surgery and sterilization eligible for second surgical opinion coverage and requiring that insurers offer benefits coverage for maternity care without regard to the marital status of an otherwise eligible person. Beyond these provisions, there are no other compliance requirements for insurers who are small businesses. To provide different requirements for insurers who are small businesses would negate the prevention of unfair discrimination as established in the rules.

Full text of the proposed new rules follows.

**SUBCHAPTER 19. OPTIONAL COVERAGE FOR PREGNANCY AND CHILDBIRTH BENEFITS**

**11:4-19.1 Purpose**

The purpose of this subchapter is to prevent the exclusion of pregnancy-related surgery and sterilization procedures from certain second surgical opinion programs and to make maternity coverage available to insureds.

**11:4-19.2 Scope**

This subchapter shall apply to all group and individual health insurance policies as well as hospital and medical service corporation contracts delivered or issued for delivery in this State. This subchapter shall not apply to health service corporation contracts.

**11:4-19.3 Second surgical opinions**

Every health insurer and medical service corporation offering individual and group policies in this State, with the exception of hospital service corporations, shall include in its programs for second surgical opinions, coverage for pregnancy-related surgery and sterilization procedures.

**11:4-19.4 Maternity benefits option**

(a) Each insurer shall make available benefits coverage for maternity care without regard to the marital status of its policyholders, subscribers or other persons thereunder covered for expenses incurred in pregnancy and childbirth.

(b) The amount of or type of benefit coverage for maternity care expenses incurred in pregnancy and childbirth shall be provided to the same extent as benefits coverage is provided in policies and contracts for any other covered illness. Where a fixed amount of benefit coverage for surgery is prescribed by a policy or contract, benefit coverage for pregnancy-related surgical procedures shall be commensurate to that for surgery of comparable difficulty and severity.

(c) Policies which provide normal pregnancy and childbirth benefits shall cover pregnancy if conception occurs after the effective date of coverage or after a probationary period of not more than 30 days after the effective date of the coverage.

(d) Each insurer is required to give a single notice of the option to select maternity benefits coverage to its policyholders or subscribers. While no notice of the availability of such coverage is required to be made at every renewal of a policy, the coverage itself must be made available at renewal, for the option of selection by the insured.

**LAW AND PUBLIC SAFETY**

**(a)**

**DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
BUREAU OF AMUSEMENT GAMES CONTROL**

**Conduct of Licensees and Operation of Licensed Games**

**Preproposal Hearings on Possible Amendments to N.J.A.C. 13:3-3.4, 3.5 and 3.6**

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control; and Amusement Games Control Commissioner.

Authority: N.J.S.A. 5:8-79, 5:8-79.1, 5:8-85, 5:8-101 and 5:8-107.

Take notice that John F. Vassallo, Jr., Amusement Games Control Commissioner, pursuant to the authority of the Amusement Games Licensing Law, N.J.S.A. 5:8-78 et seq., including the rulemaking authority and public hearing requirements of N.J.S.A. 5:8-79 and N.J.S.A. 5:8-107, has determined to conduct public hearings with respect to the possible initiation of subsequent rulemaking proceedings covering the conduct, control and operation of amusement games of skill or chance licensed and operated at recognized amusement parks, seashore or other resort areas and at agricultural fairs and exhibitions. This determination has been made to conduct such hearings in anticipation of the expiration date of the Amusement Games Control Regulations, N.J.A.C. 13:3, on August 1, 1988, pursuant to Executive Order No. 66(1978).

The specific area of discussion will include the November 3, 1981, approval (by referendum) which vests in the Amusement Games Control Commissioner the authority to determine the value of prizes to be awarded and amount of charge for participation. Prizes currently cannot exceed \$500.00 retail value and the patron participation fee cannot exceed \$1.00 or \$.50 for any arcade game (N.J.A.C. 13:3-3.5 and 3.6), as established following hearings held on June 1 and 4, 1982, and on March 29, 1985. (See 15 N.J.R. 680(a); 17 N.J.R. 1058(a); and 17 N.J.R. 1664.)

Interested persons may present comments, statements or arguments at the public hearings on Wednesday, January 20, 1988 at 9:30 A.M., at:

Fourth Floor Conference Center  
Richard J. Hughes Justice Complex  
25 Market Street  
Trenton, New Jersey

Individuals interested in making presentations at the Hearings should advise the Commissioner, in writing, by January 15, 1988, to facilitate scheduling. Written submissions to the Commissioner at the referenced address will be received until January 29, 1988.

Both requests for presentation, scheduling and written submissions should be addressed to:

John F. Vassallo, Jr.  
Amusement Games Control Commissioner  
Division of Alcoholic Beverage Control  
Richard J. Hughes Justice Complex  
CN-087  
Trenton, New Jersey 08625

**TRANSPORTATION**

**TRANSPORTATION OPERATIONS**

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

Submit comments by February 3, 1988 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

(a)

**Speed Limits****Route N.J. 23 in Passaic County****Proposed Amendment: N.J.A.C. 16:28-1.25**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Proposal Number: PRN 1988-15.

The agency proposal follows:

**Summary**

The proposed amendment will establish maximum speed limits along Route N.J. 23 in Wayne Township, Passaic County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of maximum speed limits along Route N.J. 23 was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.25 based upon the request from local officials and the traffic investigation.

**Social Impact**

The proposed amendment will establish maximum legal speed limits along Route N.J. 23 in Wayne Township, Passaic County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of speed limit signs. Motorists who violate the rules will be assessed the appropriate fine.

**Regulatory Flexibility Statement**

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19. The proposed amendment primarily affects the motoring public.

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

16:28-1.25 Route 23

(a) The rate of speed designated for the certain parts of State highway Route 23 described in this section shall be established and adopted as the maximum legal rate of speed: [thereat:]

1. For both directions of traffic:

i.-vii. (No change.)

viii. Zone eight: 55 mph in Wayne Township, Passaic County between the Route U.S. 46-Route N.J. 23 [and]- Route I-80 interchange (**Singac Brook**) and **3,170 feet north of Packanack Lake Road (at U-Turn)** (milepost [5.8] **5.62 to 8.9**); thence

ix.-x. (No change.)

2. For northbound traffic:

i.-iii. (No change.)

iv. **40 mph in Wayne Township, Passaic County (along Route N.J. 23 Service Road) between 3,170 feet north of Packanack Lake Road (at U-turn) and Ratzer Road; thence**

v. **40 mph in Wayne Township, Passaic County between 3,170 feet north of Packanack Lake Road (at U-Turn) and the Black Oak Ridge Road Connection (at traffic signal) (milepost 8.9 to 9.59).**

3. For southbound traffic:

i.-iv. (No change.)

v. **40 mph between Black Oak Ridge Road Connection (at traffic signal) and 700 feet south of Black Oak Ridge Road (milepost 9.59 to 9.30); thence**

vi. **55 mph between 700 feet south of Black Oak Ridge Road and 3,170 feet north of Packanack Lake Road (at U-turn) (milepost 9.30 to 8.90).**

4. For both directions of traffic:

i.-xiv. (No change.)

xv. **55 mph between Black Oak Ridge Road Connection (at traffic signal) and the Pompton River (Wayne Township-Pequannock Township line) (milepost 9.59 to 9.63).**

(b)

**Restricted Parking and Stopping****Routes N.J. 17 in Bergen County, N.J. 47 in Cumberland County, N.J. 168 in Camden County and U.S. 322 in Gloucester County****Proposed Amendments: N.J.A.C. 16:28A-1.9, 1.33, 1.51, and 1.93**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Proposal Number: PRN 1988-16.

The agency proposal follows:

**Summary**

The proposed amendments will establish "no parking bus stop" zones along Routes N.J. 17 in Lyndhurst Township, Bergen County and N.J. 168 in Bellmawr Borough, Camden County; a "no parking loading zone" along Route N.J. 47 Millville City, Cumberland County; and "no stopping or standing" zones along Route U.S. 322 in Glassboro Borough, Gloucester County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon requests from local officials expressing concerns for safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking bus stop" zones along Routes N.J. 17 and N.J. 168; a "no parking loading zone" along Route N.J. 47; and "no stopping or standing" zones along Route U.S. 322 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.9, 1.51, 1.33 and 1.93 based upon the requests from local officials and the traffic investigations.

**Social Impact**

The proposed amendments will establish "no parking bus stop" zones along Routes N.J. 17 in Lyndhurst Township, Bergen County and N.J. 168 in Bellmawr Borough, Camden County; a "no parking loading zone" along Route N.J. 47 in Millville City, Cumberland County; and "no stopping or standing" zones along Routes U.S. 322 in Glassboro Borough, Gloucester County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no parking" zones signs and the local governments will bear the costs for "no parking bus stop" and the "no parking loading zone" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

**Regulatory Flexibility Statement**

The proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19. The proposed amendments primarily affects the motoring public.

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

16:28A-1.9 Route 17

(a) (No change.)

(b) The certain parts of State highway Route 17 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-8. (No change.)

**9. Along the easterly (northbound) side in Lyndhurst Township, Bergen County.**

i. Near side bus stops:

(1) **Baldwin Avenue—Beginning at the southerly curb line of Baldwin Avenue and extending 129 feet southerly therefrom.**

(2) **Milton Avenue—Beginning at the southerly curb line of Milton Avenue and extending 105 feet southerly therefrom.**

**TRANSPORTATION**

**PROPOSALS**

(3) **Orient Way**—Beginning at the southerly curb line of Orient Way and extending 127 feet southerly therefrom.

(4) **Polito Avenue**—Beginning at the southerly curb line of Polito Avenue and extending 105 feet southerly therefrom.

10. Along the westerly (southbound) side in Lyndhurst Township, Bergen County:

i. Near side bus stops:

(1) **Valley Brook Avenue**—Beginning at the northerly curb line of Valley Brook Avenue and extending 105 feet northerly therefrom.

(2) **Kingsland Avenue**—Beginning at the northerly curb line of Kingsland Avenue and extending 105 feet northerly therefrom.

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

16:28A-1.33 Route 47

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

(c) The certain parts of State highway Route 47 described in this subsection shall be designated and established as “no parking” zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established loading zone:

1. Along the easterly (northbound) side in Millville City, Cumberland County:

i. Beginning at a point 42 feet south of the southerly curb line of Broad Street and extending 50 feet southerly therefrom.

16:28A-1.51 Route 168

(a) (No change.)

(b) The certain parts of State highway Route 168 described in this subsection shall be designated and established as “no parking” zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-7. (No change.)

8. Along the easterly (northbound) side in Bellmawr Borough, Camden County:

i. Mid-block bus stops:

(1) **Between Beningo Boulevard; Cypress Avenue**—Beginning 150 feet south of the southerly curb line of Beningo Boulevard and extending 135 feet southerly therefrom.

(2) **East Chestnut Avenue**—Beginning 73 feet south of the southerly curb line of East Chestnut Avenue and extending 135 feet southerly therefrom.

16:28A-1.93 Route U.S. 322

(a) The certain parts of State [H]highway Route U.S. 322 described in this subsection shall be designated and established as [“no parking”] “no stopping or standing” zones. [where stopping or standing is prohibited at all times except as provided in N.J.S.A. C39:4-139.]

1.-3. (No change.)

4. No stopping or standing in Glassboro Borough, Gloucester County:

i. Along both sides:

(1) From Length Road to Girard Road including all ramps, bridges and connections under the jurisdiction of the Commissioner of the Department of Transportation.

**(a)**

**Restricted Parking and Stopping  
Route N.J. 31 in Warren County**

**Proposed Amendment: N.J.A.C. 16:28A-1.22**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139

Proposal Number: PRN 1988-5.

The agency proposal follows:

**Summary**

The proposed amendment will establish “no parking” zones along Route N.J. 31 in Washington Borough, Warren County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from local officials to prohibit stopping or standing to preclude traffic congestion, the Department’s Bureau of Traf-

fic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of “no parking” zones where stopping or standing is prohibited was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.22 based upon the request from local officials and the traffic investigation.

**Social Impact**

The proposed amendment will establish “no parking” zones where stopping or standing is prohibited along Route N.J. 31 in Washington Borough, Warren County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of “no parking” zones signs. Motorists who violate the rules will be assessed the appropriate fines.

**Regulatory Flexibility Statement**

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19. The rule primarily affects the motoring public.

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

16:28A-1.22 Route 31

(a) The certain parts of State highway Route 31 described in this subsection shall be designated and established as “no parking” zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-3. (No change.)

4. No stopping or standing in Washington Borough, Warren County:

[i. Along the northbound side:

(1) From a point 125 feet south of the center line of Upper Park Drive, to the center line of Boulevard.

ii. Along the southbound side:

(1) From the center line of Gibson Place, to a point 65 feet south of the center line of Hillcrest Avenue.]

**i. Along both sides for the entire length within the corporate limits of the Borough of Washington including all ramps and connections under the jurisdiction of the Commissioner of Transportation.**

5.-6. (No change.)

(b) (No change.)

**(b)**

**Turns**

**Route N.J. 21 in Essex County**

**Proposed Amendment: N.J.A.C. 16:31-1.11**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-183.6.

Proposal Number: PRN 1988-14.

The agency proposal follows:

**Summary**

The proposed amendment will establish “no left turn” movement along Route N.J. 21 in the City of Newark, Essex County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from local officials and their concerns for safety, the Department’s Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of “no left turn” movement along Route N.J. 21 was warranted.

The Department therefore proposes to amend N.J.A.C. 16:31-1.11 based upon the request from local officials and the traffic investigation.

**Social Impact**

The proposed amendment will establish “no left turn” movements along Route N.J. 21 in Newark City, Essex County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

PROPOSALS

Interested Persons see Inside Front Cover

TREASURY-GENERAL

**Economic Impact**

The Department of local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no left turn" signs. Motorists who violate the rules will be assessed the appropriate fine.

**Regulatory Flexibility Statement**

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19. The proposed amendment primarily affects the motoring public.

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

16:31-1.11 Route 21

(a) Turning movements of traffic on the certain parts of State highway Route 21 described [herein] below are regulated as follows:

1. No left turns:

i.-ii. (No change.)

iii. **McCarter Highway and Rector Street—North on Route 21 to west on Rector Street, in the City of Newark, Essex County.**

**TREASURY-GENERAL**

**DIVISION OF PENSIONS**

For proposals numbered PRN 1988-4 and 12, submit comments by February 3, 1988 to:

Peter J. Gorman  
Administrative Practice Officer  
Division of Pensions  
20 West Front Street  
CN 295  
Trenton, New Jersey 08625

(a)

**Teachers' Pension and Annuity Fund  
Interfund Transfers**

**Proposed Amendment: N.J.A.C. 17:3-7.1**

Authorized By: Anthony P. Ferrazza, Secretary, Teachers' Pension and Annuity Fund.

Authority: N.J.S.A. 18A:66-56.

Proposal Number: PRN 1988-4.

The agency proposal follows:

**Summary**

This proposed amendment to N.J.A.C. 17:3-7.1 will permit members of the retirement system who have credit in another State-administered retirement system for service prior to the date of enrollment in the TPAF to transfer the credit to the Teachers' Pension and Annuity Fund (TPAF) at any time. At present, such transfers must be done at the time of enrollment in TPAF and a transfer cannot be made by a person who has been granted a deferred retirement in the other system. This amendment will permit transfers in cases of deferred retirement and at any time after enrollment in TPAF, provided that the person did not continue to earn service credit in the other system after enrollment in TPAF. For persons who make the transfers at the time of enrollment in TPAF, their contribution rate will be based upon their age at the time of enrollment in the other system, subject to commutation in cases of deferred retirement. The contribution rate for persons who do not make timely transfers will be based upon their age at the time of enrollment in TPAF.

**Social Impact**

The proposed amendment will benefit the members of TPAF and the other State-administered retirement systems because it liberalizes the rules concerning transfers of service credit among the systems.

**Economic Impact**

No economic impact on the retirement system or its members is anticipated from the adoption of this proposal since the amendment simply concerns transfer of service credit.

**Regulatory Flexibility Statement**

The rules of the Teachers' Pension and Annuity Fund affect only public employers and employees. Thus, this proposed amendment will not have

any adverse effect upon small businesses or private industry in general. A regulatory flexibility analysis is not required.

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

17:3-7.1 Interfund transfers; State-administered retirement systems

(a) The system will transfer membership to any State-administered retirement system as follows:

1.-3. (No change.)

4. The member shall enjoy the same [rate of contribution and] service credits established in the present system, subject to the provisions of the new system.

5. This procedure would not apply where a member [does not make a timely transfer in accordance with N.J.S.A. 43:2-1 et seq. or who has been granted a deferred retirement allowance by the present system] **has credit in the present system for service after the date of enrollment in the new system or where a person has ceased to be a member of the present system before establishing sufficient service credit to be eligible for deferred retirement.**

6. (No change.)

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

(d) [The] **A member who makes a timely transfer in accordance with N.J.S.A. 43:2-1 et seq. will contribute to the new system at a rate based on his or her age at the time of enrollment in the present system and no refund of pension contributions will be made except for those contributions made by veterans covering service prior to January 1, 1955, where applicable. The contribution rate for a member granted a deferred retirement in the present system who makes a timely transfer at the time of enrollment in the new system will be determined in accordance with the rules concerning enrollment after deferred retirement in the new system. A member who does not make a timely transfer will contribute to the new system at a rate based on his or her age at the time of enrollment in the new system.**

(b)

**State Police Retirement System  
Interfund Transfers**

**Proposed Amendment: N.J.A.C. 17:5-6.1**

Authorized By: Anthony P. Ferrazza, Secretary, State Police Retirement System.

Authority: N.J.S.A. 53:5A-30.

Proposal Number: PRN 1988-12.

The agency proposal follows:

**Summary**

This proposed amendment to N.J.A.C. 17:5-6.1 will permit members of the retirement system who have credit in another State-administered retirement system for service prior to the date of enrollment in the SPRS to transfer the credit to the State Police Retirement System (SPRS) at any time. At present, such transfers must be done at the time of enrollment in SPRS and a transfer cannot be made by a person who has been granted a deferred retirement in the other system. This amendment will permit transfers in cases of deferred retirement and at any time after enrollment in SPRS, provided that the person did not continue to earn service credit in the other system after enrollment in SPRS. For persons who make the transfers at the time of enrollment in SPRS, their contribution rate will be based upon their age at the time of enrollment in the other system, subject to commutation in cases of deferred retirement. The contribution rate for persons who do not make timely transfers will be based upon their age at the time of enrollment in SPRS.

**Social Impact**

The proposed amendment will benefit the members of SPRS and the other State-administered retirement systems because it liberalizes the rules concerning transfers of service credit among the systems.

**Economic Impact**

No significant economic impact on the retirement system or its members is anticipated from the adoption of this proposal since the amendment simply concerns transfer of service credit.

**Regulatory Flexibility Statement**

The rules of the State Police Retirement System affect only public employers and employees. Thus, this proposed amendment will not have any adverse effect upon small businesses or private industry in general. A regulatory flexibility analysis is not required.

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

17:5-6.1 Interfund transfers; other State systems

(a) Interfund transfers between State-administered pension funds are permitted by reciprocal transfer arrangements. Such transfers would not apply where the member [does not make a timely transfer in accordance with N.J.S.A. 43:2-1 et seq., or who has been granted a deferred retirement by the present system] **has credit in the present system for service after the date of enrollment in the new system or where a person has ceased to be a member of the present system before establishing sufficient service credit to be eligible for deferred retirement.**

(b) (No change.)

(c) The system will transfer membership to any State-administered system as follows:

1.-3. (No change.)

4. The member shall enjoy the same [rate of contribution and] service credits established in the present system, subject to the provisions of the new system.

5. (No change.)

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

(f) [The] A member who makes a timely transfer in accordance with N.J.S.A. 43:2-1 et seq. will contribute to the new system at a rate based on his or her age at the time of enrollment in the present system and no refund of pension contributions will be made except for those contributions made by veterans covering service prior to January 1, 1955, where applicable. **The contribution rate for a member granted a deferred retirement in the present system who makes a timely transfer at the time of enrollment in the new system will be determined in accordance with the rules concerning enrollment after deferred retirement in the new system. A member who does not make a timely transfer will contribute to the new system at a rate based on his or her age at the time of enrollment in the new system.**

**(a)****NEW JERSEY STATE LOTTERY COMMISSION****Deposit of Lottery Money****Proposed Amendment: N.J.A.C. 17:20-6.3**

Authorized By: Barbara A. Marrow, Executive Director,  
Division of State Lottery.

Authority: N.J.S.A. 5:9-7.

Proposal Number: PRN 1988-1.

Submit comments by February 3, 1988 to:

Christopher D. Kniesler  
Administrative Practice Officer  
Division of State Lottery  
CN 041  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposal amends the rules of the State Lottery Commission to bring them into conformity with rules for the specific lottery games, which are promulgated directly by the Commission pursuant to P.L. 1981, c.182. The proposal preserves the confidentiality of individual lottery agent revenue and income statistics, exempting them from disclosure under the Right-To-Know Law, N.J.S.A. 47:1A-1, et seq.

**Social Impact**

The proposal protects individual lottery ticket sales agents from unwarranted disclosure of their ticket sales revenues. It is feared that such disclosure could expose an agent to enhanced risks of theft or robbery. In addition, these data border on tax return information, which is confidential pursuant to State and federal law.

**Economic Impact**

The proposal has no revenue or other economic impact, direct or indirect, since it affects no operational practices of the State Lottery or its licensed ticket sales agents.

**Regulatory Flexibility Statement**

Since the proposal does not affect small businesses (applying only to data collected by the Division of the State Lottery), a detailed regulatory flexibility analysis has not been conducted by the State Lottery Commission. With respect to the underlying question of agent reporting of lottery business transactions, the commission has determined that the existing structure is the minimum allowable level of reporting and paperwork, consistent with preserving the integrity of lottery operations.

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

17:20-6.3 Deposit of Lottery money

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

(f) All agent lottery operations, reports and records shall be subject, upon demand, to inspection and audit by representatives of the Division of the State Lottery, **but such reports and records shall remain confidential for all purposes except income tax reporting required by law.**

(g)-(h) (No change.)

**TREASURY-TAXATION****(b)****DIVISION OF TAXATION****Corporation Business Tax****Recycling Tax Credit****Proposed New Rule: N.J.A.C. 18:7-3.18**

Authorized By: John R. Baldwin, Director, Division of Taxation,  
Department of Treasury.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1988-10.

Submit comments by February 3, 1988 to:

Nicholas Catalano  
Chief Tax Counselor  
Division of Taxation  
50 Barrack Street  
CN 269  
Trenton, NJ 08646

The agency proposal follows:

**Summary**

This proposed new rule relates to the New Jersey Corporation Business Tax Act, N.J.S.A. 54:10A-1, et seq., and sets forth the rules under which a corporation will qualify for a business tax credit upon the purchase of certain recycling equipment pursuant to P.L. 1987, c.102. The rule sets forth the qualification requirement of approval by the Department of Environmental Protection. The rule also sets forth the manner in which the credit is prorated and calculated and provides for carryover to years subsequent to the expiration of the credit.

**Social Impact**

The rule will assist corporate taxpayers and tax practitioners in understanding the recycling tax credit provided by section 42 of P.L. 1987, c.102 (N.J.S.A. 54:10A-53). It is expected that adoption of this rule will eliminate unnecessary communication between the Division and tax practitioners with respect to the application of the recycling tax credit in most circumstances.

**Economic Impact**

Corporate taxpayers are expected to save, in the aggregate, an estimated \$35 million in corporate business tax for the fiscal period ending September 30, 1988.

**Regulatory Flexibility Statement**

This proposal does not negatively affect or impact small businesses. The proposed new rule affords both small and large taxpayers an opportunity to understand the Division of Taxation's interpretation of a law that grants a tax credit to both large and small corporate taxpayers

who purchase qualified recycling equipment. Small businesses should not be exempt from the rules, as this would deny them the benefits available under recycling tax credit.

Full text of the proposed new rule follows.

18:7-3.18 Recycling tax credit

(a) As used in this section:

"Maximum yearly credit" means the maximum amount of the tax credit allowable in a tax year.

"Qualified recycling equipment" means that recycling equipment which is certified in writing by the Director of Environmental Protection as qualified for the corporation business tax credit.

"Total credit allowable" means the total corporate tax credit that a taxpayer can take on equipment certified by the Department of Environmental Protection.

(b) A corporate taxpayer which purchases qualified recycling equipment is entitled to a corporation business tax credit equal to 50 percent of the cost of the certified equipment, subject to the following limitations:

1. The taxpayer must receive certification from the Commissioner of the Department of Environmental Protection prior to claiming the credit.

2. The maximum yearly credit shall not be more than 20 percent of the total credit allowable in any one given full tax year.

3. The credit shall be based on amounts paid for the equipment less the amount of any loan made pursuant to section 36 of P.L. 1987, c.102 (N.J.S.A. 13:1E-96).

4. The credit allowable in a given tax year cannot exceed 50 percent of the tax liability otherwise due on that return. The tax liability otherwise due is computed after credit is taken pursuant to N.J.S.A. 52:27H-78 (urban enterprise zone employee tax credit).

5. The amount of the tax credit shall not reduce the tax liability below the statutory minimum tax provided at N.J.S.A. 54:10A-5(e).

(c) No tax credit may be taken by a taxpayer in the year that the equipment is disposed of.

(d) The basis for computation of the tax credit amount is the same basis as used for Federal tax purposes exclusive of any loans received by the taxpayer pursuant to section 36, P.L. 1987, c.102 (N.J.S.A. 13:1E-96).

(e) The tax credit shall be prorated based on months or the fraction thereof that the equipment is used in the state. The base period for this proration is 12 months.

(f) Taxpayers who purchase qualified recycling equipment and have unused credits on December 31, 1996 can carry forward the tax credit to subsequent periods subject to the limitations contained in (b)2, 3, 4 and 5 above.

(g) The equipment must be used during the year to be eligible for the tax credit.

Example: XYZ Corporation begins to use qualified recycling equipment in this state on January 1, 1988. The Federal cost basis of this equipment is \$100,000 and the taxpayer did not receive any loans from the recycling fund to help with the purchase of the equipment. The taxpayer receives an enterprise zone employee tax credit of \$5,000 and their corporate tax liability after this credit is \$30,000. The credit for the taxpayer is the lesser of \$10,000 (\$100,000 cost x 50 percent (total credit allowable) x 20 percent maximum yearly credit), or \$15,000 (50 percent of the tax liability after the enterprise zone tax credits). In this case the allowable credit for XYZ Corporation is \$10,000, the lesser of the two amounts.

## OTHER AGENCIES

(a)

### NEW JERSEY HIGHWAY AUTHORITY

#### Garden State Parkway

#### Tolls

#### Proposed Amendments: N.J.A.C. 19:8-1.1 and 19:8-3.1.

Authorized By: New Jersey Highway Authority.

George P. Zilocchi, Executive Director.

Authority: N.J.S.A. 27:12B-5(j) and (t), 27:12B-14, 27:12B-14.1, 27:12B-14.2, 27:12B-18, and 27:12B-24.

Proposal Number: PRN 1988-11.

Four public hearings concerning these proposed amendments will be held on the following days at the indicated time and place:

January 5, 1988 at 7:00 P.M.

Saddle Brook Marriott Hotel  
I-80 at Garden State Parkway  
Saddle Brook, New Jersey

January 7, 1988 at 7:00 P.M.

Holiday Inn  
290 Highway 37  
Toms River, New Jersey

January 11, 1988 at 7:00 P.M.

Budget Motor Lodge  
350 Route 9 North  
Woodbridge, New Jersey

January 13, 1988 at 7:00 P.M.

Music Pier  
9th and Boardwalk  
Ocean City, New Jersey

Submit comments by February 3, 1988 to:

George P. Zilocchi, Executive Director  
New Jersey Highway Authority  
Garden State Parkway  
Woodbridge, New Jersey 07095

The agency proposal follows:

#### Summary

In response to the requirement to produce additional revenue to meet debt service obligations, to provide for increased operating costs, and to finance necessary capital improvement projects, the New Jersey Highway Authority ("Authority") proposes to amend its toll regulations to increase tolls for vehicles using the Garden State Parkway ("Parkway").

The basic toll for cars at toll barriers will increase from \$.25 to \$.50. Car tolls at ramps will for the most part increase from \$.10 and \$.15 to \$.25 and from \$.25 to \$.50. The Authority also intends to introduce a \$.35 car discount token which may be used by cars at all exact change \$.50 toll lanes.

Barrier tolls for heavy trucks (2 axle, 4 tire, 3½ tons or more; 2 axle, 6 tires; or 3 or more axles), where allowed, will generally increase to a per axle charge of \$.50.

Tolls for buses will increase from \$1.00 to \$3.00. Regularly scheduled commuter buses will be able to purchase and use discount bus tokens at \$1.00. Other buses will be able to purchase discount bus tokens for \$2.00. For toll purposes, school buses shall be treated as cars.

In addition, the proposed amendments will authorize tolls at two new barrier plazas in Atlantic County and Cape May County (near Wildwood) and at three new ramp plazas at Interchange 120, Interchange 116 and Interchange 74. It is anticipated that Interchange 74 will be operational by 1989 and that the remaining new toll plazas will be operational by 1991.

The proposed amendments will also make certain definitional changes to implement the proposed changes.

It is anticipated that the proposed increases will take effect on or about April 2, 1988.

The Authority's enabling act, at N.J.S.A. 27:12B-4, requires the prior approval in writing of the Governor and either the State Treasury or the Comptroller of the Treasury before any revision in tolls can be made effective by the Authority. This required approval has been obtained to commence the public hearings to be held in January of 1988 pursuant

**OTHER AGENCIES**

**PROPOSALS**

to N.J.S.A. 27:12B-14.1, to cause to be published notice of the indicated hearings in at least 10 newspapers with a daily circulation in the State pursuant to N.J.S.A. 27:12B-14.2, and to commence the Administrative Procedure process set forth in N.J.S.A. 52:14B-4 and N.J.A.C. 1:30, et seq., and is further subject to the requirement that after the aforesaid hearings, the members of the Authority shall review the information received at such hearings, shall revise the proposed schedule of tolls, if justified, and shall thereafter adopt a resolution, subject to the prior written approval of the Governor and State Treasurer, adopting a schedule of tolls.

**Social Impact**

The proposed toll increases and the establishment of the additional locations for the collection of tolls will permit the Authority to better maintain the Parkway and to secure financing to make necessary capital improvements. The improved maintenance and the proposed capital improvement projects will lessen traffic congestion on the Parkway, particularly at rush hours and other peak hours of travel. The Parkway will thus provide its patrons with safe and time-saving journeys to homes, businesses and recreational areas in those portions of the State served by the Parkway and will thereby contribute to the enhancement of the quality of the lifestyle presently enjoyed by the citizens of New Jersey and visitors to our State. In providing greater access to many parts of the State, the Parkway expects to continue to contribute to the enhancement of many residential and commercial developments in New Jersey and the peripheral services required for those residences and businesses. The capital improvement projects will also provide additional employment for New Jersey residents and thereby contribute to their social well-being.

**Economic Impact**

The Authority's proposed toll increase will increase the cost to all persons using the Parkway. This toll increase will be the first increase in the basic \$.25 barrier toll since the Parkway's original construction in 1954. The increased cost to operators of cars using the Parkway will be offset by the introduction of a \$.35 discount token for use by cars at the exact change \$.50 toll lanes. The use of tokens should also reduce congestion at the toll plazas, thereby reducing the negative economic impact of traffic delays on the motoring public.

The proposed amendments will also authorize two new barrier toll plazas (in Atlantic County and Cape May County) and three new ramp toll plazas (at Interchanges 74, 116 and 120) which will impact on residents in these areas. These new toll plazas will provide a more equitable toll structure on the Parkway consistent with its policy of user financing. This policy also supports the proposed increase for buses and heavy trucks.

The revenues generated by the proposed toll increases will be used by the Authority to meet its debt service obligations, to continue and improve upon necessary maintenance of the Parkway, and to finance and fund required capital improvements to the Parkway to minimize traffic congestion. Reduction of congestion should eliminate or lessen undue traffic delays, thereby resulting in an economic benefit for Parkway patrons.

The capital construction projects will also result in additional jobs for the State's workforce and increased opportunities for small, minority and women's businesses to participate in the Authority's contract set-aside program for these businesses.

**Regulatory Flexibility Statement**

The proposed amendments to the Authority's toll rules do not adversely affect small business since they do not impose reporting, recordkeeping or other requirements on such businesses. The proposed amendments affect all members of the motoring public to the extent they use the Parkway in traveling between various locations along its route.

Although the proposed amendments do not adversely impact small businesses, such small businesses, as well as minority and women's businesses, will benefit from the proposed amendments since they will provide financing for capital construction which will permit the Authority to utilize those enterprises consistent with the Authority's contract set-aside program for small businesses, minority businesses and women's businesses.

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

19:8-1.1 Definitions

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

...  
"Bus token" means the Authority's authorized discount token for use by buses.

...  
"Car" means a passenger motor vehicle, including station wagons, hearses, funeral flower and funeral service vehicles for which issuance of passenger car plates is authorized, taxicabs, motorcycles, **2 axle 4 tire campers, school buses** and panel vans, pickup trucks and similar vehicles having a [registered] gross weight not exceeding 6,999 pounds **and having no more than 2 axles and 4 tires.**

"Car token" means the Authority's authorized car discount token for use by cars only at exact change \$.50 toll lanes.

"Heavy truck" means a truck with 2 axles and 4 tires weighing more than 6,999 pounds, a truck with 2 axles and 6 or more tires, or a truck with 3 or more axles.

19:8-3.1 Tolls  
(a) (No change.)

(b) Tolls shall be paid by currency, coin, or authorized Authority token or scrip for the passage of all vehicles on the Parkway in amounts and at the locations designated in the following schedule.

AGENCY NOTE: The following table of toll locations and rates is proposed to replace that table which presently appears at N.J.A.C. 19:8-3.1(b).

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Toll Location	Barrier or Ramp	Car	Car with 1-axle Trailer; 2-axle, 6-Tire Camper; or 3-axle Camper	Car with 2-axle Trailer or 4-axle Camper	Car with 3-axle Trailer	Omnibus**	Heavy Truck***					
							2-axle, 4-tire Truck, 3½ tons or more	2-axle, 6-tire Truck	3-axle Truck	4-axle Truck	5-axle Truck	6-axle Truck
Hillsdale	B	.50*	.75	1.00	1.25	3.00	—	—	—	—	—	—
Paramus	R	.25	.40	.50	.65	3.00	—	—	—	—	—	—
Bergen	B	.50*	.75	1.00	1.25	3.00	—	—	—	—	—	—
Saddle Brook	R	.50*	.75	1.00	1.25	3.00	—	—	—	—	—	—
Clifton	R	.25	.40	.50	.65	3.00	—	—	—	—	—	—
Passaic	R	.25	.40	.50	.65	3.00	—	—	—	—	—	—
Watchung	R	.50*	.75	1.00	1.25	3.00	—	—	—	—	—	—
Essex	B	.50*	.75	1.00	1.25	3.00	—	—	—	—	—	—
Bloomfield	R	.25	.40	.50	.65	3.00	—	—	—	—	—	—
East Orange	R	.25	.40	.50	.65	3.00	—	—	HEAVY TRUCKS PROHIBITED			—
Irvington	R	.25	.40	.50	.65	3.00	—	—	NORTH OF INTERCHANGE 105			—
Union	R	.50*	.75	1.00	1.25	3.00	—	—	—	—	—	—
Union	B	.50*	.75	1.00	1.25	3.00	—	—	—	—	—	—
Raritan N/S	B	.50*	.75	1.00	1.25	3.00	—	—	—	—	—	—
Cheesequake	R	.25	.40	.50	.65	3.00	—	—	—	—	—	—
Matawan	R	.25	.40	.50	.65	3.00	—	—	—	—	—	—
Keyport-Hazlet	R	.25	.40	.50	.65	3.00	—	—	—	—	—	—
Arts Center	R	.25	.40	.50	.65	3.00	—	—	—	—	—	—
Holmdel	R	.25	.40	.50	.65	3.00	—	—	—	—	—	—
Red Bank	R	.25	.40	.50	.65	3.00	—	—	—	—	—	—
Eatontown	R	.50*	.75	1.00	1.25	3.00	—	—	—	—	—	—
Asbury Park	B	.50*	.75	1.00	1.25	3.00	.50	1.00	1.50	2.00	2.50	3.00
Belmar-Wall	R	.25	.40	.50	.65	3.00	.25	.50	.75	1.00	1.25	1.50
Lakewood-Brick	R	.25	.40	.50	.65	3.00	.25	.50	.75	1.00	1.25	1.50
Lakehurst	R	.25	.40	.50	.65	3.00	.25	.50	.75	1.00	1.25	1.50
Toms River	B	.50*	.75	1.00	1.25	3.00	.50	1.00	1.50	2.00	2.50	3.00
Lacey Road	R	.25	.40	.50	.65	3.00	.25	.50	.75	1.00	1.25	1.50
Barnegat	B	.50*	.75	1.00	1.25	3.00	.50	1.00	1.50	2.00	2.50	3.00
New Gretna	B	.50*	.75	1.00	1.25	3.00	.50	1.00	1.50	2.00	2.50	3.00
Atlantic County	B	.50*	.75	1.00	1.25	3.00	.50	1.00	1.50	2.00	2.50	3.00
Somers Point	R	.50*	.75	1.00	1.25	3.00	.50	1.00	1.50	2.00	2.50	3.00
Great Egg	B	.50*	.75	1.00	1.25	3.00	.50	1.00	1.50	2.00	2.50	3.00
Cape May	B	.50*	.75	1.00	1.25	3.00	.50	1.00	1.50	2.00	2.50	3.00
Wildwood****	R	.25	.40	.50	.65	3.00	.25	.50	.75	1.00	1.25	1.50
Wildwood	B	.50*	.75	1.00	1.25	3.00	.50	1.00	1.50	2.00	2.50	3.00

\* 35-cent car tokens available for use by cars in exact change lanes.

\*\* \$1.00 bus token available for use by regularly scheduled buses; \$2.00 bus token available for use by all other buses.

\*\*\* Heavy trucks (3½ tons or more, 6 tires, 3-or-more-axles) prohibited north of interchange 105.

\*\*\*\* Tolls to be removed from Wildwood Ramp after Wildwood Barrier is opened.

(a)

**CASINO CONTROL COMMISSION  
Procedure For Exchange Of Checks Submitted By  
Gaming Patrons  
Verification of Travelers Checks**

**Proposed Amendment:**

**Alternative I N.J.A.C. 19:45-1.25**

**Alternative II N.J.A.C. 19:45-1.25**

Authorized By: Casino Control Commission,

Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-69(c).

Proposal Number: PRN 1988-8.

Submit comments by February 3, 1988, to:

David C. Missimer

Senior Assistant Counsel

Casino Control Commission  
3131 Princeton Pike Office Park  
Building No. 5, CN-208  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendments to N.J.A.C. 19:45-1.25(e) were originally proposed through petitions for rulemaking filed by the Claridge Hotel and Casino (Claridge) (see 19 N.J.R. 2070(b)) and the Division of Gaming Enforcement (Division) (see 19 N.J.R. 2309(a)). Prior to its consideration by the Commission, Claridge amended its petition to conform the amendatory language proposed therein to an independent proposal suggested by the Commission's staff. Claridge's amended proposal is being published as Alternative I; the proposal of the Division is being published as Alternative II. Only one of the two proposals will be adopted by the Commission.

The proposals are intended to clarify the meaning and scope of the verification procedures currently required of a casino licensee by N.J.A.C.

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19:45-1.25(e) when accepting a travelers check from a patron. Alternative I would require a casino licensee to verify the validity of the travelers check by: performing the standard "watch and compare" procedure; examining the instrument for signs of tampering or alteration; and performing any other procedures required by the issuer of the particular travelers check to indemnify the acceptor against loss. Alternative II would require a casino licensee to verify every travelers check through direct telephone or computer contact with the issuer of the travelers check or through indirect contact by means of an independent verification service such as Central Credit.

**Social Impact**

According to the Claridge, adoption of Alternative I would have little or no social impact since it would merely codify existing verification procedures. Conversely, Claridge maintains that adoption of Alternative II would have an adverse social impact since it would diminish the negotiability of travelers checks and place casino licensees at a competitive disadvantage with other businesses in the tourist industry who need only observe the watch and compare procedure. It is also possible that casino patrons might be adversely affected should the additional verification procedures proposed in Alternative II cause delays when patrons attempt to cash travelers checks at the casino cage.

The Division asserts that adoption of Alternative II would have a beneficial social impact in that it would reduce travelers check encashment fraud to the lowest reasonably achievable level. The Division maintains that Alternative II would have little effect on casino licensees or patrons since "even of the twelve licensed Atlantic City casinos presently perform such a verification in the majority of encashments prior to their acceptance of recognized travelers checks."

**Economic Impact**

Again, the Division asserts that adoption of Alternative II would have a negligible economic impact on licensed casinos. According to the Division, all twelve licensed casinos already have access to computer terminals or verification services which would enable compliance with the proposed amendment. The minimal time necessary to verify a travelers check would not translate into any significant cost to a casino licensee, in the Division's opinion, and would be justified by a reduction in fraudulent encashments. The Division maintains that the travelers check industry would also benefit in that travelers check issuers would continue to have full negotiability of their checks with increased protection against fraud.

Adoption of Alternative I would have little or no economic impact on casino licensees or the revenues or taxes generated by legalized casino gaming in this State. The proposed amendment would simply require a casino licensee to observe the acceptance procedures specified by the issuer of the travelers check. None of the major issuers of travelers checks currently require direct or indirect telephone or computer verification of all travelers checks accepted by casino licensees or any other business.

**Regulatory Flexibility Statement**

This proposal will only affect the operations of casino licensees and therefore will not impact upon any small business protected under the Regulatory Flexibility Act.

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

**ALTERNATIVE I**

19:45-1.25 Procedure for exchange of checks submitted by gaming patrons

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

(e) Cash equivalents and casino checks, as defined in N.J.A.C. 19:45-1.1, shall only be accepted at the cashiers' cage by general cashiers. Prior to acceptance of any cash equivalent from a patron, the general cashier shall determine the validity of such cash equivalent by performing the necessary verification for each type of cash equivalent and such other procedures as may be required by the issuer of such cash equivalent. Prior to the acceptance of a cash equivalent made payable to the presenting patron or of a casino check pursuant to N.J.S.A. 5:12-101(g), the general cashier shall examine that patron's identification credentials to ensure the patron's identity and shall maintain documentation supporting that examination.

**1. Prior to acceptance of a travelers check from a patron, the general cashier shall verify its validity by:**

- i. Requiring the patron to countersign the travelers check in his or her presence;**
  - ii. Comparing the countersignature with the original signature on the travelers check;**
  - iii. Examining the travelers check for any other signs of tampering, forgery or alteration; and**
  - iv. Performing any other procedures which the issuer of the travelers check requires in order to indemnify the acceptor against loss.**
- (f)-(p) (No change.)

**ALTERNATIVE II**

19:45-1.25 Procedure for exchange of checks submitted by gaming patrons

(a)-(d) No change.

(e) Cash equivalents and casino checks, as defined in N.J.A.C. 19:45-1.1, shall only be accepted at the cashiers' cage by general cashiers. Prior to the acceptance of any cash equivalent from a patron, the general cashier shall determine the validity of such cash equivalent by performing the necessary verification for each type of cash equivalent and such other procedures as may be required by the issuer of such cash equivalent.

**1. Necessary verification for travelers checks shall include either of the following to determine the validity of that instrument:**

- i. Direct contact with the travelers check issuer, via telephone or on-line terminal, to access the issuer's information regarding the check being presented by the patron; or**
- ii. Inquiry to Central Credit or any similar independent verification service, to access that service's information regarding the check being presented by the patron.**

**2.** Prior to the acceptance of a cash equivalent made payable to the presenting patron or of a casino check pursuant to N.J.S.A. 5:12-101(g), the general cashier shall examine that patron's identification credentials to ensure the patron's identity and shall maintain documentation supporting that examination.

(f)-(p) (No change.)

**(a)**

**Gaming Equipment  
Emergency Slot Machine Modifications  
Proposed Amendment: N.J.A.C. 19:46-1.29**

Authorized By: Casino Control Commission,  
Theron G. Schmidt, Executive Secretary.  
Authority: N.J.S.A. 5:12-63(c) and 5:12-100(e).  
Proposal Number: PRN 1988-7.

Submit comments by February 3, 1988 to:

Deno R. Marino  
Deputy Director, Operations  
Casino Control Commission  
3131 Princeton Pike Office Park  
Building No. 5, CN-208  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

The proposed amendment to N.J.A.C. 19:46-1.29 is intended to repeal a paragraph of the section adopted by the Commission in 1978 which dealt with emergency temporary approval of slot machine modifications deemed necessary to prevent cheating or a machine malfunction. With improved testing of slot machines and the immediate availability of staff, this rule has become obsolete.

The justifications for the repeal are numerous. First, the Division of Gaming Enforcement has implemented intense testing of slot machines in their laboratory and both staffs have established various inspection and enforcement programs on the site of each casino room since the inception of the rule. Secondly, staff's knowledge related to possible slot tampering and/or manipulation has grown considerably over the course of the last nine years, causing improved security measures. Furthermore, since experience has shown that any modification to approved slot machines should be reviewed and inspected by staff, a Slot Procedures

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**Interested Persons see Inside Front Cover**

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Manual is now available which details the necessary procedures to be followed in this circumstance.

**Social Impact**

From the social perspective, the proposal will eliminate temporary approvals, and instead, force casino personnel to go through the normal review and approval process thereby eliminating any doubt by the public and/or Commission representatives that the modifications are not acceptable. This, in turn, will continue to strengthen the public confidence and trust in the credibility and integrity of New Jersey's gaming industry and the regulatory process, thereby creating a positive social impact.

**Economic Impact**

The proposal will have no economic impact since the deleted rule has become obsolete. Detailed procedures have been developed to assure that slot machines comply with prototype approvals granted and are already being followed.

**Regulatory Flexibility Statement**

This proposal will only affect the operations of casino licensees and, therefore, will not impact on any small business as defined by the Regulatory Flexibility Act.

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

19:46-1.29 Operation of slot machine in conformance with approved model

(a) The responsibility for final assembly and initial operation of a slot machine in the manner approved by the Commission rests with the manufacturer and distributor. Changes in the manner of final assembly or initial operation of a slot machine will be deemed unsuitable unless prior to the institution of the change the manufacturer or distributor or operator shall have obtained approval from the Commission in accordance with the following procedure[s]:

1. (No change.)

[2. In emergency cases, when a change is deemed necessary to prevent cheating or malfunction, temporary approval may be requested prior to making the change of a commission agent in the casino. This approval must be followed within 15 days by a written request noting the temporary approval and containing the additional material as described in this section.]

(b) (No change.)

# RULE ADOPTIONS

## PERSONNEL

### (a)

#### MERIT SYSTEM BOARD

#### Leaves, Hours of Work and Employee Development

#### Adopted New Rules: N.J.A.C. 4A:6

**Adopted Repeals: N.J.A.C. 4:1-17.1 through 4:1-17.10, 4:1-18.1 through 4:1-18.3, 4:1-18.5 through 4:1-18.8, 4:1-20.1 through 4:1-20.3, 4:1-26.1, 4:2-17.1 through 4:2-17.14, 4:2-18.2 through 4:2-18.6, 4:2-20.1 through 4:2-20.8, 4:2-26.1 through 4:2-26.14, 4:3-17.1 and 4:3-20.2**

Proposed: October 5, 1987 at 19 N.J.R. 1764(a).

Adopted: December 10, 1987 by the Merit System Board, Eugene J. McCaffrey, Sr., Commissioner, Department of Personnel.

Filed: December 11, 1987 as R.1988 d.13, with technical and minor substantive changes not requiring additional public notice and comments (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 11A:2-6(b), 11A:6-1 through 11A:6-28, 18A:31-2, 30:4-178, 38:23-1, 38:23-1.1, 38:23-2, 38:23-4, 38A:4-4, 40A:14-177, 52:14-26.2, 29 U.S.C. 201 *et seq.*

Effective Date: January 4, 1988.

Expiration Date: January 4, 1993.

#### Summary of Public Comments and Agency Responses:

COMMENT: An attorney representing Camden Council No. 10 suggested that language be added to N.J.A.C. 4A:6-1.1(a) recognizing collective negotiations provisions and requirements.

RESPONSE: The extent to which matters addressed in these rules are subject to collective negotiations is governed by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 *et seq.*, and related case law. Therefore, it would not be appropriate to add language to these rules, which might be inconsistent with such law, on the subject of the applicability of collective negotiations requirements.

COMMENT: Several union representatives and other commenters stated that N.J.A.C. 4A:6-1.2 is inconsistent with statutory provisions regarding vacation leave, namely N.J.S.A. 11A:6-2 and 11A:6-3, in that the statute establishes minimum entitlements for such leaves.

RESPONSE: In response to these comments, N.J.A.C. 4A:6-1.2(b) has been changed to provide that, in local service, vacation leave entitlements as set forth in the rule are minimums. However, in State service, the rule has not been changed in view of the longstanding practice whereby leave entitlements are set by administrative rules.

COMMENT: A representative of the Division of Medical Assistance and Health Services, State Department of Human Services, commented that N.J.A.C. 4A:6-1.2(a) is deficient in omitting reference to vacation leave benefits for members of the Senior Executive Service.

RESPONSE: Vacation leave benefits for the Senior Executive Service will be addressed in forthcoming Chapter N.J.A.C. 4A:3, which will be proposed shortly.

COMMENT: An attorney representing Camden Council No. 10 suggested that language be added to N.J.A.C. 4A:6-1.2(a)1, similar to that found in current rule N.J.A.C. 4:2-17.1, stating that employees who begin work after the 23rd day of a month do not receive a vacation day for that month.

RESPONSE: The word "only" has been added in N.J.A.C. 4A:6-1.2(a)1 to clarify that the vacation leave entitlements of employees in their initial month of employment are limited to those specifically stated in the rule. With this clarification, it is unnecessary to state that employees who begin work after the 23rd day of the month are not entitled to any vacation leave credit for that month.

COMMENT: The personnel director for Morris County objected to making the formula for vacation leave entitlements in the first month of service, as set forth in N.J.A.C. 4A:6-1.2(a)1, applicable to employees in local service (see the first paragraph in N.J.A.C. 4A:6-1.2(b)).

RESPONSE: Since the statutory entitlement to vacation leave is identical during the first year of employment for State and local employees,

it is appropriate to use the same formula for both State and local employees with respect to the first month of employment. It is also noted that no other local official objected to this provision.

COMMENT: A representative of the New Jersey Civil Service Association (CSA) commented that N.J.A.C. 4A:6-1.2(b) does not clearly state that employees in local service with more than one year of service are credited with their vacation leave entitlement as of January 1st.

RESPONSE: The rule is similar to the predecessor rule in that appointing authorities in both State and local service are not required to grant the employee's entire vacation leave entitlement on January 1st since scheduling of vacation leave is subject to the discretion of the appointing authority.

COMMENT: Several union representatives objected to the requirement that service be "continuous" for purposes of determining vacation leave entitlements.

RESPONSE: The requirement for "continuous" service is statutory (see N.J.S.A. 11A:6-2 and 11A:6-3) and therefore not subject to change in these rules.

COMMENT: A representative of Local 1037 of the Communications Workers of America (CWA) questioned whether the phrase "employment for the same jurisdiction" found in the definition of continuous service in N.J.A.C. 4A:6-1.2(c) would apply to service in different departments of State government. She also requested the inclusion of language to ensure that State employees in "resignation/pick-up" situations retain vacation entitlements.

RESPONSE: Since New Jersey State government constitutes one jurisdiction, employees who transfer between departments of State government will retain their vacation entitlements based on years of continuous State service. The situation involving State employees who resign, or are deemed to have resigned, to accept employment in a different State department will be addressed more fully in the forthcoming Chapter N.J.A.C. 4A:4. To clarify the situation until that chapter is adopted, the word "actual" has been inserted before "interruption" to make it clear that there must be a true gap in working days due to resignation, retirement or removal to cause of break in the continuity of service.

COMMENT: Several union representatives commented that sick leave entitlements as set forth in N.J.A.C. 4A:6-1.3(a) should be stated as minimums.

RESPONSE: For the same reasons stated regarding vacation leave, language has been added to provide that employees in local service are entitled to a minimum of the sick leave entitlement stated in the rule.

COMMENT: The personnel director of Morris County objected to making the formula for sick leave entitlements in the first month of service, as set forth in N.J.A.C. 4A:6-1.2(a)1, applicable to employees in local service.

RESPONSE: For the same reasons stated regarding a similar provision in the vacation leave rule, no change will be made in the proposal.

COMMENT: Several comments were submitted regarding N.J.A.C. 4A:6-1.3(a)2, which provides that after the first calendar year of employment, employees are to be credited with 15 working days' sick leave at the beginning of the calendar year. A representative of CSA stated that the rule was not clear that an employee with more than one year of service is credited with all sick leave as of January 1. A representative of CWA questioned whether an employee who begins working on July 1 is credited with 6 days' sick leave as of that date. The personnel director of Morris County objected to the applicability of this provision to employees in local service. The Department of Labor suggested that the rule be changed to provide that employees who abuse sick leave will not be credited with 15 days' sick leave at the beginning of the calendar year, but rather must "earn" sick leave before using it at the rate of one and one-quarter days per month.

RESPONSE: The subject rule, as proposed, is applicable to both State and local service since the statutory sick leave entitlements are identical. With regard to the questions raised, the rule provides that employees are entitled to one working day sick leave for each month of service. Thus, an employee who begins employment on July 1 is entitled only to one day's sick leave in July. On August 1, another day of sick leave is credited, and so on until December. After the end of the first calendar year of employment, that is, on January 2 of the following year, the employee is credited with 15 days' sick leave. It is recognized that the crediting of 15 days' sick leave on January 1st represents a departure for local service. However, no major fiscal or operational impact is anticipated

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with regard to employees who have genuine need for using sick leave. The suggestion by the Department of Labor to allow appointing authorities to place employees on an "earned leave" basis will be submitted for proposal with opportunity for public comment.

COMMENT: An attorney representing Camden Council No. 10 suggested the words "of 30 days or more" be added to N.J.A.C. 4A:6-1.3(c), to avoid penalizing employees for suspensions of less than 30 days.

RESPONSE: The purpose of subsection (c) is to implement the statutory directive that sick leave is earned on the basis of time in paid service. Local appointing authorities may adopt procedures for determining the effect of unpaid leaves or suspensions of less than a month upon sick leave. In State service, this issue is addressed in N.J.A.C. 4A:6-1.5.

COMMENT: A representative of CWA Local 1037 proposed the addition of the following provisions to N.J.A.C. 4A:6-1.4 in order to prevent appointing authorities from harassing their employees for sick leave use:

1. No employees shall be terminated when the employee is absent pursuant to an approved leave of absence.
2. An approved leave of absence shall not be unreasonably withheld where an employee presents proof of a serious illness that required a leave of absence.
3. Where appropriate, an employee's affidavit shall be acceptable to prove illness in place of a doctor's certificate.
4. An appointing authority shall be prohibited from fining, terminating or otherwise disciplining an employee who is absent because of illness where the employee has exhausted paid sick leave.

Similarly, a representative of CWA Local 1038 suggested the addition of a requirement that an appointing authority show cause for requesting proof of illness or injury. When an employee is to be examined by a physician prior to return to work, he suggested that the appointing authority be given a five day time limit.

Another CWA representative proposed that when an appointing authority requires verification of illness, the employee be notified in advance of the need for such verification. In the absence of such timely notice to the employee, he suggested, the appointing authority would no longer have the right to require verification of the illness. Finally, a representative of CWA requested several provisions regarding verification and use of sick leave in local service to prevent harassment of employees.

RESPONSE: The purpose of N.J.A.C. 4A:6-1.4 is to provide general guidelines for the use and verification of sick leave in State service. It is not possible, through rulemaking, to address each of the issues raised by these comments and produce workable regulations for every specific situation. When an employee believes that an appointing authority has acted improperly with regard to granting of sick leave, the grievance and appeal mechanisms are available to address these particular situations.

With regard to local service, it must be noted that N.J.S.A. 11A:6-1 provides for the adoption of rules by the Merit System Board regarding procedures for State employee leaves, while political subdivisions are directed to prepare their own procedures subject to statutory provisions.

COMMENT: The Department of Labor requested an amendment to N.J.A.C. 4A:6-1.5 to permit an appointing authority to place an employee on an involuntary leave of absence where the employee's physical or mental condition has deteriorated enough to prevent the employee from contributing to the workplace.

RESPONSE: It is recognized that there are situations where an employee, although unable to work, refuses to be placed in sick leave status, thus forcing the appointing authority to pursue disciplinary procedures. However, amending the rule as suggested, while precluding the "stigma" of disciplinary procedures, would have a greater negative impact on employee rights by curtailing the appeal and hearing opportunities associated with the disciplinary process.

COMMENT: In N.J.A.C. 4A:6-1.5, a representative of CWA stated that subsection (c) should be negotiated since the subject matter concerns terms and conditions of employment. A representative of CWA Local 1038 suggested that the phrase "except where collective bargaining agreements allow for other provisions" be added to subsection (c). He also suggested that subsection (d) be deleted.

RESPONSE: Subsection (c) is properly within the scope of rulemaking, since it implements the statutory directive that sick leave be earned on the basis of time in paid service. Adding language on the applicability of negotiated provisions would be inappropriate for the reasons stated regarding a similar suggestion on N.J.A.C. 4A:6-1.1(a). With regard to subsection (d), no reason has been offered for deletion. The purpose of this subsection is to clarify that Supplemental Compensation on Retirement (N.J.A.C. 4A:6-3) is the exclusive means for compensating State employees for unused sick leave.

COMMENT: In N.J.A.C. 4A:6-1.6(c)2, which concerns Sick Leave Injury (SLI), a representative of CWA objected to the use of the term "defect," calling it insulting to State employees.

RESPONSE: In response to the comment, the word "condition" has been substituted as more appropriate than the term "defect."

COMMENT: A representative of the Division of Medical Assistance and Health Services in the State Department of Human Services suggested that N.J.A.C. 4A:6-1.6(c)2 be amended to make it consistent with the predecessor rule, which provided that pre-existing conditions are *not* compensable when aggravation of the condition was reasonably foreseeable.

RESPONSE: The word "not" has been inserted between the words "are" and "compensable." The absence of the word "not" in the proposal was a typographical error.

While the summary accompanying the proposal indicated that this section was substantially similar to the pre-existing rule, the typographical error as it appeared in the Register may have led some readers to believe that a substantive change had been made. A petition for a rule change may be filed by any person pursuant to N.J.A.C. 4A:1-1.4 who wishes to amend the rule in light of the correctly adopted text.

COMMENT: Two CWA representatives suggested that N.J.A.C. 4A:6-1.6(c)4 be broadened to include psychological disability resulting from job stress.

RESPONSE: Changing the standard set forth in N.J.A.C. 4A:6-1.6(c)4 would result in verification problems, as well as broaden the coverage of the SLI program well beyond its intended scope.

COMMENT: The Department of Labor suggested, in light of two recent Merit System Board decisions on SLI appeals, that the following language be added to N.J.A.C. 4A:6-1.6(b)3: "The Merit System Board may, however, extend this time frame in extraordinary circumstances."

RESPONSE: The two recent Board decisions granting SLI beyond the one-year limit concerned unusual cases where the employees' disability did not begin immediately after their accidents. In the rare situations where the need to extend the one-year limit arises, the Merit System Board may rely upon the general rule, set forth at N.J.A.C. 4A:1-1.2(c), which permits relaxation of the rules in individual cases.

COMMENT: In N.J.A.C. 4A:6-1.7, a representative of CWA Local 1038 suggested that an appointing authority be required to notify an employee in writing of the disposition of the employee's request for SLI.

RESPONSE: The language of N.J.A.C. 4A:6-1.7(b)1 and (b)2, as originally proposed, does require such notification.

COMMENT: In N.J.A.C. 4A:6-1.9, a representative of CWA Local 1038 suggested that unclassified employees be granted three days of administrative leave in each calendar year.

RESPONSE: While N.J.A.C. 4A:6-1.9(b) permits appointing authorities to grant up to three days' administrative leave to unclassified employees, mandating such leave for unclassified employees would be inconsistent with the scope of N.J.S.A. 11A:6-1 and 11A:6-6. These statutory provisions apply to employees in the career service.

COMMENT: In N.J.A.C. 4A:6-1.10(a)1, a representative of CWA suggested that leave without pay for union office should not be limited to six biweekly pay periods for nonpermanent employees.

RESPONSE: The language of N.J.A.C. 4A:6-1.10(a)1, as originally proposed, does permit leave for union office by nonpermanent employees longer than six pay periods, as provided by negotiated agreement.

COMMENT: Several CWA representatives suggested that N.J.A.C. 4A:6-1.10(a)1 be amended to allow leave in excess of 6 pay periods for nonpermanent employees, especially for sick leave.

RESPONSE: The leave provided to State employees under N.J.A.C. 4A:6-1.10, while without pay offers distinct benefits, such as the right to return to the same job title and the opportunity to compete for promotions. It is appropriate that a distinction be made between permanent employees, who have established entitlement to their jobs through merit procedures, and nonpermanent employees, in providing for such leaves. Extension of such leave in sick leave situations will be submitted for proposal with opportunity for public comment.

COMMENT: The Department of Labor suggested that N.J.A.C. 4A:6-1.11(b) be amended to provide clearer guidelines for appointing authorities in determining whether active duty or active duty for training in the New Jersey National Guard is "required."

RESPONSE: The rule contains a cross-reference to N.J.A.C. 5A:2-2.3(b), a rule issued by the New Jersey Department of Defense, which clearly lists the types of required National Guard duty. Language has been added to the rule to explain the purpose of this cross-reference. In view of the guidelines contained in N.J.A.C. 5A:2-2.3(b) for determin-

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ing whether such duty is required, it would be unnecessary to add such guidelines in Title 4A, N.J.A.C.

COMMENT: A representative of CSA suggested that N.J.A.C. 4A:6-1.11(b) ought to be more specific regarding the granting of leave for national guard duty. She asked that the rule address situations where local appointing authorities penalize workers for taking such leave, such as only allowing employees to take leave when scheduling permits and only allowing leave during regular time-off periods.

RESPONSE: The rule as proposed clearly states that appointing authorities "shall" grant such leave for required duty. However, language has been added, similar to that found in subsection (c) regarding military reserve duty, permitting an appointing authority to reschedule an employee's work time to avoid conflict with required national guard duty.

COMMENT: An attorney representing Camden Council No. 10 requested a clarification of the last sentence of N.J.A.C. 4A:6-1.11(c). She commented that an appointing authority should not be permitted to require an employee to make up work time because of annual training.

RESPONSE: The sentence regarding rescheduling of work time is most applicable to weekend drills. Based on this provision, an employee whose usual work schedule is Sunday through Thursday can be rescheduled to work Monday through Friday to avoid conflict with such a weekend drill.

COMMENT: Two CWA representatives suggested that N.J.A.C. 4A:6-1.13 be amended to extend convention leave to the CWA and other unions affiliated with the AFL-CIO. They argued that it was inappropriate for the State to favor one union over another in these rules.

RESPONSE: The subject rule implements statutory provisions which authorize convention leave for certain organizations. In the absence of amendments to these statutes, changes to this rule would not be possible.

COMMENT: In N.J.A.C. 4A:6-1.16, which concerns leave for union office, a representative of CWA Local 1038 suggested that the granting of such leave be mandatory, not discretionary on the part of the appointing authority.

RESPONSE: This suggestion cannot be implemented due to the statutory language. N.J.S.A. 11A:6-12 states that an appointing authority "may" grant a leave of absence for union office.

COMMENT: Two CWA representatives suggested that unclassified employees should be treated identically to career service employees with respect to leave for emergency civilian duty (N.J.A.C. 4A:6-1.18), leave for jury duty (N.J.A.C. 4A:6-1.19) and leave to appear as a witness (N.J.A.C. 4A:6-1.20).

RESPONSE: The rules as proposed authorizes appointing authorities, on a discretionary basis, to grant these special leaves to unclassified employees on the same basis as career service employees. However, mandating such leaves for unclassified employees would be inconsistent with the scope of N.J.S.A. 11A:6-1, which authorized the Merit System Board to designate leaves other than sick and vacation leave for employees in the career service.

COMMENT: A representative of CWA Local 1038 suggested that N.J.A.C. Subchapter 4A:6-2 should contain provision for payment for on-call time.

RESPONSE: The subject of on-call time will be addressed in the recodification of the rules on overtime compensation, to be issued in the forthcoming Chapter 4A:3.

COMMENT: A representative of CWA suggested that language be added to N.J.A.C. 4A:6-2.1(a) providing that local appointing authorities have the obligation to negotiate regarding hours of work, and that language be added to N.J.A.C. 4A:6-2.1(b) providing for negotiations on hours of work when the Board establishes a new title or changes the number of hours in the normal work week in State service.

RESPONSE: As previously stated with respect to similar suggestions on leave rules, it is inappropriate to state in these rules which matters are subject to collective negotiations.

COMMENT: A representative of CWA Local 1038 suggested that N.J.A.C. 4A:6-2.3, which concerns job titles with non-limited workweeks, be deleted in its entirety because its subject matter is mandatorily negotiable.

RESPONSE: The adoption of this rule is authorized by N.J.S.A. 11A:6-24, which provides that the Merit System Board adopt rules for the implementation of hours of work.

COMMENT: A representative of CWA suggested that the language found in N.J.A.C. 4A:6-4.3 (now found in N.J.A.C. 4:2-27.4(c)) for determining which job titles are exempt or non-limited, was preferable to the language found in this proposal at N.J.A.C. 4A:6-2.3(a). He further questioned the meaning of the term "sworn unclassified" employees of the State Police in N.J.A.C. 4A:6-2.3(a)3.

RESPONSE: The language contained in the overtime rules at N.J.A.C. 4:2-27.4(c) is not being replaced by the rules in Chapter 4A:6. The section of the overtime rules cited by the commenter defines the types of positions which are exempt from the Federal Fair Labor Standards Act. The provisions contained in N.J.A.C. 4A:6-2.3 have a different purpose; namely, setting the standards for determining whether a job title has a non-limited work week. It should be noted that some job titles with a non-limited workweek are nevertheless covered under the Fair Labor Standards Act (see N.J.A.C. 4A:6-2.3(b)3) because they do not meet the Federal criteria for exemption.

The term "sworn unclassified" employees of the State Police refers to State Troopers, including those in superior ranks, as distinguished from civilian employees of the Division of State Police.

COMMENT: In N.J.A.C. 4A:6-2.4, which concerns holidays in State service, the Department of Labor suggested that subsection (c) be amended to require that an employee be in pay status for the whole day before a holiday in order to receive pay for the holiday, and that those who retire the day before a holiday not receive pay for the holiday.

RESPONSE: The suggested changes would entail recordkeeping and other costs (in order to distinguish between employees in pay status for only part of the day as compared to those in pay status for the whole day, and between employees who retire and are separated for other reasons) which would not justify the fiscal benefits of denying pay for holidays in these relatively rare situations.

COMMENT: In N.J.A.C. 4A:6-2.5, which concerns inclement weather and emergency conditions, a representative of CWA Local 1033 suggested that the rule provide for notice to employees far in advance, preferably at time of initial employment, that they will be required to work during inclement weather. This representative, along with two other CWA representatives, also suggested that employees who are required to work to maintain essential services, while others are excused, should be paid overtime rates. A representative of CWA Local 1038 suggested that the rule provide for excusing employees when a local state of emergency is declared.

RESPONSE: With regard to notice to employees, it is agreed that employees should be provided notice in advance that they may be required to work during inclement weather or other emergency conditions. However, in view of the difficulties involved in mandating this notice in all cases and fashioning a rule applicable to all situations, it is preferable to allow each appointing authority to develop its own procedures for such notice. The issue of eligibility for overtime compensation is currently addressed in N.J.A.C. 4:2-27.1 *et seq.* That subchapter will shortly be recodified in the forthcoming Chapter 4A:3. With regard to local states of emergency, the language of the rule as proposed allows for closings on a regional basis. See N.J.A.C. 4A:6-2.5(b)2.

COMMENT: Several CWA representatives suggested that language be added to N.J.A.C. 4A:6-2.6 (Flexitime Programs), 4A:6-2.7 (Alternative Workweek Programs) and 4A:6-2.8 (Adjusted Hours of Operation) providing for the obligation to negotiate concerning the establishment, modification or abolishment of these programs.

RESPONSE: As previously stated with respect to similar suggestions, these rules do not deal with collective negotiations. It should be noted, that consultations with negotiations representatives on these programs are encouraged. See N.J.A.C. 4A:6-2.6(f), 4:6-2.7(i) and 4A:6-2.8(d).

COMMENT: A representative of CWA Local 1037 suggested that N.J.A.C. 4A:6-2.6(g) and 4A:6-2.7(j) be amended to provide that the appointing authority provide a description of its flexitime and alternative workweek programs to employees as a matter of course, not just upon request.

RESPONSE: In view of similar language in current rules (see N.J.A.C. 4:2-18.4(g) and 4:2-18.6(j)) and lack of identified problems regarding access by employees to information about these programs, the suggested changes are unnecessary.

COMMENT: The Department of Labor suggested that N.J.A.C. 4A:6-3.1(b)1 should be changed to allow all employees who are permitted to retire to be eligible for Supplemental Compensation on Retirement (SCOR) payments.

RESPONSE: Since the purpose of the SCOR program is to provide a financial incentive for conscientious and efficient service, it is appropriate to exclude from eligibility those who are removed for cause as well as those who retire in lieu of removal or under circumstances that would warrant removal. However, it must be noted that the rule as proposed permits the Commissioner of Personnel to allow SCOR in individual cases based on mitigating circumstances.

COMMENT: A representative of the CSA suggested that N.J.A.C. 4A:6-4.1, which concerns Human Resource Development (HRD) pro-

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grams, should require a local appointing authority to notify the negotiations representative when it elects to participate in an HRD program. Further, she suggested that some HRD programs should be mandatorily extended to local service.

**RESPONSE:** In accordance with N.J.S.A. 11A:6-27, the Commissioner's role with respect to local service is limited to providing assistance in HRD programs when requested by the political subdivision. Rules which would mandate participation or notice to negotiations representatives would be inconsistent with that statutory provision.

**COMMENT:** A representative of CWA suggested that N.J.A.C. 4A:6-4.2(b) be amended to provide for assistance to workers before, during and after job displacement, in order to demonstrate a commitment to such a program.

**RESPONSE:** The commitment to this program is demonstrated by the language as proposed which is broadly worded to cover necessary situations.

**COMMENT:** In N.J.A.C. 4A:6-4.4, which concerns a Human Resource Development Committee, a representative of the CWA suggested that the rule should provide for the appointment of a CWA representative to the committee, and that bargaining unit HRD professionals or specialists should be appointed to the Committee.

**RESPONSE:** No restrictions by particular union are placed on appointments to the Department's other advisory boards. Accordingly, it would not be appropriate to place such restrictions on appointments to the HRD Committee.

**COMMENT:** A CWA representative suggested that the following two provisions should be subject to negotiations: N.J.A.C. 4A:6-4.6(d), which sets a ceiling on tuition aid; and N.J.A.C. 4A:6-4.7(a)2, which sets the employee's share of the cost for participation in the Certified Public Manager (CPM) program.

**RESPONSE:** As evidenced by predecessor rules (see N.J.A.C. 4:2-20.6 and 4:2-20.8), it is a matter of longstanding practice that these matters have been set by administrative rules.

**COMMENT:** A representative of CWA Local 1037 presented four comments with respect to N.J.A.C. 4A:6-4.10, which concerns the Employee Advisory Service (EAS):

1. The original purpose of the EAS as stated in the predecessor rule has been ignored;
2. The early referral mandate found in the former rule has been eliminated;
3. The confidentiality requirement has been weakened by the addition of an exception "where there is an overriding health or safety need;" and
4. Subsection (f) should be changed to preclude discipline of employees in treatment for alcoholism or drug abuse.

**RESPONSE:** In response to the first comment, language has been added to subsection (a) regarding the purpose of the EAS. In response to the second comment, subsection (b) has been amended to encourage early referrals to the EAS. With regard to the third comment, a rare exception to confidentiality is appropriate when the health or safety of other employees is at stake. With regard to the fourth comment, while rehabilitative efforts are clearly encouraged under this rule, the suggested blanket prohibition of discipline would not be appropriate in all cases.

**COMMENT:** The Department of Labor suggested two amendments to N.J.A.C. 4A:6-5.2, which concerns the Performance Assessment Review (PAR) program: First, providing for changing an employee's rating after the final assessment conference; and second, providing not only for an improvement plan option, but also for a development plan for employees who attain a rating of satisfactory or better.

**RESPONSE:** There are very few instances where a rating is changed after the final conference. In such situations, the PAR form provides instructions consistent with the suggestion. With regard to a development plan, experience with the PAR program has shown that such plans should be encouraged, but not mandated by rule, for employees who are rated satisfactory or better.

**COMMENT:** A representative of CWA Local 1037 was concerned that N.J.A.C. 4A:6-5.2(a) might dilute the mutuality requirement between the employee and supervisor in developing the job performance plan. Further, she suggested that subsection (b) should require evaluative meetings more frequently than every six months.

**RESPONSE:** The rule as proposed requires the employee and supervisor to jointly develop a job performance plan. This language does not dilute the mutuality requirement, but it does avoid some misunderstanding that arose under the predecessor rule when an employee and supervisor could not agree on the plan. Under the rule as proposed, the supervisor's determination generally governs in such situations. However, language has been added to N.J.A.C. 4A:6-5.2(a) to provide for the

employee to note disagreement with the plan. Further, N.J.A.C. 4A:6-5.3(e) provides that an employee who disagrees with his or her plan may utilize the noncontractual grievance procedures. With regard to the frequency of meetings, informal meetings related to job performance can and should take place more frequently than every six months. However, experience with the PAR program so far does not justify a requirement for more frequent formal evaluative meetings.

**COMMENT:** Two CWA representatives objected to N.J.A.C. 4A:6-5.3(d), which provides for appeal to the Merit System Board by employees who have received a PAR rating at the lowest level, as an intrusion on the contractual grievance process. Further, they stated that this provision constituted an attempt to reverse a determination by the Public Employment Relations Commission (PERC) on the right to pursue a contractual grievance regarding performance evaluations.

**RESPONSE:** Initially, it should be noted that the PERC decision cited by the commenters involved the former EPEIS program and not the PAR program. Further, providing an appeal route culminating with the Merit System Board offers a valuable right to all State employees, including those who would have no other appeal mechanism available to them in the absence of this rule.

**Summary of other changes made between proposal and adoption:**

In addition to the changes described above and various technical and typographical corrections, the following changes have been made:

In N.J.A.C. 4A:6-1.3(g)4, the phrase "for a reasonable period of time" has been added to the provision regarding sick leave for death in the employee's immediate family to make this provision consistent with subsection (g)3, which allows use of sick leave to care for a seriously ill family member.

In N.J.A.C. 4A:6-1.7, a subsection (g) has been added regarding SLI appeal procedures in order to codify the longstanding requirement that copies of all materials submitted to the Merit System Board be made available to all their parties.

In N.J.A.C. 4A:6-4.7(c), which concerns the CPM Policy Board, the phrase "which will set overall program policy" has been deleted in view of the advisory role of that Board.

In N.J.A.C. 4A:6-5.1(b), specific encouragement for inclusion of unclassified titles has been added to the rule on the PAR program. Further, paragraph (b)4 has been added to provide for a distinct type of PAR job performance plan during the working test period.

In N.J.A.C. 4A:6-5.2(b)1, clearer language has been provided regarding PAR procedures when there is a change in supervision or job assignment.

**Full text** of the rules repealed may be found in the New Jersey Administrative Code at N.J.A.C. 4:1-17.1 through 4:1-17.10, 4:1-18.1 through 4:1-18.3, 4:1-18.5 through 4:1-18.8, 4:1-20.1 through 4:1-20.3, 4:1-26.1, 4:2-17.1 through 4:2-17.14, 4:2-18.2 through 4:2-18.6, 4:2-20.1 through 4:2-20.8, 4:2-26.1 through 4:2-26.14, 4:3-17.1 and 4:3-20.2.

**Full text** of the adoption follows (additions shown in bold face with asterisks \*thus\*; deletions shown in brackets with asterisks \*thus\*).

**CHAPTER 6  
LEAVES, HOURS OF WORK AND  
EMPLOYEE DEVELOPMENT**

4:1-17.1	4A:6-1.1	4:1-18.8	4A:6-2.3
4:1-17.2	4A:6-1.1	4:1-20.1	4A:6-4.1
	4A:6-1.4		4A:6-5.1
	4A:6-1.5	4:1-20.2	4A:6-4.8
4:1-17.3	4A:6-1.2	4:1-20.3	4A:6-4.7
4:1-17.4	4A:6-1.3	4:1-26.1	<b>REPEALED</b>
4:1-17.5	4A:6-1.3	4:2-17.1	4A:6-1.4
	4A:6-1.4	4:2-17.2	4A:6-1.4
4:1-17.6	4A:6-1.10	4:2-17.3	4A:6-1.5
4:1-17.7	4A:6-1.11	4:2-17.4	4A:6-1.6
4:1-17.8	4A:6-1.12	4:2-17.5	4A:6-1.6
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4:2-18.2	4A:6-2.4	4:2-26.2	4A:6-3.1
4:2-18.3	4A:6-2.4	4:2-26.3	4A:6-3.1
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	4A:6-4.5	4:2-26.13	4A:6-3.4
4:2-20.5	4A:6-4.4	4:2-26.14	4A:6-3.4
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SUBCHAPTER 1. LEAVES OF ABSENCE

4A:6-1.1 General **\*provisions\***

(a) In local service, appointing authorities shall establish types of leaves and procedures for leaves of absence.

1. Pursuant to this subchapter, employees in local service shall also be entitled to vacation leave (N.J.A.C. 4A:6-1.2(b) through (h)); sick leave (N.J.A.C. 4A:6-1.3(a) through (h)); military leave (N.J.A.C. 4A:6-1.11); gubernatorial appointment leave (N.J.A.C. 4A:6-1.13); convention leave (N.J.A.C. 4A:6-1.13); and elective office leave (N.J.A.C. 4A:6-1.17).

2. An appointing authority may grant permanent employees a leave of absence without pay for a period not to exceed one year. A leave may be extended beyond one year for exceptional circumstances upon request of the appointing authority and written approval of the Department of Personnel.

3. An appointing authority may grant unpaid union leave pursuant to N.J.A.C. 4A:6-1.16.

4. Vacation and sick leaves for police officers and firefighters are established by local ordinance. See N.J.S.A. 40A:14-7 and 40A:14-118.

(b) In State service, this subchapter shall apply to career service employees, unless otherwise indicated. Temporary employees (see N.J.S.A. 11A:4-13c.) are not entitled to the leaves or benefits in this subchapter.

(c) Records of all employee leaves of absence and types of leave shall be maintained by State and local appointing authorities and reported to the Department of Personnel for the official State record in the prescribed manner and form.

(d) A leave of absence shall not disqualify an applicant for a promotional examination.

(e) Where leave procedures are not set by this subchapter, appointing authorities shall establish such procedures subject to applicable negotiations requirements.

4A:6-1.2 Vacation leave

(a) Full-time State employees in the career service shall be entitled to annual paid vacation leave, credited at the beginning of each calendar year in anticipation of continued employment, based on their years of continuous State full-time or part-time service in the career, senior executive or unclassified service. See subsection (c) for definition of continuous service.

1. New employees shall **\*only\*** receive one working day for the initial month of employment if they begin work on the 1st through the 8th day of the calendar month, and one-half working day if they begin on the 9th through the 23rd day of the month.

2. After the initial month of employment and up to the end of the first calendar year, employees shall receive one working day for each month of service. Thereafter, employees shall receive paid vacation leave as follows:

- i. From the beginning of the first full calendar year of employment and up to five years of continuous service, 12 working days;
- ii. After five years of continuous service and up to 12 years of continuous service, 15 working days;

iii. After 12 years of continuous service and up to 20 years of continuous service, 20 working days;

iv. Over 20 years of continuous service, 25 working days.

3. An increase in vacation leave shall be granted at the beginning of the calendar year in which the years of service requirement will be met.

4. Vacation leave credits shall not accrue after an employee has resigned or retired although his or her name is being retained on the payroll until exhaustion of vacation or other compensatory leave.

(b) **\*[Full-time local employees shall be entitled to annual paid vacation leave upon initial employment as set forth in (a)1 and (a)2 above, and thereafter as follows:]\* \*From initial employment up to the end of the first calendar year, annual paid vacation leave for full-time local employees shall be at least the amounts specified in (a) and (a)2 above. Thereafter their vacation leave shall be at least:\***

1. From the beginning of the first full calendar year of employment and up to 10 years of continuous service, 12 working days;

2. After 10 years of service and up to 20 years of continuous service, 15 working days; and

3. After 20 years of continuous service, 20 working days.

(c) Continuous service, for purposes of this section, shall mean employment for the same jurisdiction without interruption due to resignation, retirement or removal.

1. An employee who has been appointed from a special reemployment list shall be credited with any continuous service prior to the layoff in addition to continuous service subsequent to reemployment.

2. Periods of employment before and after a suspension or leave without pay shall be considered continuous service. However, the period of time on a suspension or leave without pay, except for military leave, shall not be included in calculating years of continuous service.

(d) Part-time and 10-month employees shall be entitled to a proportionate amount of paid vacation leave. State employees in intermittent titles shall be entitled to paid vacation leave based on accumulated hours of work as set by the Commissioner.

(e) Appointing authorities may establish procedures for the scheduling of vacation leave. Vacation leave not used in a calendar year because of business necessity shall be used during the next succeeding year only and shall be scheduled to avoid loss of leave.

(f) An employee who leaves State government service or service with a local jurisdiction shall be paid for unused earned vacation leave.

(g) An employee who exhausts all paid vacation leave in any one year shall not be credited with additional paid vacation leave until the beginning of the next calendar year. See N.J.A.C. 4A:6-1.5(b)2 for State service.

(h) Upon the death of an employee, unused vacation leave shall be paid to the employee's estate.

4A:6-1.3 Sick leave

(a) Full-time State **\*[and local]\*** employees shall be entitled to annual paid sick leave as **\*[follows]\* \*set forth in (a)1 and 2 below. Full-time local employees shall be entitled to a minimum of annual paid sick leave as follows\*:**

1. New employees shall **\*only\*** receive one working day for the initial month of employment if they begin work on the 1st through the 8th day of the calendar month, and one-half working day if they begin on the 9th through the 23rd day of the month.

2. After the initial month of employment and up to the end of the first calendar year, employees shall be credited with one working day for each month of service. Thereafter, at the beginning of each calendar year in anticipation of continued employment, employees shall be credited with 15 working days.

(b) Part-time and 10-month employees shall be entitled to a proportionate amount of paid sick leave. State employees in intermittent titles shall be entitled to paid sick leave based on accumulated hours of work as set by the Commissioner.

(c) Paid sick days shall not accrue during a leave of absence without pay or suspension.

(d) Sick leave credits shall not accrue after an employee has resigned or retired although his or her name is being retained on the payroll until exhaustion of vacation or other compensatory leave.

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(e) An employee who exhausts all paid sick days in any one year shall not be credited with additional paid sick leave until the beginning of the next calendar year.

(f) Unused sick leave shall accumulate from year to year without limit.

(g) Sick leave may be used by employees who are unable to work because of:

1. Personal illness or injury;
2. Exposure to contagious disease;
3. Care, for a reasonable period of time, of a seriously ill member of the employee's immediate family (see N.J.A.C. 4A:1-1.3 for definition of immediate family); or
4. Death in the employee's immediate family\*, for a reasonable period of time\*.

(h) Sick leave may be used by a handicapped employee for absences related to the acquisition or use of an aid for the handicap when the aid is necessary to function on the job. In such cases, reasonable proof may be required by the appointing authority.

## 4A:6-1.4 Sick leave procedures: State service

**\*(a) The provisions in this section are applicable to State service.\***

**\*(a)\*\*(b)\*** An employee whose work schedule is other than a 24-hour or shift coverage shall, by the scheduled reporting time, notify a contact person designated by the agency of any absence due to illness.

**\*(b)\*\*(c)\*** An employee whose work unit requires 24-hour or shift coverage shall, at least one hour before the scheduled starting time, notify the designated contact person of any absence due to illness. In case of sudden illness or emergency, exceptions may be granted by the designated contact person.

**\*(c)\*\*(d)\*** An appointing authority may require proof of illness or injury when there is a reason to believe that an employee is abusing sick leave; an employee has been absent on sick leave for five or more consecutive work days; or an employee has been absent on sick leave for an aggregate of more than 15 days in a 12-month period.

**\*(d)\*\*(e)\*** When an illness is of a chronic or recurring nature causing occasional absence\*s\* of one day or less, one proof of illness shall be required for every six month period. The proof of illness must specify the nature of the illness and that it is likely to cause periodic absences from employment.

**\*(e)\*\*(f)\*** In case of sick leave due to exposure to a contagious disease, a death in the employee's immediate family or to care for a seriously ill member of the employee's immediate family, reasonable proof may be required.

**\*(f)\*\*(g)\*** An appointing authority may require an employee to be examined by a physician designated and compensated by the appointing authority as a condition of the employee's continuation of sick leave or return to work.

1. Such an examination shall establish whether the employee is capable of performing his or her work duties and whether return to employment would jeopardize the health of the employee or that of other employees.

2. The appointing authority shall set the date of the examination to assure that it does not cause undue delay in the employee's return to work.

**\*(g)\*\*(h)\*** Failure to follow sick leave notification and verification procedures may result in a denial of sick leave for that specific absence, be considered an abuse of sick leave and/or constitute cause for disciplinary action.

**\*(h)\*\*(i)\*** An appointing authority shall provide the Department of Personnel with a record of an employee's unused sick leave when the employee separates from State service. The Department of Personnel shall provide an appointing authority with a record of an employee's unused sick leave if an employee is reemployed. Upon reemployment, an employee is entitled to utilize any unused sick leave from the previous period of employment. Such unused leave carried over shall be used before any leave accrued after reemployment. However, such unused leave carried over shall not be counted for purposes of Supplemental Compensation on Retirement. See N.J.A.C. 4A:6-3.2.

## 4A:6-1.5 Vacation and sick leave adjustments: State service

(a) Employees in State service are liable for vacation and sick leave days taken in excess of their entitlements.

(b) An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned. An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month.

1. An employee shall reimburse the appointing authority for paid working days used in excess of his or her prorated and accumulated entitlements.

2. An employee who returns to work from a leave of absence shall not be credited with paid vacation or sick leave until the amount of leave used in excess of the prorated entitlement has been reimbursed.

(c) **\*[Intermittent]\* \*In State service, intermittent\*** days off without pay shall be aggregated and considered as a continuous leave without pay for calculation of reduced vacation and sick leave credits. When intermittent days off without pay equal 11 working days, the employee's vacation and sick leave credits shall be reduced by one-half of one month's entitlement. Union leave days pursuant to a negotiated agreement shall not be included in such calculations.

(d) An employee shall not be reimbursed for accumulated sick leave when leaving State service except for separations on retirement as provided in N.J.A.C. 4A:6-3.

(e) When an employee is transferred **\*in State service\***, the employee's former appointing authority shall provide the new State appointing authority with a record of an employee's unused vacation, administrative and sick leave.

## 4A:6-1.6 Sick Leave Injury (SLI) requirements: State service

(a) The provisions concerning sick leave injury (SLI) benefits in this subchapter apply to full and part-time State employees in the career, senior executive and unclassified services. SLI benefits for employees in intermittent titles will be based on the expected length of service.

(b) An employee who is disabled due to a work-related injury or illness shall be granted a leave of absence with pay.

1. An employee who can return to work on a part-time basis shall be compensated for the hours actually worked and receive SLI benefits for the hours missed due to the disability.

2. SLI benefits shall be reduced by the amount of any temporary disability payments under N.J.S.A. 34:15-12 (Workers' Compensation) or N.J.S.A. 43:21-25 et seq. (Temporary Disability Benefits Law).

3. Benefits are limited to a one year period from the initial date of the injury or illness.

(c) The disability must be due to an injury or illness resulting from the employment.

1. Injuries or illnesses which would not have occurred but for a specific work-related accident or condition of employment are compensable.

2. Preexisting illnesses, diseases and **\*[defects]\* \*conditions\*** aggravated by a work-related accident or condition of employment are **\*not\*** compensable when such aggravation was reasonably foreseeable.

3. Illnesses which are generally not caused by a specific work-related accident or condition of employment, are not compensable except when the claim is supported by medical documentation that clearly establishes the injury or illness is work related.

4. Psychological or psychiatric illness is not compensable, except when such illness can be traced to a specific work-related accident or occurrence which traumatized the employee thereby causing the illness, and the claim is supported by medical documentation.

5. An injury or illness is not compensable when the appointing authority has established that the employee has been grossly negligent, including those **\*injurious illnesses\*** arising from impairment due to alcohol or drug abuse.

(d) Any accident resulting in injury for which the employee seeks compensation must occur on the work premises.

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1. Work premises are the physical area of operation of the appointing authority, including buildings, grounds and parking facilities provided by the State.

2. An injury occurring off the work premises is compensable only when the employee is engaged in authorized work activity or travel between work stations.

(e) For the injury to be compensable, it must occur during normal work hours or approved overtime.

1. Injuries which occur during normal commutation between home and the work station or home and a field assignment are not compensable.

2. Injuries which occur during lunch or break periods are not compensable. However, employees who are required by the appointing authority to remain at a particular job location during lunch and/or work-break shall not be precluded from receiving SLI benefits.

### 4A:6-1.7 Sick Leave Injury (SLI) reporting and appeal procedures: State service

(a) An employee is required to report to his or her supervisor any work accident or condition claimed to have caused disability upon occurrence or discovery, and is responsible for completing a written report on the matter within five days or as soon as possible thereafter. The report shall include a statement of when, where and how the injury or illness occurred\*, statements of witnesses and copies of all medical reports concerning the injury or illness.

(b) The appointing authority shall review the request for SLI benefits based on the standards in N.J.A.C. 4A:6-1.6, and within 20 days of receipt of the request:

1. Grant the request, notify the employee in writing and forward its recommendation to the Department of Personnel which, upon review, shall notify the employee and appointing authority whether or not the benefits have been approved; or

2. Deny the request and advise the employee in writing of the reasons for the denial and of the right to appeal to the Merit System Board within 20 days of receipt of the determination.

(c) The appointing authority's recommendation for approval of SLI benefits must be accompanied by:

1. All personal injury reports;
2. A record of the employee's lost time;
3. A detailed explanation of the incident;
4. All pertinent physician reports; and
5. A completed "Request for Employment Disability Leave."

(d) The appointing authority may require the employee to be examined by a physician designated and compensated by the appointing authority.

(e) An employee may appeal an appointing authority denial of SLI benefits to the Merit System Board in accordance with N.J.A.C. 4A:2-1.1 et seq.

(f) An employee or appointing authority may appeal a Department of Personnel denial of SLI benefits to the Merit System Board in accordance with N.J.A.C. 4A:2-1.1 et seq.

**\*(g) In all appeals, copies of all materials submitted to the Merit System Board shall be provided to all other parties.\***

**\*[(g)]\*(h)\*** The burden of proof is on the appellant to establish entitlement to SLI benefits by a preponderance of the evidence.

### 4A:6-1.8 Pregnancy-disability and child care leave: State service

(a) A State employee in the career, senior executive or unclassified service who requests leave with or without pay for reason of disability due to pregnancy shall be granted leave under the same terms and conditions as those applicable to such employees for sick leave or leave without pay. The appointing authority may request acceptable medical evidence that the employee is unable to perform her work because of disability due to pregnancy.

1. An employee may use accrued sick, vacation or administrative leave for pregnancy-disability purposes but shall not be required to exhaust accrued leave before taking a leave without pay.

2. An employee must exhaust all accrued sick leave to be eligible for New Jersey Temporary Disability Insurance.

(b) Child care leave may be granted to State employees under the same terms and conditions as all other leave\*s\* without pay. See N.J.A.C. 4A:6-1.10.

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### 4A:6-1.9 Administrative leave: State service

(a) Full-time State employees in the career and senior executive service and those employees of Rutgers, the State University, New Jersey Institute of Technology, and the University of Medicine and Dentistry of New Jersey who perform services similar to those performed by employees of the New Jersey State Colleges who are in the career service shall be granted three days of administrative leave in each calendar year for personal business, including emergencies and religious observances.

1. Priority in granting such leave requests shall be:

- i. Emergencies;
- ii. Religious holidays;
- iii. Personal matters.

2. Employees hired during the calendar year shall be granted one-half day of administrative leave for each full calendar month of employment up to a maximum of three days' leave for the remainder of the calendar year. Thereafter, administrative leaves shall be credited at the beginning of each calendar year.

3. Administrative leave may be utilized in multiples of one-half days.

(b) Unclassified employees may be granted up to three days of administrative leave in each calendar year, at the discretion of the appointing authority.

(c) Part-time employees shall be entitled to a proportionate amount of paid administrative leave. Employees in intermittent titles shall be entitled to paid administrative leave based on accumulated hours of work as set by the Commissioner.

(d) Use of administrative leave must be approved by the appointing authority and cannot be unreasonably denied.

(e) Administrative leave that is not used during the calendar year shall be forfeited. An employee who leaves State service shall not be required to reimburse the State for days already used.

(f) Administrative leave may be taken in conjunction with other types of paid leave.

### 4A:6-1.10 Leave without pay: State service

(a) In State service, an appointing authority may, with Department of Personnel approval, grant leaves of absence without pay to permanent employees for a period not to exceed one year unless otherwise provided by statute. A leave may be extended beyond one year for exceptional situations upon request by the appointing authority and written approval by the Department of Personnel.

1. An appointing authority may, with Department of Personnel approval, grant leaves of absence without pay to nonpermanent career service State employees for exceptional situations. Such leaves shall not exceed six biweekly pay-periods, or the equivalent, and shall not continue beyond termination of the appointment. Leave for union office, pursuant to N.J.A.C. 4A:6-1.16, may be for longer periods, as provided in the negotiated agreement. Leave without pay for nonpermanent employees may be terminated at any time.

(b) Employees in the senior executive and unclassified service may be granted leaves of absence without pay up to one year, at the discretion of the appointing authority.

(c) An appointing authority may permit an employee to return from a leave of absence without pay prior to its conclusion.

(d) Appointing authorities shall set procedures subject to review by the Department of Personnel for leave without pay.

### 4A:6-1.11 Military leave

(a) An employee in the career, senior executive or unclassified service, other than a person holding a position for a fixed term or period, who enters the military service in time of war or emergency, or for any period of training, or pursuant to any selective service system, shall be entitled to a leave of absence without pay for the period of such service and three months after discharge. However, if an employee is incapacitated by wound or illness at the time of discharge, such leave shall be extended until three months from recovery but in no event more than two years from date of discharge.

1. During such leave of absence, the employee shall continue to accrue seniority and salary increments, if applicable, in his or her title.

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2. No entitlements under this section shall be granted if the separation from military service is by a dishonorable discharge. See N.J.S.A. 38:23-4.

3. For Federal reemployment rights, see 43 U.S.C. Section 2021.

(b) An employee in the career, senior executive or unclassified service who is a member of the national guard or other component of the organized militia of the State of New Jersey shall be entitled to a leave of absence with pay not to exceed 90 days in the aggregate in any one year that he or she is required to engage in active duty or active duty for training. See N.J.A.C. 5A:2-2.3(b) **\*for types of required duty. However, appointing authorities may reschedule an employee's work time to avoid conflict with such required duty\*.**

1. A leave of absence with pay shall also be granted for other military duty when ordered by the Governor in case of insurrection, breach of the peace, national disaster or imminent danger to public safety.

2. Such leave of absence shall be in addition to the regular vacation allowed such employee. See N.J.S.A. 38A:4-4.

(c) A permanent employee who is a member of the organized reserves of the Army, Navy, Air Force or Marine Corps of the United States or other affiliated organizations shall be entitled to a leave of absence with pay on days on which he or she is required to engaged in field training, but only that training which consists of participation in unit training field operations. However, appointing authorities may reschedule an employee's work time to avoid conflict with military field training.

1. A nonpermanent employee serving for one year or longer shall be entitled to a leave of absence with pay not to exceed 30 days in the aggregate in any one year while engaged in field training. A leave of absence without pay shall be granted to a nonpermanent employee serving for less than a year while engaged in field training.

2. Such leave of absence shall be in addition to the regular vacation allowed such employee. See N.J.S.A. 38:23-1 and 38:23-1.1.

(d) An employee is entitled to a leave of absence without pay for such other national guard, state organized militia or United States reserve duty not covered by (b) or (c) above.

1. During such leave of absence, the employee shall continue to accrue seniority and salary increments, if applicable, in his or her title.

2. At the discretion of the employee, vacation leave, administrative leave and other accrued compensation may be used for such absences.

(e) For military leave regulations promulgated by the New Jersey Department of Defense, see N.J.A.C. 5A:2.

### 4A:6-1.12 Leave for appointment by Governor

A permanent employee or an employee in the senior executive service appointed by the Governor to an office shall be granted a leave of absence without pay for the period of appointment. Upon the expiration of the leave, the employee shall have the right to return to that former title and receive all the rights, privileges and benefits of that title as if he or she had remained in that title. See N.J.S.A. 52:14-16.2.

### 4A:6-1.13 Convention leave

(a) Every employee in the career, senior executive or unclassified service who is a duly authorized representative shall, upon request, be granted a leave of absence with pay for a period of up to five days in any calendar year to attend any State or national convention of any one or more of the established veterans organizations listed in N.J.S.A. 38:23-2 and the New Jersey Civil Service Association. The five days shall include necessary travel time. Written notice from the appropriate organization indicating that the employee is a duly authorized delegate shall be submitted to the appointing authority prior to the convention. A certificate of attendance shall be submitted to the appointing authority after the convention indicating the delegate's attendance.

(b) Every employee who is a duly authorized representative of the following organizations shall be granted a leave of absence with pay to attend the following conventions. The leave shall be for a period inclusive of the duration of the convention with a reasonable time allowed for travel to and from the convention. A certificate of attendance at the convention shall, upon request, be submitted by the

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representative so attending. See N.J.S.A. 11A:6-10; N.J.S.A. 40A:14-177 and 38:23-2.

1. American Federation of Police Officers, Inc.;
2. Bronze Shield, Inc.;
3. Batons;
4. Fire Fighters Association of New Jersey;
5. Firemen's Mutual Benevolent Association Inc.;
6. Fraternal Order of Police;
7. New Jersey Association of Chiefs of Police;
8. New Jersey State Exempt Firemen's Association;
9. New Jersey State Patrolmen's Benevolent Association, Inc.;
10. Uniformed Firemen's Association;
11. Vulcan Pioneers;
12. A member organization of the New Jersey Council of Charter Members of the National Black Police Association, Inc.

(c) Persons designated by the Governor shall be granted leaves of absence to attend the convention of the American Correctional Association (American Prison Association). See N.J.S.A. 30:4-178.

(d) Any full-time teaching staff member, secretary or office clerk of any local school district who applies to his or her board of education shall be granted a leave of absence with pay to attend the convention of the New Jersey Education Association. Such leave shall not exceed two days within any one calendar year. The employee must file a certificate of attendance with the board of education. The certificate must be signed by the executive secretary of the association for the employee to receive paid leave. See N.J.S.A. 18A:31-2.

(e) The Chancellor of Higher Education, with approval of the Board of Higher Education, may prepare rules concerning leaves of absence and payment during such leaves for teachers employed in the State colleges. See N.J.S.A. 18A:64-16.

### 4A:6-1.14 Education leave: State service

In State service, an appointing authority may, with Department of Personnel approval, grant an employee in the career, senior executive or unclassified service education leave with or without pay for the purpose of obtaining training that is of direct value to the State but is not available through State inservice training programs. See N.J.A.C. 4A:6-4.6 for tuition aid programs.

### 4A:6-1.15 Leave for athletic competition: State service

(a) Any State employee in the career, senior executive or unclassified service who qualifies as a member of the United States team for athletic competition at the world, Pan American or Olympic level, in a sport contested in either Pan American or Olympic competitions, shall be granted a leave of absence with pay for the purpose of preparing for and engaging in the competition.

(b) Such paid leave shall be no more than 90 calendar days in one year or the combined days of the official training camp and competition, whichever is less.

### 4A:6-1.16 Leave for union office

An appointing authority may grant a leave of absence without pay to any employee elected or appointed as an official of the employee's union. The maximum period for such leaves shall be a subject of negotiation between the employer and union.

### 4A:1.17 Leave for elective office: local service

(a) A permanent employee in local service shall be granted a leave of absence without pay to fill elective public office for the term of the office.

1. The employee shall be entitled to return to his or her permanent title within six years from the date the leave begins, provided that a written request to return is submitted to the appointing authority before the leave expires. If the term of the elective office exceeds six years, the employee's name shall be placed on a special reemployment list at the expiration of the six years.

2. The employee shall continue to accrue seniority in his or her permanent title for a maximum of six years.

3. An employee who had taken a promotional examination before being granted the leave may be appointed to the promotional title from the resulting list and shall begin the working test period upon return from the leave.

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4. Any appointments to fill the position of the employee during the leave shall be made from appropriate eligible lists, but any such appointments shall be interim and shall terminate upon the return of the employee on such leave to the permanent title.

**4A:6-1.18 Leave for emergency civilian duty: State service**

(a) State employees in the career or senior executive service shall be given time off with pay to perform emergency civilian duty in relation to national defense or other emergency when so ordered by the Governor or by the President of the United States.

(b) Unclassified State employees may be granted such leave with or without pay at the discretion of the appointing authority.

**4A:6-1.19 Leave for jury duty: State service**

(a) State employees in the career or senior executive service shall be granted leave with pay for the time required to attend jury duty that is scheduled during work hours. Time required for jury duty includes actual time spent in commuting.

(b) Employees who are required to attend jury duty during the work shift immediately preceding or following his or her scheduled work shift wholly within the same day shall be excused from the scheduled work shift. If the employee's scheduled work shift extends from one day to the next and does not immediately precede or follow the period during which an employee must attend jury duty, the employee shall choose and be granted leave from his or her work shift that is scheduled either before or after jury duty.

(c) Employees shall be granted up to their normal number of work hours in any one day to attend jury duty. Employees who do not work on a fixed workweek schedule may be granted up to eight hours leave in any one work day.

(d) Employees shall submit to their appointing authority written verification of attendance signed by a representative of the court.

(e) Unclassified State employees may be granted such leave with or without pay at the discretion of the appointing authority.

**4A:6-1.20 Leave to appear as a witness: State service**

(a) State employees in the career or senior executive service shall be granted time off with pay to appear as a witness or a party before a judicial or administrative body or legislature committee when such appearance is part of the job function. If an employee appears as a witness or a party during his or her normal day off, the employee shall be compensated on a time-for-time basis.

(b) When appearance before a judicial or administrative body is not part of the job function, a State employee in the career or senior executive service shall be granted time off with pay when summoned as a witness in a proceeding to which he or she is not a named party, and shall be granted time off without pay to appear at a proceeding to which he or she is a party. However, an employee is entitled to time off with pay to attend his or her workers' compensation proceeding.

(c) State unclassified employees may be granted such leave with or without pay at the discretion of the appointing authority.

**SUBCHAPTER 2. HOURS OF WORK**

**4A:6-2.1 General provisions**

(a) In local service, appointing authorities, subject to applicable negotiations requirements, may establish the hours of work.

(b) In State service, this subchapter applies to all employees in the career, senior executive or unclassified service.

1. The number of hours comprising the normal workweek for each job title shall be indicated in the State compensation plan.

2. For State overtime and holiday pay procedures, see N.J.A.C. 4A:3-5.1 *et seq.*

**4A:6-2.2 Fixed workweek (35, 40, 3E or 4E) job titles: State service**

(a) Job titles which meet all of the following criteria shall be assigned a fixed workweek of either 35 or 40 hours:

1. The work schedule is consistently regular, amenable to administrative control and determined by the direction of a supervisor rather than by the nature of the service and employees have minimal discretion over their work schedule;

2. The hours of work conform to a standard pattern of work time for the typical work location;

3. Employees normally work under direct supervision within a formal work program in a State office, location or place of business. Field work without direct supervision is minimal; and

4. An appointing authority can certify with assurance when an employee performs work beyond the normal workweek.

(b) Job titles which meet the criteria in (a) above are designated as 35 hours (35) or 40 hours (40), except those exempt from the Fair Labor Standards Act, 29 U.S.C. 20 *et seq.*, are designated exempt \*[25]\*\*35\* hours (3E) or exempt 40 hours (4E).

**4A:6-2.3 Non-limited (NL, NE or N4) job titles: State service**

(a) Titles in the following categories shall be assigned a non-limited workweek:

1. Titles in which employees have direct or delegated responsibility for the management of a State governmental unit or a professional level program, including deputies, assistants and staff administrative titles at management levels who are authorized to assume many of the functions performed by their supervisor. This category could include supervisory professional titles above the level of crew leader and clerical supervisor;

2. Non-management titles which do not meet all of the criteria for a fixed workweek set forth in N.J.A.C. 4A:6-2.2(a).

3. Sworn unclassified employees of the State police;

4. Military titles in the Department of Defense in which employees are required to be on duty in support of National Guard units; and

5. Titles in which schedules of work vary considerably between a prime and a slack work season.

(b) Non-limited titles are those titles having irregular or variable work hours. Such titles shall be designated as follows:

1. Non-limited (NL) titles are those titles in which employees work at least a 35 hour workweek with occasional requirements for a longer workweek to complete projects or assignments.

2. Non-limited, 40 hour (N4) titles are those in which employees work at least a 40-hour workweek with occasional requirements for a longer workweek to complete projects or assignments.

3. Non-limited, non-exempt (NE) titles are those titles which are subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*

**4A:6-2.4 Holidays: State service**

(a) Holidays as authorized by law or Executive Order shall be allowed as days off with regular pay for full-time employees. Part-time employees who work a constant percentage of a full workweek shall receive holiday leave credit on a proportionate basis. Employees in intermittent titles shall receive holiday leave credit based on accumulated hours of work as determined by the Commissioner.

(b) When an authorized State holiday falls on a Saturday, the preceding Friday shall be observed as the holiday. When an authorized holiday falls on a Sunday, the following Monday shall be observed as the holiday.

(c) Employees who are in pay status on the day immediately before an authorized holiday shall receive pay for the holiday.

**4A:6-2.5 Inclement weather or emergency conditions: State service**

(a) The Governor, the Commissioner of Personnel or their designees shall determine when inclement weather warrants the implementation of emergency procedures such as early release of employees, the closing of offices and the late opening of offices. The Commissioner or his designee shall notify all State departments when emergency procedures are to be implemented.

(b) Each State department shall maintain essential services and shall designate a coordinator who shall be responsible for:

1. Ensuring that department employees are advised of the emergency procedures;

2. Advising the Governor's office and the Commissioner of regional openings and closings;

3. Ensuring that employees are advised of a telephone number to call regarding implementation of departmental emergency procedures and a listing of the radio stations which will broadcast information concerning the implementation of State-wide emergency procedures.

(c) Employees who are required to work to maintain essential services while others are excused shall be given priority for release for the next emergency, where practicable.

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**4A:6-2.6 Flexitime programs: State service**

(a) Appointing authorities may establish flexitime programs to accommodate operational and/or employee needs, and shall provide for:

1. Core time, which is the period of time during which all employees must be present;
  2. Flexible time, which is the period of time before and after the core time in which the employees may choose, subject to appointing authority approval, time of arrival and departure;
  3. A meal period which may be flexible in duration and scheduling.
- (b) An appointing authority may limit participation in a flexitime program to selected groups of job titles, work units and/or work locations to accommodate operational needs.
- (c) Department of Personnel assigned workweeks for affected titles, for example, 35 or 40 hours, shall be retained.

(d) Establishment, modification or termination of a flexitime program shall not become effective without the approval of the Commissioner. Requests for these actions shall be submitted at least 30 days in advance of the proposed effective date to the Department of Personnel and shall include:

1. Justification which relates the requested action to operational and employee needs;
2. Statement of impact on, services to the public or agency clientele;
3. Details of the core time, flexible time and meal periods;
4. Groups of job titles, work units and/or work locations to be covered by the program;
5. Procedures governing employee participation in the program;
6. Approval procedures for individual flexitime schedules and changes;
7. Provisions for giving employees at least two weeks notice of termination of the program;
8. Monitoring and evaluation procedures; and
9. Name, address and telephone number of the program administrator.

(e) An appointing authority may authorize a complete or partial temporary suspension of the flexitime program if required by operational needs. Within 10 days of the suspension of the program, the appointing authority shall submit to the Commissioner a fully detailed justification and specify the duration of the suspension.

(f) Appointing authorities should consult with affected negotiations representatives concerning flexitime programs before implementation.

(g) A description of an appointing authority's flexitime program shall be made available to employees upon request.

(h) Overtime compensation for employees in flexitime programs shall be regulated in the same manner as for all other employees.

**4A:6-2.7 Alternative workweek programs: State service**

(a) Appointing authorities may establish alternative workweek programs, such as a four day workweek, to accommodate operational and/or employee needs.

(b) A program may be developed for year-round use or for a specific portion of a year.

(c) An appointing authority may limit participation in an alternative workweek program to selected groups of job titles, work units and/or work locations to accommodate operational needs.

(d) Department of Personnel assigned workweeks for affected titles, for example, 35 or 40 hours, shall be retained.

(e) Appointing authorities shall develop appropriate prorated sick, vacation and administrative leave schedules for employees participating in an alternative workweek program.

1. A normal workday for four day workweek employees in 35 hour, NL or NE workweek titles shall be eight and three-quarter hours a day, exclusive of a meal period. A normal workday for four day workweek employees in 40 hour or N4 workweek shall be 10 hours a day, exclusive of a meal period.
2. All sick, vacation and administrative leave taken by employees participating in a four day workweek program shall be charged at the rate of one and one-quarter days for each day absent. Employees taking less than a full day's leave shall have their leave time prorated accordingly.

(f) Since employees in an alternative workweek program have a longer or shorter workday than employees on a five day workweek schedule, a time differential exists on holidays. This differential shall be equalized in a manner determined by the appointing authority. If a holiday occurs on an employee's regular day off, he or she shall be granted an additional day off consistent with operational needs.

(g) Establishment, modification or termination of an alternative workweek program shall not become effective without the approval of the Commissioner. Requests for these actions must be submitted at least 30 days in advance of the proposed effective date to the Department of Personnel and shall include the same items listed in N.J.A.C. 4A:6-2.6(d).

(h) An appointing authority may authorize a complete or partial temporary suspension of the alternative workweek program if required by operational needs. Within 10 days of the suspension of the program, the appointing authority shall submit to the Commission a fully detailed justification and specify the duration of the suspension.

(i) Appointing authorities should consult with affected negotiations representatives concerning alternative workweek programs before implementation.

(j) A description of an appointing authority's alternative workweek program shall be made available to employees upon request.

(k) Overtime compensation for employees in alternative workweek programs shall be regulated in the same manner as for all other employees.

**4A:6-2.8 Adjusted hours of operation: State service**

(a) Appointing authorities may adjust established hours of daily or shift operations to accommodate operational and/or employee needs.

(b) Department of Personnel assigned workweeks, for affected titles, for example, 35 or 40 hours, shall be retained.

(c) Except for emergency situations of limited duration, adjustments in hours of daily or shift operation shall not become effective without the approval of the Commissioner. Requests for these actions should be submitted at least 30 days in advance of the proposed effective date to the Department of Personnel and shall include:

1. Justification which relates the change to operational and employee needs;
2. Statement of impact on services to the public or agency clientele, employees and the community, that is, traffic flow;
3. Details of adjustments;
4. Work locations and approximate number of employees affected;
5. Provisions for giving employees at least two weeks written notice of adjustments; and
6. Name, address and telephone number of the program administrator.

(d) Appointing authorities should consult with affected negotiations representatives regarding adjustments in hours of daily or shift operations before implementation.

**SUBCHAPTER 3. SUPPLEMENTAL COMPENSATION ON RETIREMENT**

**4A:6-3.1 Eligibility: State service**

(a) The following employees shall be eligible for supplemental compensation on retirement ("SCOR"):

1. State employees in the career service and employees in the senior executive service with underlying permanent career service status;
2. State employees in job titles in the senior executive service without permanent career service status and in the unclassified service who have been granted sick leave under the following standards:
  - i. All employees in that job title are granted sick leave days in the same number and manner as set forth for State career service employees in N.J.A.C. 4A:6-1.3;
  - ii. Sick leave for all employees in that job title is used, reported, and subject to verification in the same manner required for State career service employees in N.J.A.C. 4A:6-1.4 and 1.5.
3. Employees of Rutgers, the State University; the New Jersey Institute of Technology; and the University of Medicine and Dentistry of New Jersey, who perform services similar to those performed

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by employees of the New Jersey State Colleges who are in the career service, or who have been granted sick leave under the standards set forth in (a)2 above.

(b) Employees in the categories in (a) above shall be eligible for SCOR upon separation from employment based on retirement from a pension system administered by the State of New Jersey.

1. Employees removed for cause after an opportunity for a hearing, who retire in lieu of removal, or who retire under circumstances which would warrant removal, shall not be eligible for SCOR. However, the Commissioner may allow SCOR in such cases where removal was based on a medical disability or where the Commission finds sufficient mitigating circumstances to warrant supplemental compensation.

2. Employees who retire as a result of accidental or ordinary disability, and who meet all other applicable rules, shall be eligible for SCOR.

3. Employees of the University of Medicine and Dentistry of New Jersey who are members of the Newark Employees' Retirement System, and who meet all other applicable rules, shall be eligible for SCOR.

4. Employees who elect deferred retirement, or whose separation from employment is not based on retirement, shall not be eligible for SCOR.

5. Faculty members of the State Colleges; Rutgers, the State University; the New Jersey Institute of Technology; and the University of Medicine and Dentistry of New Jersey who have served in an administrative capacity **\*may be eligible for SCOR based on the time served in that administrative capacity\*** only. Such employees, if deemed eligible, shall be entitled to payment based on sick leave and salary earned while serving in an administrative title.

### 4A:6-3.2 Break in service: State service

(a) Employees who incur a break in service due to resignation, retirement or removal shall have sick leave computed for SCOR purposes only from the date of return to employment.

1. Employees who have retired and received the maximum SCOR payment shall not be eligible for further supplemental compensation.

2. Employees who have retired and received less than the maximum SCOR payment shall be eligible for an amount no greater than the difference between the payment received and the maximum payment upon reentering State employment and again retiring from State service.

(b) Employees who incur a break in service due to layoff shall be credited for SCOR purposes with sick leave accrued both before separation and after return to employment.

### 4A:6-3.3 Computation of payment: State service

(a) SCOR shall be computed at the rate of one-half the employee's daily rate of pay for each day of earned and unused accumulated sick leave at the effective date of retirement. The daily rate of pay shall be based upon the average annual compensation received during the last full year of active employment prior to the effective date of retirement.

1. Overtime pay or other supplemental pay shall be excluded from the computation.

2. Periods of leaves of absence without pay shall be excluded from the computation.

(b) If an employee changes from 12 month to 10 month employment during the last year of employment, the average **\*annual\*** compensation must be weighted accordingly.

(c) Ten month employees who have received sick leave without proration shall have their unused accumulated sick leave reduced by one-sixth for purposes of calculating SCOR.

(d) The maximum amount of SCOR for any employee shall be \$15,000.

### 4A:6-3.4 SCOR procedures: State service

(a) An employee may file an application form DPF-279, within one year of the effective date of retirement, requesting supplemental compensation after receiving a copy of the official notice of retirement approval issued by the appropriate pension board or authority.

(b) The appointing authority shall not process the SCOR application form until it has received the employer's copy of the notice

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of the retirement approval. If the appointing authority has not received the employer's copy of the notice of retirement approval, it shall, within 45 days after receipt of the employee's application form DPF-279, notify the employee accordingly.

(c) After receipt of the notice of retirement approval and SCOR application, the appointing authority shall forward to the Department of Personnel within 45 days:

1. A personnel action request certifying the number of days of earned and unused accumulated sick leave and the amount of SCOR to be paid;

2. A copy of the notice of retirement approval; and

3. Completed application form DPF-279.

(d) The Department of Personnel shall review the request to ensure that eligibility criteria as set forth in N.J.A.C. 4A:6-3.1 have been met.

1. If eligibility criteria have been met, the request shall be approved.

2. If eligibility criteria have not been met, the request shall be disapproved and the employee shall be provided written notice of the reasons for disapproval and the right to appeal to the Commissioner.

(e) Following approval of the SCOR application, payment shall be made by the appointing authority in accordance with established payroll procedures. The appointing authority shall be responsible for withholding payment should the employee cancel the retirement.

(f) In the event of an employee's death after the effective date of retirement but before payment of SCOR is made, payment shall be made to the employee's estate.

(g) Payment of SCOR shall in no way affect any pension or retirement benefits for which a retired employee is eligible under any other program.

## SUBCHAPTER 4. HUMAN RESOURCE DEVELOPMENT: TRAINING AND EDUCATION PROGRAMS

### 4A:6-4.1 General provisions

(a) In local service, appointing authorities may implement Human Resource Development (HRD) programs and may, subject to the terms and approval of the Commissioner, participate in programs set forth in this subchapter.

(b) In State service, the Commissioner may establish HRD programs and shall review and approve appointing authority programs.

### 4A:6-4.2 Department of Personnel functions: State service

(a) The Commissioner shall supervise a State training center which, among other things, shall:

1. Serve as a central resource and maintain a central registry for HRD programs including types, sources, schedules and costs of such programs;

2. Provide varied training courses with fee schedules for State employees;

3. Develop and provide particular training for which State appointing authorities may be assessed such as:

i. Supervisory and management training (see N.J.A.C. 4A:6-4.7);

ii. Human resource management and development training;

iii. Support staff training; and

iv. Other programs in consultation with the HRD Committee (see N.J.A.C. 4A:6-4.4) as determined by the Commissioner.

(b) The Department of Personnel shall:

1. Coordinate a State program for employees seeking agency, career or location changes and for employees affected by job displacement.

2. Encourage and provide assistance to State appointing authorities for employee development programs that assist employees in advancing in their current career or movement to a new career.

3. Provide guidance and consultation to agencies in the choice, implementation and evaluation of HRD programs.

### 4A:6-4.3 Agency Human Resource Development Plan: State service

(a) Each State department or agency shall establish HRD programs under an HRD professional and prepare an annual plan to

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be submitted to, and approved by, the Department of Personnel based on a comprehensive needs analysis.

1. In developing the HRD plan, a department or agency should evaluate the results and effects of HRD programs provided to its employees to determine whether the programs are contributing to the achievement of the agency mission and goals and review:

- i. The extent to which HRD programs produce desired changes in employee knowledge, skills, attitudes and performance;
- ii. The extent to which HRD programs that are provided cover the areas of greatest need;
- iii. Any necessary modification in the coverage or conduct of HRD programs and methods to increase the value and benefits of programs; and
- iv. HRD priorities, funding and future programs.

2. The plan shall be in such form and detail and submitted according to such time schedules as prescribed by the Department of Personnel.

3. The plan shall generally include but not be limited to a listing and description of programs in the following areas:

- i. Employee orientation;
- ii. Performance Assessment Review (see N.J.A.C. 4A:6-5.1 et seq.);
- iii. Career development (see N.J.A.C. 4A:6-4.5);
- iv. Retirement planning;
- v. Other programs; and
- vi. Such additional categories as required by the Department of Personnel.

3. The plan shall include a listing of human resource development funds, their sources, and the distribution of such funds.

(b) Each State department or agency shall submit to the Department of Personnel for approval blanket or individual HRD requests on \*[Form DPF-94]\* **\*a designated form\***. Such requests shall be reviewed in accordance with the department or agency plan and such additional information as provided.

(c) The Department of Personnel may require additional reports, information or audits of a department or agency's HRD programs as it deems necessary.

### 4A:6-4.4 Human Resource Development Committee: State service

(a) The Commissioner shall establish and appoint a Human Resource Development Committee from among State HRD professionals to advise and assist the Department of Personnel in establishing and implementing procedures for State employee training and education and such other HRD advisory groups as the Commissioner shall deem necessary.

(b) The Department of Personnel shall provide necessary assistance to the Committee.

### 4A:6-4.5 Career development programs: State service

(a) State departments and agencies shall implement HRD programs that assist employees in supplementing or acquiring knowledge, skills and abilities for the performance of their work responsibilities.

(b) Departments or agencies may, consistent with their goals, workforce planning and technological changes, also implement programs that allow employees to move to new assignments or career opportunities.

(c) Career development programs include, but are not limited to, tuition aid (see N.J.A.C. 4A:6-4.6); interchange (see N.J.A.C. 4A:6-4.8); \*[interships]\* **\*internships\*** (see N.J.A.C. 4A:6-4.9) and specific training or education courses.

### 4A:6-4.6 Tuition aid program: State service

(a) Each State department or agency, subject to available appropriations, shall establish a tuition aid program, available to eligible employees to complete undergraduate, graduate, technical or supplemental coursework at an accredited educational institution which relate to current or planned job responsibilities.

(b) The tuition aid program may be submitted for approval as part of the HRD plan (see N.J.A.C. 4A:6-4.3) or as a separate plan for approval by the Department of Personnel and shall include:

1. Employee eligibility criteria and acceptable grades and course completion for reimbursement;

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2. Amount of funds allocated for tuition aid;

3. Name of the individual charged with administering the program;

4. Amount and form of reimbursement; and

5. Procedures for notifying employees of approval or disapproval \*[and for reimbursement]\*.

(c) Any amendment to the \*[tuition aid program]\* **\*plan\*** must be submitted for approval at least one month prior to implementation.

(d) No employee shall receive tuition aid per semester in an amount that exceeds the cost of six credits at a New Jersey State College or Rutgers, the State University, whichever is higher.

(e) Reimbursement shall be made upon evidence of satisfactory completion of the courses as determined by the department or agency.

(f) Notice, eligibility and application procedures for tuition aid shall be posted throughout the department or agency.

(g) Each State department or agency shall also submit semi-annual reports to the Department of Personnel in such form and detail and according to such time schedule as the Department shall prescribe and include:

1. Names and titles of all employees receiving tuition aid;
2. Amount of aid received by each employee;
3. Equal employment and affirmative action data;
4. Information relating to the course and educational institution; and
5. Other information as may be requested by the Commissioner.

### 4A:6-4.7 Certified Public Manager Program: State service

(a) A Certified Public Manager Program (CPM) for supervisors and managers shall be administered by the Department of Personnel.

1. The program shall consist of progressive levels of instruction jointly conducted by the Department and Rutgers, the State University.

2. Each department or agency shall be assessed costs to be transferred to the Department of Personnel for participation of their employees for supervisory training. For that part of the program for managerial training, the employee shall be responsible for 25 percent of the cost and the department or agency for 75 percent of the cost.

(b) The Commissioner shall be the chief administrative officer and set the participation criteria, courses and costs.

(c) The Commissioner shall appoint a CPM Policy Board, consisting of representatives from State government, private industry and academia\*[ , which will set overall program policy]\*.

### 4A:6-4.8 Employee interchange program

(a) The Commissioner may approve an Employee Interchange Program that is intended to improve the management of government through shared experience, communication and learning among public, private and academic organizations. See N.J.S.A. 52:14-6.10 et seq. and N.J.S.A. 11A:2-11j.

(b) An appointing authority is authorized to participate, either as a sending or receiving agency, in an interchange program with any federal, State or local governmental or private sector entity.

(c) An interchange program shall provide that:

1. The length of any interchange shall not be more than 12 months or less than two months. The Commissioner may approve an assignment of less than two months in emergency situations. The Commissioner may extend an interchange for up to an additional six months to complete work in progress.

2. The participating employee shall remain an employee of the sending agency from which he or she shall receive salary and all benefits.

i. A receiving agency may reimburse the employee for travel expenses.

ii. The sending agency may receive reimbursement from the receiving agency for the salary and benefits of the employee. Such reimbursement shall be determined by agreement between the sending and receiving agencies. The agencies may also agree to provide housing or relocation assistance for the employee.

3. No interchange may be initiated without written consent of the participating employee.

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4. A participating employee shall remain in the employ of the sending agency for a period of at least one year after the end of the interchange.

(d) An employee may not be assigned to an interchange program for more than 12 months in any 36-month period, unless the length of the interchange is extended by the Commissioner pursuant to (c)1 above.

(e) An employee interchange may be terminated by either the receiving or sending agency by giving 30 days written notice to the other agency, the employee and the Department of Personnel.

(f) The New Jersey Conflict of Interest Law (N.J.S.A. 52:13D-12 et seq.) shall be applicable to all participating State employees and to Federal, local or private sector employees serving with a State agency.

4A:6-4.9 Internship programs: State service

(a) Internship programs include:

1. Programs limited to full time students of participating accredited institutions of higher education who are performing services for a State department or agency directly related to their course of study;

2. Fellowships in managerial assignments to selected individuals based on established educational and career achievements; and

3. Educational or apprenticeship programs for State employees intended for career change or advancement or due to job displacement.

(b) A proposed internship program must be submitted in writing to the Commissioner by the agency head and include a detailed description of the program, its benefits, program participants, program costs and relevant data. The Commissioner may request additional information and may approve, disapprove or modify the request.

4A:6-4.10 Employee Advisory Service: State service

(a) The Department of Personnel shall establish an Employee Advisory Service (EAS) to **\*assist State employees in achieving and maintaining the highest level of job performance of which they are capable. EAS shall\*** provide access to counseling, rehabilitative and/or community services for a State employee who:

1. Has received an annual performance rating at the lowest level. See N.J.A.C. 4A:6-5.1 et seq.

2. Has received **\*a\*** performance rating which is below the mid-point on the multi-level scale and an improvement plan has not been effective;

3. Is experiencing personal problems which affect job performance; or

4. Has a family member who is experiencing personal problems which affect the employee's job performance.

(b) Employees may voluntarily contact EAS or may be referred to EAS by the appointing authority. If the employee consents, he or she may be referred by a union or association representative. **\*An employee should be referred to EAS as soon as problems are manifested which may affect job performance.\***

(c) Except as conditioned below or where there is an overriding health or safety need, all EAS information regarding an employee is confidential.

1. An employee may authorize in writing the release of all or part of such information.

2. In appointing authority referrals, the appointing authority may be informed:

- i. Whether an individual has been accepted for a program;
- ii. Whether or not an employee has kept his or her appointments;
- iii. The dates and times of future appointments with either EAS or an outside agency; and
- iv. The estimated amount of time needed to complete the program if reasonably ascertainable.

(d) Appointments for appointing authority referred employees shall be scheduled through the **\*[personal]\* \*personnel\*** office.

1. An employee shall be given time off with pay for the intake and evaluation visits. For other situations and visits, arrangements shall be set by the employee and appointing authority, which may include use of available sick or other leave.

2. When an appointing authority referred employee fails to keep a scheduled appointment or does not accept a referral from EAS, the appointing authority shall be notified of the matter by EAS.

(e) EAS shall monitor the progress of all employees. To maintain active client status, an employee must follow the prescribed EAS program.

(f) An appointing authority that is informed that an employee is receiving services through EAS, shall consult with the **\*supervisor of the\* EAS \*program\*** prior to seeking removal of the employee.

(g) State health or other benefit programs may be utilized where applicable.

**SUBCHAPTER 5. PERFORMANCE EVALUATION**

4A:6-5.1 General provisions

(a) In local service, an appointing authority may establish an employee performance evaluation program. A performance evaluation system must be reviewed and approved by the Department of Personnel in order to be used in promotions or layoff.

(b) In State service, a Performance Assessment Review (PAR) program shall apply to all employees in the career service, and those in unclassified titles as designated by particular departments or agencies.

**\*1. While not mandated, departments and agencies are encouraged to include all unclassified titles in the PAR program.\***

**\*[1.]\*2.\*** The PAR program shall use a multi-level rating scale and a standardized form to be designated by the Department of Personnel.

**\*[2.]\*3.\*** Annual PAR ratings will be based on an evaluation of performance over the preceding 12-month period, with interim ratings assigned at the end of six months and final ratings assigned and recorded at the end of one year.

**\*4. During the working test period, a job performance plan should emphasize training and development. Upon successful completion of the working test period, a full job performance plan shall be developed.\***

(c) Each appointing authority shall maintain an employee's PAR evaluations in his or her personnel records and shall submit reports to the Department of Personnel on all final PAR ratings of its employees in a form prescribed by the Department.

(d) The Commissioner may modify the PAR program based on specific employee or agency needs.

4A:6-5.2 PAR procedure: State service

(a) An employee and his or her supervisor shall jointly develop a job performance plan consisting of work assignments together with measurable performance standards. The employee shall be provided with a copy of the performance plan once established. **\*If an employee disagrees with the established performance plan, he or she may note such disagreement.\***

(b) At the end of six months and at the end of one year, the employee and the supervisor shall review the employee's performance and the supervisor shall designate a performance rating.

1. **\*[Where there are changes in the supervisor or job assignment during the evaluation period, the performance plan shall be modified accordingly and the rating will be a proration of the ratings by all supervisors for that period.]\* \*Where there is a change either in job assignment or supervisor during the evaluation period, the old performance plan shall be closed out and a new performance plan prepared. The final rating shall be a proration of all ratings received during the review period.\***

2. Where appropriate, performance improvement plans shall be set at each review.

3. The employee shall be entitled to a copy of the rating.

(c) Where a rating below the mid-point on the multi-level scale is received, a performance review shall be conducted after three months or such shorter period of time as determined by the supervisor.

(d) New employees shall receive a performance plan within a reasonable time after appointment.

(e) The Department of Personnel may require additional reports, information or audits of an agency's PAR program.

## ADOPTIONS

## 4A:6-5.3 PAR use and review: State service

(a) If there is more than one level below the mid-point, an employee may not receive successive annual ratings which are immediately below the mid-point. Any employee who has failed to improve his or her performance after such rating during the next annual review period shall receive the lowest PAR rating.

(b) An employee receiving an annual PAR rating at the lowest level shall be denied an anniversary date increment.

1. An appointing authority may request an anniversary date increment for an employee who was denied an increment but whose performance has subsequently improved. If approved by the Department of Personnel, such increment shall not be effective until at least 90 days after the employee's anniversary date.

2. An employee who receives an annual rating at the lowest level shall be referred by the appointing authority to the Employee Advisory Service. See N.J.A.C. 4A:6-4.10.

(c) An employee who has received an annual PAR rating at the lowest level may appeal such rating through departmental noncontractual grievance procedures. See N.J.A.C. 4A:2-3.1 et seq. In addition to the grievance procedure requirements, all appeals shall be accompanied by a copy of the PAR evaluation.

(d) An employee may appeal the final departmental decision to the Merit System Board within 20 days of receipt of the decision.

1. The appeal shall be in writing and include a copy of the written departmental decision and the basis for the appeal.

2. The employee shall have the burden of proof to establish that the actions of the supervisor in assigning the rating were arbitrary, unreasonable or induced by improper motives.

3. The Board shall render a final administrative decision upon the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1.

(e) An employee who disagrees with his or her PAR job performance plan may utilize the noncontractual grievance procedures. The Department of Personnel may designate a person to aid in the resolution of such matters.

(f) In a disciplinary action, an employee may challenge the basis of any rating that is an issue in the proceeding.

(g) Performance rating may be used as a factor in promotion (see N.J.A.C. 4:1-9.5) and layoff (N.J.A.C. 4A:8-2.2(c)4).

## NEW JERSEY EMPLOYEE AWARDS COMMITTEE

## (a)

## Awards Program

## Adopted New Rules: N.J.A.C. 4A:6-6

## Adopted Repeal: N.J.A.C. 4:4

Proposed: October 5, 1987, 19 N.J.R. 1774(a).

Adopted: December 8, 1987 by the New Jersey Employee Awards Committee, William G. Scheurer, Executive Secretary.

Filed: December 9, 1987 as R.1988 d.11, with technical changes and substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 11A:6-29 through 11A:6-32.

Effective Date: January 4, 1988.

Expiration Date: January 4, 1993.

## Summary of Public Comments and Agency Responses:

COMMENT: A representative of the Communications Workers of America (CWA) commented that the types of awards described in N.J.A.C. 4A:6-6.9 must be negotiable because such awards, if given in monetary form, would constitute merit pay and the Department of Personnel does not have the authority to make such awards.

RESPONSE: The Department of Personnel, through the New Jersey Employee Awards Committee, does have the authority to establish such awards, pursuant to the following statutory provisions: N.J.S.A. 11A:6-30, which permits the Committee to provide awards for certain accomplishments subject to appropriations that are made; and N.J.S.A. 11A:6-31(a), which permits the Committee to adopt rules to implement the awards program subject to the Commissioner's approval.

## PERSONNEL

## Summary of Changes Made Between Proposal and Adoption

Technical changes have been made to a few rules to correct typographical or spelling errors. Also, the word "will" was changed to "may" in the first line of N.J.A.C. 4A:6-6.7(h) and the first line of N.J.A.C. 4A:6-6.7(i) to accurately reflect language in N.J.S.A. 11A:6-30, which states that the New Jersey Employee Awards Committee may provide awards to State employees for certain achievements.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

## CHAPTER 6

## LEAVES, HOURS OF WORK AND EMPLOYEE DEVELOPMENT

## SUBCHAPTER 6: AWARDS PROGRAM

OLD CITATION	NEW CITATION	OLD CITATION	NEW CITATION
4:4-1.1	4A:6-6.2	4:4-3.6	4A:6-6.10
4:4-1.2	4A:6-6.1	4:4-3.7	4A:6-6.7
4:4-2.1	4A:6-6.2	4:4-3.8	4A:6-6.7
4:4-2.2	4A:6-6.2	4:4-3.9	4A:6-6.6
4:4-2.3	4A:6-6.2	4:4-4.1	4A:6-6.4
4:4-3.1	4A:6-6.5	4:4-4.2	4A:6-6.4
4:4-3.2	4A:6-6.5	4:4-4.3	4A:6-6.4
4:4-3.3	4A:6-6.5	4:4-5.1	4A:6-6.8
4:4-3.4	4A:6-6.6	4:4-5.2	4A:6-6.8
4:4-3.5	4A:6-6.3	4:4-5.3	4A:6-6.8

## SUBCHAPTER 6. AWARDS PROGRAM

## 4A:6-6.1 General provisions

(a) In local service, appointing authorities may establish and administer awards programs.

(b) In State service, the following types of award programs are established:

1. Awards for Recognition;
2. Awards for Suggestions;
3. Awards for Service;
4. Other awards programs as the New Jersey Employee Awards Committee may establish; and
5. Department or agency awards programs approved by the New Jersey Employee Awards Committee.

(c) The awards program applies to all employees in the executive branch of State government, whether in the career, senior executive or unclassified service, including autonomous agencies within executive departments; applicable employees in the Judiciary; and all employees in the Office of Legislative Services.

## 4A:6-6.2 New Jersey Employee Awards Committee: State service

(a) The New Jersey Employee Awards Committee (Committee) shall be established in the Department of Personnel under the supervision of the Commissioner. The Committee shall consist of seven persons, each of whom shall be employed in a different department in the Executive Branch.

1. Committee members shall be appointed by the Governor upon nomination by the Commissioner, for staggered terms of three years or until a successor is appointed. If a vacancy on the Committee occurs by reason other than expiration of term, the vacancy shall be filled for the unexpired term. No member shall serve more than two consecutive full terms.

2. Members of the Committee shall serve without compensation but shall be reimbursed for their actual and necessary expenses.

3. The Committee shall meet and organize as soon as practicable after the annual appointment of new members and select a Chairperson from among its members. The Committee shall hold a regular meeting at least once each month and special meetings at the call of the Chairperson.

4. The Committee shall submit monthly reports to the Commissioner concerning operations of the Awards Program, which shall include data on activity level, processing time, and program benefits to the State. This data will also be furnished to each agency's chief executive officer. The Committee shall submit an annual report to the Governor through the Commissioner.

**PERSONNEL****ADOPTIONS**

5. The administrative work of the Committee shall be performed by an Executive Secretary (Secretary) and other necessary staff designated by the Commissioner.

(b) Departmental committees shall be established in each agency operating under the Awards Program, under the supervision and direction of the Committee. Divisional and institutional award sub-committees may be established within agencies, but the responsibility for the agencies' activities will remain with the departmental committees.

1. The departmental committees shall include at least three members appointed by the agency's chief executive officer for a term of one year, effective each May 18. Departmental committee members shall be employees who are responsible for evaluation and analysis of the agency's programs. The chairperson of the departmental committee shall be an individual who has direct access to the chief executive officer.

2. Departmental committees shall meet at least monthly and shall establish procedures for the processing of awards within their agencies, in accordance with the rules in this subchapter and with the approval of the Committee.

3. Departmental committees shall be responsible for objectively and impartially investigating and evaluating each proposed award furnished to them by the Committee and returning a timely and documented recommendation to the staff of the Committee.

4. Departmental committees shall be responsible for suitable ceremonies for the presentation of awards to their employees and shall use available means, as the Committee may propose, to promote employee participation in the awards program.

5. Departmental committees shall report their activities to the Committee through their chairpersons.

**4A:6-6.3 Records: State service**

(a) The Committee shall maintain the following records:

1. Official copies of the minutes of all meetings and all other official actions which are public information.

2. Copies of all suggestions, as defined in N.J.A.C. 4A:6-6.5, received by the Committee, along with supporting documents and recommendations from departmental committees.

(b) The departmental committees shall maintain the following records:

1. Official copies of the minutes of all meetings and all other official actions which are public information.

2. Copies of each suggestion, as defined in N.J.A.C. 4A:6-6.5, which is referred by the Committee, with supporting documentation and the recommendation of the departmental committee.

3. Records of all transactions and supportive documentation for Option No. 2 suggestions as defined in N.J.A.C. 4A:6-6.6.

(c) Records shall be retained after the final action by the Committee in accordance with each department's record retention schedule. See N.J.A.C. 15:3-2.1 *et seq.*

**4A:6-6.4 Recognition awards: State service**

(a) Recognition Awards shall be established in, but not limited to, the following four categories:

1. Heroism Awards may be made to employees who perform acts of bravery or personal sacrifice above and beyond the duties and responsibilities of the employee's position and which reflect credit upon the State of New Jersey, whether or not the act was performed during working hours.

2. Exceptional Service Awards may be made to employees for outstanding acts of public service above and beyond the duties and responsibilities of the employee's position and which reflect credit upon the State of New Jersey, whether or not the act was performed during working hours.

3. Professional Achievement Awards may be made to employees in recognition of meritorious or distinguished accomplishments which need not fall entirely within the scope of normal duties. An award may be made to an employee who has:

i. Initiated and successfully established new and outstanding methods, practices, plans or designs in such fields as, but not limited to, administration, engineering, law, medicine or environmental sciences;

ii. Achieved honors from professional societies, educational institutions or recognized groups for outstanding performance in his or her field; or

iii. Provided key assistance to the recipient of an award.

4. Community Service Awards may be made to employees who have made outstanding contributions to the communities in which they live or to the State as a whole through organizational activities outside the workplace.

(b) Employee recognition awards may be made to an employee or a group of employees.

(c) A nomination for an employee recognition award may be submitted by an employee or by any resident of New Jersey to the Committee along with supporting information.

1. Nominations in the heroism category must be submitted within one year of the specified act.

2. Upon receipt, the nomination will be reviewed by the Secretary and a letter of acknowledgement sent to the nominator. Copies of the nomination shall then be forwarded to the appropriate departmental committee(s) for investigation and recommendation.

3. The departmental committee shall make a thorough investigation of the nomination and thereafter, by majority vote, recommend approval or disapproval. If the recommendation is for disapproval, the nomination shall be returned to the Secretary with an explanation of the reasons for disapproval, along with any supporting documents. If the departmental committee recommendation is for approval, the nomination with recommendations and supporting documentation shall be forwarded to the department's chief executive officer for endorsement. The nomination, with recommendations and supporting documents, shall then be returned to the Secretary.

4. The Committee shall consider the nomination and the departmental committee's recommendation and decide whether or not an award should be made and the type of award. The Secretary shall advise the nominator, in writing, of the action of the Committee. Presentation ceremonies shall be arranged by the Secretary.

**4A:6-6.5 Suggestion Award Program standards: State service**

(a) A suggestion is a written proposal which will produce notable economy or improvement in an operation of State government or one which will improve service to the public, employee safety or employee welfare.

(b) To be considered for a suggestion award, the following requirements must be met:

1. The suggestion must be original, or propose a new application of an old idea;

2. The suggestion must be implemented or ordered implemented by a State agency; and

3. There must be a causal relationship between the suggestion and implementation of the improvement.

(c) The following suggestions are not eligible for an award:

1. A suggestion which represents a part of an employee's duties and which the employee has the authority to change or the responsibility to bring to the attention of his or her supervisor;

2. A suggestion by an employee whose primary duty is research and planning unless the suggestion concerns a matter which is clearly unrelated to the employee's assignment or primary duty;

3. A suggestion which was initially disapproved, unless the idea is implemented as a result of the suggestion within two years from notice of disapproval and is subsequently approved by the Committee;

4. A suggestion which is received by the Committee more than six months (excluding necessary trial period) after it has been placed in use;

5. A suggestion concerning routine maintenance of buildings, equipment or grounds, which should be normally reported. Where sustained complaints have not resulted in correction, the Committee may consider such a suggestion for an award;

6. A suggestion involving new structures, equipment, materials and procedures during the initial period of trial, experiment or development, the length of which is considered reasonable by the Committee;

7. A suggestion which simply involves instituting or raising fees or taxes levied by the State;

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8. A suggestion to transfer programs or activities from one level of government to another, unless the transfer of the program or activity effectuates a savings or improvement of services;

9. A suggestion to recoup owed funds from another agency or political subdivision of the State; or

10. Any idea or improvement which no State agency is authorized to perform, or which requires legislative or regulatory changes or the enforcement of a law or regulation.

(d) All persons employed in State government at the time of submission are eligible, except members of the Committee or a departmental committee, the Secretary, or the staff of the Awards program.

**4A:6-6.6 Suggestion Award Program procedures: State service**

(a) Suggestions shall be submitted on a form prescribed by the Committee, which shall include:

1. A brief statement describing the present condition, method or practice, and where it exists.

2. A specific statement of what is suggested and how it can be accomplished. Sketches, charts, samples and additional data may be included.

3. A concise statement of the benefits which will accrue and the name of the organization or organizations which will benefit.

4. The name, home mailing address, social security number, title of present position, salary range, and department and division of the suggester.

(b) Suggestions may be submitted through one of two options at the discretion of the suggester:

1. Option 1 suggestions are suggestions sent to the Committee, which then refers them to the appropriate departmental committee(s).

2. Option 2 suggestions are suggestions sent to the Committee to ensure that the suggestion is recorded as the suggester's property. Thereafter, the suggester directly works with the suggester's supervisor and the departmental committee to develop and refine the suggestion.

(c) The Committee and the departmental committees shall utilize the following procedures in processing suggestions:

1. For Option 1, the departmental committee shall make, within 45 \**[dys]*\***days**\* of receipt of the suggestion from the Committee, an evaluation and a recommendation to the Committee.

2. For Option 2, the departmental committee shall make arrangements with the suggester and appropriate supervisory personnel to develop and refine the suggestion. This departmental committee shall, within a reasonable time, make an evaluation and recommendation to the Committee.

3. The Secretary shall make the initial review of all proposed award recommendations from the departmental committees. When the recommendation from the departmental committee is for disapproval, the Secretary shall, from the evidence presented, determine if the disapproval should be upheld. When the recommendation is for approval and the recommended amount of the award is \$100.00 or less, the Secretary may authorize the award.

4. The Committee shall review evaluations from departmental committees when the recommendation is for approval and the recommended amount of the award is more than \$100.00. Following review, the Committee shall either accept, reject or modify the recommendation.

5. If the Committee determines that it is necessary to use outside consultants in the development of evaluation of a suggestion, the costs may be offset against any award.

6. Suggestions which are disapproved by the departmental committee, may be reviewed by the Committee on its own motion, or be referred back to the departmental committee for reconsideration.

7. The Secretary shall notify the suggester of the disposition of the suggestion within 60 days of receipt of the departmental committee's recommendation, and whether there will be a trial period and the length of such period.

(d) After approval of a suggestion award, the Secretary shall make arrangements for the issuance of a check, less appropriate payroll deductions, to be drawn upon the funds appropriated to the Department of Personnel for the payment of awards.

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1. The check will then be forwarded to the departmental committee for presentation, except when the Committee elects to arrange a special ceremony.

2. Awards involving vacation options under N.J.A.C. 4A:6-6.7(a)2 will be arranged between the employee's Personnel Officer and the Secretary on a case by case basis.

**4A:6-6.7 Suggestion Award Program types and amounts of awards: State service**

(a) Awards for suggestions shall be in cash or additional paid vacation time-off in lieu of cash under certain circumstances.

1. Cash awards shall be no less than \$25.00 nor more than \$10,000 for each approved suggestion.

2. A time-off option in lieu of a cash award will be calculated as follows:

i. One day of additional time-off in lieu of an award from \$50.00 to \$75.00;

ii. Two days of additional time-off in lieu of an award from \$75.00 to \$150.00.

(b) When a suggestion is adopted primarily because it will result or has resulted in saving money, the amount of the award shall be 10 percent of the estimated net annual savings in the first year of operation, up to the \$10,000 maximum. Under exceptional conditions, the Committee may select a typical year or may average several years to determine an award.

(c) When a suggestion is adopted primarily upon the basis of improvements in such areas as safety, health, welfare and morale, or it is otherwise not possible to determine monetary savings, the departmental committee shall recommend and the Committee shall determine the amount of the award base on the following factors:

1. Effectiveness of solution offered by suggesters;

2. Seriousness of present problem in terms of money or other factors;

3. Extent of problem;

4. Probability of problem actually happening; and

5. Ingenuity of the solution.

(d) A suggester shall receive the full amount of the award when the suggestion is implemented. Where implementation is not complete but specific steps have been taken, a partial award may be paid at the Committee's discretion. It shall be the responsibility of the departmental committee to inform the Secretary when a suggestion has been placed into operation. Disputes regarding the date of implementation shall be resolved by the Committee.

(e) A cash or other award shall be in addition to the regular compensation of the recipient. The acceptance of such award shall constitute an agreement that the use of the suggestion by the State or its subdivisions or independent authorities shall not form the basis of a further claim of any additional award, compensation or payment by the employee, his or her heirs, or assignees.

(f) Persons who leave State service after having submitted a suggestion are still eligible for an award. In the case of death, the award shall be paid to the suggester's estate.

(g) Departmental awards consisting of plaques may be presented to the department or autonomous agency with the best record of employee participation during the fiscal year for the:

1. Highest number of suggestions approved per one hundred employees.

2. Highest dollar savings to the State realized through implementation of suggestions from their employees.

(h) Special awards consisting of plaques \**[will]*\* **may** be presented to suggesters whose accumulated awards total \$10,000 or result in savings to the State of \$100,000. In addition, the suggesters become members of an Advisory Board to the Committee. The Advisory Board may be called upon to comment and make recommendations on policy and program promotion.

(i) State "Suggester of the Year" will be selected by the Committee from among the successful submissions of the previous calendar year and will be suitably recognized as determined by the Committee. The selection from nominations submitted by the Secretary will be based on:

1. Importance of the suggestion on a State and national level;

2. Savings and/or other benefits;

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3. Public relations aspects and compatibility of the selection with the character and goals of the program.

(j) Departmental "Suggester of the Year" may be nominated by each department or autonomous agency. The nomination shall be made by the departmental committee with approval of the chief executive officer. The nomination must be approved by the Committee which will designate a uniform award and arrange for its procurement and presentation. Standards in selecting the nomination will be:

1. The suggestion(s) must have been approved during the previous calendar year;
2. The suggestion(s) must be of importance or value to the agency;
3. The suggester must be an employee of the agency as of the date nominated.

### 4A:6-6.8 Service Awards Program: State service

(a) Awards for length of service shall be given to all employees upon completion of each five years of employment.

1. Service shall include employment in the career, senior executive or unclassified service in either a regular, provisional or temporary capacity.

2. Years of employment shall be determined in the same manner used to compute annual vacation leave. See N.J.A.C. 4A:6-1.2.

3. Any dispute or question regarding eligible service shall be referred to the Committee for resolution.

4. It shall be the responsibility of each agency to determine the employees eligible for length of service awards.

(b) Retirement awards shall be given at the time of retirement to all those who have retired from any pension system administered by the State, regardless of the amount of service time. Only one retirement award will be presented to any employee.

1. Any dispute or question regarding eligible service shall be referred to the Committee for resolution.

2. It shall be the responsibility of each agency to determine the employees eligible for retirement awards.

(c) Each department shall review personnel records prior to the close of the fiscal year to determine employees who will be eligible for length of service and/or retirement awards. Presentation ceremonies shall be the responsibility of each department and shall be conducted at least on a yearly basis.

(d) Length of service and retirement awards may consist of letters of commendation, certificates, citations, plaques, medals, gift items, or such other awards as the Committee shall determine.

### 4A:6-6.9 Departmental awards programs: State service

(a) All State departments and agencies are encouraged to establish and maintain programs for recognition of their own employees for, but not limited to:

1. Attendance;
2. Safety;
3. Productivity;
4. Customer service; and
5. Employee of the year, employee of the month, or similar programs.

(b) Proposals for departmental programs shall be submitted to the Committee, which may approve, disapprove or modify the proposals. Proposals shall describe in detail the categories of awards, eligibility standards, procedures and types and amounts of awards to be given selected employees. Approval shall generally be for a specific duration, after which time the department or agency may seek approval for continuing the programs.

### 4A:6-6.10 Appeals: State service

(a) Any appeals to the Committee which involve matters under this subchapter, including denial of a suggestion award by a departmental committee, shall be filed with the Secretary.

1. All appeals shall be in writing, signed by the person appealing (appellant) or his or her representative and must include the reason for the appeal and the specific relief requested.

2. Unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation or action being appealed.

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3. The appellant must provide any additional information that is requested, and failure to provide such information may result in dismissal of the appeal.

4. Except where a hearing is required by law or these rules, or where the Committee finds that a material and controlling dispute of fact exists that can only be resolved by a hearing (see N.J.A.C. 1:1-1.1 et seq. for OAL hearing procedures), an appeal will be reviewed on a written record.

5. A party in an appeal may be represented by an attorney, authorized union representative or authorized appointing authority representative. See N.J.A.C. 1:1-5.4 for contested case representation at the Office of Administrative Law.

(b) The Committee may reopen final decision if new evidence and/or a new argument is presented which, if accepted, would change the outcome. Before reopening is considered, the appellant must satisfy the Committee that it was impossible to present these matters during the original appeal.

(c) If a suggestion is disapproved, and within a two-year period from notice of disapproval appears to have been subsequently implemented, the suggester may appeal the original determination. See N.J.A.C. 4A:6-6.5(c)3.

(d) The Committee shall render the final administrative decision\*[s]\*, which shall not be subject to further appeal to the Commissioner or the Merit System Board.

(e) When an agency recommends disapproval of a suggestion award on the basis of absence of causal relationship between the suggestion and implementation, the burden of proof in an appeal shall be on the agency. In all other appeals, the burden of proof shall be on the appellant.

## COMMUNITY AFFAIRS

### (a)

### NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

#### Transfer of Servicing of Single Family Mortgage Loans

#### Adopted New Rule: N.J.A.C. 5:80-21.

Proposed: November 17, 1986 at 18 N.J.R. 2238(a).

Adopted: November 16, 1987 by New Jersey Housing and Mortgage Finance Agency, James L. Logue, Executive Director.

Filed: November 16, 1987 as R.1987 d.517, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: January 4, 1988.

Expiration Date: May 20, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

#### Summary of Changes Between Proposal and Adoption:

1. 5:80-21.1(b)—A technical change was made to correct punctuation.
2. 5:80-21.2(a)—One additional provision was added in order to clarify and identify who, within the Agency, has the authority to approve transfers of servicing.
3. 5:80-21.2(b)—Technical changes were made to correct grammar.
4. 5:80-21.3(a) and 21.4(b)—As there may be one or more mortgage servicing agreements with a servicer, the term "mortgage servicing agreement" should not be capitalized. It is more appropriate to use the term in a generic sense.

**Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).**

## ADOPTIONS

## COMMUNITY AFFAIRS

## SUBCHAPTER 21. TRANSFER OF SERVICING OF SINGLE FAMILY MORTGAGE LOANS

## 5:80-21.1 General applicability

(a) The rules within this subchapter shall apply to all servicers of Agency single family mortgage loans who are either:

1. Transferring the ownership interest of the servicing company or entity; or
2. Transferring the ownership of their holding company; or
3. Transferring by sale their portfolio of Agency loans to another servicer.

(b) The rules within this subchapter shall also apply to any change in the servicer's organizational structure, which in the Agency's determination, amounts to the type of transfer specified in (a) above. In determining whether a change in the servicer's organizational structure is a transfer subject to these rules, the Agency may consider:

1. Name change of servicer;
2. Change of location of servicer;
3. Staff changes by servicer;
4. Other significant organization changes by servicer.

(c) The rules within this subchapter shall not apply to loan originators who are not servicers.

## 5:80-21.2 Agency review and approval

(a) No servicer may enter into any transfer as specified in N.J.A.C. 5:80-21.1(a) or (b), without obtaining prior written consent of the Agency. **\*Approval of all transfers shall be made by the Executive Director of the Agency.\***

(b) In order for a transfer to be approved, the successor servicer must meet all of the following requirements:

1. **\*Ability to\*** **\*[A]\*\*a\*** assume a servicing portfolio of at least 100 Agency loans;
2. Have a net worth of \$250,000 plus 0.2 percent of the outstanding principal balances of its total portfolio of loans serviced.
3. Have a servicing portfolio of at least 200 loans for other investors totaling at least \$10 million **\*dollars\*** in outstanding principal balances.
4. Be an approved servicer for the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC). If the servicer is not FNMA/FHLMC approved, the Agency reserves the right to make its own determination.
5. Have current certified financial statements and servicing and delinquency statistics which are satisfactory to the Agency.
6. **\*[Complete]\*\*Completion of\*** the participation application to the satisfaction of the Agency.
7. **\*[Complete]\*\*Completion of\*** the Agency's Questionnaire for Servicing Transfers to the satisfaction of the Agency. This form must also be completed by the transferring servicer.
8. **\*[Submit]\*\*Evidence of\*** fidelity insurance, errors and omission insurance and other insurance the Agency deems necessary.
9. If a successor servicer is an existing Agency servicer, there must be a record of acceptable servicing performance, as determined by the Agency.

## 5:80-21.3 Transfer fees

(a) A transfer fee shall be paid to the Agency on all transfers specified in N.J.A.C. 5:80-21.1(a) and (b). The fee shall be assessed according to the terms of the **\*[Mortgage Servicing Agreement]\*\*mortgage servicing agreements\*** with each servicer.

(b) A transfer fee shall not be imposed on loans in foreclosure or loans in default over 60 days. If the servicer receives payment from the mortgagee within a reasonable time of the transfer which brings such loans out of foreclosure or reduces the period of default to less than 60 days, then a fee will be required to be paid by the servicer at such time.

## 5:80-21.4 Subsequent transfers

(a) The rules within this subchapter shall apply in their entirety to any subsequent transfers by servicers who became successor servicers under the provisions of these rules.

(b) Successor servicers shall assume and abide by all the terms, including payment of transfer fees, of the original **\*[Mortgage Ser-**

ving Agreement]\*\* **\*mortgage servicing agreements\*** on the loans being serviced unless different terms are agreed to in writing by the successor servicer and the Agency.

(a)

## NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Rental Surcharge; Low and Moderate Income Split  
Adopted New Rule: N.J.A.C. 5:92-5.14

Proposed: September 8, 1987 at 19 N.J.R. 1597(a).

Adopted: December 7, 1987 by Arthur R. Kondrup, Chairman,  
Council on Affordable Housing.

Filed: December 11, 1988 as R.1988 d.27, with 5:92-12.11 not  
adopted, but still pending.

Authority: N.J.S.A. 52:27D-301 *et seq.*

Effective Date: January 4, 1988.

Expiration Date: June 16, 1991.

## Summary of Public Comments and Agency Responses:

The Public Advocate commented on N.J.A.C. 5:92-5.14, regarding the low and moderate income split. The specific comments with agency responses follow.

COMMENT: Since there is evidence to indicate that more than two-thirds of the housing need is composed of low income households, the proposed rule does not adequately address the need for housing affordable to households earning less than 50 percent of median income.

RESPONSE: The Council feels that the proposed rule is a reasonable effort to meet the needs of low income households within the economic realities of producing affordable units to this segment of the population in that it provides sufficient incentives for developers to produce this housing. The standard that 50 percent of the units within inclusionary development be affordable to low income households is one that the New Jersey courts have consistently found to be acceptable when approving Mount Laurel settlements.

COMMENT: The language in the proposed rule that states that "to the best extent feasible, at least half of all rehabilitated units shall be for low income households" is not adequate to ensure that low versus moderate income units are rehabilitated. The Council should provide standards, procedures or reporting requirements that demonstrate that a community has not discriminated against low income households.

RESPONSE: The Council recognizes that when a community rehabilitates its low and moderate income deficient housing stock, there is no guarantee that 50 percent of the occupants will be low income households. The Council will not accept discrimination against low income households; nor will it accept moderate income units not be rehabilitated due to the absence of low income households participating in a municipal rehabilitation program. At this time, the Council does not feel that it is necessary to further complicate an already difficult process by creating additional standards, procedures or reporting requirements.

COMMENT: The proposed amendment properly requires that half of the units in each bedroom type and half of all rental units be low income units. However, it leaves a serious loophole in that it permits municipalities to reserve units for senior citizens in a manner that effectively restricts the availability of sale and rental housing to low income families.

RESPONSE: While N.J.A.C. 5:92-14.3 does create the possibility that senior citizen housing will be created, there is a need for such housing. The supposed loophole described in the comment does not appear to so adversely impact the availability of housing to low income families as to require further restrictive regulation.

The New Jersey Council on Affordable Housing is not, at this time adopting proposed new rule N.J.A.C. 5:92-12.11, which would permit and regulate surcharges imposed on tenants of low and moderate income units whose household income exceeds the income guidelines promulgated by the Council. The Council is evaluating the comments it has received and a decision to adopt this rule in its present or an amended form is pending further review.

Full text of the adoption follows.

## 5:92-5.14 Low and moderate income split

At least half of all units devoted to low and moderate income households within inclusionary developments shall be affordable to

low income households. At least half of all units in each bedroom distribution and half of all rental units shall be available for low income households. To the best extent feasible, at least half of all rehabilitated units shall be for low income households.

## ENVIRONMENTAL PROTECTION

### (a)

#### DIVISION OF FISH, GAME AND WILDLIFE

##### Fish and Game Council 1988-89 Fish Code

##### Adopted Amendments: N.J.A.C. 7:25-6

##### Adopted New Rule: N.J.A.C. 7:25-6.5

Proposed: August 3, 1987 at 19 N.J.R. 1385(a)

Adopted: December 11, 1987 by the Fish and Game Council,

George McCloskey, Acting Chairman

Filed: December 11, 1987 as R.1988 d.15, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c))

Authority: N.J.S.A. 13:1B-30 et seq. and 23:1-1 et seq.

DEP Docket Number: 032-87-07

Effective Date: January 4, 1987

Expiration Date: February 18, 1991

##### Summary of Public Comments and Agency Responses:

A public hearing concerning the proposal was held on September 8, 1987 at the Assunpink Wildlife Conservation Center located on Eldridge Road within the Assunpink Wildlife Management Area, Robbinsville, New Jersey. Eight verbal comments were offered at this hearing. In addition, 11 written comments were received during the public comment period which closed on September 9, 1987.

COMMENT: There is no scientific basis for affording increased protection to largemouth bass during their spawning period, April 1 through June 15, by establishment of a reduced harvest rule at N.J.A.C. 7:25-6.10.

RESPONSE: Largemouth bass are extremely vulnerable during the spawning period while they are guarding their nests. The majority of the harvest occurs during this limited period of time. The objective of the proposed amendment was to improve the quality of largemouth bass fishing throughout the remainder of the year by protecting these adult largemouth bass at the time they are most vulnerable, thereby increasing the supply of bass through the remainder of the year. Sufficient data exists to support the belief of the Fish and Game Council (the "Council") that this objective can be achieved by affording increased protection to adult largemouth bass. No claim, however, was made that the restriction would improve spawning success. The Council noted that the opposition to the rule came entirely from one organization, the B.A.S.S. federation. This organization holds bass fishing tournaments in New Jersey during the spawning periods (both New Jersey and Pennsylvania have closed seasons for largemouth bass at this time) and adoption of the proposed amendment would disrupt their traditional format for these tournaments. The Council also noted that the proposed amendment did not prohibit fishing for largemouth bass but merely increased the minimum size and decreased the daily bag and possession limit. Further, the Council noted that procedures could be instituted which would allow the B.A.S.S. federation to conduct its tournaments and still comply with the rule. For example, procedures such as a catch and release system, whereby largemouth bass would be weighed and measured in the presence of a witness and immediately returned to the waters, could be incorporated into B.A.S.S. tournament rules in order to comply with the chapter. Release must then be performed using the proper method, minimizing harm or injury to the fish.

COMMENT: Creation of the "Pequest River Trout Conservation Area," at N.J.A.C. 7:25-6.5, where only artificial lures and flies may be used and a 15-inch minimum size limit and a one-trout daily bag govern, constitutes setting aside public waters and trout for the exclusive use of a special interest group.

RESPONSE: The Council had rejected a similar proposed new rule in 1986. At that time, the Council chose to select the option which they felt represented the desires of the majority. However, a significant amount of support developed for the proposed new rule since then and it was

re-introduced in the proposed 1988-89 Fish Code. The Council once again found that the majority of anglers still did not favor the proposed new rule but that enough support did exist to warrant some recognition. A compromise approach has been adopted at N.J.A.C. 7:25, reducing the length of the Pequest River Trout Conservation Area from the proposed 1.3 miles to one-half mile and reducing the amount of time the limitations are in effect by changing the starting date from the proposed May 16 to May 30. As a consequence of the later starting date for the Pequest River Trout Conservation Area rule limitations at N.J.A.C. 7:25-6.5 and earlier stocking dates for the Pequest River, there will no longer be a need to affect the closure proposed at N.J.A.C. 7:25-6.5(b)6 to avoid conflict between stocking and angling, and, therefore, N.J.A.C. 7:25-6.5(b)6 has been deleted from the adopted rule.

COMMENT: The traditional April opening of the trout season should be set in N.J.A.C. 7:25-6.2 for the first Saturday in April, thereby increasing the recreational opportunities afforded by the Division of Fish, Game and Wildlife's trout stocking program.

RESPONSE: The Council felt that sufficient data did not exist to show that the risk of mortality of pre-season stocked trout was significantly less if the second Saturday in April, that is, April 9, was selected as the opening day as opposed to the first Saturday in April, that is, April 2. However, the Council recognizes the merits of the comment and, therefore, has adopted the first Saturday in April (Note: Although the trout season technically opens on January 1, the angling public generally recognizes the April re-opening date, which follows the three week closure for in-season stocking, as the opening of the trout season). As a consequence of selecting an earlier opening date, it was necessary to make changes to the in-season stocking closure periods set forth in N.J.A.C. 7:25-6.2(a) and (f) in order to maintain the three week closure for stocking purposes.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

#### SUBCHAPTER 6. 1988-89 FISH CODE

##### 7:25-6.1 General provisions

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

(d) This Code, when adopted and when effective, shall supersede the provisions of the 1987-88 Fish Code.

##### 7:25-6.2 Trout season and angling in trout-stocked waters

(a) The trout season for 1988 shall commence 12:01 A.M. January 1, 1988 and extend to midnight March **\*[20]\* \*13\***, 1988. The trout season shall re-open at 8:00 A.M. Saturday, April **\*[9]\* \*2\***, 1988 and extend to include March 19, 1989. (See separate regulations for Greenwood Lake, the Delaware River between New Jersey and Pennsylvania, Round Valley Reservoir, Musconetcong River "No Kill" Area, **\*[Pequest River Trout Conservation Area]\*** and the Van Campens Brook Natural Trout Fishing Area.)

(b) It shall be unlawful to fish for any species of fish from midnight of the **\*[20th]\* \*13th\*** of March to 8:00 A.M. on April **\*[9]\* \*2\***, 1988 in ponds, lakes or those portions of streams that are listed herein for stocking during 1988. (See separate regulations for Lake Hopatcong, Spruce Run Reservoir, Swartswood Lake and Wawayanda Lake.)

(c) (No change.)

(d) Trout stocked waters for which in-season closures will be in force are as follows (waters will be closed from 5:00 A.M. to 5:00 P.M. on dates indicated):

1. Big Flat Brook—100 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April **\*8\***, 15, 22, 29; May 6, 13, 20, 27;

2. Black River—Route 206, Chester **\*[to]\* \*at\*** Dam to lower end of Hacklebarney State Park—April **\*7\***, 14, 21, 28; May 5, 12, 19**\*[, 26]\***;

3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April **\*4\***, 11, 18, 25; May 2, 9, 16**\*[, 23]\***;

4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April **\*4\***, 11, 18, 25; May 2, 9, 16**\*[, 23]\***;

5. Metedeconk River, S. Br.—Bennetts Mills dam to twin wooden foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood—April **\*4\***, 11, 18, 25; May 2, 9, 16**\*[, 23]\***;

## ADOPTIONS

6. Musconetcong River—Lake Hopatcong Dam to Delaware River including all main \*[steam]\* \*stem\* impoundments, but excluding Lake Musconetcong, Netcong—April \*8,\* 15, 22, 29; May 6, 13, 20\*[ , 27]\*;
7. Paulinskill River—Limecrest Railroad Spur Bridge, Sparta Township, to Delaware River—April \*7,\* 14, 21, 28; May 5, 12, 19\*[ , 26]\*;
8. Pequest River—Source to Delaware River—April \*8,\* 15, 22, 29; May 6, 13, 20\*[ , 27]\*;
9. Pohatcong Creek—Route 31 to Delaware River—April \*5,\* 12, 19, 26; May 3, 10, 17\*[ , 24]\*;
10. Ramapo River—State line to Pompton Lake—April \*7,\* 14, 21, 28; May 5, 12\*[ , 19]\*;
11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April \*6,\* 13, 20, 27; May 4, 11, 18\*[ , 25]\*;
12. Raritan River, S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April \*5,\* 12, 19, 26; May 3, 10, 17\*[ , 24]\*;
13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April \*4,\* 11, 18, 25; May 2, 9, 16\*[ , 23]\*;
14. Toms River—Ocean County Route 528, Holmansville to confluence with Maple Root Branch and Route 70 to County Route 571—April \*4,\* 11, 18, 25; May 2, 9, 16\*[ , 23]\*;
15. Walkkill River—W. Mt. Road to Route 23, Hamburg—April \*4,\* 11, 18, 25; May 2, 9, 16\*[ , 23]\*; and
16. Wanaque River—Greenwood Lake Dam to Jct. with Pequannock River, excluding Wanaque Reservoir and Lake Inez—April \*8,\* 15, 22, 29; May 6, 13, 20\*[ , 27]\*.

(NOTE: The Division reserves the right not to stock on the above dates when emergency situations prevail.)

(e) (No change.)

(f) Trout stocked waters for which no in-season closures will be in force are as follows\*[:]\* (figures in parenthesis indicate the anticipated number of stockings to be carried out from April \*[11]\* \*4\* through May \*[31]\* \*20\*:

NOTE: The Division reserves the right to suspend stocking when emergency conditions prevail):

1. (No change.)
2. Bergen County
  - Hackensack River—Lake Tappan to Harriot Avenue, Harrington Park—(4)
  - Hohokus Brook—Forest Road to Whites Pond—(1)
  - Indian Lake—Little Ferry—(4)
  - Mill Pond—Park Ridge—(2)
  - Pascack Creek—Orchard Street, Hillsdale, to Lake Street, Westwood—(4)
  - Saddle River—State Line to Grove Street, Ridgewood—(6)
  - Tienekill Creek—Closter, entire length—(1)
  - Whites Pond—Waldwick—(2)
- 3.-9. (No change.)
10. Hunterdon County
  - Amwell Lake—Linvale—(4)
  - Beaver Brook—Clinton Township, entire length—(2)
  - Capoolong Creek—Pittstown, entire length—(6)
  - Delaware—Raritan Feeder Canal—Bulls Island to Hunterdon—Mercer County line—(6)
  - Everittstown Brook—Everittstown, entire length—(2)
  - Frenchtown Brook—Frenchtown, entire length—(1)
  - Hakihohake Creek—Milford, entire length—(2)
  - Little York Brook—Little York, entire length—(2)
  - Lockatong Creek—Opdyke Road Bridge, Kingwood Township to Delaware-Raritan Feeder Canal—(2)
  - Milford Brook—Milford, entire length—(1)
  - Mulhockaway Creek—Pattenburg, source to Spruce Run Reservoir—(2)
  - Neshanic River—Kuhl Road to Hunterdon County Route 514—(1)
  - Prescott Brook—Clinton Township, entire length—(1)
  - Rockaway Creek—Readington Township, entire length—(4)

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- Rockaway Creek, N/B—Tewksbury and Readington Township, entire length—(4)
- Rockaway Creek, S/B—Lebanon to Whitehouse, entire length—(3)
- Round Valley Reservoir—Lebanon—(1)
- Spring Mills Brook—Spring Mills, entire length—(0)
- Spruce Run—Glen Gardner and Lebanon Township, entire length—(3)
- Spruce Run Reservoir—Clinton—(6)
- Sydney Brook—Sydney, entire length—(0)
- Tetertown Brook—Tetertown, entire length—(0)
- Wickecheoke Creek—Covered Bridge, Sergeantsville to Delaware River—(1)
- 11.-13. (No change.)
- 14. Morris County
  - Beaver Brook—Rockaway, entire length—(3)
  - Burnham Park Pond—Morristown—(1)
  - Drakes Brook—Flanders, entire length—(1)
  - Flanders Brook—Mt. Olive, entire length—(3)
  - Hibernia Brook—Hibernia, entire length—(4)
  - India Brook—Mt. Freedom to Rt. 24, Ralston, entire length—(2)
  - Lake Hopatcong—Lake Hopatcong—(2)
  - Lake Musconetcong—Netcong—(2)
  - Ledgewood Brook—Ledgewood—(2)
  - Mill Brook—Center Grove, entire length—(2)
  - Mt. Hope Pond—Mt. Hope—(2)
  - Passaic River—White Bridge to Dead River—(6)
  - Pompton River—Pequannock Township (see Passiac Co.)—(6)
  - Rhinehart's Brook—Hacklebarney State Park, entire length—(2)
  - Russia Brook—Jefferson Township, Ridge Road to Lake Swannanoa—(3)
  - Speedwell Lake—Morristown—(2)
  - Trout Brook—Hacklebarney State Park, entire length—(2)
  - Whippany River—Washington Valley Road to Rt. 202, Morristown—(3)
- 15. (No change.)
- 16. Passaic County
  - Barbour's Pond—West Paterson—(2)
  - Clinton Reservoir—Newark Watershed—(2)
  - Greenwood Lake—West Milford—(3)
  - Oldham Pond—North Haledon—(2)
  - Pequannock River—Route 23, Smoke Rise to Paterson-Hamburg Turnpike, Pompton Lakes—(3)
  - Pompton Lake—Pompton Lakes—(2)
  - Pompton River—Pompton Lake to Newark—Paterson Turnpike—(6)
  - Ringwood Brook—State line to Sally's Pond, Ringwood Park—(4)
  - Sheppard's Lake—Thunder Mountain, Ringwood Borough—(3)
- 17.-18. (No change.)
- 19. Sussex County
  - Alm's House Brook—Myrtle Grove, Hampton Township, entire length—(2)
  - Andover Junction Brook—Andover, entire length—(3)
  - Beaver Run Brook—Beaver Run, entire length—(1)
  - Bier's Kill—Shaytown, entire length—(2)
  - Big Flat Brook, Upper—Saw Mill Lake, High Point State Park to 100 ft. above Steam Mill Bridge on Crigger Road—(1)
  - Canistear Reservoir—Newark Watershed—(2)
  - Clove River—Junction of Route 23 and Mt. Salem Road to Route 565 bridge—(3)
  - Cranberry Lake—Byram Township—(2)
  - Culver's Lake Brook—Frankford Township, entire length—(2)
  - Dry Brook—Branchville, entire length—(0)
  - Franklin Pond Creek—Hamburg Mt. W.M.A., entire length—(3)
  - Glenwood Brook—Lake Glenwood to Stateline—(1)
  - Hardystonville Brook—Hardystonville, entire length—(1)
  - Illiff Lake—Andover Township—(3)
  - Kymer's Brook—Andover, entire length—(2)
  - Lake Musconetcong—Netcong—(2)
  - Lake Hopatcong—Lake Hopatcong—(2)
  - Lake Ocquittunk—Stokes State Forest—(6)

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Little Flat Brook—Sandyston Township, entire length—(3)  
 Little Swartswood Lake—Swartswood—(2)  
 Lubbers Run—Byram Township, entire length—(3)  
 Neldon Brook—Swartswood, entire length—(2)  
 Papakating Creek—Plains Road bridge to Route 565 Lewisburg—(2)  
 Papakating Creek, W. Br.—Libertyville, entire length—(2)  
 Parker Brook—Stokes State Forest—entire length—(1)  
 Pond Brook—Middleville, entire length—(2)  
 Roy Spring Brook—Stillwater, entire length—(2)  
 Saw Mill Lake—High Point State Park—(6)  
 Shimers Brook—Montague Township, entire length—(1)  
 Stony Brook—Stokes State Forest, entire length—(2)  
 Stony Lake—Stokes State Forest—(3)  
 Swartswood Lake—Swartswood—(4)  
 Trout Brook—Middleville, entire length—(2)  
 Tuttlers Corner Brook—Tuttlers Corner—entire length—(2)  
 Wawayanda Lake—Vernon—(4)  
 20. (No change.)  
 21. Warren County  
 Barker's Mill Brook—Vienna, entire length—(2)  
 Bear Creek—Southtown, entire length—(2)  
 Beaver Brook—Silver Lake Dam to Pequest River—(2)  
 Blair Creek—Hardwick Center to Blair Lake—(2)  
 Blair Lake—Blairstown—(0)  
 Buckhorn Creek—Roxburg, entire length—(2)  
 Dark Moon Brook—Johnsonburg, entire length—(1)  
 Dunnfield Creek—Delaware Water Gap National Recreation Area, entire length—(3)  
 Furnace Brook—Oxford, entire length—(2)  
 Furnace Lake—Oxford—(5)  
 Honey Run—Swayze's Mill Road to Route 519, Hope Township—(2)  
 Jacksonburg Creek—Jacksonburg, entire length—(3)  
 Lopatcong Creek—Route 519 to South Main Street, Phillipsburg—(3)  
 Merrill Creek—Stewartville, entire length—(2)  
 Mountain Lake—Buttville—(5)  
 Pohatcong Creek—Mt. Bethel to Route 31—(2)  
 Pophandusing Creek—Oxford Road, Hazen to Delaware River—(1)  
 Roaring Rock Brook—Brass Castle, entire length—(2)  
 Trout Brook—Hackettstown, entire length—(3)  
 Trout Brook—Hope, entire length—(2)  
 (g) (No change.)  
 (h) No person shall take, kill, or have in possession in one day more than six in total of brook trout, brown trout, rainbow trout, or hybrids thereof during the period extending from 8:00 A.M. April \*[9]\* \*2\*, 1988 until midnight May 31, 1988, or more than four of these species during the periods of January 1, 1988 to midnight March \*[20]\* \*13\*, 1988 and June 1, 1988 through midnight March \*[19]\* \*12\*, 1989 except as designated for specially regulated trout fishing areas.  
 (i) Lake Hopatcong in Morris County, Spruce Run Reservoir in Hunterdon County, Swartswood Lake and Wawayanda Lake in Sussex County will remain open to angling year-round. Trout, if taken during the period commencing at midnight, March \*[20]\* \*13\*, 1988 and extending to 8:00 A.M., April \*[9]\* \*2\*, 1988, must be returned to the water immediately and unharmed.

## 7:25-6.3 Fly-fishing waters

(a) From 5:00 A.M. on Monday, April \*[18]\* \*11\*, 1988 to and including November 30, 1988,\* the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:

1.-2. (No change.)

(b) Beginning January 1, 1988 to midnight March \*[20]\* \*13\*, 1988 and from 8:00 A.M. on April \*[9]\* \*2\*, 1988 to midnight, March \*[19]\* \*12\*, 1989, the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5:00 P.M. on days listed for stocking:

1. (No change.)

(c) (No change.)

(d) The following regulations shall apply to the above designated fly-fishing waters:

1. (No change.)

2. Not more than six trout may be killed daily during the April \*[9]\* \*2\* through May 31 portion of the season; at other times the limit is four.

i. Any number of trout \*[in excess of the aforementioned daily limit of six]\* may be caught provided that such \*[excess]\* trout are immediately returned to the water unharmed, except that the Musconetcong fly-fishing stretch is designated a "no kill" area and all trout caught in this stretch \*[must]\* \*shall\* be immediately returned to the water unharmed. \*[Authority: N.J.S.A. 23:5-10.]\*

3.-5. (No change.)

7:25-6.4 (No change.)

## 7:25-6.5 Pequest Trout Conservation Area

(a) The following stretch of the Pequest River is designated as the Pequest River Trout Conservation Area: An approximately \*[1.3]\* \*one-half\* mile portion of the Pequest River, within the Pequest Wildlife Management Area, extending specifically from the County bridge on Pequest Furnace Road at Pequest upstream to \*[the railroad bridge adjacent to the Pequest Trout Hatchery]\* \*a point, clearly designated by markers, adjacent Foot Hill Road\*.

(b) During the period of May \*[16]\* \*30\* through October 2, the following regulations shall apply to the above designated Pequest River Trout Conservation Area:

1. No bait or lures of any kind may be used except artificial lures and flies;

2. A person shall not have in possession while fishing any natural bait, live or preserved;

3. A person shall not kill or have in possession while fishing any trout less than 15 inches in total length;

4. A person shall not have in possession while fishing any more than one dead, creel or otherwise appropriated trout, except that additional trout may be caught provided they are returned to the water immediately and unharmed; \*and\*

5. Size limits and creel limits on species other than trout are in accordance with Statewide regulations\*[\*]; and]\*\*.\*

\*[6. The area shall be closed to angling from 5:00 A.M. to 5:00 P.M. on those days that the Pequest River is listed for stocking.]\*

## 7:25-6.6 Round Valley Reservoir

(a) The minimum size of smallmouth bass shall be 13 inches. There shall be no size limit on largemouth bass. Daily bag and possession limit for largemouth bass and smallmouth bass shall be five in total.

(b) The minimum size of brown trout and rainbow trout shall be 13 inches. Daily bag and possession limit for brown trout and rainbow trout shall be two in total. Authority: N.J.S.A. 23:5-7, 23:5-10.

(c) (No change.)

(d) The season for lake trout shall extend from 12:01 A.M. January 1 to midnight September 30, 1988.

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

## 7:25-6.7 Baitfish

(a) (No change.)

(b) In waters listed in this code to be stocked with trout, it is prohibited to net, trap or attempt to net or trap baitfish from March \*[21]\* \*14\* to June 15 except where the taking is otherwise provided for. For the remainder of the year, up to 35 baitfish per person per day may be taken with a seine not over 10 feet in length and four feet in depth or a minnow trap not larger than 24 inches in length with a funnel mouth no greater than two inches in diameter or an umbrella net no greater than three and one-half feet square.

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

7:25-6.8 (No change in text.)

7:25-6.9 (No change in text.)

## 7:25-6.10 Warmwater fish

(a) (No change.)

(b) The size limits on rock bass, black crappie, white crappie, redbfin pickerel and chain pickerel are hereby eliminated in all waters

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except in Lake Hopatcong, Swartswood Lake (Sussex County), and Hammonton Lake (Atlantic County) where there shall be a minimum size of 15 inches for chain pickerel. (See separate regulations for Greenwood Lake.)

(c) The provision that a person may not take or have in possession more than 25 in total of fish commonly classed as fresh water game and food fish is hereby abolished. (See Code and statutes for bag limits on individual species.) Authority: N.J.S.A. 23:5-10.

(d) (No change.)

(e) The minimum size of largemouth bass in lakes, ponds and reservoirs shall be 12 inches and in rivers, streams and other waters it shall be nine inches, except that during the period of April 1 through June 15, an 18 inch minimum size limit shall be in effect. (See separate regulations for Greenwood Lake, the Delaware River and Round Valley Reservoir).

1.	Season	Size Limit	Bag Limit
Trout	April *[9]* *2*—Sept. 30	No minimum	5
Largemouth bass and smallmouth bass	No closed season	9 inch minimum	5 in total
Walleye	No closed season	15 inch minimum	5
Chain pickerel	No closed season	12 inch minimum	5
Muskellunge, and any hybrid thereof	No closed season	30 inch minimum	2
Northern pike	No closed season	24 inch minimum	2
Striped bass	March 1—Dec. 31	33 inch minimum	2
Baitfish, fish bait	No closed season	No minimum	50
Shortnose sturgeon	Closed-endangered species		
All other freshwater species	No closed season	No minimum	No limit

2.-7. (No change.)

7:25-6.17 (No change in text.)

7:25-6.18 (No change in text.)

**(a)**

**DIVISION OF ENVIRONMENTAL QUALITY**

**Pesticide Control Code**

**Readoption: N.J.A.C. 7:30**

Proposed: September 8, 1987 at 19 N.J.R. 1611(a).

Adopted: December 4, 1987 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: December 4, 1987 as R.1988 d.9, **without change**.

Authority: N.J.S.A. 13:1B-3 et seq. and 13:1F-1 et seq., specifically 13:1F-4.

Effective Date: December 4, 1987.

Expiration Date: December 4, 1992.

DEP Docket Number: 038-87-08.

**Summary of Public Comments and Agency Responses:**

The New Jersey Department of Environmental Protection (the Department) has readopted, without change, the Pesticide Control Code, N.J.A.C. 7:30. These rules cover the registration of pesticides, the licensing of dealers and applicators, and the regulation of pesticide use.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:30 was to expire on December 6, 1987. The Department is in the process of studying the Pesticide Control Code (Code) to determine if various changes and additions to it should be proposed. At the time it became necessary to propose to readopt the Pesticide Control Code (Code) in order for it to remain in effect, these studies were not complete. The Department intends to address many of the comments received during the readoption process in a future proposal. The areas where the Department intends to make a proposal have been identified in the applicable response to comments.

A public hearing on the proposed readoption was held at the Department's Environmental Laboratory Building, Trenton, New Jersey on October 8, 1987 to provide interested parties with the opportunity to present testimony. The comment period closed on October 15, 1987. The Department received written testimony from two people with an additional four people presenting comments at the public hearing.

General Comments N.J.A.C. 7:30

COMMENT: The Department should enforce Occupational Safety and Health Administration (OSHA) regulations which require growers

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(f) Daily bag and possession limit for largemouth bass and smallmouth bass shall be not more than five in total except during the period of April 1 through June 15 only one largemouth bass may be possessed (see separate regulations for Greenwood Lake, the Delaware River and Round Valley Reservoir).

(g)-(m) (No change in text.)

7:25-6.11 through 6.15 (No change in text.)

7:25-6.16 Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, the following regulations for the Delaware River between New Jersey and Pennsylvania are made a part of the New Jersey State Fish and Game Code and will be enforced by the conservation authorities of each state.

to inform workers of chemicals they may be exposed to and also requires them to train workers in safe practices.

RESPONSE: Recent judicial decisions have held that OSHA workplace regulations preempt similar state programs leaving exclusive enforcement authority with OSHA; the Department does not have authority to either adopt or enforce these standards. The Department will continue to pass on pertinent information regarding hazards to farm workers, to appropriate agencies and to the regulated community.

COMMENT: A more expeditious process for reviewing pesticides for which information in areas such as carcinogenicity is incomplete needs to be written into the code. This might be underwritten by a mill tax and/or a graduated registration fee for pesticides having data gaps.

RESPONSE: The United States Environmental Protection Agency (EPA) currently has established a program for the review of pesticide data gaps and the acquisition of required information and data. The Federal program has a budget of over \$20 million to perform these functions. At this time, the Department has been satisfied with the information available from this resource. Additionally, the Department currently has the ability to address further restrictions on a case by case basis through its technical review committee.

COMMENT: Pertinent information should be provided to local communities and public officials concerning pesticides produced at chemical companies where current EPA Superfund legislation does not apply.

RESPONSE: The Code currently requires at N.J.A.C. 7:30-9.4(b) that anyone storing pesticides for other than personal use must maintain a list of those pesticides stored and notify their local fire department of the location of the storage area.

COMMENT: Vendors of pesticides should be held responsible for providing safe and environmentally sound means of disposal.

RESPONSE: The Department has worked at providing for disposal of unwanted pesticides. Currently the majority of the counties in New Jersey periodically offer county disposal days for this purpose. The county waste coordinator should be contacted for such a program. At this time the Department feels this system is adequate.

COMMENT: Inert ingredients known or suspected of being hazardous should be identified on product labels. Another commenter suggested over the counter pesticides should be labeled to include health data and should contain references to sources of additional information.

RESPONSE: The Department is expressly forbidden by Federal statute (7 USC 136V(b)) from imposing any requirements for labelling or packaging in addition to or different from those imposed by the Insec-

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ticides and Environmental Pesticide Control Act. The EPA is the exclusive regulator of Federal labeling information. The Department has been advised that the inert ingredient issue is currently being addressed by EPA.

COMMENT: Language should be included in the Code stating that no employer may retaliate against or discriminate against any employee who has provided information leading to an enforcement action by the Department.

RESPONSE: This would require a legislative change. The Department does support this concept.

COMMENT: The Department should establish a mandatory pesticide reporting system whereby the medical community would be educated concerning the symptoms, diagnosis and treatment of pesticide illnesses and would be required to report pesticide-related health effects.

RESPONSE: The Department strongly supports this concept; however, it feels this is more efficiently and appropriately handled by the New Jersey Department of Health (DOH). It is currently being implemented by the DOH through cooperation with SA-Lantic Migrant Health services in cases involving farm workers.

#### N.J.A.C. 7:30-1 Pesticide Product Registration and General Requirements

COMMENT: Registration fees should be increased to provide additional money for research to find less toxic methods of pest control and to support grants for Integrated Pest Management research.

RESPONSE: In the next revision of the Code, the Department will be asking for increased registration fees for pesticides. Part of the proposed increase will be allocated for research needs.

COMMENT: It is strongly recommended that the grounds for denial, revocation or suspension of a registration should include engaging in misleading advertising or misleading representation to customers.

RESPONSE: This is already covered in the Code at N.J.A.C. 7:30-1.9(j) which states that "no person shall make false or misleading claims through any media relating to the effects of a pesticide, the degree of certification required, or the application methods to be utilized."

COMMENT: The Department should disallow the use of shelf supplies of banned pesticides once a pesticide has been banned.

RESPONSE: Generally, the EPA issues directions for disposal or return of suspended or banned pesticides. In some cases, EPA will allow continued use of a pesticide until current stocks are used up; in others EPA establishes a cut off date beyond which the pesticide can no longer be used. In the case of the immediate ban of pesticides, EPA is responsible for indemnification of distributors for shelf supplies of the banned pesticide. The Department does have similar powers under N.J.A.C. 7:30-1.10. Whether the immediate ban option is invoked is determined on a case-by-case basis taking into account the severity of the threat posed.

#### N.J.A.C. 7:30-2 Prohibited and Restricted Use Pesticide List

COMMENT: The Department should consider banning 2,4-D because of cases of cancer in humans and brain tumors in rats.

RESPONSE: The pesticide 2,4-D will be addressed in the next Code revision. It is likely that it will be classified as a restricted use pesticide in higher concentrations and use restrictions may also be applied.

COMMENT: Diazinon has been banned in some jurisdictions on golf courses and sod farms. The Department should consider banning it on these areas as well as on lawns.

RESPONSE: The Department is considering this for its upcoming Code revision. At this time, it is likely any proposal will include bans on golf courses and sod farms with a limited ban on lawn areas.

#### N.J.A.C. 7:30-6 Commercial Pesticide Applicators

COMMENT: Four comments received strongly recommended that everyone who applies pesticides commercially or to an agricultural commodity be certified.

RESPONSE: The Department is currently in the process of reviewing the effectiveness of the operator certification program. In accordance with a Pesticide Control Council recommendation, a confidential survey is being prepared. The result of this survey will help the Department evaluate the adequacy of the program. Additionally, enforcement statistics are being compiled and a profile developed to further assist in evaluating this issue.

#### N.J.A.C. 7:30-9 Pesticide Exposure

COMMENT: The public should have access to application records and complaints especially in the case of chemically sensitive persons.

RESPONSE: Department records are available upon specific request to the full extent of the New Jersey Public Records Law, N.J.S.A. 47:1A et seq.

COMMENT: The Department should require justification for gypsy moth control efforts based on criteria established by the New Jersey Department of Agriculture and should consider requiring permits for gypsy moth control.

RESPONSE: The Department presently has a committee studying gypsy moth control including these concerns. Based on the committee's findings, the Department will take appropriate action.

COMMENT: The Department should set up criteria to determine when control of mosquitos is necessary in order to avoid needless and duplicative pesticide applications.

RESPONSE: This is being studied by the New Jersey Mosquito Control Commission and the Department's Office of Mosquito Control. When this study is complete, the Department will take appropriate action.

COMMENT: The Department should establish re-entry intervals or other special requirements for all pesticide products that EPA has found to pose a risk of cancer, birth defects, reproductive effects and other adverse chronic effects.

RESPONSE: The mechanism for enforcing re-entry requirements is already in the Code at N.J.A.C. 7:30-9.10. The Department will place further restrictions and re-entry requirements as further information becomes available.

COMMENT: The Department should encourage State agencies such as the Department of Transportation and mosquito commissions to adopt use of alternatives to pesticides.

RESPONSE: The Department concurs with this comment not only for State agencies, but for commercial sprayers as well. In this light, the present certification program encourages limiting the use of pesticides and implementing alternatives when possible.

COMMENT: The Department should require government agencies such as the New Jersey Department of Transportation to write an impact statement evaluating the health and environmental effects of the pesticides they propose to use and to discuss alternatives.

RESPONSE: The Department considers this a good concept and it will be considered for a future Code revision.

COMMENT: The Department should require use of only the least hazardous pesticide known.

RESPONSE: Use levels are established for each pesticide by the EPA based on determinations of what is safe for each. If it is determined there is no alternative to the use of a pesticide, the use level established by EPA assures that any pesticide used will not threaten health or safety. Additionally, application of the more toxic pesticides must be under the supervision of certified applicators.

COMMENT: The Department should make no special provision for re-entry with protective clothing unless positive scientific evidence proves it is effective.

RESPONSE: The Department currently enforces re-entry and protective clothing requirements stated on the product label pursuant to the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.A. §§135 et seq. The Department accepts the results of the studies indicating that use of proper protective clothing is effective.

COMMENT: The Department should establish a State-run monitoring program to determine levels of pesticides in the State's drinking water and agricultural crops.

RESPONSE: The Department currently monitors the State's drinking water supplies through the Bureau of Safe Drinking Water in the Division of Water Resources. Sampling for pesticide residues in agricultural crops is conducted concurrently by the Department and the Federal Food and Drug Administration.

COMMENT: The Department should require notification prior to pesticide applications on lawns, to trees, in hotels, restaurants, hospitals, etc. to minimize exposure.

COMMENT: Individuals in multiple family residences should be notified in writing and notices posted prior to a pesticide application.

COMMENT: Workers in institutional, commercial and public buildings need to be informed of pesticide use in their buildings.

COMMENT: Where pesticides are applied on a routine schedule, the periodic nature of the application should be indicated on posted notices.

COMMENT: The use of newspapers to notify a community of area wide spraying may be inadequate. In addition, where non-English speaking persons are involved, the appropriate language should be used.

RESPONSE: The notification issue will be addressed in the extensive additions to the Code which the Department intends to propose in the

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first half of 1988. The Department is committed to upgrading the Code with workable and enforceable alternatives which will further the program's objectives as they become available.

COMMENT: Information on inert ingredients should be provided through the notification process.

RESPONSE: At this time, information on inert ingredients is limited. The EPA is in the process of addressing this issue. As further information becomes available, the Department will take appropriate action.

COMMENT: Consumers should be provided with two sources of health information, one for emergency situations and one for general health information.

RESPONSE: The Department agrees with this comment and will address this in proposed amendments to the Code which should appear in the first half of 1988.

**N.J.A.C. 7:30-10 Pesticide Use**

COMMENT: The Department should obtain any records of complaints involving pesticide use from the New Jersey Department of Agriculture, Department of Health and other sources such as mosquito commissions.

RESPONSE: This is currently being done and will be computerized in the near future.

COMMENT: When information is requested from the Department relating to alleged violations, the request must be in writing. There should be an easier way to obtain information.

RESPONSE: General information can be provided over the phone. When more detailed information is required on specific cases, Department directives require that a written request be made in order to ensure efficient records protection, handling, and review.

COMMENT: Chemical manufacturers should be required to pay a surcharge if their products are found in groundwater in excess of State standards.

RESPONSE: Currently for the majority of pesticides, data is limited as to acceptable levels in groundwater. As data becomes more complete, the Department will consider this suggestion further.

COMMENT: The Department should forbid the application of termiticide and other pesticides during regular school hours within a school building.

RESPONSE: The Department agrees with this comment. This issue will be addressed in proposed amendments to the Code which should appear in the first half of 1988.

COMMENT: The Department should conduct a thorough evaluation of any pesticide for which preliminary data indicate that the pesticide, as presently used, will cause or tend to cause adverse effects on persons or the environment.

RESPONSE: The Department is presently reviewing products as information is received which indicates that current uses may cause or tend to cause adverse effects on people or the environment. In those cases where the Department determines adverse effects do occur, rules will be developed to address use restrictions as was done with chlordane in 1985.

COMMENT: The Department should ban aerial application of chemical pesticides on non-agricultural lands. Another commenter suggested that aerial application be limited to emergency infestations until further research proving its safety can be done.

RESPONSE: Proper aerial application of pesticides may be one of the safest methods of application. Generally less pesticide is required which reduces the exposure to the applicator and persons in the spray area. In addition, there are currently stringent rules in effect regarding aerial applications.

COMMENT: The homeowner contracting for a lawn or ornamental application should clearly mark the boundaries of the property to avoid accidental application on adjacent property.

RESPONSE: This is currently addressed in the Code at N.J.A.C. 7:30-10.3(d). It is the responsibility of the applicator to determine the boundaries of the area to be treated.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:30.

**HEALTH**

**HOSPITAL REIMBURSEMENT**

**(a)**

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

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

Proposed: July 6, 1987 at 19 N.J.R. 1145(a).

Adopted: December 10, 1987 by Molly Joel Coye, M.D., M.P.H.,  
Commissioner, Department of Health (with approval of the  
Health Care Administration Board).

Filed: December 11, 1987 as R.1988 d.24, with changes not in  
violation of N.J.A.C. 1:30-4.3.

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

Effective Date: January 4, 1988.

Expiration Date: October 15, 1990.

NOTE: Hospitals were notified by the Department of Health by written memorandum dated October 13, 1987 of their ability to elect either Option 1 or Option 2 reimbursement in accordance with the Health Care Administration Board's adoption of N.J.A.C. 8:31B-3.27(a)1v. on October 1, 1987.

**Summary of Public Comments and Agency Responses:**

COMMENT: Volume variable unit pricing for new capital reimbursement will apply to hospitals' entire Capital Facilities Allowance (CFA), thereby reclassifying existing debt (old capital) and placing it, as new capital, at risk. Blending old capital with new capital may provide a disincentive to pursue new projects even when appropriate. Existing capital commitments, which were undertaken under different regulatory requirements (and with the imprimatur of the Hospital Rate Setting Commission via "Comfort Letters") and market conditions, should not be placed at risk. This may negatively affect the credit quality of New Jersey hospitals by disrupting the trust the lending community has in the Chapter 83 System's ability and willingness to channel capital reimbursement funds to acute care hospitals. Therefore, only new capital commitments should be subjected to volume-variable unit price reimbursement while existing debt continues to be reimbursed under Option 1 or Option 2.

**RESPONDENTS:**

- Community Memorial Hospital
- Cooper Hospital/University Medical Center
- Department of the Public Advocate
- First Boston
- General Hospital Center at Passaic
- Hackensack Medical Center
- Hospital Center at Orange
- Healthcare Financial Management Association
- Kaden and Arnone, Inc.
- Muhlenberg Regional Medical Center, Inc.
- Our Lady of Lourdes
- Shearson Lehman Brothers
- Somerset Medical Center
- Wayne General Hospital
- West Jersey Health System
- Besler and Company
- Cathedral Healthcare System
- East Orange General Hospital
- Elizabeth General Medical Center
- Hackettstown Community Hospital
- Saint Joseph's Hospital
- Zurbrugg Memorial Hospitals
- Health Insurance Association
- Blue Cross/Blue Shield
- Community Memorial Hospital
- Health Care Financial Management Association
- Hospital Center at Orange
- Saint Francis Medical Center
- Kennedy Memorial Hospitals

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Dover General Hospital  
 Peat, Marwick, Main and Company  
 Riverview Medical Center  
 New Jersey Hospital Association  
 Jersey City Medical Center  
 Bayonne Hospital  
 Deborah Heart and Lung Center  
 UMDNJ/University Hospital  
 Newark Beth Israel Medical Center  
 Chilton Memorial Hospital

**RESPONSE:** The Department recognizes that the proposal to place all (both existing and new CFA) reimbursement on the volume-variable unit price system, with the advent of a batch Certificate of Need (CN) approval, will subject existing debt commitments to the at risk payment approach. This follows the purpose of this proposal to assure that capital investment is undertaken with the advance understanding that all capital reimbursement can no longer be a pass-through. However, in order to protect existing debt, the Department has made a change on adoption so that payments will be provided to hospitals (which are placed on unit priced payments) for capital facilities which are no less than Principal and Interest amounts incurred as of December 31, 1987.

**COMMENT:** Refinancing debt should not cause hospitals to be subject to the capital cost limitation or trigger volume variable unit price reimbursement.

**RESPONSE:** The Department concurs with the concept that "pure" refinancing of existing debt (likely undertaken to take advantage of market opportunities) will not trigger unit price reimbursement. However, where refinancing is combined with a "new capital" project of Batch eligible size, the Department does not consider this a "pure" refinancing and the unit price limitation and volume-sensitive method of reimbursement will be applied.

**COMMENT:** Volume-variable reimbursement will reward hospitals with increasing volume; hospitals already operating at high volumes have little upside potential and great downside potential. Large facilities will capture additional capital dollars which may penalize smaller facilities.

**RESPONSE:** Hospitals with increasing volume will attract increased capital funds to pay for debt. The Department agrees with the portion of this comment which notes that hospitals with increasing volume will be rewarded and smaller hospitals may have less access to or leverage in capital markets. However, these are expected results of the proposed regulations, which are believed to be, on balance, a method for promoting efficiency and funneling capital reimbursement to growing institutions. Hospitals "at the margin" are afforded the opportunity to undertake capital expansion; but only where this is feasible, based on growing volume. Smaller facilities generally have reduced access to capital markets due to a lower revenue base and less ability to diversify; this is not affected by the revised capital reimbursement approach. Those hospitals with decreasing volumes are encouraged to consider alternatives such as merger, consolidation or affiliation.

**COMMENT:** The unit cost/price of capital, as calculated, is not clearly related to hospitals' capital requirements. The "maximum statewide standard" was calculated using hospitals with various plant ages, case-mixes, peers, lengths of stay, service area population needs and project needs. Older debt/facilities reduce the average because new building projects are more costly. The Department's calculation confounds new capital with old capital and a calculation that adjusts for these variables, or "equalizes" new and old capital, is needed. The method for developing the limit should be thoroughly reviewed.

**RESPONSE:** The statewide standard places a unit price limit on reimbursement. The limit was calculated by dividing total 1986 CFA by total 1985 Adjusted Admissions. The resulting value, \$275 per Adjusted Admission, is a mean value for all Chapter 83 hospitals. Its utility can be evaluated on the basis that all but one of the October 15, 1986 Batch hospitals were able to meet this test.

Each hospital's CFA per Adjusted Admission was also calculated; the range of hospital specific values is from \$1138 to \$41. Several analyses of hospital-specific unit costs of capital were performed which show:

1. **Peer Groupings** (by teaching status) are about equally affected by the limitation—44/90 (49%) hospitals exceed the limit; 9/20 (45%) are Major Teaching; 7/14 (50%) are Minor Teaching; and 28/56 (50%) are Non Teaching.

2. **Medicare Case-Mix Intensity** (as published in the 6/3/86 Federal Register)—largely not correlated with unit cost (R Value = .069)

3. **October 15, 1986 Batch Hospitals** below the limit (including their newly approved amounts) in all but one case.

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Volume variable unit price reimbursement should not affect hospitals until 1989 or later (this includes the 1986 Batch hospitals which already fall within the proposal once it's approved).

Finally, the department plans to review and refine, where appropriate, the method used to calculate the statewide price limitation for existing and future capital facilities indebtedness using various factors, including billing and case-mix, before the next CN Batch.

**COMMENT:** The proposed \$275 statewide limitation is excessive because it is based on current reimbursement which is already too high.

**RESPONSE:** The Department acknowledges that past approval decisions and costs of capital resulted in CFA payments which amount to about 10 percent of total system operating costs in 1985-1986. This level can be reduced and reallocated to hospitals with growing volumes under the provisions in the revised regulatory proposal.

Setting limits based on normative standards was considered and rejected as too complex and controversial. Future changes to the statewide standard limit may use normative modeling elements.

On balance, given the higher costs of newer construction coupled with lower interest rates available in current markets, the Department believes the \$275 limitation, as calculated, is a reasonable starting point.

**COMMENT:** The per-admission limit on capital reimbursement may result in cost-shifting from Medicare to the private sector because Medicare patients have longer lengths of stay and consume more resources. A flat-rate add-on to a DRG rate may cause the patient's bill to be higher than the charges generated. It is recommended this add-on occur through the Mark-Up factor. Individual case add-on for capital is too complex (mechanically and procedurally) and it is recommended that the Mark-Up factor be used for payment.

**RESPONSE:** Case-mix differences as well as billing concerns will be addressed by implementing the per-admission reimbursement through the percentage-based Mark-Up factor and subsequently reconciling hospitals to the per-case amount. As noted above, case-mix will be examined during 1988.

**COMMENT:** Capital costs do not vary with volume. It is inappropriate to use adjusted admissions as a unit cost/price basis for capital reimbursement or for limiting capital expenditures or reimbursement for these expenditures.

**RESPONSE:** The Department believes unit price volume-variable reimbursement is relevant to capital payments to hospitals with increasing volume. Decisions on new capital investments should be made with realistic expectations about the volumes which will be generated.

**COMMENT:** Volume variable reimbursement will encourage expansion of high volume inpatient services regardless of need. Inpatient modalities will be encouraged rather than outpatient and other lower cost modalities.

**RESPONSE:** Incentives which encourage using inpatient services are now balanced by for example, controls (PRO review activities) to assure that only necessary services are used. Case based reimbursement encouragement of inpatient services is already present in the Chapter 83 system; Direct Patient Care reimbursement amounting to over half of hospitals' total reimbursement, statewide. Capital expenditures, in contrast, represent about 10 percent of total expenditures. While some additional positive pressure is placed on using inpatient services; it will not be material, considering the existing incentives and the controls which are already in place.

**COMMENT:** Requiring hospitals to choose either Option 1 or 2 for all future CFA calculations rather than the customary higher of the two options extinguishes a source of cash for institutions which are already "cash poor". Hospitals should therefore continue to have the ability to change reimbursement options.

**RESPONSE:** The Department agrees that an improper source of operating cash may be extinguished; this result is consistent with the goals of the revised regulatory proposal. Hospitals which are receiving reimbursement in excess of debt service needs should be funding depreciation under existing rules.

Hospitals' one time election of reimbursement option will eliminate payments to hospitals in excess of debt service needs over the lifetime of the debt and provide for payments to permit hospitals to meet debt service requirements.

**COMMENT:** The capital reimbursement system adopted should provide rigorous oversight to prevent switching from one option to another. It was never the intent of Chapter 83 to allow switching yet, in practice, changing options occurred.

**RESPONSE:** The Department concurs with this comment and believes enough reporting now occurs from hospitals to the Department to

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monitor and take necessary action in the future when only one CFA reimbursement option is permitted.

COMMENT: Clarification was requested regarding N.J.A.C. 8:31B-3.27(a)lv specifically: the election of CFA options; "designated by the hospital's board"; and regarding the definition of "useful life" as it is applied to old and new debt.

RESPONSE: The hospital's election of options applies to both old and new capital. Each hospital may choose its reimbursement option, which then applies to existing debt reimbursement and will also be used when new projects are undertaken. Useful life refers to the asset life.

It was suggested that governing body ("Board") designation of funds was unnecessary or supernumerary. The Department believes this is a valid part of the governing body's fiduciary responsibility and should not be burdensome. It will remain as part of the revised rules.

COMMENT: N.J.A.C. 8:31B-3.27(a)lii was questioned regarding whether "incurred" debt refers to Certificate of Need (CN) approval, bond issuance date, or date of first repayment. Using August 31, 1986 instead of January 1, 1987 was also questioned.

RESPONSE: For purposes of these rules, "incurred" refers to the effective date of CN approval. Projects less than CN size are considered incurred on the date a contract for construction is executed. Amounts incurred on or before December 31, 1987 (except for the October 15, 1986 Batch) are considered old capital. August 31, 1986 is used to clearly identify the October 15, 1986 Batch as being subject to the proposed volume-variable unit priced payments.

COMMENT: Hospitals should be allowed to switch options when new construction or refinancing occur. Interest expense associated with refinancing and which exceeds the statewide capital limitation should be eligible for reimbursement.

RESPONSE: Changing options after initial election is not anticipated because this has historically been a source of reimbursement in excess of debt service needs. While the Department recognizes that hospitals will find the most favorable choice of options dependent upon present and anticipated debt structure, a one time election remains part of the proposal. The Department believes hospitals operating in a businesslike manner are able to plan and rationally choose the option best suited to their business environment.

Additional expenses incurred to refinance (advance refund or extinguish early) debt will be considered for reimbursement in accordance with a policy formulated and published to the industry on April 30, 1987 by the Commissioner. Methods and guidelines for addressing losses on early extinguishment of debt are in development and should be available in 1988.

COMMENT: The proposed amendments do not address capital leases. Operating leases on capital facilities should be included in Option 2 payments.

RESPONSE: Capital leases, those which meet Generally Accepted Accounting Principles (GAAP) standards for amortization, will be treated as presently required by regulation. Operating leases are permitted reimbursement under Option 1 and capitalized leases are permitted reimbursement under Option 2. No change is requested.

COMMENT: The proposed regulations encourage level debt financing rather than level principal financing. A result will be increasing level debt structuring, which will increase the amount of reimbursement. The system should build in incentives (such as accelerated depreciation) supporting level principal debt structures.

RESPONSE: To the extent that hospitals continue to view reimbursement in excess of debt service costs as "available cash"; this comment may be valid. However, the Department takes the position that these dollars should be appropriately funded. Level principal financing is presently uncommon. The Department believes there remain incentives to pursue level principal financing, namely; the hospital's total debt and cost to the consumer will be reduced; and reduced capital costs will strengthen the hospital's position relative to any per-case capital limitations.

COMMENT: N.J.A.C. 8:31B-3.27(a)li(1), regarding reasonable interest limitations to encourage refinancing of long-term of debt, is not specific enough. Definitions of "reasonable interest expense"; "significant present value savings"; and standards for monitoring and triggering penalties, are vague.

RESPONSE: Standards and operational definitions for monitoring reasonable interest; triggering further review; and HRSC actions, include the following:

1. Saving standard: Five percent Net Present Value (NPV) of the principal amount refundable for the life of the debt.

2. Monitoring standard: The Delphis-Hanover Index for BBB-, 30 year issuances compared to the hospitals' weighted average rate. Hospitals

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consistently exceeding the rate differential which would yield 5 percent NPV savings for 3 monthly observations will be candidates for CFA reductions for the difference amounts.

3. Enforcement: Hospitals will be notified and provided 30 days to respond and demonstrate that refunding is either planned (with a likely implementation date) or not feasible; stating the reasons for non-feasibility.

COMMENT: In the section on refinancing, there is no recognition of the Internal Revenue Code of 1986.

RESPONSE: N.J.A.C. 8:31B-3.27(a)li(1) states that refinancing feasibility will consider "... issuance costs and tax laws." This reference includes the Internal Revenue Code of 1986.

COMMENT: Definition of adjusted admission is necessary. The denominator used for calculation of unit price should maintain a match between calculated costs and billed costs.

RESPONSE: Adjusted Admissions are defined as: Inpatient Admissions (including newborns) times Total Gross Revenue divided by Total Gross Inpatient Revenue. (See also: N.J.A.C. 8:31B-3.24, Footnote 2.) Presumably, this comment refers to maintaining comparability between unit costs as calculated and hospitals' opportunity to bill for such costs. Hospitals will be afforded the opportunity to bill for capital costs associated with non-inpatient services.

COMMENT: Newborns should not be counted as admissions as they artificially bias the proposed reimbursement system toward hospitals with large maternity services.

RESPONSE: This view is related to the comments regarding fixed price reimbursement in the face of different case-mix intensities; normal newborns having low intensity and length of stay. The Department's view is that it is inequitable to eliminate newborns from admission counts. There are other comparably low intensity (to newborns) admissions which are not being excluded.

COMMENT: The regulation should include a timetable of when the capital limitation calculation will be updated. "As needed" provides no incentive for timely revision. Yearly revision was recommended by one commenter and recalculation before the next batch was suggested too. The per-admission capital limit does not take into account a higher cost for new construction. The limit should be indexed forward from the base year calculation using the hospital construction cost index. New projects are more costly. The calculation should not be tied to the Hospital Policy Manual.

RESPONSE: Calculation of the new limit, which will be proposed concomitantly with action on the new Hospital Policy Manual (regulations are anticipated in N.J.A.C. 8:31B-3.27), is now under development and will address these issues.

COMMENT: Adjusted Admissions should recognize case-mix complexity and/or length of stay in per-unit reimbursement. Complex cases may use more resources and tend to have longer lengths of stay. Reimbursement based on admission may adversely affect hospitals with increasing case-mix complexity and may encourage hospitals to avoid complex cases and thereby have a negative impact on access.

RESPONSE: Initial data inspection and modeling does not lend this concept support. The Department will continue to examine whether the per-case capital reimbursement should be modified to include case-mix.

COMMENT: Unit price for capital and indirect reimbursement should apply to both inpatient and outpatient services. It appears that the Department's intent is to have volume variability apply only to inpatient volume. Allocation of capital and indirect costs to the hospital's total volume is essential to provide incentives to render the most appropriate and cost-effective services.

RESPONSE: The Department concurs with this view and has allocated portions of capital reimbursement to both inpatient and outpatient business. Outpatient capital, with the exception of SDS, will be paid as a fixed sum representing an allocation of capital based on the ratio of outpatient revenue to total revenue.

COMMENT: Same Day Surgery (SDS) should be counted as an inpatient admission for reimbursement of unit capital and indirect costs. The criterion for determining an admission should be the generation of a uniform patient bill.

RESPONSE: The Department agrees that new capital payments for SDS cases should be volume-variable. An SDS unit price of capital will be determined.

COMMENT: Concern was expressed that allocation of capital costs will be overwhelmingly to outpatient areas.

RESPONSE: The allocation between inpatient and outpatient areas is now a ratio of inpatient to outpatient revenue. In the future, it may depend on the level of regulation or deregulation applied to these areas.

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COMMENT: It is more appropriate and precise to address the problem of excess capital costs through the CN process rather than reimbursement.

RESPONSE: The Department agrees that strong CN controls are needed; limitations on unit costs are a second tier in assuring that excessive capital formation is avoided. This two-tier approach is necessary, in the Department's view, to avoid excess capital formation with resources which could better serve the public if employed elsewhere.

COMMENT: Capital reform will disrupt the trust that the financial community has in the fairness of Chapter 83. The effect will be a fall in the credit rating of New Jersey hospitals. Inability of the rating services to continue their trust in the State's reimbursement system will lead to a semipermanent decline in the average ratings of New Jersey Hospitals.

RESPONSE: Given proposed rules which will assure reimbursement to existing debt commitments and clearly define the rules for future issuances, the Department disagrees that this view presents a likely outcome of regulation change.

COMMENT: In light of the current excess capacity in the system, the October 15, 1986 CN Batch should be reevaluated to determine its necessity and appropriateness.

RESPONSE: While the Department acknowledges the concern expressed here for system cost and efficiency, the 1986 Batch was approved and committed to during May 1987.

COMMENT: The proposed amendments remove the ability to appeal costs associated with approved CN from the Conditionally Accept option. This allows hospitals to appeal for CN associated costs only by rejecting their rates. The Conditionally Accept option is needed for hospitals to continue to present their cases to the Hospital Rate Setting Commission for a fair decision.

RESPONSE: The intention was to reflect unit price reimbursement in collateral regulations, in this case, in N.J.A.C. 8:31B-3.51(b)2iii, regarding conditionally accepting rates. Too much was, inadvertently, removed from the rules and proposed language has been restored to reflect the collateral rule changes needed in this section. In summary, "conditionally accept" appeals are reserved only for old capital.

COMMENT: Hospitals must be permitted the right to appeal any denied capital costs in any year.

RESPONSE: Appeals for existing debt obligations (old capital) will occur, as has been the case prior to the proposed rule changes. New capital will be reconciled to unit price and volume and is not appealable.

COMMENT: Regulations regarding Early Extinguishment of Debt should be included in the regulatory proposal.

RESPONSE: The Department intends to address each situation individually through the HRSC. The Commissioner's policy framework in the April 30, 1987 memorandum is adequate notice of the Department's intent.

COMMENT: Clarification is requested for planned reconciliation terminology in N.J.A.C. 8:31B-3.73iv. Speedy reconciliations are needed.

RESPONSE: Capital reimbursement will be reconciled as is presently done for old capital. New capital will be reconciled to unit costs times actual units of service provided by hospitals.

COMMENT: System savings of \$10 million are estimated to result from refinancings while previously estimated savings were to be \$43 million.

RESPONSE: Department policy direction is to encourage savings to the system through refinancing wherever possible but not to arbitrarily or preemptively remove funds from the system. Additionally, previous estimates were revised with advice from the Health Care Facilities Financing Authority (HCFFA).

COMMENT: No retroactive adjustments should be allowed to the unit price of capital if the actual volume of admissions differs during the year in which payments are made to hospitals.

RESPONSE: Once calculated, the hospital-specific unit price (to a maximum of the calculated statewide limit) will be applied to admissions for the rate year; reconciliation will be to units of service times the established hospital rate.

COMMENT: The new capital limitation was based on the 1986 CFA for all Chapter 83 hospitals divided by the 1985 adjusted admissions. This calculation is inconsistent. Adjusted admissions for 1986 should be used as the denominator.

RESPONSE: 1986 Adjusted Admissions (which were not available for the initial calculation) are about one percent greater than 1985 Adjusted Admissions. Using 1986 Adjusted Admissions and CFA would reduce the unit cost of capital maximum from \$275 per case to \$272 per case. Because commitments were made (under the October 15, 1986 Batch) at

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\$275 per case, the Department believes equity is best served by retaining the present calculation and limit.

COMMENT: In order to avoid inequities, new capital standards should be established based on all the hospitals in the system, not just the majority of hospitals.

RESPONSE: All Chapter 83 hospitals were included in calculations of hospital specific and statewide capital costs per adjusted admission.

COMMENT: The required funding of 50 percent of the difference between the CFA and the CCR was seen as overly restrictive. Borrowing, repayment and penalty regulations associated with the funded dollars are also too restrictive.

RESPONSE: The Department concurs that a refinement of this amendment is warranted. In lieu of a Statewide 50 percent funding requirement, the Department will substitute a hospital-specific deposit ratio. The deposit ratio will be calculated annually as follows.

(1) Determine the relationship (annual excess or shortfall) between principal requirement and depreciation reimbursement over the life of the debt.

(2) Calculate the sum of the future values (FV) of depreciation reimbursement in excess of principal on the first day of the first shortfall year. Assume a 5.5% compounding rate.

(3) Calculate sum of the present values (PV) of the shortfall on the first day of the first shortfall year. Assume a 5.5% discount rate.

(4) Adjust the PV of the shortfall:

(a) Deduct the PV (on the first day of the first shortfall year) of the depreciation shortfall in the final year if the last payment will be made by the Debt Service Reserve Fund as required by a bond covenant.

(b) Deduct the FV (on the first day of the first shortfall year) of the beginning balance of the Reserve Account.

(5) Divide the result of (4) by the result of (2)

Adjusted SUM (PV shortfall)  
SUM (FV excess)

Annual Reserve Account contributions should be *at least* equal to the product of the depreciation excess and the deposit ratio. Yearly contributions and earned interest shall accumulate in the Reserve Account to be used exclusively to offset the shortfall between principal requirements and depreciation reimbursement.

Dollars not funded in the Reserve Account may be used for other approved purposes. The penalty for under funding in any year will be an increase in the deposit ratio calculated in the subsequent year.

COMMENT: The amendment does not specify that the Plant Fund may be used to offset the shortfall that may occur between principal requirements and depreciation reimbursement.

RESPONSE: The Department intends that Capital Facilities reimbursement be used for debt service, building replacement and major renovations. The proposed amendments do not reflect this intent and will be altered. Funds accumulated in the Reserve Account (see above) are to be used exclusively for the repayment of debt during years when depreciation reimbursement falls short of principal repayment requirements. The deposit ratio provides that the *exact* amount needed for this purpose be set aside during years when depreciation reimbursement is in excess of principal requirements. Funds not deposited in the Reserve Account are available for other approved uses.

COMMENT: The Department proposed new capital regulations a year ago in reaction to Federal proposals to include capital costs in the PPS rates. The federal government is postponing the phase-in of case rates for capital until 1991, at the earliest. Thus, instituting per-case amounts in New Jersey at this time is not as critical as before.

RESPONSE: Federal plans are only part of the rationale for addressing efficient capital formation and reimbursement. Additionally, revisions affecting new capital will only begin having an impact in 1989 or later.

#### Summary of Changes Made Between Proposal and Adoption:

The changes made are in two general areas, required deposit ratios and appeal provisions.

The Department has changed the fixed ratio of 50 percent to a net funding formula which would allow for individual differences and more accurately reflect hospital-specific needs.

Department tests of the net funding formula indicate that the industry-wide effect will be the same; therefore, the changes are not substantive. The models used by the Department have been shared with members of the regulated group and with the Health Care Facilities Financing Agency and have been determined to be reasonable.

The change at N.J.A.C. 8:31B-3.27(a)1vii(1)(C) clarifies that the Capital Facilities debts incurred prior to December 31, 1987 will be reimbursed.

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The change at N.J.A.C. 8:31B-3.51(b)2iii was made in response to comments to restore appeal provisions previously in the Code which were inadvertently removed by the proposal.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisk **\*[thus]\***).

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

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

(c) The Preliminary Cost Base shall include a Capital Facilities Allowance as defined in N.J.A.C. 8:31B-3.27.

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

8:31B-3.17 Financial elements reporting audit adjustments

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

1.-2. (No change.)

3. Capital Facilities Allowance: Capital cash requirements (as defined in N.J.A.C. 8:31B-3.27 and 8:31B-4.42).

4. (No change.)

(b) (No change.)

8:31B-3.27 Capital Facilities

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

1. Building and fixed equipment:

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

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

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

iii. (No change in text.)

iv. (No change in text.)

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

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

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

vi. For either option, a hospital must annually fund **\*an amount equal to\*** at least **\*the product of the depreciation excess and the deposit ratio at the defined compounding rate established by the Department used to calculate present values. These yearly contributions plus earned interest shall accumulate to be used exclusively to offset the shortfall between CFA reimbursement and Capital Cash Requirements (CCR) in later years of debt service.\*** **\*[50 percent of the difference between the CFA and its Capital Cash Requirements, plus earnings on previous year's contributions,]\*** **\*The deposits will be accumulated as a separate balance subject to audit\*** in the Plant Fund (as defined in N.J.A.C. 8:31B-4.16(a)2). A penalty of 10 percent of the amount not funded (the difference between required accumulated funding with fund earnings and actual funding) will be assessed against the hospital. Each year a hospital may spend up to **\*[50 percent of the maximum annual]\*** **\*the\* difference between \*the\* CFA and Capital Cash Requirements \*less the required deposit ratio\*** for permitted purposes (as defined in N.J.A.C. 8:31B-4.42(a)2) or may borrow against the Plant Fund up to **\*[the 50 percent annual]\*** **\*this\*** level for any lawful purpose, provided that: such loans made against the Plant Fund are repaid with interest within one year of borrowing; and such borrowings do not reduce the accumulated balance of deposits plus earnings in the Plant Fund. Expenditures above the **\*[50 percent]\*** **\*required deposit\*** level are permitted only for major plant replacement with an approved Certificate of Need or for needs related to: mergers; consolidations; conversions; or closures as defined in N.J.A.C. 8:31B-4.42(a)3.

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

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

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

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

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

(C) Hospitals will be reimbursed the Capital Facilities Allowance per Adjusted Admission for each event of inpatient care billed for on the Uniform Bill—Patient Summary (UB-PS) **\*except that hospitals will be reimbursed total CFA amounts which are not less than their approved actual Principal and Interest amounts incurred through December 31, 1987 and adjusted by actual annual revisions to the 1987 amount thereafter\***.

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

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

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

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

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

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

2. (No change.)

#### 8:31B-3.51 Notification appeal and review

(a) (No change.)

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

1. (No change.)

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

i.-ii. (No change.)

**\*iii. Approved certificates of need which are defined as capital and patient care costs arising from projects for which a certificate of need has been granted; except for certificate of need projects approved on or after September 1, 1986 which will only be appealable in accordance with N.J.A.C. 8:31B-3.27(a)1.vii. Adjustments in Patient Care Costs in excess of that which would otherwise be deemed reasonable under N.J.A.C. 8:31B-3.20 through 3.36 shall be permitted by the Commissioner acting under this Section only when:**

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

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

**Note: In evaluating appeals, for (b)2iii above the Commission shall give emphasis to any cost savings projected by the hospital in its application for such a Certificate of Need to any existing debt obligations on existing equipment.\***

iv. (No change in text.)

3. (No change.)

#### 8:31B-3.55 Capital facilities

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

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

#### 8:31B-3.73 Reconciliation: Hospitals

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

1. Variable financial elements:

i.-iii. (No change.)

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

2. Fixed financial elements:

i. (No change.)

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

3.-4. (No change.)

#### 8:31B-4.42 Capital facilities'

(a) Buildings and Fixed Equipment:

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

2.-3. (No change.)

'(Footnote) (No change.)

(a)

### Procedural and Methodological Regulations

#### Adopted Amendments: N.J.A.C. 8:31B-3.24, 3.51, 3.71, 3.73

Proposed: July 6, 1987 at 19 N.J.R. 1147(a).

Adopted: December 10, 1987 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Filed: December 11, 1987 as R.1988 d.25, with substantive changes not in violation of N.J.A.C. 1:30-4.3.

Authority: N.J.S.A. 26:24-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: January 4, 1988.

Expiration Date: October 15, 1990.

#### Summary of Public Comments and Agency Responses:

Comments were received from the following:

East Orange Medical Center, Robert Wood Johnson, Deborah Medical Center, Public Advocate, Our Lady of Lourdes Medical Center, Blue Cross, Alexian Brothers Medical Center, Helene Fuld Medical Center, Health Insurance Association of America, Bridgeton Hospital, St. Francis Medical Center (T), Muhlenberg Regional Medical Center, New Jersey Hospital Association, Newark Beth Israel Medical Center, Kaden and Arnone, Besler & Co., Hospital Financial Managers Association, KPMG Peat Marwick, Jersey City Medical Center, Dover General Hospital, Healthcare Financial Management Association, Zurbugg Memorial Hospital, Hackettstown Community Hospital, Wayne General Hospital, Healthcare Corporation of the Archdiocese of Newark, Somerset Medical Center, Passaic General, Ernst and Whinney, Cathedral Health Care System, Elizabeth General Medical Center, Northern Ocean Health Systems, Hackensack Medical Center, Kennedy Memorial, Cooper Medical Center, Hospital Center at Orange, St. Joseph's Hospital, Riverview

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Medical Center, Bayonne Hospital, Chilton Memorial Hospital, Valley Hospital, University of Medicine and Dentistry of New Jersey, West Jersey Health System.

**COMMENT:** Same Day Surgery and Outpatient Volume Variability  
Same Day Surgery (SDS) cases are comparable to inpatient admissions. In order to encourage the increase of Same Day Surgery, those cases should be treated as inpatient cases in the calculation of adjusted admissions and subject to volume variability. Indirect costs associated with other outpatient services should also be volume variable.

**RESPONSE:** Outpatient/SDS Volume Variability

The Department of Health agrees that SDS should be volume variable. Appropriate and efficient inpatient resource consumption (both direct and indirect costs) should be encouraged not discouraged. Notwithstanding the corresponding arguments about occupancy and case mix intensity that is, SDS represents lower case mix, indirect costs associated with SDS should be made volume variable because SDS replaces other less cost effective inpatient stays.

Outpatient services, for example, clinic, emergency room and private referrals are not substitutes for inpatient services. The current, fixed reimbursement of outpatient indirect costs should be continued. Hospitals may appeal for additional costs if a hospital expands its present services.

Outpatient reimbursement reform, including possible deregulation, will be studied more closely during 1988. The Department of Health will be developing outpatient regulation changes in concert with inpatient, direct patient care rate setting reform.

The Department used adjusted admissions in order to allocate indirect costs between inpatients and outpatients instead of using the percentage of inpatient and outpatient revenue. Both formulas result in identical allocations of indirect costs. Adjusted Admissions is a more convenient alternative if the Department wanted to model the effect of changes in case mix or admissions statistics. Unfortunately, some commenters have inferred that the use of adjusted admissions was intended to make outpatient volume variable. That was, in fact, an incorrect inference.

SDS will be reconciled to a flat amount per discharge. The amount will be equal to the proportion of outpatient indirect costs which can be attributed to SDS. SDS admissions will not be included in the calculation of adjusted admissions.

**COMMENT:** Billing a flat amount per admission regardless of the DRG price will result in an inequitable distribution of indirect costs among payers and, may result in increase in patient appeals.

As a remedy, indirect costs should be billed as a prorated amount, based on direct patient care costs.

**RESPONSE:** The Department of Health agrees that, absent some mechanism to allocate indirect costs proportionately to each DRG, payers using different levels of direct costs may pay disproportionate amounts of indirect costs. However, once such a sophisticated formula is developed, payers currently paying for indirect costs as a percentage of direct costs may incur increasing obligations for those indirect costs which do not vary with intensity of services. Until then, the Department of Health proposes that reasonable indirect costs be allocated as a percentage of direct patient care costs but that the hospitals be reconciled to a flat amount per discharge.

**COMMENT:** Recognize case mix in determining adjusted admissions

Certain indirect costs are a function of intensity. A hospital with a difficult case mix may use more utilities and have fewer patients occupy more bed days that is, longer LOS. More complex services, such as cardiac surgery, require more personnel, for example, specialized purchasing personnel. Due to relatively longer lengths of stay, the hospital with higher intensity would have fewer admissions than would a hospital which generates more volume by concentrating on low intensity care. Same Day Surgery (SDS), and newborn deliveries (generates two low length of stay bills for mother and baby).

Therefore, a unit cost comparison is not a fair measure of indirect cost efficiency. The unit cost could be improved by adjusting the base year volume for intensity that is, credit higher intensity cases with 1.5 adjusted admissions per admission if the hospital's base year intensity is 1.5 times greater than the peer group average.

**RESPONSE:** Case Mix Intensity

The Department of Health has not noted a high correlation between a hospital's case mix and the extent to which the hospital's unit cost exceeds or falls below the mean or standard. The Department will continue to study this issue before any further movement to full standard pricing. At present, however, there are sufficient protections against case mix differences. These protections include: 1) the two percent corridor will limit loss or gain; 2) the hospital's own costs will make up 75 percent

of the payment rate; 3) the hospitals are grouped by peer groups which reflect similar case-mix; 4) specialty hospitals may apply to have a unit cost based totally on their own approved costs.

**COMMENT:** Hospital Size and Age of Plant

The size and age of the physical plant makes comparisons among hospitals unfair. A larger hospital has an advantage because most indirect costs do not increase steadily with volume. See the comments of Alexian hospital and the Public Advocate for a more detailed analysis. Also, age of the plant affects certain maintenance costs which are beyond management controls.

**RESPONSE:** The Department of Health has not had time to perform an in-depth analysis in order to support or refute this claim. If, however, a hospital with a low number of adjusted admissions cannot be competitive due to diseconomies of scale, then it is appropriate for such a hospital to consider a merger or conversion. Provided a hospital's plant size is appropriate for the population it provides access to, losses due to diseconomies of scale may adversely impact on a necessary and otherwise efficient provider. Perhaps a size allowance can be built into a standard when hospitals are paid based on a larger percentage of standard.

**COMMENT:** Hospital Location

Inner city hospitals incur higher security and patient social service costs which are not comparable with other hospitals. Rural hospitals suffer from diseconomies of scale which result from relatively low adjusted admissions and, therefore, higher unit costs.

**RESPONSE:** Hospital Location

The Department of Health recognizes that these differences may affect indirect costs. It is unclear as to the extent of these differences. No commenter provided sufficient information to substantiate this point. Further review is necessary as part of the refinement of the standard indirect unit cost methodology. It should be noted, however, that some inner city hospitals would gain reimbursement through the proposed methodology.

**COMMENT:** Calculation of Adjusted Admissions

The comments vary widely on this point. Naturally, hospitals with low case mix, having newborns and Same Day Surgery (SDS) as a significant portion of the hospitals' admissions will argue to include those in the calculation and payment of a unit cost. On the other extreme, hospitals with few or no newborns, SDS or even outpatient care will argue that the standard unit cost has been diluted by those low cost cases and will result in an underpayment. Refer to comments from St. Joseph's Hospital.

**RESPONSE:** Use of Adjusted Admissions

One of the goals of reimbursement reform was to allocate indirect costs to the DRGs and outpatient services in order to develop an all inclusive (direct, indirect and capital) rate and to allow for a competitive market environment. The use of adjusted admissions to develop a reimbursement rate per admission was considered the best way to move away from a regulatory environment which supported underutilized providers at the expense of properly utilized providers. The Department is waiting for a study of outpatient indirect costs which was initiated by a subcommittee of the Hospital Association. This and other studies of cost allocation will be considered in future rate reform proposals.

Presently, the only means of comparing indirect costs among hospitals was by comparing the cost per adjusted admission. Given the eventual movement to an all inclusive rate per case (direct, indirect and capital), it is reasonable to compare hospitals using adjusted admissions because volume changes will be based upon increases/decreases in adjusted admissions.

**COMMENT:** Volume Variability of Indirect Costs

Studies by Colin R. Goodall for Alexian Brothers Medical Center and J. Joel May (the Pennington Group) for the Office of the Public Advocate, study the relationship of volume and cost. Mr. May states that "the fundamental assumption that high occupancy is inversely related to low cost is weak generally" and that "some costs vary directly with volume (for example, patient care coordination), some vary not at all . . . for example, utilities, and some vary in "steps (for example, salaries)." Dr. Goodall's report concludes that only UTC (utilities) and PCC (patient care coordination) are volume variable. Unit costs in the remaining four cost centers: A&G, FIS, PLT, OGS decrease as admissions increase. Comments from Alexian Brothers Medical Center noted that the proposed methodology is "discriminatory" in that the unit cost is calculated using a weighted average unit cost that is, total cost divided by total admissions. Instead, the hospital suggests calculating each hospital's unit cost, summing the unit costs and dividing by the number of hospitals that is, the mean of the means.

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Mr. May also concludes that "some positive savings in revenue will be tantamount to windfalls." Conversely, "some negative swings in revenue may spell disaster for affected hospitals." Because certain costs are not volume variable, hospitals with low costs and declining occupancy will be eliminated. May and several other commenters basically oppose the inclusion of all of the proposed cost centers as part of a fully volume variable methodology.

**RESPONSE: Volume Variability**

The data indicate that, in general, hospitals with high occupancy will gain with the standard, volume variable indirect cost rate and, in general, low occupancy results in a loss of indirect reimbursement. Hospitals which lose reimbursement must respond by increasing volume, reducing cost, merging with other hospitals and/or downsizing the facility by converting excess capacity to alternate non-acute care, for example, physician office space, etc.

The purpose of a volume variable system is to encourage a system wide reduction in excess capacity and discourage high unit costs (inefficiencies).

**COMMENT: Actual costs versus approved cost.**

The Alexian report noted that all hospitals have actual costs per adjusted admission in excess of approved costs based upon 1985 data. Therefore, they conclude that actual costs should be used if a standard unit cost is to be used. The standard is a screening of already screened costs. A&G/FIS and PCC cost centers were (separately) screened using base year adjusted admissions to calculate a unit cost which was ranked and costs in excess of 110 percent of the median were eliminated. PLT was screened (statewide grouping) using square feet. UTC and OGS were not screened.

**RESPONSE:** The Department is revising its data to include 1986 approved costs and 1986 volume. As of this date, all hospitals' 1986 indirect cost appeals have not been approved by the Commission. The Department will impute the dollar value, on a cost center basis, for all appeals which are not final. The standard rate will represent a reasonable amount of 1986 costs. The hospital-specific portion will be revised to include Commission-approved costs when they become final. Use of actual 1986 costs was discussed, at length, and rejected because the resulting rates would reflect costs which the Commission has not approved. The standard variable unit cost was a further refinement to the current rate setting process intended to support efficient and well utilized hospitals and remove the fixed ("propping up") reimbursement of underutilized or inefficient providers.

The inclusion of Commission-approved indirect appeals as of 1986 should be adequate to address any bona fide costs in excess of the base year (in 1982 dollars) increased by an economic factor. In addition, the Department will continue to recognize legal appeals which may apply either statewide or to isolated groups of hospitals.

**COMMENT: Critique of the 1988 corridor of Two Percent (2%) of the Preliminary Cost Base (PCB)**

The above commenters suggest a smaller corridor than two percent of the PCB, using a lower percentage and/or a percentage of indirect costs only. Bridgeton asks that the hospitals be protected for volume changes through 1988.

Other commenters (Valley Hospital, HIAA) argue to eliminate the corridor and allow for the full impact of the indirect rate.

**RESPONSE:** A variety of comments stem from a misunderstanding about the two percent corridor. The purpose of the corridor was to limit the gains or losses which are calculated at the inception of the unit cost methodology. Any change in volume between the base year (1986) and the rate year 1988 which results in additional losses may be appealed (8:31B-3.24(b)6), subject to a statewide appeals budget. On a statewide basis, the amounts subject to this appeal are not estimated to be substantial. The Department agrees that these appeals may not be resolved prior to January 1, 1989, but would point out that an appeal based on 1988 data could not be resolved until the data is available from all affected hospitals.

Many proponents of indirect volume variability envisioned no corridor, no appeals, and the use of an even earlier base year volume. This was an attempt to remove the props which have supported inefficient hospitals over the last six or seven years under Chapter 83.

The adoption acknowledges the need for a more reasonable starting point for introducing and phasing in a new reimbursement methodology. In short, there have been compromises in the development of this new methodology. These have been shown as changes on adoption.

A corridor (two percent of the PCB) was one compromise suggested by the NJHA to the methodology which would ease the transition to a full volume variable standard. The Department has selected the Septem-

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ber 1987 Preliminary Cost Base (PCB) of each hospital in calculating indirect unit rates with a corridor.

**COMMENT: Operating Margin**

The regulations are too vague with regard to the calculation and implementation of an operating margin. Some commenters suggest a margin comparable to insurance or other utility companies.

Other comments suggest a gradual phase in of an operating margin in concert with the phase in of standard cost.

The New Jersey Business Group on Health (NJBGH) and the Health Insurance Association of America (HIAA) are opposed to a guaranteed margin. They suggest that the rates be adequate to allow a hospital to generate an improved operating margin and that certain costs which are a pass through, such as bad debt, be restricted in recognition of a margin to cover those costs.

The Office of the Public Advocate strongly opposes an operating margin, citing a provision for hospitals to receive one percent of Direct Patient Care revenue if the hospital accepts its rates. They list the amount of one percent accept dollars in their comments. They further state that the regulation is "impermissively vague".

**RESPONSE: Operating Margin**

The issue of an operating margin has been discussed during several Joint Hospital Payer Task Force meetings. The Department is committed to the development of reasonable standard price which, when fully implemented, would include a component for an operating margin. To demonstrate a good faith commitment, the Department has included a reference to a future operating margin component in the adoption. However, a more specific calculation cannot be provided until the Department develops the methodology in conjunction with the Hospital Payer Task Force.

**COMMENT: Appeals Process**

Most commenters agree that statewide or generic appeals should be permitted in order to recognize changes in the health care system which are not addressed in the standard.

Several commenters (Bridgeton, Health Insurance Association of America, Elizabeth General) request that a provision be made to allow for mergers. Mergers would be one form of a hospital(s) response to reductions in indirect cost reimbursement. Since mergers do not realize savings immediately, a provision could be made to relieve a hospital from all or part of the lost indirect cost reimbursement during the start-up period.

Many commenters suggest that the rates should be appealable because many of the indirect costs are not homogeneous. One commenter suggested appeals of the standard in the first year only. The Public Advocate suggests only appeals where access is an issue for example, rural, inner city.

**RESPONSE: Appeals Process**

The Joint Hospital/Payer Task Force and the Department of Health have agreed that the system needs more prospective rates which are not burdened by an appeals process. The movement to a standard, volume variable unit cost would take the place of a fixed indirect cost reimbursement.

The introduction of a peer group standard unit cost and appeals of new or existing costs would further complicate and slow the system. In lieu of an appeals process on the standard, a corridor to protect hospitals from large increases or decreases is provided. It is hoped that further refinements to the 1989 standard would address any measurable and reasonable differences in indirect costs which may not be addressed through the current methodology.

Generic or statewide appeals which represent legal changes requiring a hospital to increase its indirect costs will be permitted for both the hospital specific and peer group standard unit cost where all hospitals are affected.

**COMMENT: Peer Grouping**

Core teaching hospital costs are spread to other teaching hospitals, therefore, the core hospitals receive less than reasonable cost to provide certain indirect costs which are unique.

Teaching status of hospitals, for the most part, does not explain indirect cost differences. Two peer groups—Inner City and all others should be used (Besler & Co.).

Inner city hospitals serve a unique socio-economic patient population. In order to adequately serve this population OGS and PCC costs, in particular, are increased.

Peer grouping which would account for differences in case mix, size, location are discussed separately.

**RESPONSE:** The Department will be evaluating all of the issues relating to standardization of indirect costs. If there are significant items which

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can and should be isolated, then future standards will be adjusted accordingly. At this time, the Department has not identified costs within the teaching peer group that belong solely in the core teaching hospital rates.

**Summary of Changes Made Between Proposal and Adoption:**

The changes made on adoption are in response to comments regarding the derivation of the methodology for reimbursement of indirect costs. The Department has adjusted the formula used to calculate indirect costs from 50 percent standard unit cost/50 percent hospital unit cost to 25 percent standard unit cost/75 percent hospital unit cost. The change slows down the movement to the standard, so that hospitals have more time to adjust their costs to a standard payment rate. The Department's intent is to protect against any substantial change in payment rates to the hospitals. The changes made on adoption are not substantive because the systemic impact is the same. There is a muting effect on individual hospitals, which continues to be mediated by the two percent corridor.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

**8:31B-3.24 Reasonable indirect patient care costs**

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

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

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

(c) The reasonable amount of indirect costs (exclusive of skilled nursing apportionment) will be determined for those hospitals that will receive an initial PCB. Disincentive amounts will be calculated in the Physician and Teaching Related Centers. The screening methodology will compare base year actual cost data. Screens will not be applied to sales and real estate taxes, outside collection costs, employee health insurance and malpractice insurance. The above indirect costs are not considered volume variable and are therefore included in the Preliminary Cost Base spread to all rates through the use of the overhead mark-up factor.

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

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

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

\*[4.]\* The costs used to calculate these peer group indirect standards will be the 1985 approved indirect costs \*[which shall include]\* **\*plus 1986\*** Commission-approved indirect costs which are approved

as continuous adjustments. **\*The imputed value of pending 1986 appeals are included in the calculation of the standard unit cost. The standard will not be recalculated except for the inclusion of statewide generic issues affecting one or more peer groups. The hospitals will receive the Commission-approved 1986 indirect cost, as it effects the hospital specific portion of the blended rate, at Final Reconciliation.\***

\*[5.]\***4.\*** The adjusted admissions used to calculate these peer group standards will be \*[1985]\* **\*1986\*** adjusted admissions.

**\*5. The equalized peer group standard unit cost is unequalized using a hospital's unequalization factor, and added to the peer group unequalized standard unit cost to form a hospital's unequalized indirect standard unit cost. The unequalized standard unit cost will be blended with the hospital's specific unit cost, using 25 percent standard unit cost/75 percent hospital unit cost to create a blended rate. In 1988 only, if the blended rate would result in a gain or loss of revenue greater than two percent of the hospital's 1987 preliminary cost base, assuming 1986 volume, then the change in revenue will be limited to the two percent. Hospitals may appeal losses in reimbursement which are a result of volume decline during 1987 and 1988. These appeals will be subject to a statewide appeals budget equal to the revenue removed from the system due to downturns. No appeal will be allowed for losses due to the standard price. Hospitals which are recognized under N.J.A.C. 8:31B-3.22 as being specialized in nature may apply to the commissioner for a unit cost based on their own 1986 approved costs with no standard blended into the payment rate.\***

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

**\*Inpatient indirect costs are volume variable. Hospitals will be reconciled to inpatient discharges multiplied by the blended rate. Projected total indirect costs will be collected during the year through the use of the overhead mark-up factor. Outpatient indirect costs will remain fixed except for same-day surgery patients. Same day surgery indirect costs will be volume variable, subject to a unit cost which represents the pro rata portion of outpatient indirect costs which were attributable to same day surgery in 1986.\***

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

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

- 1. A&G/FIS;
  - 2. PLT;
  - 3. PCC (Non-phy); and
  - 4. OGS.
- (e) Cost centers subject to screening:

Cost Centers	Peer Group	Unit of Service	Reasonable Cost Limit
(RSD) Residents Non-Phy	teaching, minor teaching non-teaching	Full time Equivalent RSD	1.1
(PHY) Physicians Non-Phy	teaching, minor teaching non-teaching	Full time Equivalent PHY	1.1
(RSD) Residents Physician	teaching, minor teaching non-teaching	Full time Equivalent RSD	1.1

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(PHY) Phys. & Physician	teaching/minor teaching non-teaching	Full time Equivalents in PHY and EDR	1.1
Education & Research	teaching non-teaching	PHY	

## 8:31B-3.51 Notification appeal and review

(a) (No change.)

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

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

2.-4. (No change.)

## 8:31B-3.71 Reconciliations and adjustments

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

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

## 8:31B-3.73 Reconciliation: Hospitals

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

1. (No change.)

2. Fixed financial elements:

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

ii. (No change.)

3.-4. (No change.)

## ADOPTIONS

DIVISION OF HEALTH PLANNING AND RESOURCES  
DEVELOPMENT

(a)

**Certificate of Need: Policy Manual for Planning and  
Certificate of Need Reviews of Health Care  
Facilities and Services within the State of New  
Jersey****Readoption: N.J.A.C. 8:43E-1.1 through 1.37**

Proposed: October 19, 1987 at 19 N.J.R. 1872(a).

Adopted: December 10, 1987 by Molly Joel Coye, M.D., M.P.H.,  
Commissioner of the Department of Health (with approval of  
the Health Care Administration Board).

Filed: December 11, 1987 as R.1988 d.21, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq. specifically 26:2H-5.

Effective Date: December 11, 1987.

Expiration Date: December 11, 1992.

**Summary of Public Comments and Agency Responses:****No comments received.**

**Full text** of the readoption may be found at N.J.A.C.  
8:43E-1.1-1.37.

(b)

**Certificate of Need: Psychiatric Inpatient Beds  
Adult Open Acute Psychiatric Bed Standards****Readoption with Amendments: N.J.A.C. 8:43E-2.1  
through 2.18**

Proposed: October 19, 1987 at 19 N.J.R. 1873(a).

Adopted: December 10, 1987 by Molly Joel Coye, M.D.,  
M.P.H., Commissioner of the Department of Health (with  
approval of the Health Care Administration Board).

Filed: December 11, 1987 as R.1988 d.22, **without change.**

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

Effective Date: December 11, 1987 (Readoption).

Effective Date: January 4, 1988 (Amendments).

Expiration Date: December 11, 1992.

**Summary of Public Comments and Agency Responses:**

Written comments were received only from the Division of Mental  
Health and Hospitals of the New Jersey Department of Human Services.

COMMENT: The Division of Mental Health and Hospitals states that  
Adult Open Acute Psychiatric Beds must be developed in conjunction  
with Adult Closed Acute Psychiatric Beds where the need exists. In order  
to facilitate continuity of care, the Division desires that inpatient psy-  
chiatric units which provide services to involuntarily committed patients  
must be developed in conjunction with Adult Open Acute Psychiatric  
Units and must be linked with them as well as with specially designated  
ambulatory screening services. The addition of a competitive review sec-  
tion is also being requested. The Division states that this will foster  
compliance with the mental patient screening provisions contained in P.L.  
1987, c.116 (N.J.S.A. 30:4-27.1 through 27.22), and will negate the need  
to approve Adult Open Acute Psychiatric Beds in the future in order to  
provide these needed linkages.

RESPONSE: The Department concurs that the need for continuity of  
care makes the linkage of Adult Closed Acute Psychiatric Beds and Adult  
Open Acute Psychiatric Beds very desirable. However, to require that  
these linkages be mandatory would be a substantive change to the rule  
as proposed and would require republication according to the Office of  
Administrative Law and the provisions of N.J.A.C. 1:30-4.3. Republica-  
tion would delay the effective date of the readoption of the rules beyond  
the expiration date of January 17, 1988. To ensure that the rules do not  
expire, the Department recommends final readoption without change.  
However the Department has made a commitment to consult with the  
Division of Mental Health and Hospitals so that their suggested changes  
can be proposed as new amendments in the near future.

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Full text of the re-adoption may be found at N.J.A.C. 8:43E-2.1 through 2.8.

Full text of the adopted amendments follows.

**SUBCHAPTER 2. RULES GOVERNING PSYCHIATRIC INPATIENT ADULT OPEN ACUTE BEDS**

**8:43E-2.1 Scope**

The New Jersey Department of Health currently licenses and regulates inpatient psychiatric beds as provided in licensed general and special hospitals throughout the State. The vast majority of licensed psychiatric beds remain in use for the purpose of treating adults with acute psychiatric disorders on a voluntary basis. These rules address the addition or establishment of licensed psychiatric beds of this type, to be classified as Adult Open Acute Psychiatric Beds, in any existing or proposed licensed hospital in New Jersey.

**8:43E-2.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings:

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

“Adult Closed Acute Psychiatric Unit” means a separate and locked unit of inpatient beds in a New Jersey hospital specifically designated for the provision of intensive treatment services for persons experiencing an acute episode of a primary or secondary psychiatric disorder which accepts and treats individuals under an involuntary commitment order and may also admit patients to the unit under voluntary commitment status. Admissions to the unit have an average length of stay of 30 days or less. (N.J.A.C. 8:43E-3.1 et seq.)

“Children’s Acute Psychiatric Beds” means any separate unit or facility, or sub-unit of an existing licensed psychiatric unit or facility, established for the provision of intensive treatment and rehabilitation of individuals under the age of 18, who are experiencing an acute episode of a psychiatric disorder. (See N.J.A.C. 8:43E-4.1 et seq.)

“Emergency/Screening Mental Health Services” means a designated or discrete program of psychiatric crisis intervention, evaluation, treatment and referral services available on a 7-day, 24 hour basis to individuals experiencing an acute psychiatric crisis within a defined service area.

“Intermediate Adult Psychiatric Beds” means licensed psychiatric beds in a separate and designated area in a New Jersey Hospital which provide intensive psychiatric evaluation and treatment services as part of a comprehensive psychiatric and psychosocial rehabilitation program and which are appropriate for individuals aged 18 and above who are experiencing an acute episode of a psychiatric disorder and who require a comprehensive and specialized treatment program that cannot be fully provided within a short-term acute psychiatric setting. Admissions to the Intermediate Psychiatric unit or facility have an average length of stay which is generally greater than the average length of stay for Adult Open Acute Psychiatric Units in New Jersey and less than 45 days.

**8:43E-2.4 Bed Need**

(a) Each applicant for Adult Open Acute Psychiatric Beds shall demonstrate the need for additional bed capacity through application of the adult open acute bed need methodology, attached herein as Appendix A.

(b) Exceptions may be considered by the Department when the applicant has demonstrated compliance with either of the following conditions:

1. When the establishment of beds is for the purpose of serving patients who traditionally have been admitted to a State or County Psychiatric Hospital where the applicant provides Inpatient Screening Beds. This must be documented by an affiliation agreement with

the State or County Psychiatric Hospital, attached to the application. Need for the proposed number of beds must be documented through application of the methodology attached herein as Appendix B.

2. (No change.)

**8:43E-2.12 Conversion of existing bed capacity**

(a) Facilities seeking approval of new or additional Adult Open Acute Psychiatric Beds shall convert existing bed capacity when occupancy rates for other services (for example Medical-Surgical, Pediatric, Ob/Gyn) are below, for the four previous reporting quarters, those levels set as minimum by the State Medical Facilities Plan. Copies of the State Medical Facilities Plan may be obtained by written request to:

Health Systems Review, Room 604  
New Jersey Department of Health  
CN 360  
Trenton, NJ 08625

(b) (No change.)

**APPENDIX A  
ADULT OPEN ACUTE  
PSYCHIATRIC BED NEED METHODOLOGY**

**A. Formula for determining county bed need**

Step 1

$$\text{(Statewide Use Rate X } \frac{\text{Projected Target Year County Population}}{1000} \div 365 =$$

Bed need at 100% occupancy  $\div .85 =$  bed need at 85% occupancy (Method 1)

Step 2

$$\frac{\text{Current Patient Days}}{1000} \times \frac{\text{Target Year Projected County Population}}{1000} =$$

Projected Patient Days  $\div 365 =$  Bed need at 100% occupancy

$\div .85 =$  Bed need at 85% occupancy (Method 2)

Step 3 through Step 5 No Change

**B. Derivation of Formula Components**

1. “Total Statewide Patient Days” is the sum of patient days resulting in admissions to adult open acute psychiatric units, except as noted in v. below, of the following New Jersey licensed hospitals:

- i. General Hospitals
- ii. Private Psychiatric Hospitals
- iii. County Psychiatric Hospitals
- iv. Special Hospitals

2. “Statewide Use Rate” is the Total Statewide Patient Days divided by the total current New Jersey population per 1000 residents.

3. Target Year Projected Population” is a 5-year projection from the year of application which is derived from the New Jersey Department of Labor official projections, utilizing the “preferred” model.

4. “Current Patient Days” are the sum, by county of facility location, except as noted in iii. below, of patient days resulting from admissions to adult open acute psychiatric beds, except as noted in v. below, in the following facilities, during the last full calendar year for which such data has been reported to the Department:

- i. General Hospitals
- ii. Special Hospitals
- iii. Private Psychiatric Hospital patient days assigned to county of origin.
- iv. County Hospitals

5. The “Mental Health Need Modifier” is a factor which estimates relative need for mental health services in a given county. Source of the data upon which the factor is based is a report published in 1986 by the N.J. Division of Mental Health and Hospitals, entitled Regional Need-Based Planning for the New Jersey State Mental Health System. Copies of the full text may be obtained by written request to the:

N.J. Division of Mental Health and Hospitals,  
Office of Program Evaluation,  
13 Roszel Road  
CN 700  
Princeton, N.J. 08540

(a) The Mental Health Need Modifier is computed for each county utilizing the following methodology:

$$\frac{\text{Composite Need T-Score—Mean of Composite Need Scores, 21 Counties}}{\text{Standard Deviation, Mean Composite Need Score}} =$$

$$\text{Relative Composite Need X } \frac{1990 \text{ Projected County Population}}{100,000} = \text{Mental Health Need Modifier}$$

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(b) The "Composite Need T-Score" is a relative value as listed under Table I in the above 1986 report, under the column heading "Composite Need Score for Community Mental Health Resources."

(c) Future applications of this methodology may incorporate revised values should they be contained in officially published updates of the above 1986 report. Information on and copies of updates may be obtained at the above address.

6. "Total Bed Supply" is the sum of the following:

i. Licensed psychiatric beds, as determined under official license issued by the Department, designated for use as an adult open acute psychiatric inpatient service, including beds licensed but not maintained.

ii. Adult open acute psychiatric beds approved by the Department through a currently valid Certification of Need but not yet in operation.

iii. Adult Open Acute Psychiatric Beds in Special Hospitals, allocated by County as follows:

$$\frac{\text{Total Special Hospital Adult Open Acute Patient Days by County (of Origin)}}{365} \div .85 = \text{Bed Supply by County}$$

APPENDIX B (No change.)

**(a)**

**Certificate of Need: Psychiatric Inpatient Beds Inpatient Screening Psychiatric Bed Standards Redoption with Amendments: N.J.A.C. 8:43E-3.1 through 8:43E-3.18**

Proposed: October 19, 1987 at 19 N.J.R. 1875(a).  
 Adopted: December 10, 1987 by Molly Joel Coye, M.D., M.P.H.,  
 Commissioner of the Department of Health (with approval of  
 the Health Care Administration Board).  
 Filed: December 11, 1987 as R.1988 d.20, **without change**.  
 Authority: N.J.S.A. 26:2H-5 and 26:2H-8.  
 Effective Date: December 11, 1987 (Redoption).  
 Effective Date: January 4, 1988 (Amendments).  
 Expiration Date: December 11, 1992.

**Summary of Public Comments and Agency Responses:**  
 Written comments were received only from the Division of Mental Health and Hospitals of the New Jersey Department of Human Services.  
**COMMENT:** The Division of Mental Health and Hospitals states that this rule would benefit from a Competitive Review section, similar to that contained in the Intermediate Adult and Special Psychiatric Bed rule.  
**RESPONSE:** The Department concurs in the desirability of having a Competitive Review section in this rule. However, to require that these linkages be mandatory would be a substantive change to the rule as proposed and would require republication according to the Office of Administrative Law and the provisions of N.J.A.C. 1:30-43. Republication would delay the effective date of the readoption of the rules beyond their expiration date of January 17, 1988. To ensure that the rules do not expire, the Department has made a commitment to consult with the Division of Mental Health and Hospitals so that their suggested changes can be proposed as new amendments in the near future.

**Full text** of the readoption may be found at N.J.A.C. 8:43E-3.1 through 3.18.

**Full text** of the adopted amendments follows.

**SUBCHAPTER 3. RULES GOVERNING PSYCHIATRIC INPATIENT SCREENING BEDS**

**8:43-3.2 Definitions**

The following words and terms, when used in this subchapter shall have the following meanings:

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

"Adult closed acute psychiatric unit" means a separate and locked unit of inpatient beds in a New Jersey hospital specifically designated for the provision of intensive treatment services for persons experiencing an acute episode of a primary or secondary psychiatric disorder which accepts and treats individuals under an involuntary commitment order and may also admit patients to the unit under voluntary commitment status. Admissions to the unit have an average length of stay of 30 days or less.

**8:43E-3.4 Bed need**

(a) The number of beds approved for a proposed service area, which shall be defined by county or mental health service area boundaries, shall be equivalent to the following formula:

Step #

1. Total involuntary commitments from area, age 18 and above, excluding detainer patients
2. x 75 percent (Projected proportion diverted by Screening Unit) = Potential Admissions
3. x 3 day length of stay = Potential patient days
4. ÷ 365 = Bed need at 100 percent Occupancy
5. x (2-.8) = Bed need at 80 percent Occupancy

(b) An exception to the three-day length of stay (LOS) identified at (a) Step #3 above may be considered by the Department in the case of Certificate of Need applications proposing the establishment of Adult Closed Acute Psychiatric Beds. The LOS proposed at this step may reflect that LOS which the applicant projects and documents in the application. This LOS and corresponding rationale must be acceptable to the Department and shall not exceed 30 days.

**8:43E-3.7 Minimally required services**

(a) (No change.)

(b) The applicant facility must provide a comprehensive psychiatric emergency/screening program meeting requirements for Emergency Services as determined by the Division of Mental Health and Hospitals in the Rules and Regulations Governing State Aid under the Community Mental Health Services Act (N.J.S.A. 30:9A; 10:37-5.3 and 5.4). Evidence that the program is or will be upon initiation in compliance with these standards shall be demonstrated within the Certificate of Need application. Copies of the above regulations may be secured by writing to:

Bureau of Standards and Inspections  
 New Jersey Division of Mental Health and Hospitals  
 13 Roszel Road  
 CN 700  
 Princeton, N.J. 08540

**(b)**

**Certificate of Need: Psychiatric Inpatient Beds Children's Acute Psychiatric Bed Standards Redoption with Amendment: N.J.A.C. 8:43E-4.1 through 4.4**

Proposed: October 19, 1987 at 19 N.J.R. 1876(a).  
 Adopted: December 10, 1987 by Molly Joel Coye, M.D., M.P.H.,  
 Commissioner of the Department of Health (with approval of  
 the Health Care Administration Board).  
 Filed: December 11, 1987 as R.1988 d.19, **without change**.  
 Authority: N.J.S.A. 26:2H-5 and 26:2H-8.  
 Effective Date: December 11, 1987 (Redoption).  
 Effective Date: January 4, 1988 (Amendment).  
 Expiration Date: December 11, 1992.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the readoption may be found at N.J.A.C. 8:43E-4.1 through 4.4.

**Full text** of the adopted amendment follows.

**ADOPTIONS**

**8:43E-4.4 Regulation review**

These rules will be repealed when new Child and Adolescent Acute Psychiatric Bed Standards are promulgated by the Department of Health, with the approval of the Health Care Administration Board.

**(a)**

**Certificate of Need: Intermediate Adult and Special Psychiatric Bed Standards**

**Readoption: N.J.A.C. 8:43E-5.1 through 8:43E-5.20**

Proposed: October 19, 1987 at 19 N.J.R. 1877(a).

Adopted: December 10, 1987 by Molly Joel Coye, M.D., M.P.H., Commissioner of the Department of Health (with approval of the Health Care Administration Board).

Filed: December 11, 1987, as R.1988 d.18, **without change**.

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

Effective Date: December 11, 1987.

Expiration Date: December 11, 1992.

**Summary of Public Comments and Agency Responses:**

Written comments were received only from the Division of Mental Health and Hospitals of the New Jersey Department of Human Services.

COMMENT: The Division of Mental Health and Hospitals commented that this rule would benefit from an addition to N.J.A.C. 8:43E-5.20, Competitive Review, in which priority would be given to applicants who have developed or provided access to Adult Closed Acute Services.

RESPONSE: The Department concurs that this addition to the Competitive Review section would be beneficial to the mental health system and would improve the effectiveness of the rule. However, the Department has been informed by the Office of Administrative Law that the change would represent a substantive change to the rule as proposed and would require republication according to the provisions of N.J.A.C. 1:30-4.3. Republication would only serve to delay the effective date of the readoption of the rules beyond their expiration date of January 17, 1988. To ensure that the rules do not expire, the Department recommends final readoption without change. However the Department has made a commitment to consult with the Division of Mental Health and Hospitals so that their suggested change can be proposed as a new amendment in the near future.

Full text of the readoption may be found at N.J.A.C. 8:43E-5.1 through 5.20.

**(b)**

**DIVISION OF ALCOHOL, NARCOTIC, AND DRUG ABUSE CONTROL**

**Eligibility and Reimbursement for Retrovir for Individuals with AIDS**

**Adopted Concurrent Proposal: N.J.A.C. 8:61-2**

Proposed: November 2, 1987 at 19 N.J.R. 2067(a).

Adopted: December 4, 1987 by Molly J. Coye, M.D., Commissioner, Department of Health.

Filed: December 4, 1987 as R.1987 d.6, **without change**.

Authority: N.J.S.A. 26:1A-15.

Effective Date: December 4, 1987.

Expiration Date: October 6, 1991.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

**SUBCHAPTER 2. ELIGIBILITY CRITERIA TO PARTICIPATE IN RETROVIR DRUG PROGRAM**

**8:61-2.1 Purpose**

The purpose of this subchapter is to describe the clinical and financial criteria which individuals must meet in order to become enrolled in the Retrovir Drug Program.

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**8:61-2.2 Definitions**

"AIDS Drug Program" means the program by which eligible individuals will be reimbursed for the cost of purchasing Retrovir (Azidothymidine—AZT), or any other drug approved by the Federal Food and Drug Administration which has been recognized as prolonging the life of individuals with AIDS, from funds appropriated to the State from the Federal government.

**8:61-2.3 Clinical eligibility**

To be considered clinically eligible to participate in the AIDS Drug Program (Program), an individual must meet the clinical criteria established by the manufacturer of the drug, as determined by a physician.

**8:61-2.4 Income eligibility**

(a) Any single permanent resident of New Jersey must have an annual income of less than \$25,000 to be eligible for enrollment in the Program.

(b) Any married permanent resident of New Jersey must have a combined (applicant and spouse) annual income of less than \$30,000 to be eligible for PAAD.

1. An applicant and spouse shall be considered separated when each maintains a separate residence and the applicant does not have access to or receives support from the spouse's income.

2. An applicant and spouse shall be considered separated when the spouse has been institutionalized in a long-term facility, either skilled or intermediate, or in a State or county psychiatric hospital at least 30 consecutive days prior to application.

(c) Income shall be determined in accordance with the standards delineated at N.J.A.C. 10:69A-6.2.

**8:61-2.5 Residence**

Residence shall be determined in accordance with the standards delineated at N.J.A.C. 10:69A-6.4.

**8:61-2.6 Application process**

(a) Applications to enroll in the program can be obtained by calling the Department of Health AIDS HOTLINE, at 1-800-624-2377.

(b) Once the application is received by an interested individual, the form should be completed and returned to the address indicated on the application.

(c) If approved for participation in the Program, the Department will notify the individual, his or her physician, and the pharmacy from which the prescription for Retrovir will be filled.

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**(c)**

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**State College Personnel System**

**Adopted New Rules: N.J.A.C. 9:6A**

Proposed: September 8, 1987 at 19 N.J.R. 1613(a).

Adopted: December 11, 1987 by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Filed: December 11, 1987 as R.1988 d.14, **with substantive and technical changes** not requiring additional public notice and comment. (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:3-14(h) and 18A:64-6(h).

Effective Date: January 4, 1988.

Expiration Date: January 4, 1993.

**Summary of Public Comments and Agency Responses:**

The Board of Higher Education received several comments regarding the proposal from the Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO (hereinafter referred to as "AFT"); Local 195, International Federation of Professional & Technical Engineers (hereinafter referred to as "IFPTE") and the State College Presidents' Council. The specific comments and the agency responses thereto follows:

COMMENT: The AFT commented in general that the proposed new rules dealt with several terms and conditions of employment for em-

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ployees within its bargaining unit, that the proposed new rules made significant changes in the current rules and provisions governing those subject matters and that the matters within the proposed new rules should be negotiated.

RESPONSE: The proposed new rules represent matters which the Board of Higher Education is legally empowered to regulate. The majority of the proposed new rules maintains the status quo of affected employees or represents legitimate issues for the Board of Higher Education to determine through rules. However, upon reexamination of the proposal to ensure that only appropriate matters were included within the proposed new rules, N.J.A.C. 9:6A-3.4(c), 3.6(g), 5.3(c), 5.3(d), 5.3(h), 5.6(c) and 5.12(d) were all modified to be effective only for non-bargaining unit employees. The Board of Higher Education anticipates negotiating with the AFT on a wide range of other issues which are properly within the collective bargaining arena.

COMMENT: The proposed new rules will not allow the State colleges to create new titles within the IFPTE bargaining unit that are covered by the provisions of Title 11A, Civil Service, New Jersey Statutes.

RESPONSE: The proposed new rules do not affect titles or positions within the IFPTE bargaining unit nor do they permit the State colleges to remove such positions from coverage under Title 11A.

COMMENT: The proposed new rules create a "special title" category, N.J.A.C. 9:6A-2.1, which should not be allowed as it is an extension of the Special Services title which was phased out by the Governor's Executive Order.

RESPONSE: The "special title" category is not an extension of the problems associated with hiring hourly employees which were to be phased out in compliance with a Governor's Executive Order. Rather, it is an opportunity for the colleges to hire student assistants, for example, at rates of pay determined by the college as part of the student's financial aid package or educational experience.

COMMENT: The proposed new rules eliminate part-time employees doing IFPTE bargaining unit work from coverage under Title 11A, Civil Service, New Jersey Statutes. Such employees should be entitled to receive such coverage.

RESPONSE: The proposed new rules do not eliminate such employees from coverage under Title 11A, Civil Service, New Jersey Statutes.

COMMENT: The State College Presidents' Council believes that the proposed new rules will promote greater campus flexibility and efficiency for managing personnel matters within the confines of higher educational values and establish a proper balance in authority between the Board of Higher Education and individual campus trustee boards, thereby ensuring that each college is permitted to function within a general framework that allows flexibility among the campuses.

RESPONSE: No response required.

Full text of the adoption follows (additions indicated in boldface with asterisks **\*thus\***; deletions indicated in brackets with asterisks **\*[thus]\***).

## SUBCHAPTER 1. GENERAL PROVISIONS

## 9:6A-1.1 Purpose

The purpose of this chapter is to prescribe rules and procedures to provide an effective and efficient personnel system and to ensure that employees are treated fairly and impartially.

## 9:6A-1.2 Compliance

All state colleges and their **\*full or part-time\*** employees including but not limited to all faculty, librarians, non-teaching professional staff, managerial employees, **\*[part-time employees,]\*** and student employees shall comply with these rules; provided, however, that career service employees covered by the provisions of Title 11A, Civil Service, New Jersey Statutes, shall not be subject to these rules.

## 9:6A-1.3 Severability

If a rule or part of a rule is declared invalid for any reason, the validity of the remainder of the rules in this chapter shall not be affected by such determination.

## SUBCHAPTER 2. DEFINITIONS

## 9:6A-2.1 Definitions

The following words and terms, when used in this chapter shall have the following meanings **\*and are defined solely for the purposes of this chapter\***, unless the context clearly indicates otherwise:

"Academic year" means the period of time commencing as set forth in the official academic calendar adopted by each state college and concluding June 30 of the succeeding calendar year.

"Anniversary date" means the date in each fiscal year on which the individual employee is eligible for consideration for an annual increase to his or her salary based upon length of service and an assessment of performance.

"Classification of position" means the assignment by the college of a position to a title in the State College Classification Plan.

"Classification of title" means the determination of the specification of an individual title.

"Class" or "class of positions" means a position or group of positions sufficiently alike in duties, authority and responsibilities to require similar qualifications and have the same title.

"Class title" means a descriptive name that identifies a class or class of positions.

"Employee" means all employees at a state college not covered by the provisions of Title 11A, Civil Service, New Jersey Statutes, except for student employees.

"Faculty" means any full-time member of the teaching staff appointed with academic rank including faculty at the A. Harry Moore School.

"Fiscal year" means the period of time commencing July 1 of each calendar year and concluding June 30 of the succeeding calendar year.

"Full time employee" means an employee assigned to a title under the State College Classification Plan who meets the standards for exempt status as defined under the Fair Labor Standards Act, 29, U.S.C. 201 et seq.

"Immediate family" means father, mother, mother-in-law, father-in-law, grandmother, grandfather, grandchild, spouse, child, step-child, foster child, sister or brother of the employee. "Immediate family" shall also include other relatives of the employees residing in the employee's household.

"Librarian" means employees serving in the titles Librarian I, II, and III, which carry concurrent academic rank.

"Managerial employees" means all employees who are not entitled to representation by a negotiations agent under the provisions of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. including confidential employees, as set forth in N.J.A.C. 9:6A-3.7.

"Non-teaching professional" means an employee at a state college, other than a faculty member or Librarian I, II, or III, who is entitled to representation by the recognized majority representative for **\*non-teaching\*** professional staff and faculty at the state colleges.

"Part-time employee" means an employee who is employed on less than a full-time basis, **excluding adjunct faculty\***.

"Position" means an employment assignment with an authorized set of specific duties and responsibilities requiring the full or part-time employment of an individual(s).

"Reclassification" means the change by the college of an individual position from one title to a different title within the State College Classification Plan.

"Reevaluation" means the adjustment of the salary range assigned to a specific title.

"Regular title" means a title within the State College Classification Plan which has a corresponding salary range established by the Board of Higher Education and carries eligibility for holiday and other leave benefits.

"Salary range" means a schedule of compensation with a minimum and maximum salary and intermediate steps.

"Special title" means a title included in the State College Classification Plan which does not have a salary range established by the Board of Higher Education, does not carry eligibility for holidays and other leave benefits, and is of a temporary nature in that it may not be more than six months in duration on a full-time basis nor half-time or more on a continuing basis.

"Specification" means the written compilation of all the elements of a particular title including but not limited to the salary range, scope, duties and responsibilities, unit designation, examples of work and minimum qualifications.

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"State College Classification Plan" means the comprehensive system of titles, title series, and specifications for positions at the state colleges not **\*[bound]\* \*covered\*** by the provisions of Title 11A, Civil Service, New Jersey Statutes.

"Student employee" means an employee in a special title whose employment at the college is primarily for the purpose of financing his or her collegiate education and/or to further his or her education objectives at the college.

"Title" means a descriptive name that identifies a class or class of positions.

"Title series" means a related set of titles involving the same kind of work and ranked according to level of difficulty and responsibility.

## SUBCHAPTER 3. STATE COLLEGE CLASSIFICATION PLAN

## 9:6A-3.1 Classification of titles

(a) The Board of Higher Education shall establish and maintain a State College Classification Plan for all employees, as defined in N.J.A.C. 9:6A-2.1, at the state colleges which shall consist of:

1. A system of titles and title series; and
2. Specifications for each title which shall include:
  - i. A definition of the class of positions indicating the scope of work performed and the organizational relationships involved;
  - ii. A statement of duties and responsibilities;
  - iii. Examples of work which illustrate the nature and extent of the duties and responsibilities, which examples shall be considered descriptive and not restrictive;
  - iv. Minimum requirements and qualifications essential to the performance of the work of the class;
  - v. Assignment to a bargaining unit;
  - vi. Assignment to a salary range;
  - vii. Such other information as may be necessary.

(b) The college shall assign each position to an appropriate title based on an analysis of the work to be performed and consistent with the specification for that title.

1. No person shall be appointed or employed under a title not appropriate to the duties to be performed nor be required to routinely perform duties unrelated to the assigned title.

2. Should the employee disagree with the classification of a position, an appeal may be made in accordance with N.J.A.C. 9:6A-3.5.

(c) The scope of work, duties, and responsibilities of any full-time employee assigned to a regular title under the State College Classification Plan shall as a whole meet the standards for exempt status as defined under the Fair Labor Standards Act, 29 U.S.C. 201 et seq.

## 9:6A-3.2 Administration of State College Classification Plan

(a) The Chancellor shall enforce and administer the State College Classification Plan approved by the Board of Higher Education and shall:

1. Require that approved class titles be used in all official records and communications relating to personnel, including payrolls and budget provided, however, the colleges shall not be precluded from utilizing functional local titles;
2. With the consent of the Board of Higher Education approve:
  - i. New titles to be added within the State College Classification Plan;
  - ii. Specifications for new titles and modification of specifications for existing titles to ensure their accuracy;
  - iii. Deletion of existing titles;
  - iv. Changes in the wording of existing titles; and
  - v. Assignment and reassignment of salary ranges to titles.

3. Notify the state colleges of changes in the State College Classification Plan; and

4. Recommend to the Board of Higher Education any other changes deemed necessary to accurately reflect current conditions.

(b) The president of each college shall be responsible for the administration of the State College Classification Plan on his or her campus.

## 9:6A-3.3 Requests for changes within the State College Classification Plan

(a) State colleges proposing changes within the State College Classification Plan shall initiate requests by letter from the president of the college, or his or her designee, addressed to the Chancellor of Higher Education, setting forth the nature of the requested change and appropriate justification.

(b) There shall be established a State College Classification Advisory Board which shall consist of one representative from each state college as designated by the president of each state college.

1. The chairperson of the State College Classification Advisory Board shall serve for a period of one year.

2. The State College Classification Advisory Board shall be convened whenever necessary to review requests for substantive changes within the State College Classification Plan.

(c) Upon receipt of a letter requesting a substantive change within the State College Classification Plan, the Chancellor shall submit all pertinent information to the State College Classification Advisory Board.

(d) The State College Classification Advisory Board shall, within 60 calendar days, make a written recommendation to the Chancellor.

(e) At either of the succeeding two meetings of the Board of Higher Education after receipt of the recommendation from the State College Classification Advisory Board, the Chancellor shall present a recommendation to the Board of Higher Education.

(f) Nothing in this section shall preclude the Chancellor from utilizing the services of an outside consultant(s) to assist in evaluating such requests.

1. If a consultant is utilized the Chancellor shall refer any such matters to the consultant(s) within 30 days of the recommendation from the State College Classification Advisory Board.

2. The time limit set forth in (e) above shall run from the time the Chancellor receives the report from the consultant.

## 9:6A-3.4 Classification and reclassification of positions

(a) The college shall, after review of the duties and responsibilities assigned to a position, classify the position to a title within the State College Classification Plan, pursuant to N.J.A.C. 9:6A-3.1(b).

(b) When the college, an affected employee, or the recognized negotiations agent claims, in writing, that the assigned duties and responsibilities of a position have changed to the extent that they are no longer similar to the duties and responsibilities of other positions in the same title, and that the title is no longer appropriate, the college shall after review of the claim:

1. Reclassify the position to a more appropriate existing title; or
2. Recommend to the Chancellor of Higher Education that a new title be established to which the position shall be reclassified; or
3. Remove all out-of-title duties and responsibilities; or
4. Determine that the position is properly classified.

(c) The effective date of a reclassification is the date of written notification by the college to any affected **\*managerial\*** employee.

(d) An employee whose position is affected by a reclassification decision may appeal in accordance with N.J.A.C. 9:6A-3.5.

## 9:6A-3.5 Reclassification appeal procedures

(a) An appeal of a reclassification decision is a request for review of a managerial determination as to whether the duties of a specific position conform to the specification for the title assigned to that position.

(b) An appeal from an employee, or the recognized negotiations agent, shall be submitted in writing to the appropriate college office.

1. The appeal must identify the specific duties that do not conform to the specification for the title and be signed by the employee.

2. If the appellant proposes a different title for the position, he or she must explain how the different title more accurately describes the duties of the position than the current or proposed title.

(c) The president of the college or his or her designee shall appoint a hearing officer to conduct a review of the appeal. The parties shall present their arguments before the hearing officer.

1. All parties shall be advised of the review date.

2. An employee is entitled to self-representation, representation by counsel or by the recognized negotiations agent. Reasonable prior

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notice shall be given to the hearing officer as to the form of representation.

(d) The hearing officer shall submit a written report to the president of the college or the president's designee within 15 working days of the review.

1. The report shall include an analysis of the duties of the position as they relate to the specification, findings, conclusions, and a recommendation.

2. A copy of the report shall be sent to all parties.

(e) The president or his or her designee shall review the report and notify the appellant of his or her decision within 20 working days of receipt of the report of the hearing officer. This decision letter must include the duties of the position, findings of fact, appeal rights and procedures, conclusions, and the determination that:

1. The position is properly classified; or

2. The position is properly classified, but that out-of-title duties are being performed, in which case the college shall order, in writing, the removal of inappropriate duties; or

3. The position should be reclassified; in which case, normal reclassification procedures shall be initiated.

(f) The final decision of the college may be appealed to the Chancellor of Higher Education pursuant to N.J.S.A. 18A:6-27.

(g) No decision by the Chancellor in a reclassification appeal shall preclude the college from removing the appellant's out-of-title duties as an alternative resolution to implementing the reclassification of the appellant's position.

**9:6A-3.6 Title reevaluation requests**

(a) A request for a title reevaluation must identify and explain the areas of substantive change in the scope of work and the duties and responsibilities of the position.

1. The request shall be set forth through a written narrative and include a revised title specification and evidence that all employees in the title are performing specific tasks at a higher level than defined in the current specification.

2. Increased volume of work is not evidence of substantive change.

(b) The college, an affected employee, or the recognized negotiations agent may request a reevaluation, which shall be submitted in writing to the Chancellor.

1. At least two weeks prior to the submission of such a request to the Chancellor, notice of the request shall be provided to the president of the college.

(c) The Chancellor shall refer a request to the State College Classification Advisory Board for a recommendation. The recommendation shall be issued to the Chancellor within 60 calendar days of receipt of the request by the State College Classification Advisory Board.

(d) The Chancellor may render a decision based on the written record or appoint an independent compensation consultant which appointment shall be made within 30 days.

1. If the Chancellor appoints a consultant to conduct a review of the request, all parties shall be advised of the review date and shall present their arguments before the consultant. An employee requesting a reevaluation may be heard personally or be represented by counsel or the employee's recognized negotiations agent.

2. The consultant shall submit a report and recommendation to the Chancellor within 30 calendar days after the review.

3. The report and recommendation shall be sent to all parties. Exceptions may be filed with the Chancellor within 15 calendar days of receipt of the report and recommendation. If exceptions are filed, cross-exceptions may be filed within five days of receipt of the exceptions. Exceptions and cross-exceptions shall be served on all parties.

(f) If the Chancellor determines that the title should be reevaluated, he or she shall bring a recommendation to the Board of Higher Education at one of its next two succeeding meetings following the receipt of the recommendation from the State College Classification Advisory Board or any consultant(s) if utilized.

(g) The effective date of any reevaluation **\*for a managerial employee\*** shall be the first pay period following the board of Higher Education decision.

9:6A-3.7 Assignment of confidential positions to a board of trustees

(a) Each state college is entitled to assign no more than two employees, at any one time, to confidential board positions.

(b) The following requirements must be met for any assignment to a confidential board position:

1. The employee must serve at the pleasure of the president of the college and shall perform duties directly related to board of trustee activities;

2. The employee shall be assigned to a position not entitled to representation by any negotiations agent; and

3. The employee's job duties and responsibilities shall comply with the requirements of N.J.A.C. 9:6A-3.1(c).

(c) Confidential positions shall be a regular title but shall not be assigned to any specific salary range.

**9:6A-3.8 Student employees**

(a) Student employees' salaries shall be determined by each college.

(b) Eligibility for student employee status shall require continuous enrollment during the academic year as a student at the employing state college.

(c) Student employees shall not be entitled to sick or vacation leave, holidays, or other leaves set forth in N.J.A.C. 9:6A-5.

**SUBCHAPTER 4. COMPENSATION****9:6A-4.1 State College Compensation Plan**

(a) The Board of Higher Education shall establish with the concurrence of the Governor and publish the State College Compensation Plan which shall be the official plan for compensating all employees in regular titles at the state colleges.

(b) The State College Compensation Plan shall establish a series of pay ranges containing minimum, maximum, and intermediate salary steps.

**9:6A-4.2 Administration of the State College Compensation Plan**

(a) Employees shall begin at the minimum rate of the pay range assigned to their title unless in the academic and institutional judgment of the president a higher rate in the range is warranted.

(b) Periodic increases to a managerial employee's salary based upon length of service and performance shall be paid by the college on the employee's anniversary date, when appropriate, in accordance with the provisions of the State College Compensation Plan. Time spent by managerial employees in non-pay status will not be included in total time of employment when calculating eligibility for such periodic salary increases.

(c) No employee shall be paid below the minimum or above the maximum of the range for his or her class, except with the approval of the Chancellor for any employee who is demoted during the term of a contract or while under tenure **\*or unless permitted under a negotiated agreement\***.

(d) The salary range for all titles shall be established on the basis of a 12 month work obligation. Ten month titles shall be three ranges lower than the corresponding 12 month titles.

(e) Part-time employees in regular titles at the state colleges shall be compensated in direct proportion to the percent of full-time assignment at the assigned step of the salary range for the title held.

(f) Employees in special titles at the state colleges shall be compensated at a rate determined by the employing institution in conformance with applicable state and federal laws.

(g) Any action taken by a state college which violates the provisions of the State College Compensation Plan shall be void and of no legal effect.

**9:6A-4.3 Annual salary increases for managerial employees**

(a) The anniversary date of all managerial employees shall be July 1 of each fiscal year commencing on July 1, 1988 except as provided in (b) below.

(b) Any managerial employee who is not at the maximum of his or her salary range as of the effective date of this section shall retain his or her current anniversary date until he or she reaches the maximum of the salary range or until he or she moves to a new salary range.

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(c) A managerial employee under (b) above who reaches the maximum of his or her salary range or moves to a new salary range shall have his or her anniversary date adjusted to the next succeeding July 1.

(d) All managerial employees hired subsequent to the effective date of this section shall be assigned an anniversary date of July 1. The college may adjust the starting salary to reflect the difference in the period of time before the next salary increase.

(e) A managerial employee shall not be eligible for an annual salary increase unless he or she has been in active pay status in his or her current salary range for more than six months within the preceding fiscal year. Exceptions to this requirement may be made by the president of the college.

(f) Annual salary increases for managerial employees based upon length of service and performance shall not exceed one step in the salary range for the title except when there is a determination by the president of outstanding performance.

### 9:6A-4.4 Pay adjustments for managerial employees appointed to titles with higher salary ranges

(a) When a managerial employee is appointed to an acting position, successfully competes with internal and/or external candidates for a new appointment, or as a result of a reorganization is appointed to a position at the college with a higher salary range than his or her current position, the employee may be treated for salary purposes as a new hire.

(b) When a managerial employee is appointed to a position with a higher salary range than his or her current position other than pursuant to (a) above, the employee shall receive one increment in his or her former salary range and be moved to the closest higher step in the new range.

(c) When a managerial employee is appointed in accordance with (b) above and has been employed at the maximum of his or her salary range for one year or more, he or she may receive one additional increment in the salary range for the new position.

### 9:6A-4.5 Pay adjustments for managerial employees in a title reevaluated to a new salary range

(a) Any managerial employee who is assigned to a new salary range as a result of a title reevaluation which does not exceed one salary range shall maintain his or her current step in the new range.

(b) When any managerial employee is assigned to a new salary range as a result of a title reevaluation which exceeds one salary range, the determination of which step on the new salary range an affected employee will receive shall be at the discretion of the college.

### 9:6A-4.6 Pay adjustments for managerial employees who are demoted

(a) A managerial employee who is demoted to a position with a lower salary range than his or her current position shall receive a salary no greater than the maximum of the new range.

(b) A managerial employee serving less than six months in a new position as a result of a demotion shall not be eligible to receive an annual salary increase based upon length of service and assessment of performance.

(c) Determination of salaries for demoted managerial employees shall be in compliance with tenure rights.

(d) A managerial employee who is demoted to a position with a lower salary range than his or her current position but who, because of tenure rights, is entitled to a salary greater than the maximum of the range to which he or she has been demoted, shall not receive any further salary increases until the maximum of the salary range exceeds the salary at the time of demotion.

## SUBCHAPTER 5. LEAVES

### 9:6A-5.1 Records

(a) The state colleges shall maintain for each employee records of all uses of leave time, including use of sick and vacation leave.

(b) When an employee leaving the service of a state college shall have unused sick leave, the college shall certify the amount of such unused sick leave.

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(c) Any managerial individual employed by a state college who had previous employment at another state college; Rutgers University, University of Medicine and Dentistry of New Jersey; New Jersey Institute of Technology; or a position within state service shall be credited with the unused sick leave accumulated at his or her prior position, as certified by the prior employer. No transfer of unused sick leave shall be permitted if there is a break in service of greater than 30 calendar days between the two positions.

### 9:6A-5.2 Sick leave: Authorized use and verification

(a) Sick leave may be used by managerial employees in the following instances:

1. By managerial employees who are unable to work because of personal illness, accident or exposure to contagious disease.

2. For short periods of time due to a death in the immediate family of a managerial employee, or to care for a seriously ill member of such employee's immediate family.

3. By a managerial employee who is handicapped, for absences related to the acquisition or use of an aid for the handicapped provided that the aid is necessary to function on the job.

(b) The college may require proof of illness from an employee for any of the following reasons:

1. There is reason to believe that an employee may be abusing sick leave;

2. The employee has been absent on sick leave for five or more consecutive work days;

3. The employee has been absent on sick leave for an aggregate of more than 15 days in a 12 month period.

(c) A college may require an employee to be examined by a physician designated and compensated by the college as a condition of the employee's return to work, continued use of sick leave, or for other valid reasons.

1. The examination shall establish whether the employee is capable of performing his or her work duties and that the return to employment will not jeopardize the health of the employee or that of other employees.

2. The college shall set the date of the examination to assure that it does not cause undue delay in the employee's return to work.

(d) When an illness is of a chronic or recurring nature causing occasional absences, one proof of illness may be required by the college for every six month period. The proof of illness must specify the nature of the illness and whether or not it is likely to cause periodic absences from employment.

(e) In case of sick leave due to exposure to contagious disease, a certificate from the New Jersey Department of Health may be required by the college.

### 9:6A-5.3 Sick leave: Entitlements

(a) All 12-month full-time managerial employees of the state colleges shall be entitled to 15 working days of sick leave during each fiscal year. All 10-month full-time managerial employees of the state colleges shall be entitled to 12.5 working days of sick leave during each fiscal year.

(b) Any managerial employee of a state college commencing employment after July 1 of any fiscal year shall be entitled to sick leave during that year at a rate of 1¼ days for each full calendar month of employment.

(c) Sick leave credits shall not accrue after \*[an] \***a managerial**\* employee has resigned or retired although his or her name is being retained on the payroll until exhaustion of vacation leave.

(d) Part-time employees in regular titles **\*who are not entitled to representation by a negotiations agent\*** shall be entitled to a proportionate amount of paid sick leave.

(e) Employees in special titles shall not be entitled to paid sick leave.

(f) Sick leave shall not accrue to managerial employees during a leave of absence without pay.

(g) A managerial employee who exhausts all accumulated paid sick leave in any one year shall not be credited with additional paid sick leave until the beginning of the next fiscal year, except that:

1. The president of the college may, at his or her discretion, advance paid sick leave to a managerial employee. The employee shall be required to pay back any such sick leave advancement by a

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reduction of subsequent accumulated sick leave or by other arrangement approved by the college.

(h) Unused sick leave **\*for managerial employees\*** shall accumulate from year to year.

**9:6A-5.4 Sick leave: Reporting**

(a) A managerial employee of a state college shall, by the scheduled reporting time, notify his or her supervisor of any absence due to illness.

(b) Failure by any employee to supply notification to the designated contact person may result in a denial of sick leave for the specific absence, be considered an abuse of sick leave and constitute a cause for disciplinary action.

**9:6A-5.5 Sick leave: Pregnancy**

(a) A managerial employee who requests leave with or without pay for reason of inability to perform duties and responsibilities due to her pregnancy shall be granted leave under the same terms and conditions as sick leave, vacation leave or leave without pay.

1. The college may request acceptable medical evidence that the employee is unable to perform her work due to pregnancy.

(b) A managerial employee may use accrued leave time but shall not be required to exhaust accrued leave before taking a leave without pay.

(c) In order to qualify for New Jersey Temporary Disability Insurance, an employee at a state college must exhaust all accrued sick leave.

**9:6A-5.6 Vacation leave: Entitlements**

(a) Vacation leave shall accrue for managerial employees according to the following:

1. All 12 month full-time managerial employees of the state colleges shall be entitled to 22 working days of vacation leave during each fiscal year.

2. All 10 month full-time managerial employees of the state colleges shall be entitled to 18 working days of vacation leave during each fiscal year.

3. Any managerial employee of a state college commencing employment after July 1 of any fiscal year shall be entitled to vacation leave during that year at a rate of 22/12 days per month for 12-month employees and 18/10 days per month for ten-month employees for each full calendar month of employment.

4. Vacation leave shall not accrue for managerial employees during a leave of absence without pay.

(b) Employees in special titles shall not be entitled to paid vacation leave.

(c) Part-time employees **\*not entitled to representation by a negotiations agent\*** in regular titles shall be entitled to a proportionate amount of paid vacation leave.

(d) Vacation leave credits shall not accrue after **\*[an]\* \*a managerial\*** employee has resigned or retired although his or her name is being retained on the payroll until exhaustion of vacation leave.

(e) A managerial employee leaving the service of a state college shall, at the discretion of the college, either fully use his or her vacation leave prior to leaving the employment of the college or be paid for such unused vacation leave.

(f) Managerial employees may carry over to the next fiscal year up to a maximum of one year of unused vacation leave with the approval of the president of the college or his or her designee.

(g) A managerial employee who exhausts all paid vacation leave in any one year shall not be credited with additional paid vacation leave until the beginning of the next fiscal year.

(h) Upon the death of a managerial employee, earned unused vacation leave shall be paid to the employee's estate.

**9:6A-5.7 Vacation and sick leave: Liability**

(a) A managerial employee is liable for vacation and sick leave days taken in excess of his or her entitlement.

(b) A managerial employee who leaves the college or goes on a leave of absence without pay before the end of the fiscal or calendar year, as applicable, shall have his or her leave prorated according to time earned.

(c) A managerial employee shall reimburse the college for paid working days used in excess of his or her prorated and accumulated entitlements.

1. A managerial employee who returns to work from a leave of absence shall not be credited with paid vacation or sick leave until the amount of leave used in excess of the prorated entitlement has been reimbursed.

(d) For managerial employees, intermittent days off without pay shall be aggregated and considered as a continuous leave without pay for calculation of reduced vacation and sick leave credits.

1. When intermittent days off without pay equal 11 working days, the managerial employee's vacation and sick leave credits shall be reduced by one-half of the one month's entitlement.

(e) An employee shall not be paid for accumulated sick leave when leaving the college except as provided in N.J.A.C. 4:5.

**9:6A-5.8 Leave without pay for managerial employees**

The college may grant leaves of absence without pay to full-time managerial employees for a period not to exceed one year. The one-year leave may be extended for exceptional circumstances upon request of the employee and approval of the college.

**9:6A-5.9 Leave without pay for managerial employees: Child care**

Child care leave may be granted to managerial employees under the same terms and conditions as all other leaves without pay.

**9:6A-5.10 Special leave for managerial employees: Jury duty**

(a) Managerial employees shall be granted leave with pay for the time required to attend jury duty that is scheduled during work hours.

1. Time required for jury duty includes actual time spent in commuting.

(b) The managerial employee shall be responsible for immediate notification to the college of impending jury duty.

(c) Managerial employees shall submit to the college written verification of attendance signed by a representative of the court.

**9:6A-5.11 Special leave for managerial employees: Court appearance**

(a) Managerial employees shall remain in pay status when appearing as a witness or a party before a judicial or quasi-judicial body or legislative committee when such appearance is part of the job function.

(b) Managerial employees shall be granted time off with pay when summoned as a witness before a judicial or quasi-judicial proceeding to which he or she is not a named party, other than in (a) above.

(c) Managerial employees may be granted time off without pay to appear at a judicial or quasi-judicial proceeding to which he or she is a party, other than in (a) above.

**9:6A-5.12 Holidays**

(a) Managerial employees at the state colleges shall be entitled to days off with pay on such state holidays as are authorized by the Governor.

(b) Any managerial employee who is required by the college to work on a state holiday shall be entitled to comparable time off on another work day approved by the employee's supervisor.

(c) Managerial employees must be in pay status the working day immediately preceding and subsequent to a holiday in order to receive credit for the holiday.

(d) Part-time employees in regular titles other than faculty **\*not entitled to representation by a negotiations agent\*** shall receive credit for the holiday on a proportionate basis provided the employee's work schedule would have included work time on that holiday.

**9:6A-5.13 Unauthorized absence**

Any employee who is absent from duty for five consecutive business days without notice to and approval of his or her supervisor or who fails to report for duty within five business days after the expiration of any authorized leave may be subject to dismissal by the college.

**9:6A-5.14 Sick leave injury (SLI) for managerial employees:****General**

(a) A managerial employee at a state college who is disabled from a work-related injury or illness shall be granted a leave of absence with pay.

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(b) An employee at a state college who is disabled from a work-related injury or illness, who can return to work on a basis less than his or her normal work schedule shall be compensated for the hours actually worked and receive sick leave injury (SLI) benefits for the hours missed due to the disability.

(c) SLI benefits shall be reduced by the amount of any workers' compensation award to such an employee.

(d) Benefits are limited to a one-year period from the initial date of the injury or illness.

(e) Special title employees at the state colleges shall not be eligible to receive sick leave injury (SLI) benefits.

**9:6A-5.15 Sick leave injury (SLI) for managerial employees: Standards**

(a) To receive sick leave injury (SLI) benefits, the disability must be an injury or illness resulting from the employment.

1. Injuries or illnesses which would clearly not have occurred but for a specific work-related accident or condition of employment are compensable.

2. Preexisting illnesses, diseases and defects aggravated by a work-related accident or condition of employment are not compensable where such aggravation was reasonably foreseeable.

3. Illnesses, such as a heart disorder and arthritis, which are generally not caused by a specific work-related accident or condition of employment, are not compensable except where the claim is supported by medical documentation that clearly establishes the injury or illness is work related.

4. Psychological or psychiatric illness shall not be compensable, except where such illness may be traced to a specific work-related accident or occurrence which traumatized the managerial employee thereby creating the illness, and the claim is supported by medical documentation.

5. An injury or illness occurring where the state college has established that the managerial employee has been grossly negligent, including alcohol or drug abuse at the time of the accident, shall not be compensable.

(b) Any accident resulting in injury for which the managerial employee seeks compensation must occur on the work premises except as set forth in (b)2 below.

1. For the purpose of this subsection, work premises shall be defined as the physical area of operation of the state college, including buildings, grounds and parking facilities provided by the college for the use of its employees.

2. An injury occurring off the work premises is compensable only when the managerial employee is engaged in authorized work activity or travel between assignments.

(c) Injuries which occur during normal commutation between home and the college or home and a field assignment are not compensable.

1. Injuries which occur during lunch or break periods are not compensable. However, managerial employees who are required by the college to be on duty during lunch and/or work-break shall not be precluded from receiving SLI benefits.

(d) The burden is on the managerial employee to establish by a preponderance of the evidence that he or she is entitled to SLI benefits.

**9:6A-5.16 Sick leave injury (SLI) for managerial employees: Procedures**

(a) The managerial employee shall report to his or her supervisor any accident or work condition claimed to have caused disability upon occurrence or discovery and shall complete a written report, on a form provided by the college, on the matter within five work days or as soon as possible thereafter. The report shall include a statement of when, where, and how the injury or illness occurred, statements of witnesses and copies of all medical reports concerning the injury or illness.

(b) The state college shall review the request for sick leave injury (SLI) benefits based on the standards in N.J.A.C. 9:6A-5.15 and within 20 work days of receipt of the request shall:

1. Grant the request and notify the managerial employee in writing that benefits have been approved; or

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2. In writing, deny the request, inform the managerial employee of the reasons for the denial and advise the employee of the right to appeal within 20 work days of receipt of the determination and to whom the appeal must be addressed.

(c) The state college may require the managerial employee to be examined by a physician designated and compensated by the college to determine the nature, cause and extent of the injury or illness.

**9:6A-5.17 Sick leave injury (SLI) for managerial employees: Appeal procedures**

(a) An appeal of a denial of sick leave injury (SLI) benefits from a managerial employee shall be submitted, in writing, to the appropriate college office. The appeal must include the original request for SLI benefits filed pursuant to N.J.A.C. 9:6A-5.16(a) and the determination setting forth the denial of SLI benefits made pursuant to N.J.A.C. 9:6A-5.16(b).

(b) The president of the college or the president's designee shall appoint a hearing officer to conduct a review of the appeal. The parties shall present their arguments before the hearing officer.

1. All parties shall be advised of the review date.

2. A managerial employee is entitled to self-representation or representation by counsel. Reasonable prior notice shall be given to the hearing officer as to the form of representation.

(c) The hearing officer shall submit a written report to the president of the college or the president's designee within 15 working days of the review. The report shall include findings, conclusions, and a recommendation. A copy of the report shall be sent to all parties.

(d) The president or the president's designee shall review the report of the hearing officer and notify the appellant in writing of the decision within 20 working days of receipt of the report of the hearing officer. This decision letter must include findings of fact, conclusions, and a determination of eligibility.

(e) The final decision of the college may be appealed to the Chancellor of Higher Education pursuant to N.J.S.A. 18A:6-27.

**9:6A-5.18 Paid professional leave for managerial employees**

(a) Each state college may establish a program for paid professional leaves for managerial employees to enhance professional development.

(b) Each program shall include, but not be limited to, the following elements:

1. Purpose
2. Eligibility requirements;
3. Duration of leave;
4. Compensation level;
5. Conditions regarding subsequent service at the college.

**SUBCHAPTER 6. STANDARDS OF CONDUCT**

**9:6A-6.1 Prohibition against political activity**

(a) An employee shall not directly or indirectly use or seek to use his or her authority or influence of his or her position to control or modify the political action of another person.

(b) An employee shall not engage in political activity during the hours of duty.

**9:6A-6.2 Falsification of application materials**

The falsification of any materials or documents submitted by an individual in connection with an application for employment at a state college may be grounds for dismissal.

**SUBCHAPTER 7. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION**

**9:6A-7.1 Equal Employment Opportunity and Affirmative Action Program**

(a) There shall be equal employment opportunity for all employees and all applicants seeking employment in all state colleges, regardless of race, creed, color, national origin, ancestry, religion, sex, age, political affiliation, or physical handicap.

(b) Each state college shall ensure equality of opportunity for all employees and applicants in the areas of recruitment, selection, hiring, retention, training, tenure, promotion, transfer, layoff, return

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from layoff, compensation, fringe benefits, and all other terms and conditions of employment.

(c) Affirmative action shall be undertaken to provide efforts to recruit, employ, and promote qualified members of the protected classes, as defined by the United States Equal Employment Opportunity Commission (EEOC).

(d) The state colleges shall utilize the standard race/ethnic categories established by the United States Equal Employment Opportunity Commission.

(e) Each state college shall appoint an affirmative action officer who shall be directly responsible to the president of the college. Affirmative action officers shall serve in a full-time capacity except under exceptional circumstances as determined by the Chancellor.

(f) The affirmative action officer of the college shall:

1. Be responsible to the president of the college for the administration of the college's affirmative action program;

2. Develop, for the president's approval, a written policy statement on equal opportunity and affirmative action.

3. Review the college's personnel policies and procedures including, but not limited to, recruitment, selection, and promotion procedures, to identify and facilitate the elimination of artificial barriers to equal employment opportunity;

4. Ensure that the college develops appropriate annual written affirmative action hiring goals for protected class persons;

5. Ensure that the college complies with all laws and regulations relating to equal employment opportunity and affirmative action;

6. Seek correction of discriminatory practices and procedures that might exist;

7. Act as liaison with federal, state, and local enforcement agencies;

8. Prepare, analyze, and transmit to the president of the college regular progress reports on affirmative action at the college;

9. Make available to the employees at the college, and the public, upon request, information on the college equal opportunity and affirmative action program including, but not limited to, the policy statement, the annual affirmative action plan, affirmative action goals for hiring, statistics relating to progress for the target groups for affirmative action.

10. Receive and review all discrimination complaints at the college.

(g) Each college shall submit to the Chancellor, by a date established by the Chancellor, an annual written affirmative action plan complete with:

1. Policy statement on equal opportunity and affirmative action;

2. Status of the current employment profile of the college by sex and ethnicity;

3. Progress on meeting goals for the last reporting period;

4. Affirmative action hiring goals and time tables for the plan period;

5. Identification of problem areas in hiring;

6. Specific remedies for problem areas along with the time frame for accomplishing remedial action;

7. Mechanisms for the investigation and handling of discrimination complaints.

**9:6A-7.2 Non-discriminatory employment practices**

Each state college shall provide equal employment opportunities, administer its personnel system in a non-discriminatory manner and ensure that its employment practices do not express overtly or covertly any limitation, specification, preference, or discrimination based on race, creed, religion, color, national origin, ancestry, age, marital status, physical handicaps, sex, or political affiliation.

**9:6A-7.3 Policies regarding prohibition of sexual harassment**

(a) Each state college shall adopt a policy providing for the prohibition of sexual harassment on its campus **\*which at a minimum shall comply with Federal and State law\***.

(b) The policy on sexual harassment shall include, but not be limited to, the following:

1. Definition of forms of sexual harassment;

2. Statement prohibiting sexual harassment of both employees and student employees;

3. Mechanisms for the investigation and handling of sexual harassment complaints;

4. Sanctions and corrective actions to be taken under circumstances of proven sexual harassment.

(c) The policy on sexual harassment, upon adoption by the board of trustees of the college, shall be incorporated into the affirmative action plan of the college.

(d) The college shall ensure that the policy on sexual harassment is made available to all employees at the college.

(e) The policy on sexual harassment and any future changes thereto, shall, subsequent to adoption by the board of trustees of the college, be forwarded to the Chancellor.

**9:6A-7.4 Discrimination complaints**

(a) Employees at the state colleges may file a complaint alleging discrimination or sexual harassment with the college's affirmative action officer pursuant to existing procedures at the college.

(b) Any employee not satisfied with the final outcome of the state college's investigation and determination of his or her complaint filed under (a) above shall be informed of his or her right to file a complaint with the New Jersey Division on Civil Rights or the United States Equal Employment Opportunity Commission.

**HUMAN SERVICES**

**(a)**

**DIVISION OF PUBLIC WELFARE**

**General Assistance Manual**

**Emergency Assistance**

**Adopted Amendments: N.J.A.C. 10:85-4.6**

Proposed: September 21, 1987 at 19 N.J.R. 1715(a).

Adopted: December 11, 1987 by Drew Altman, Commissioner, Department of Human Services.

Filed: December 11, 1987 as R.1988 d.26, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:8-111(d), 122, and 124.

Effective Date: January 4, 1988.

Expiration Date: January 30, 1990.

**Summary of Public Comments and Agency Responses:**

The Department of Human Services held a public hearing on October 6, 1987 concerning the proposed amendments to Emergency Assistance (EA) provisions of the General Assistance (GA) program. The hearing was conducted in compliance with the court's directive in *Rodgers, et al. v. Gibson, et al.*, 218 N.J. Super. 452 (App. Div. 1987), requiring a rulemaking hearing to solicit public comment on the proposed amendments. Notification of the public hearing was sent to over 120 interested agencies and organizations. Approximately 21 individuals attended the afternoon and evening sessions of the October 6, 1987 hearing, and 10 individuals presented oral testimony. Numerous written comments were submitted through October 26, 1987, the expanded Register comment period, and those, together with the transcript of oral testimony were made part of the public record and considered by the Department in the development of the final rule. Documents submitted on the proposal included those from the Public Advocate, the Commissioner of the Department of Community Affairs, staff from State, county, and municipal agencies, advocacy groups for battered women and the mentally ill, advocacy groups for the homeless, staff from emergency shelters, and homeless individuals.

Some commenters mentioned issues clearly beyond the scope of the proposed amendment, such as the need to increase the assistance grants; the need for the Department to develop a homesharing program (the Department of Community Affairs (DCA) already has such a program); the need for the Division of Mental Health and Hospitals (DMHH) to conduct a separate public hearing on the plight of the homeless mentally ill; the need for a hospice program for persons with AIDS; the need for 100 percent State funding for EA; and the need for EA funds to be used to subsidize rent in permanent housing on an ongoing temporary basis as a more satisfactory and cost effective measure than paying for emergency shelter in motels/hotels.

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The EA program is designed to provide temporary assistance to individuals for a limited period of time for life-sustaining necessities. To this end, the proposed adoption places emphasis on measures which are not permanent solutions in and of themselves, but rather are geared to address the needs of homeless individuals in crisis. The regulations are based on sound public policy and fiscal considerations that of necessity limit what an emergency assistance response can be. They have been expanded to include: extended time limitation for filing an application; liberalization of the concept of "lack of realistic capacity of plan"; payment of advance rent, security deposits and moving expenses; authorization of retroactive rental and mortgage payments; and extension of EA beyond the 90-day limit for up to two additional months in certain circumstances.

Testimony and written comments received, with Departmental response, are provided below:

**COMMENT:** Virtually all commenters noted that the primary cause of homelessness is the lack of suitable affordable housing throughout the State. The need for additional suitable emergency shelters was also underscored, as was the need for transitional housing for the deinstitutionalized mentally ill. It was noted that discrimination against the mentally ill exists in both temporary and permanent housing, and that conditions in many of the shelters are deplorable. It was suggested that there be mandatory State-wide building codes and standards for shelters, that shelter staff be better trained, and that there be liaison persons at shelters to assist with housing search and referrals to community mental health centers. Additionally, suggestions were made concerning the use of EA funds for construction of shelters and both transitional and permanent housing. Public and private agencies were urged to advocate more vigorously on behalf of the homeless.

**RESPONSE:** While the Department recognizes these problems, EA is not the solution to the lack of affordable housing and emergency shelters, which requires capital construction. This is not within the scope of the regulatory authority of this Department, nor is it a consideration with respect to EA. The redefining of regulations alone is not sufficient to solve the problems of homelessness. The responsibility should be shared with the cities, counties and Federal government, as well as the private sector. The measures contemplated through this rulemaking are aimed to assist recipients in finding whatever affordable housing is available. Discrimination in housing, and standards and conditions in shelters are not the subject of this rulemaking. The Department is, nevertheless, working with other agencies, especially the Department of Community Affairs, to creatively use EA funds to coordinate with private and nonprofit organizations to renovate housing for use in providing temporary and ultimately permanent shelter through demonstration programs such as Emergency Housing/Apartment Program (EHAP) and the Housing Quality Demonstration. The Department stands ready to address problems of homelessness at any additional Federal, State or county forum, public or private, and is committed to working with all groups toward practical, effective solutions to one of New Jersey's most serious problems.

**COMMENT:** Although most commenters applauded the regulatory addition of the two month extension for receiving EA, almost all were of the opinion that the 90-day limit, plus the incremental two month extension, was not sufficient in view of the lack of affordable housing in the State. In contrast, one commenter noted that the extension will result in an enormous financial burden to municipalities, and another recommended that the time limit be reduced to 30 days in order to ease the financial hardship on municipalities. The majority, however, urged that the time limit be extended further, with about half suggesting that EA should be granted with no stated time limit until permanent housing is secured, provided that reasonable efforts were undertaken by both client and agency to locate permanent housing.

**RESPONSE:** The Department has taken into consideration the renewed emphasis on services by the municipal welfare department (MWD) including information, referral, counseling, and assistance in securing shelter, combined with additional financial assistance in the form of security deposits for rent and utilities, advance rent, moving expenses and furniture storage. The Department is also cognizant of the need for sound public policy which calls for a solution that involves a balance between the needs of the GA population and the agency's mandate to operate within fiscal boundaries which ultimately are defined by the Legislature's appropriation. The Department, therefore, concludes that homelessness cannot be solved by expanding EA beyond the 90 days (plus, if necessary, an addition of up to two months). The crux of the problem is the lack of low-income housing. Emergency Assistance by definition, is a temporary assistance program to help individuals for a limited period of time.

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**COMMENT:** Expansion of the time limit on application for EA from seven to 30 days was supported by nearly all commenters, with the majority suggesting that the regulation be further liberalized by deletion of any time limit. Questions were also raised concerning the establishment of a limit on the number of times an individual may apply for EA and a definition of the point at which homelessness actually begins.

**RESPONSE:** The Department concludes that a time limit of 30 days between the occurrence of the emergency and the application for emergency assistance is reasonable. This time limitation is an expansion of the current rule and gives recognition to the fact that many individuals, when faced with homelessness, attempt to resolve the crisis on their own by staying with relatives or friends. Only after other alternatives have been explored to no avail do those individuals seek the aid of agencies. The Department concludes that a time frame expansion beyond 30 days is not warranted. Procedures are currently in place which stipulate that in situations where families take refuge in relatives' homes, emergency shelters, or are hospitalized due to domestic violence or illness, that every effort be made to contact the MWD or a crisis intervention agency, which would then contact the MWD, to report the emergent situation in order to ensure potential eligibility for EA within the prescribed application time frame. The Department points out that acceptable contact may be in the form of a telephone call.

Due to variations that may exist in individual case circumstances the Department concludes that to set a limit on the number of times an individual may apply for EA is not warranted in the GA program. The issue may be handled on a case by case basis, since administrative measures are presently in place to provide recipients and applicants with appropriate redress.

**COMMENT:** Most commenters stated that the concept of "realistic capacity to plan" is meaningless in view of inadequate welfare grants and the lack of affordable housing. Advocates for battered women and the mentally ill maintained that the concept is particularly inapplicable to the populations served by their agencies since the ability of those individuals to function is impaired from the outset. One commenter indicated support for the concept, provided that language be added to take into account the special problems of the mentally disabled. Another preferred language stipulating that the applicant must not have contributed to his homelessness. Questions were also raised concerning the definition of "necessary household and living expenses", and about the unstated necessity of receipts or other documentation to demonstrate that the applicant has appropriately disposed of his available funds. Commenters could foresee problems with documentation since many applicants would find such a requirement difficult if not impossible to meet.

**RESPONSE:** The language pertaining to "realistic capacity to plan" liberalizes policy as set forth in the current rule. Eligibility based on need alone, however, cannot be accommodated. Recent experience in other states which have unlimited emergency assistance for housing has resulted in an enormous cost to the public with no permanent solutions to homelessness. As to the impaired ability of battered women and the mentally disabled to realistically plan in advance, the suggestion that language be added taking into account their unique problems, and the comments requesting definition of necessary living expenses, the Department concludes that the proposed regulations do not require further modification. Receipts for expenditures need not be required. Decisions must be made on a case by case basis predicated on the responsible discretion of the agency. Administrative remedies are currently available to provide applicants with appropriate redress.

**COMMENT:** The majority of commenters maintained that regulations concerning documentation of contacts in the housing search should be more flexible due to the lack of affordable housing, the lack of transportation in some areas, and the limitations of the physically and mentally ill.

**RESPONSE:** The proposed regulations state that at least 10 contacts per week should be made "unless the agency determines that fewer contacts are appropriate or that good cause, for example, illness, incapacity exists for fewer contacts." The Department concludes that the proposed regulations are sufficiently flexible to address the issues.

**COMMENT:** Some commenters supported the proposed regulation concerning authorization of retroactive rental and mortgage payments for two months as written. Others favored extending the time limitation, while the majority suggested that there should be no time limit. It was also suggested that retroactive utilities payments be included. Most commenters urged that some evidence of pending eviction other than a formal eviction notice be recognized as acceptable.

RESPONSE: The proposed regulations have been modified to authorize retroactive rental, mortgage and utilities payments for up to three months after other avenues have been explored to no avail. This has been done in order to curtail potential evictions and lessen disruptions in family living and to moderate the unnecessary expenditure of EA funds for temporary placement in motels/hotels. The Department has also amended the proposed text to include some acceptable evidence of pending eviction such as official documentation other than a court-ordered eviction notice. This change is consistent with comments indicating that by the time a court order for eviction is issued it is too late to prevent the eviction.

COMMENT: There was general support for authorization of payment for advance rent, security deposits for rent and/or utilities, and moving expenses when necessary. Individual comments were made concerning the definition of limits and the financial hardship to municipalities which will result from these expanded regulations. A few commenters indicated the need to include payment for furniture storage while permanent housing arrangements are being sought.

RESPONSE: The proposed regulatory text has been modified to include authorization of payment for furniture storage. Precise limits, however, cannot be established for every situation prompted by these proposed regulations due to variations that may exist in individual circumstances.

COMMENT: Many commenters argued against relocation of individuals outside their own municipalities for either temporary shelter or permanent housing since this would result in loss of contact with support systems which are vital for the mentally disabled and victims of domestic violence. The majority, taking into account the shortage of emergency shelters and affordable housing, conceded that relocation may be necessary as a last resort. Of those commenters, many maintained that the referring municipality should provide a relocated individual with services and transportation costs to return to his or her own municipality to conduct a housing search. It was also noted that each municipality should develop resources for its own homeless individuals and that the proposed regulations do not impose an obligation upon MWDs to make every effort to place individuals within their own municipalities, thereby adding to the problems of already overburdened municipalities which may be faced with an influx of additional homeless people.

RESPONSE: The text of proposed regulations has been modified to reflect that efforts should be made by both recipient and agency to secure temporary and permanent housing in the recipient's own municipality. As a last resort, a homeless individual may be relocated elsewhere. The Department agrees that each municipality should be responsible for developing resources for its own homeless population and this modification encourages such responsibility.

COMMENT: Concern was expressed by a few commenters about the possibility of bias or error on the part of MWDs, resulting in unfair treatment of recipients and lack of uniformity in interpretation and administration of EA regulations. Additional training for agency workers who will deal with mentally disabled applicants or recipients was suggested.

RESPONSE: The MWDs are charged with the responsibility, including appropriate training of MWD staff, to carry out the mandates of the EA rules. Administrative remedies are presently in place to provide recipients and applicants with the necessary redress in the event the regulations are not properly executed by the MWD.

COMMENT: A great many commenters requested that services be specifically defined and expanded to address the special problems of the diverse GA population, including mental illness, substance abuse, and the elderly.

RESPONSE: Specific definitions and explanations could actually limit the provision of services. Due to the diversity of the GA population, it is more beneficial to recipients to outline services in the broad language of the proposed regulations.

COMMENT: It was suggested by one commenter that denials of EA should be in writing and the appeal process should be explained at the time of the denial.

RESPONSE: Current regulations provide that notice of any negative action, as well as the process of appeal, must be given in writing.

COMMENT: One commenter stated that assistance checks should be withheld from recipients in emergency shelters until permanent housing is obtained, since recipients usually make no effort to save a portion of their assistance grants to provide for the costs of permanent housing arrangements.

RESPONSE: Such an approach would go beyond the scope of the current rulemaking. The Department therefore concludes that to mandate

an across the board savings requirement in an essentially "unrestricted grant system" would not be appropriate. Rather, the agency can encourage recipients to save through case management and support services such as budget planning and counseling.

COMMENT: AFDC grants should be continued in full until permanent housing is secured for mothers who have temporarily lost their children to foster care. Otherwise, having to depend on GA grants, they will not be able to afford appropriate housing in order to reunite their families.

RESPONSE: Federal regulations, as a condition for FFP, do not authorize the continued issuance of AFDC grants to the parents if the eligible children are no longer in the care and custody of those parents. In any event, alterations in regulations governing the AFDC program are not subject to this rulemaking.

COMMENT: A commenter suggested that EA should be provided on a temporary basis to homeless individuals regardless of their eligibility for GA, since EA is a life-sustaining necessity.

RESPONSE: Eligibility based on need alone cannot be accommodated for the reasons stated earlier. For individuals who do not meet the requirements for GA/EA, there are other programs in place such as the Emergency Services Program, through which State appropriated funds are made available to county governments for 24 hour emergency response to provide emergency shelter, food, social services, and case management. The Department is also involved in developing innovative programs to assist the homeless. An example is the Outreach Program in Jersey City in which the Department, the Jersey City Division of Welfare, the Social Security Administration, and private service agencies are engaged in a team approach to assist homeless individuals in applying for Supplemental Security Income (SSI), GA, housing, health care, and follow-up with other necessary services.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

#### 10:85-4.6 Emergency grants

(a) An emergency grant shall be authorized to or for an individual(s) otherwise eligible to receive General Assistance under the regulations in this manual when circumstances set forth in (a)1-2 below exist. In addition, these regulations shall apply to an emergency (as described in (a)1-2 below) which occurred within the 30 calendar days immediately prior to the application for General Assistance if the applicant(s) is determined eligible at the time of application under established procedures and standards.

1. Fire or natural disaster: When there has been substantial loss of shelter, food, clothing and/or household furnishings by fire, flood or other similar disaster, and the eligible individual(s) is in a state of homelessness and the director determines that the provision of one or more of these basic needs is essential for the health and safety of the individual.

2. Domestic violence: The state of homelessness may result from imminent or demonstrated violence which imperiled the health and safety of the individual or eligible unit.

3. **\*[When]\*\*Where\*** there is **\*official documentation of a pending eviction, such as a tenancy complaint filed by the landlord,\*** an order from a court for eviction or foreclosure, an actual eviction or foreclosure has occurred, or when prior permanent shelter is no longer available, and the eligible individual(s) demonstrates a lack of realistic capacity to plan for substitute housing as defined in (a)3iii below, emergency assistance shall be authorized in accordance with (a)3i and ii below.

i. Payment may be authorized for **\*[two]\* \*three\*** calendar months of retroactive rental or mortgage payments if it will prevent actual eviction or foreclosure.

ii. In situations of homelessness due to actual eviction or foreclosure or when prior permanent shelter is no longer available, payment shall be authorized for emergency shelter in accordance with (b)1. below.

iii. Lack of realistic capacity: Lack of realistic capacity to plan for substitute housing exists in the following circumstances:

(1) When the eligible person(s) can demonstrate that there was insufficient time to secure substitute housing between receipt of notice of imminent loss of shelter and actual eviction, foreclosure or loss of prior permanent shelter; or,

**ADOPTIONS**

**LABOR**

(2) When the eligible person(s) can demonstrate that available funds were exhausted in payment of ordinary and necessary household and living expenses, such as food, clothing and shelter, and that payment of such expenses resulted in homelessness.

(b) Standards for emergency grants are:

1. Emergency shelter: The authorized payment shall be the actual cost of adequate emergency shelter arrangements, at the most reasonable rate available, for a specified temporary period not to exceed the two calendar months following the month in which the state of homelessness first becomes known to the municipal welfare department. \**[Such emergency shelter need not be located in the municipality in which the eligible person(s) currently resides.]* \***Such emergency shelter, wherever possible, shall be in the municipality in which the eligible individual currently resides. If, however, shelter as delineated above is not available within the municipality of customary residence, the recipient, as a condition of eligibility, shall be obliged to accept shelter as delineated above which is situated outside the municipality of customary residence.\***

i. The regular grant of assistance (including calculated earned income and exempt income) is not to be counted in the determination of eligibility for or the amount of emergency assistance payments authorized for temporary emergency shelter.

(1) When plans for more permanent living arrangements are made, any funds actually available to the clients are to be counted in the determination of emergency assistance payments for shelter, utility deposits\*, **furniture storage\***, moving expenses, purchase of furniture and appliances.

ii. Client responsibility: While receiving emergency assistance for temporary shelter, eligible persons have a continuing responsibility to seek alternative permanent shelter. The eligible persons are also responsible for documenting their efforts in locating alternative permanent housing. The efforts are to begin no later than the 11th day after the date on which the agency became aware of the emergency. Such documentation must reflect at least 10 contacts per week unless the agency determines that fewer contacts are appropriate or that good cause, for example, illness or incapacity, exists for fewer contacts. Contacts may be made by telephone, personal visit, or a combination of both. Documentation consists of a written record showing:

- (1) Date of contact;
- (2) Telephone number (if applicable);
- (3) Address (location) of housing site; and
- (4) Name of person contacted (landlord or agent).

iii. Each person receiving emergency assistance for temporary shelter shall present the record of contacts at each monthly review of eligibility and at such other times as may be required by the agency.

iv. **\*Every effort shall be made to locate suitable housing in the community of prior permanent residence.\*** If \*, **however,\*** the municipal welfare agency locates suitable permanent housing of sufficient size, not necessarily in the municipality of prior residence, the client must accept the arrangement. Refusal to relocate without good cause renders the person ineligible for further emergency assistance for temporary shelter. Good cause may include, but is not limited to, the need to travel more than one hour each way to and from a place of employment by public or private transportation.

v. In situations where the municipal welfare agency determines that, despite efforts of both the client and the agency, permanent living arrangements are unavailable at the expiration of the initial emergency assistance period, an extension for up to two additional months may be authorized under conditions including but not limited to, the following:

(1) Illness or incapacity of the client or of another person which requires the client's presence in the home on a substantially continuous basis, and no other person is available to seek permanent shelter;

(2) Permanent housing has been secured but will not be available until after the expiration of the initial emergency assistance period;

vi. Payment may be authorized for **\*furniture storage,\*** moving expenses, advance rent and security deposits for rent and/or utilities when the municipal welfare director determines it is necessary to establish the client in a new permanent living arrangement.

2.-4. (No change.)

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

(f) Services: The following services shall be performed by agency personnel and must, where appropriate, be provided to all cases granted emergency assistance benefits:

- 1. Information;
- 2. Referral;
- 3. Counseling;
- 4. Assistance in securing shelter, including transportation; and
- 5. Referral for legal services.

**INSURANCE**

**(a)**

**THE COMMISSIONER**

**Organization of Department  
Revised Organization Chart**

**Adopted Amendment: N.J.A.C. 11:1-1.1**

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: December 1, 1987 as R.1988 d.1, **with changes not requiring public notice and comment** (see N.J.S.A. 52:14B-4(b)).

Authority: N.J.S.A. 17:1C-1 et seq. and 52:14B-4(b).

Effective Date: December 1, 1987.

Expiration Date: February 3, 1991.

**Summary of Public Comments and Agency Responses:**

Organizational rules are exempt from the notice and hearing requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. Therefore, there was no public comment regarding this amended organizational rule.

On December 1, 1987, pursuant to authority cited above, Kenneth D. Merin adopted a revised organizational chart for the Department of Insurance.

**Full text** of the adopted rule follows.

**SUBCHAPTER 1. ORGANIZATION**

**11:1-1.1 Organization of department**

(a) The organization chart of the Department of Insurance is as follows:

OAL NOTE: The organization chart replaced by this adoption is not reproduced here, but is set forth at N.J.A.C. 11:1.1(a) in the New Jersey Administrative Code.

**LABOR**

**(b)**

**DIVISION OF WORKPLACE STANDARDS**

**Explosives**

**Adopted New Rules: N.J.A.C. 12:190**

**Adopted Amendments: N.J.A.C. 12:190-1.3, 2.1, 3.2, 3.3, 3.5, 3.6, 3.8, 3.10, 3.12, 3.13, 3.14, 3.20, 5.2, 5.25, 6, 8, 9.1, 9.3, 9.8, 11.2 and 12**

Proposed: October 19, 1987 at 19 N.J.R. 1883(a).

Adopted: December 11, 1987 by Charles Serraino, Commissioner, Department of Labor.

Filed: December 11, 1987 as R.1988 d.16, **without change.**

Authority: N.J.S.A. 21:1A-128 et seq., specifically 21:1A-131.

Effective Date: January 4, 1988.

Expiration Date: January 4, 1993.

**Summary of Public Comments and Agency Responses:**

The New Jersey Department of Labor held a comment period open until November 30, 1987. The Department also solicited comments from a list of interested parties. Those interested parties are listed below:

**LABOR**

**ADOPTIONS**

Associated General Contractors of New Jersey, Jamesburg, N.J.  
 Explo-Tech Inc., Norristown, Pa.  
 Heavy and General Construction Laborer's Union, Newark, N.J.  
 New Jersey Association of Counties, Trenton, N.J.  
 New Jersey Business and Industry Association, Trenton, N.J.  
 New Jersey Conference of Mayors, Asbury Park, N.J.  
 New Jersey State Chamber of Commerce, Trenton, N.J.  
 Romac Explosives, Inc., Newton, N.J.  
 Utility Contractors Association of New Jersey, Lakewood, N.J.

**No comments were received** on the new rules or the amendments.

**Full text** of the adoption follows.

12:190-1.3 Scope

- (a) (No change.)
- (b) This chapter shall not apply to:
  - 1. (No change.)
  - 2. Transportation of explosives in interstate or intrastate commerce;
  - 3.-7. (No change.)

12:190-2.1 Definitions

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

...  
 "CFR" means Code of Federal Regulations in effect on date this chapter was last amended.

...  
 "Commissioner" means the Commissioner of Labor or his authorized designee.

12:190-3.2 Permit restrictions

- (a) No person shall manufacture, sell, store or use explosives unless a permit has been issued as provided in the applicable provisions of this subchapter.
- (b)-(c) (No change.)
- (d) No permit holder shall manufacture, sell, store or use explosives except in compliance with the limitations expressed on the permit.
- (e) No permit shall be issued for the sale, storage or use of explosives which are not acceptable to the Commissioner.
- (f) (No change.)

12:190-3.3 Exemptions from permits

- (a) No permit shall be required for the storage or use of smokeless powder which is used by private persons for the hand loading of small arms ammunition and which is not for resale. For this purpose not more than 36 pounds of smokeless powder and not more than five pounds of black powder shall be stored or transported without a permit.
- (b) (No change.)

12:190-3.5 Investigation of applicants for permits

- (a) Upon receipt of an application for a permit to manufacture, store, sell or use explosives, and before the permit is issued, the Commissioner shall make or cause to be made an investigation for the purpose of ascertaining if all applicable requirements of this chapter and the Act have been met.
- (b) For an initial permit to manufacture, store, sell or use explosives the Commissioner shall make a determination of "good moral character and loyalty to the United States" referenced in N.J.A.C. 12:190-3.6. This determination is based on:
  - 1.-3. (No change.)
- (c) The Commissioner shall not issue a permit to manufacture, sell, store, or use explosives when an investigation reveals that all the provisions of this chapter and the Act have not been met.

12:190-3.6 Qualifications of applicants for permits

- (a) An applicant for a permit to manufacture, sell, store or use explosives shall:
  - 1.-8. (No change.)
- (b) When the applicant for a permit to manufacture, sell, store or use explosives is a firm, association or corporation, the applicant

shall demonstrate that such activities with regard to explosives will be under the direct supervision of a person who meets the qualifications contained in this section.

12:190-3.8 Revocation of permits

- (a) A permit for the sale, storage or use of explosives may be revoked by the Commissioner for any of the following reasons:
  - 1.-6. (No change.)
  - (b)-(d) (No change.)

12:190-3.10 Permit class

- (a)-(b) (No change.)
- (c)-(d) (No change in text.)

12:190-3.12 Responsibilities of permit holder

- (a) All holders of a "permit to manufacture, sell, store or use" explosives shall comply with the reporting provisions of this subchapter.
- (b) All holders of a "permit to manufacture, sell, store or use" explosives shall post or be in possession of a permit as described in this subsection.
  - 1.-2. (No change.)
  - 3.-4. (No change in text.)
  - (c)-(d) (No change.)

12:190-3.13 Explosives not permitted

- (a) A "permit to sell, store or use" any of the following explosives shall not be issued:
  - 1.-11. (No change.)

12:190-3.14 Annual fee for permits

- (a)-(g) (No change.)
- (h)-(j) (No change in text except for table numbers in accordance with new subsection letters.)
- (k) An annual fee shall be paid for a private individual to store and use smokeless powder, in the hand loading of small arms ammunition, which is for personal use and not for resale, in accordance with Table 3.14(k).

Table 3.14(k)  
 Fee for "Permit to Store and Use"  
 Smokeless Powder  
 (No change in text of table.)

- (l) An annual fee shall be paid for a private individual to store and use black powder, in the hand loading of small arms ammunition, which is for personal use and not for resale, in accordance with Table 3.14(l).

Table 3.14(l)  
 Fee for "Permit to Store and Use"  
 Black Powder  
 (No change in text of table.)

12:190-3.20 Reporting

- (a) (No change.)
- (b) Every person holding a "permit to manufacture, sell, store or use" explosives shall report immediately any loss by theft or otherwise of explosives in his possession to the appropriate officials of the Division of Workplace Standards.
- (c)-(g) (No change.)

12:190-5.2 Types of magazines

- (a) (No change.)
- (b) The five types of magazines as listed in (a) above shall be defined as follows:
  - 1.-3. (No change.)
  - 4. "Type 4 magazine" means an indoor or outdoor magazine.
  - 5. (No change.)
  - (c)-(d) (No change.)

12:190-5.25 Notification to municipality

- (a) The holder of a "permit to store" explosives shall keep the fire official informed of:
    - 1.-4. (No change.)
- The current subchapter 6 is not being retained but has been replaced with the following new provisions.

**ADOPTIONS**

**LABOR**

**SUBCHAPTER 6. TRANSPORTATION OF EXPLOSIVES OFF-THE-HIGHWAY**

**12:190-6.1 Scope of subchapter**

This subchapter shall apply to the transportation of explosives off-the-highway, underground, and manually.

**12:190-6.2 Transportation of explosives off-the-highway in motor vehicles**

(a) This section shall apply to the transportation off-the-highway of explosives at the project site.

(b) When the blasting project is being performed in a location where the public, or workers not associated with the blasting, could approach, the explosives on the vehicle shall be kept locked in:

1. An approved transportation day-box meeting the specifications of a Type 3 magazine; or

2. A closed van type cargo space.

(c) No detonator may be transported on the same motor vehicle with other explosives, unless the provisions of 49 CFR 177.835 are complied with.

(d) No person shall smoke or carry matches or any other flame producing device while in, on, or near a motor vehicle transporting explosives.

(e) No matches, firearms, electric storage batteries, flammable substances, acids, oxidizing materials or corrosive compounds shall be carried in the body of any motor vehicle transporting explosives, except where permitted by 49 CFR Parts 171-178 and 49 CFR Parts 390-397.

(f) When carried in a vehicle transporting explosives, tools for the repair of the motor vehicle and tools required to conduct blasting operations shall be so segregated or secured in place in or on the vehicle and separated by bulkheads or other suitable means as to prevent damage to the explosives.

(g) Every motor vehicle transporting any quantity of explosives shall, at all times, be attended by a driver or other person designated by the owner.

(h) The attendant shall be:

1. Made aware of the class of explosives in the motor vehicle and of its inherent dangers;

2. Instructed in the measures and procedures to be followed in order to protect the public from inherent dangers;

3. Familiarized with the motor vehicle he is assigned to attend; and

4. Trained, authorized, and licensed to move the motor vehicle, when required.

(i) For the purpose of (g) above, a motor vehicle shall be deemed "attended" only when:

1. The attendant is physically on or in the motor vehicle, or has the motor vehicle within his field of vision and can reach the motor vehicle quickly without any interference; or

2. A motor vehicle at a blasting site is within view of the blasting crew.

**12:190-6.3 Motor vehicles on off-the-highway projects**

(a) This section shall apply to motor vehicles transporting explosives at off-the-highway projects.

(b) Motor vehicles used for transporting explosives shall be strong enough to carry the load and shall be in good mechanical condition.

(c) When explosives are transported in an open-bodied vehicle, they shall be in an approved transportation day-box and such magazine shall be securely fastened to the truck bed.

(d) All motor vehicles used for the transportation of explosives shall have tight floors and any exposed spark-producing metal on the inside of the body, portable magazine, or closed container, shall be covered with wood or other nonsparking material to prevent contact with the explosives.

(e) Motor vehicles, when used for transporting any quantity of explosives, shall display the placards required by N.J.A.C. 12:190-6.4.

(f) Each motor vehicle used for transporting explosives shall be equipped with fire extinguishers as follows:

1. Motor vehicles of less than 14,000 pounds gross vehicle weight with at least two extinguishers having a total rating of at least 4-A:20-B:C; and

2. Motor vehicles of 14,000 pounds gross vehicle weight or more and tractor semi-trailer units with at least two or more extinguishers with total rating of at least 4-A:70-B:C.

(g) Only extinguishers listed by a nationally recognized testing agency shall be used on vehicles carrying explosives. Extinguishers shall be equipped with a device permitting visual determination of charged condition.

(h) Extinguishers shall be located where they will be accessible for immediate use.

(i) Extinguishers shall be examined and recharged periodically in accordance with the manufacturer's recommendation.

(j) Where motor vehicles are operated in temperatures at or below 32 degrees fahrenheit, dry powder extinguishers shall be pressurized with nitrogen gas.

(k) A motor vehicle used for transporting explosives shall be inspected each day before use to determine that it is in proper condition for safe transportation. The inspection shall insure that:

1. The fire extinguishers are fully charged and ready for use;

2. All electrical wiring is protected and fastened to prevent short-circuiting;

3. Chassis, motor, pan and underside of body are reasonably clean and free of excessive oil and grease;

4. Fuel tanks, feed lines, and cross-over lines are secure and have no leaks;

5. Brakes, lights, horns, windshield wipers, defrosters, and steering apparatus are functioning properly; and

6. Tires are properly inflated and are not defective.

**12:190-6.4 Signs and markings**

(a) Any vehicles on the job site containing explosives shall be placarded on the front, back, and sides, in one of the following ways:

1. Placards with the word "EXPLOSIVES" in letters six inches high and in colors contrasting with the background; or

2. Placards in accordance with 49 CFR 172.522, 523, or 524.

**12:190-6.5 Transportation of explosives in underground operations**

(a) This section shall apply to the transportation of explosives from the surface to underground operations.

(b) Explosives in small amounts shall be transported in a substantially constructed transport box with lid and sides of plywood at least one inch thick or equivalent. The transport box shall be painted red, with a conspicuous marking reading: "EXPLOSIVES".

(c) Explosives exceeding 100 pounds shall be transported in a powder car of sound construction with an interior and lid of nonsparking material.

(d) The hoist operator shall be notified before transporting explosives in a shaft.

(e) Explosives shall be moved from the surface to the underground destination without any delay enroute.

(f) Detonators and other explosives shall not be transported together in the same transport box, in any shaft conveyance, or in the same cargo space of a powder car. Explosives shall not be transported in any conveyance containing other material.

(g) A person shall not ride in any shaft conveyance transporting explosives.

(h) Explosives transported underground by railroad shall be:

1. In a powder car or, if in small amounts, in a clean empty railroad car;

2. Pulled by a locomotive, if a locomotive is used; and

3. Separated by at least one empty railroad car between the locomotive and the explosive car.

(i) When a trolley locomotive is used to pull a car carrying explosives, at least two empty cars shall be placed between the explosives car and the locomotive, and an electrically insulated coupling or drawbar shall be used between the locomotive and the explosives car.

(j) When a railroad car carrying explosives is pulled by a locomotive, no person other than the train crew and powder man shall be on the train.

(k) The powder car or conveyance carrying explosives shall bear a reflectorized sign on each side with the word "EXPLOSIVES" in letters not less than four inches in height, upon a background of sharply contrasting color.

**LABOR**

(l) The amount of explosives taken to any work area shall not exceed the estimated amount needed for the next blast.

(m) Transport boxes shall not be used to store explosives, unless the following shift is to continue loading explosives for the same blast.

12:190-6.6 Manual transportation of explosives

(a) This section shall apply to the manual transportation of explosives by a person.

(b) Explosives shall not be carried in personal clothing.

(c) When it is necessary to carry explosives which are not in the original outside container, they shall be carried in a suitable bag or container.

(d) Blasting caps shall not be transported in the same bag or container with other explosives.

**SUBCHAPTER 8. (RESERVED)**

(The text of this subchapter has been deleted.)

12:190-9.1 Scope of subchapter

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

(c) The construction and operation of motor vehicles for the bulk delivery and mixing of blasting agents in transportation off-the-highway shall comply with the applicable section of N.J.A.C. 12:190-6.

12:190-9.3 (Reserved)

12:190-9.8 Bulk storage bins

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

(e) Any electrically driven conveyors for loading or unloading bins shall conform to the National Electrical Code, NFPA No. 70-1987. The conveyors shall be designed to minimize damage from corrosion.

(f)-(h) (No change.)

12:190-11.2 Prohibitions

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

(c) No person shall sell, give or deliver explosives to any person not in possession of a valid permit to sell, store or use explosives. This provision shall not apply to an authorized representative of a valid permit holder who is on a certified list by the permit holder.

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

12:190-12.1 Documents referred to by reference

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

1.-4. (No change.)

5. NFPA No. 70-1987 National Electrical Code;

6. N.J.A.C. 12:194, Model Rocketry;

7. N.J.S.A. 21:1A-128 et seq., Explosives Act;

8. N.J.S.A. 21:2-1 et seq., Manufacture, Storage and Transportation of Fireworks;

9. N.J.S.A. 21:3-1 et seq., Sale and Public Display of Fireworks;

10. 18 USC Chapter 44, Gun Control Act of 1968;

11. 29 USC 651 et seq., Occupational Safety and Health Act; and

12. USPC-1980-20th Edition, United States Pharmacopoeia.

12:190-12.2 Availability of documents for inspection

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

New Jersey Department of Labor  
 Division of Workplace Standards  
 4 Station Plaza  
 East State Street and South Clinton Avenue  
 Trenton, New Jersey

12:190-12.3 Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning and are the organizations issuing the standards and publications listed in N.J.A.C. 12:190-12.1.

...

**ADOPTIONS**

**LAW AND PUBLIC SAFETY**

**DIVISION OF CONSUMER AFFAIRS**

(a)

**BOARD OF MEDICAL EXAMINERS**

**Licensing Examinations and Endorsements, Fee Schedule, Limited Exemption from Licensure Requirement**

**Standards for Licensure of Physicians Graduated from Medical Schools Not Approved by American Accrediting Agencies**

**Adopted Amendment: N.J.A.C. 13:35-3.11**

Proposed: August 17, 1987 at 19 N.J.R. 1534(a).

Adopted: October 27, 1987, by Frank J. Malta, M.D., President, New Jersey State Board of Medical Examiners.

Filed: December 4, 1987 as R.1988 d.7, **without change**.

Authority: N.J.S.A. 45:9-2.

Effective Date: January 4, 1988.

Expiration Date: November 19, 1989.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the adoption follows.

13:35-3.11 Standards for licensure of physicians graduated from medical schools not approved by American national accrediting agencies

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

(f) A graduate of a foreign medical school shall demonstrate a document indicating a passing score on the examination administered by the Educational Commission on Foreign Medical Graduates (FMGEMS or ECFMG, as applicable).

(g)-(j) (No change.)

(k) Any applicant having received a medical degree on or after July 1, 1985 shall also demonstrate successful completion of a three-year post-graduate training.

(b)

**BOARD OF PSYCHOLOGICAL EXAMINERS**

**Fees**

**Adopted Amendment: N.J.A.C. 13:42-1.2**

Proposed: September 8, 1987, 19 N.J.R. 1632.

Adopted: October 26, 1987 by New Jersey State Board of Psychological Examiners, Annette R. Shteir, Ed.D., President.

Filed: December 10, 1987, as R.1988 d.12, **without change**.

Authority: N.J.S.A. 45:1-32, 45:14B-13.

Effective Date: January 4, 1988.

Expiration Date: November 3, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the adoption follows.

13:42-1.2 Fees

(a) Charges for examinations, licensure and other services are:

1. Application fee: \$75.00.

2. Examination fee: \$150.00 written, \$75.00 oral.

i. Re-examination fee: \$150.00 written, \$75.00 oral.

3. Initial license fee: \$75.00.

4. License renewal fee, biennial: \$140.00.

5. (No change.)

6. Reinstatement fee in addition to biennial renewal fee: \$100.00.

7. Reciprocity: \$100.00.

8. Temporary permit: \$50.00.

9. (No change.)

**ADOPTIONS**

- 10. Verification of licensure: \$25.00.
- 11. Notice of licensure: \$15.00.
- 12. Duplicate renewal certificate: \$15.00.
- (b) (No change.)

**(a)**

**DIVISION OF CONSUMER AFFAIRS**

**Sellers of Health Club Services  
Fee for Registration**

**Adopted New Rule: N.J.A.C. 13:45A-25.1**

Proposed: November 2, 1987 at 19 N.J.R. 1967(a).  
 Adopted: December 9, 1987 by James J. Barry, Jr., Director,  
 Division of Consumer Affairs.  
 Filed: December 11, 1987 as R.1988 d.23, **without change**.  
 Authority: P.L. 1987, c.238 (N.J.S.A. 56:8-4).  
 Effective Date: January 4, 1988.  
 Expiration Date: December 16, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

**SUBCHAPTER 25. SELLERS OF HEALTH CLUB SERVICES**

**13:45A-25.1 Fee for registration**

Any person who sells or offers for sale health club services shall pay to the Director of the Division of Consumer Affairs a registration fee of \$100.00 every two years, for each health club facility operated.

**STATE ATHLETIC CONTROL BOARD**

**(b)**

**Reporting for Duty; End of Round Knockout;  
Touching Boxers; "Break"**

**Adopted Amendments: N.J.A.C. 13:46-8.3, 8.12 and 8.13**

Proposed: October 5, 1987 at 19 N.J.R. 1787(a).  
 Adopted: November 24, 1987 by State Athletic Control Board,  
 Larry Hazzard, Commissioner.  
 Filed: December 11, 1987 as R.1988 d.17, **without change**.  
 Authority: N.J.S.A. 5:2A-7(c).  
 Effective Date: January 4, 1988.  
 Expiration Date: June 3, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

**13:46-8.3 Reporting for duty; number per show; restrictions**

- (a) (No change.)
- (b) At least three judges and at least two referees shall be assigned for each show.
- (c) Referees must first report to their dressing room; then to ringside; must stay at ringside when not officiating; and must avoid conversation except with State Athletic Control Board officials.

**13:46-8.12 End of round knockout**

When a round in any boxing contest, including the last round, shall terminate before a contestant who has been knocked down shall have risen from the floor of the ring, the count for the knockdown and referee's count shall be continued, and, if the fallen contestant shall fail to rise before the count of 10, he shall be considered to have lost the bout by a knockout in the round last concluded.

**13:46-8.13 Touching boxers; "break"**

The referee may audibly or physically command boxers to "break", or use a combination of those commands, when clinches occur during the course of the contest.

**PUBLIC UTILITIES**

**(c)**

**STATE ATHLETIC CONTROL BOARD**

**Hygienic Gloves for Seconds, Referees, Ringside  
Physicians & Inspectors**

**Adopted New Rule: 13:46-12.13**

Proposed: October 19, 1987 at 19 N.J.R. 1886(b).  
 Adopted: November 24, 1987, by State Athletic Control Board,  
 Larry Hazzard, Commissioner.  
 Filed: December 4, 1988 as R.1988 d.8, **without change**.  
 Authority: N.J.S.A. 5:2A-7(c).  
 Effective Date: January 4, 1988.  
 Expiration Date: June 3, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

**13:46-12.13 Hygienic gloves for seconds, referees, ringside  
physicians and inspectors**

- (a) The Commissioner shall provide, at each professional boxing show, an adequate supply of latex, disposable hygienic laboratory gloves of a type approved by the Commissioner, to be worn by Seconds, Referees, Ringside Physicians and Inspectors while involved with the boxing show.
- (b) The Commissioner shall provide, during the medical examination phase of the weigh-in, an adequate supply of latex, disposable hygienic laboratory gloves to be worn by Ringside Physicians and Inspectors.
- (c) No Boxing Referee shall be permitted to enter the ring unless the Referee is wearing the hygienic gloves specified in (a) above.
- (d) No Second shall be permitted to work in that capacity during a boxing show unless the Second is wearing the hygienic gloves specified in (a) above.
- (e) No Ringside Physician shall be permitted to examine or medically treat a boxer during a boxing show unless the Ringside Physician is wearing the hygienic gloves specified in (b) above. Exceptions shall be permitted if the treatment is considered an emergency, or the nature of treatment or examination makes the wearing of hygienic gloves impractical during the procedure.
- (f) No inspector shall be permitted to perform his assigned duties during a boxing show, unless the Inspector is wearing the hygienic gloves specified in (b) above, except as the Commissioner in his discretion may authorize for Inspectors on certain assignments.

**PUBLIC UTILITIES**

**(d)**

**BOARD OF PUBLIC UTILITIES**

**Uniform System Of Accounts**

**Adopted New Rule: N.J.A.C. 14:10-1.16**

Proposed: October 5, 1987 at 19 N.J.R. 1789(a).  
 Adopted: December 3, 1987 by George H. Barbour and Robert  
 N. Guido, Commissioners, Board of Public Utilities.  
 Filed: December 9, 1987 as R.1988 d.10, **with substantive changes**  
 not requiring additional public notice and comments (see  
 N.J.A.C. 1:30-4.3)  
 Authority: N.J.S.A. 48:2-16.  
 BPU Docket Number: TX87080794  
 Effective Date: January 4, 1988.  
 Expiration Date: September 8, 1991.

**Summary of Public Comments and Agency Responses:**

COMMENT: The Board received three comment letters concerning the proposal. Two letters, one from New Jersey Bell and the other from AT&T, supported the proposal. The third letter, on behalf of MCI Telecommunications Corporation (MCI), also supported the proposal.

**PUBLIC UTILITIES**

**ADOPTIONS**

However, MCI recommended that the text of the proposed new rule should state clearly that any carrier which obtains a waiver from the FCC will also be exempt under the Board's rule. MCI stated that its financial reports are prepared according to GAAP (generally accepted accounting principles), and the FCC does not require MCI to maintain a separate set of books according to the Uniform System of Accounts; such an accounting would not be possible in the absence of a separations procedure, which MCI has never been and is not now subject to.

RESPONSE: The Board finds merit in MCI's comment. The intent of the proposed rule is to continue the keeping of only one set of accounting records for State and Federal regulatory agencies. Accordingly, the proposed rule will be adopted and denominated subsection "(a)" and the following language will be added to the rule and denominated subsection "(b)" thereof: "For good cause shown, for example, where a telephone company obtains a waiver from the Federal Communications Commission from compliance with that commission's Uniform System of Accounts for Telephone Companies, a telephone company may obtain exemption from (a) above."

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*).

14:10-1.16 Adoption by reference of the Uniform System of Accounts

\*(a)\* The Board adopts by reference the Uniform System of Accounts for Telephone Companies that has been promulgated by the Federal Communications Commission in Part 32 of the Commission's Rules and Regulations, as well as all present and subsequent amendments, revisions, deletions and corrections which the Federal Communications Commission may adopt insofar as they relate to telephone utilities subject to the jurisdiction of the Board and are in accordance with the Board's policies and procedures.

\*(b) For good cause shown, for example, where a telephone company obtains a waiver from the Federal Communications Commission from compliance with that commission's Uniform System of Accounts for Telephone Companies, a telephone company may obtain an exemption from (a) above.\*

**TRANSPORTATION**

**TRANSPORTATION OPERATIONS**

**(a)**

**Speed Limits**

**Route 15 in Morris and Sussex Counties**

**Adopted Concurrent Proposal: N.J.A.C. 16:28-1.76**

Proposed: October 5, 1987 at 19 N.J.R. 1839(a).  
Adopted: November 18, 1987 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design, Department of Transportation.  
Filed: December 2, 1987 as R.1988 d.2, without change.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.  
Effective Date: January 4, 1988.  
Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:  
No comments received.

Full text of the adoption follows.

16:28-1.76 Route 15

(a) The rate of speed for the certain parts of State highway Route 15 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

- 1. For both directions of traffic in Sussex County:
  - i. Zone 1: 25 miles per hour in the Town of Dover from its southerly Junction with Route 46 at Mt. Hope Avenue to Fairview Avenue (milepost 0.5); thence
  - ii. Zone 2: 40 miles per hour in the Town of Dover extending through Rockaway Township and into Wharton Borough to the Route I-80 interchange (milepost 2.0).

- 2. For northbound traffic in Sussex County:
  - i. Zone 3: 55 miles per hour in Wharton Borough extending through Rockaway Township, Jefferson Township and into Sparta Township to the northerly terminus of Route 181 (milepost 14.2).
- 3. For southbound traffic in Sussex County:
  - i. Zone 4: 55 miles per hour in Sparta Township from the northerly terminus of Route 181 (milepost 14.2) extending into Jefferson Township to the bridge over Lake Shawnee (milepost 6.7); thence
  - ii. Zone 5: 50 miles per hour in Jefferson Township to 2,000 feet north of Taylor Road (milepost 4.9); thence
    - (A) 50 miles per hour in Jefferson Township to 1,500 feet south of Lake Shawnee (milepost 6.4); thence
  - iii. Zone 6: 55 miles per hour in Jefferson Township extending through Rockaway Township and into Wharton Borough to the Route I-80 interchange (milepost 2.0); thence
    - (A) 50 miles per hour to 2,000 feet north of Taylor Road (milepost 4.9); thence
    - (B) 40 miles per hour to 3,000 feet south of Edison Road—(County Road 615) (milepost 5.4); thence
- 4. For both directions of traffic in Sussex County:
  - i. Zone 7: 50 miles per hour in Sparta Township from the northerly terminus of Route 181 extending into Lafayette Township to 500 feet north of Limecrest Road—Route 94 (milepost 16.8); thence
  - ii. Zone 8: 35 miles per hour Lafayette Township to the bridge over the Paulins Kill Creek (milepost 18.3); thence
  - iii. Zone 9: 50 miles per hour in Lafayette Township extending into Frankford Township to Route 565—Route US 206 (milepost 19.6).

**(b)**

**Speed Limits**

**Route 23 in Sussex County, 94 in Sussex County and 172 in Middlesex County**

**Adopted Amendments: N.J.A.C. 16:28-1.25, 1.79 and 1.80**

Proposed: October 19, 1987 at 19 N.J.R. 1887(a).  
Adopted: November 19, 1987 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.  
Filed: December 2, 1987 as R.1988 d.3, with technical changes not requiring additional public notice and comment. (See N.J.A.C. 1:30-4.3).  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.  
Effective Date: January 4, 1988.  
Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:  
No comments received.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

16:28-1.25 Route 23

(a) The rate of speed designated for the certain parts of State highway Route 23 described in this section shall be established and adopted as the maximum legal rate of speed \*[thereat]\*:

- 1.-3. (No change.)
- 4. For both directions of traffic:
  - i.-iii. (No change.)
  - iv. Zone two: 45 mph in Franklin Borough, to the intersection of King Cole Road (Milepost 34.8); thence
  - v. (No change.)
  - vi. Zone four: 50 mph in Hardyston Township, Wantage Township to the southerly intersection of Old Deckertown Road (Cemetery Road—milepost 37.2); thence
    - (1) In Hamburg Borough, Sussex County, 35 mph between the Franklin \*[Township]\*\*Borough\*-Hamburg Borough line and the Hamburg Borough-Hardyston Township line (milepost 34.30 to 35.97)
  - vii.-xiv. (No change.)

**ADOPTIONS**

16:28-1.79 Route 94  
 (a) The rate of speed designated for the certain parts of State highway Route 94 described in this section shall be established and adopted as the maximum legal rate of speed \*[thereat]\*:  
 1. For both directions of traffic:  
 i.-xii. (No change.)  
 xiii. In Sussex County:  
 (1)-(3) (No change.)  
 (4) Hamburg Borough: 35 miles per hour between the southernmost Hardyston Township-Hamburg Borough Corporate line and the northernmost Hamburg Borough-Hardyston Township Corporate line (milepost 35.23 to \*[36.01]\*\*36.10\*  
 xiv.-xxi. (No change.)  
 2. (No change.)

16:28-1.80 Route 172  
 (a) The rate of speed designated for the certain part of State highway Route 172 described in this section shall be established and adopted as the maximum legal rate of speed thereat:  
 1. In the City of New Brunswick, Middlesex County, 30 miles per hour between Commercial Avenue and Route 18 (Milepost 0.0 to 0.81).

**(a)**

**Restricted Parking And Stopping  
 Routes N.J. 21 in Essex County, N.J. 47 in  
 Gloucester County, and U.S. 9W in Bergen County  
 Adopted Amendments: N.J.A.C. 16:28A-1.11, 1.33  
 and 1.61**

Proposed: October 19, 1987 at 19 N.J.R. 1888(a).  
 Adopted: November 23, 1987 by John F. Dunn, Jr., Assistant  
 Chief Engineer, Traffic and Local Road Design, Department  
 of Transportation.  
 Filed: December 2, 1987 as R.1988 d.5, **without change.**  
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139.  
 Effective Date: January 4, 1988.  
 Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows.**

16:28A-1.11 Route 21 including Old Route 21 (Passaic Place)  
 (a) The certain parts of State highway Route 21 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.  
 1. No stopping and standing in the City of Newark, Essex County:  
 i. Along both sides from Pointer Street to the Newark City-Belleville Town line, including ramps and connections under the jurisdiction of the Commissioner of Transportation.  
 2. No stopping or standing in the City of Clifton, Passaic County, along both sides, for the entire length within the corporate limits of the City of Clifton, including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation.  
 3. No stopping or standing in Nutley Township, Essex County, along both sides for the entire length within the corporate limits of the Township of Nutley, including all ramps, service roads, and connections under the jurisdiction of the Commissioner of Transportation.

16:28A-1.33 Route 47  
 (a) The certain parts of State highway Route 47 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.  
 1.-2. (No change.)  
 3. No stopping or standing in Franklin Township, Gloucester County:

**TRANSPORTATION**

i. (No change.)  
 ii. Along the southbound side:  
 (1) From the southerly curb line of Little Mill Road-Hall Avenue to a point 330 feet south of the southerly curb line of Grant Avenue.  
 (2) Beginning at the southerly curb line of County Road 538 (Coles Hill Road) and extending 270 feet south therefrom.  
 4.-10. (No change.)  
 (b) (No change.)

16:28A-1.61 Route U.S. 9W  
 (a) (No change.)  
 (b) The certain parts of State highway Route U.S. 9W 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 Alpine Borough, Bergen County:  
 i. Along the easterly (northbound) side:  
 (1) Between a point 500 feet south of the prolongation of the southerly curb line of Closter Dock Road and extending 1,500 feet north of the prolongation of the northerly curb line of Closter Dock Road.  
 ii. Along the westerly (southbound) side:  
 (1) Between a point 1,000 feet north of the prolongation of the northerly curb line of Closter Dock Road and extending 1,000 feet south of the prolongation of the southerly curb line of Closter Dock Road.  
 iii. Along both sides:  
 (1) Between the hours of 7:00 P.M. and 7:00 A.M. daily.  
 (2) Between points 1,000 feet south and 1,000 feet north of the pedestrian bridge at milepost 9.7.  
 (3) Between a point 1,000 feet north of Hillside Avenue and a point 1,000 feet south of Hillside Avenue.  
 2. (No change.)

**(b)**

**Restricted Parking And Stopping  
 Routes 23 in Morris County and 28 in Union County  
 Adopted Amendments: N.J.A.C. 16:28A-1.15 and  
 1.19**

Proposed: October 19, 1987 at 19 N.J.R. 1889(a).  
 Adopted: November 19, 1987 by John F. Dunn, Jr., Assistant  
 Chief Engineer Traffic and Local Road Design.  
 Filed: December 2, 1987 as R.1988 d.4, **without change.**  
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139.  
 Effective Date: January 4, 1988.  
 Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows.**

16:28A-1.15 Route 23 and Route 23 (Temporary)  
 (a) The certain parts of State highway Route 23 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.-4. (No change.)  
 5. No stopping or standing in Wayne Township, Passaic County:  
 i. Along both sides for the entire length in the Township of Wayne, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.  
 6. No stopping or standing in Pequannock Township, Morris County:  
 i. Along both sides for the entire length in Pequannock Township including all ramps and connections under the jurisdiction of the Commissioner of Transportation.  
 (b) The certain parts of State highway Route 23 (Temporary) 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.

**TRANSPORTATION**

- 1.-3. (No change.)
- Renumber 5. and 6. as 4. and 5. (No change in text.)
- (c) (No change.)

16:28A-1.19 Route 28

(a) The certain parts of State highway Route 28 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

- 1.-3. (No change.)

**ADOPTIONS**

4. No stopping or standing in the Borough of Garwood, Union County:

i. Along the north side:

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

(3) From a point 390 feet west of the westerly curblineline of Walnut Street to a point 120 feet westerly therefrom.

5.-13. (No change.)

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

# MISCELLANEOUS NOTICES

## ENVIRONMENTAL PROTECTION

### DIVISION OF WATER RESOURCES

(a)

#### Amendment to the Upper Raritan Water Quality Management Plan Public Notice

**Take notice** that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would expand the sewer service area of the Middlesex County Utilities Authority to include the proposed Glen View Estates development, four existing residential lots, and one undeveloped lot on Sterling Road in Warren Township, Somerset County, New Jersey.

**This notice** is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

**Interested persons** may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

**Any interested person** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(b)

#### Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan Public Notice

**Take notice** that an amendment to the Lower Raritan/Middlesex County Water Quality Management (WQM) Plan has been proposed. This amendment provides for the expansion of the Middlesex County Utilities Authority sewer service area to include the proposed Glen View Estates development, four existing lots, and one undeveloped lot on Sterling Road in Warren Township, Somerset County, New Jersey.

**This notice** is being given to inform the public that a plan amendment has been developed for the Lower Raritan/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, New Jersey 08901, and the NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Middlesex County will hold a **public hearing** on the proposed WQM Plan amendment. The public hearing will be on Thursday, February 4, 1988, at 10:00 A.M., in the Freeholders' Meeting Room, 11th Floor, of the Middlesex County Administration Building located on John F. Kennedy Square, New Brunswick, New Jersey.

**Interested persons** may submit written comments on the amendment to William J. Kruse of the Middlesex County Planning Board at the County Planning Board address cited above. All comments must be submitted by the date of the public hearing. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Board of Chosen Freeholders with respect to this 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 and to the public

(c)

#### Amendment to the Mercer County Water Quality Management Plan Public Notice

**Take notice** that K. Hovnanian Companies of New Jersey, Inc. has petitioned Mercer County to amend the Mercer County Water Quality Management (WQM) Plan. This amendment would adopt a Wastewater Management Plan for Hopewell Township. That document will authorize such actions as modification of the Township's sewer service areas and conversion of the Princeton Farms sewage treatment plant to a pumping station. The amendment would also modify the wetlands protection language which is presently in the Mercer County Water Quality Management Plan.

**This notice** is being given to inform the public that a plan amendment has been proposed for the Mercer County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Mercer County Planning Division, County Administration Building, Room 412, 640 South Broad Street, P.O. Box 8068, Trenton, New Jersey 08650; and the NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

The Mercer County Planning Board will hold a **public hearing** on the proposed WQM Plan amendment. The public hearing will be on Wednesday, February 10, 1988 at 8:30 A.M. in Room 211 of the Mercer County Administration Building.

**Interested persons** may submit written comments on the amendment to the Secretary, Mercer County Planning Board at the address cited above; and to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days following the public notice publication date or until 15 days following the public hearing(s), whichever is later. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Planning Board and the County Executive with respect to this amendment request. In addition, if the amendment is adopted by Mercer County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEP during its review. Mercer County and the NJDEP thereafter may approve and adopt this amendment without further notice.

(d)

#### Amendment to the Mercer County Water Quality Management Plan Public Notice

**Take notice** that Hightstown Borough has petitioned Mercer County to amend the Mercer County Water Quality Management (WQM) Plan. This amendment would allow the Hightstown Borough Sewage Treatment Plant to continue to operate and not connect to the East Windsor Municipal Utilities Authority.

**This notice** is being given to inform the public that a plan amendment has been proposed for the Mercer County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Mercer County Planning Division, County Administration Building, Room 412, 640 South Broad Street, P.O. Box 8068, Trenton, New Jersey 08650; and the NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

The Mercer County Planning Board will hold a **public hearing** on the proposed WQM Plan amendment. The public hearing will be on Wednesday, February 10, 1988 at 8:30 A.M. in Room 211 of the Mercer County Administration Building.

## ENVIRONMENTAL PROTECTION

**Interested persons** may submit written comments on the amendment to the Secretary, Mercer County Planning Board at the address cited above; and to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days following the public notice publication date or until 15 days following the public hearing, whichever is later. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Planning Board and the County Executive with respect to this amendment request. In addition, if the amendment is adopted by Mercer County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEP during its review. Mercer County and the NJDEP thereafter may approve and adopt this amendment without further notice.

### (a)

#### **Amendment to the Tri-County Water Quality Management Plan**

##### **Public Notice**

**Take notice** that on August 17, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment will designate the Burlington County Board of Chosen Freeholders as the Sludge Management and Planning Agency for all sludge generated within Burlington County.

### (b)

#### **Amendment to the Tri-County Water Quality Management Plan**

##### **Public Notice**

**Take notice** that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would approve the Township of Franklin, Gloucester County Wastewater Management Plan (WMP). This WMP would allow the construction of four new on-site wastewater treatment facilities to serve the proposed Delsea Middle School, the Mary F. Janvier Elementary School, the Royale National Line Inn, and the Franklin Place Retail Shopping Center. The WMP also identifies the Township of Franklin as the Wastewater Management Agency for Franklin Township.

**This notice** is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, Third Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

**Interested persons** may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

**Any interested person** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

### (c)

#### **Amendment to the Tri-County Water Quality Management Plan**

##### **Public Notice**

**Take notice** that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amend-

## MISCELLANEOUS NOTICES

ment would expand the sewer service area of the Waterford Township Municipal Utilities Authority to include the proposed Woodstream Phase IV residential development located in Winslow Township, Block 2401, Lots 37 and part of 7.

**This notice** is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, Third Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

**Interested persons** may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

**Any interested person** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

## HEALTH

### (d)

#### **NARCOTIC AND DRUG ABUSE CONTROL Schedules of Controlled Dangerous Substances Notice of Publication**

The Commissioner of Health, pursuant to the authority of N.J.S.A. 24:21-3 to provide annually a list of substances subject to the New Jersey Controlled Dangerous Substances Act, sets forth the list as found in the New Jersey Administrative Code at N.J.A.C. 8:65-10.1 through 10.5 inclusive and any supplements thereto and further acknowledges that list to be the controlled dangerous substances thereby controlled.

Copies may be obtained from the Office of Administrative Law, CN 049, Trenton, NJ 08625-0049 or reviewed in the Office of Drug Control, New Jersey State Department of Health, 129 E. Hanover Street, Trenton, NJ 08625-0362 administered by Lucius Bowser, R.P., M.P.H., Chief (609-984-1308).

A notice in the New Jersey Register complies with the requirement of N.J.S.A. 24:21-3 mandating annual publication of the list of controlled dangerous substances.

## INSURANCE

### (e)

#### **THE COMMISSIONER Adjustment of Medicare Deductible and Co-Payment Amounts Public Notice**

**Take notice** that Verice M. Mason, Acting Commissioner of Insurance, pursuant to the authority of N.J.S.A. 17:B-26A-7 and 17:35C-7, announces that the dollar amounts for the Medicare deductibles and co-payments as published in chart form in the pocket part of the Medicare Supplement Buyers' Guide have been increased. Effective January 1, 1988, the deductible amount for the first 60 days of hospitalization is \$540.00; from the 61st to the 90th day of hospitalization the co-payment per day is \$135.00 and from the 91st to the 150th day of hospitalization the co-payment per day is \$270.00. Additionally, for the 21st through the 100th day of Nursing Facility Care the co-payment per day has been increased to \$67.50.

These adjustments are based upon information received from the U.S. Department of Health and Human Services.

MISCELLANEOUS NOTICES

(a)

**THE COMMISSIONER**

**Adjustment of \$1,800 Tort Threshold Option Amount  
Public Notice**

**Take notice** that Kenneth D. Merin, Commissioner of the Department of Insurance, pursuant to the authority of N.J.S.A. 39:6A-8(b), announces that the tort threshold option amount will be increased from \$1,800 to \$1,950. This change becomes effective January 1, 1988, to apply to any claim for noneconomic loss arising from any automobile accident occurring on or after January 1, 1988, for those insureds who have selected the tort option.

The adjustment is based on the 6.6 percent increase in the professional services component of medical care services costs reflected in the Consumer Price Index for all urban consumers, United States city average, from October, 1986 to October, 1987. This percentage is determined by the United States Department of Labor, Bureau of Labor Statistics.

**LAW AND PUBLIC SAFETY**

(b)

**DIVISION OF MOTOR VEHICLES**

**Notice of Applications for Certificate of Public  
Convenience Permits**

**Take notice** that Glen R. Paulsen, Director, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the names and addresses of applicants who have filed an application for a common carrier's Certificate of Public Convenience Permit.

COMMON CARRIER (NON-GRANDFATHER)  
P.J.N. Enterprise Inc.  
238 No. Church Rd.  
Sparta, NJ 07871  
Peerless Bulk Transport Corp.  
P.O. Box 387  
Lafayette Street  
Carteret, NJ 07008

**Protests** in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicles, 25 South Montgomery St., Trenton, New Jersey 08666, within 20 days (January 25, 1988) following the publication of notice of an application.

**TRANSPORTATION**

(c)

**Routes and Access for Maxi-Cube Vehicles**

**N.J.A.C. 16:32-1.1, 1.2, 1.3 and 1.4**

**Public Notice**

**Take notice** that N.J.S.A. 39:3-84(a) requires State regulations pertaining to trucks be in accord with those promulgated by the U.S. Department of Transportation and applicable Federal law. Federal legislation enacted in 1986, P.L. 99-500 and P.L. 99-591, requires the states to permit "maxi-cube vehicles" on certain portions of their highways.

The Department of Transportation has determined that "maxi-cube vehicles" are subject to the standards and procedures applicable to trucks found under N.J.A.C. 16:32-1.1, 1.2, 1.3 and 1.4. These standards and procedures pertain to permitted routes, width restrictions, access to terminals and other facilities and appeal procedures.

A **maxi-cube vehicle**, as interpreted by the Federal Highway Administration, is a truck combination which consists of a power unit capable of carrying cargo which also pulls another trailing cargo unit. The power unit is a single unit truck which may have either a permanently attached or demountable cargo box. The separate cargo carrying trailer may be

TREASURY-TAXATION

up to 34 feet in length, provided the overall length of the two unit combination does not exceed 65 feet. The vehicle may have a width of up to 102 inches. Vehicles of this general description which do not exceed 62 feet in overall length, and the pulling or drawing unit of which does not exceed 35 feet, are considered a conventional truck and trailer combination under New Jersey law, and not a maxi-cube and, therefore, are not subject to the route restrictions of N.J.A.C. 16:32-1.1. Vehicles measuring 62 feet or less in length which are greater than 96 inches but not more than 102 inches in width must, however, comply with N.J.A.C. 16:32-1.2.

Maxi-cube vehicles may be operated in New Jersey only on the routes permitted for double-trailer truck combinations found in N.J.A.C. 16:32-1.1. Standards and procedures for reasonable access to terminals and other facilities for maxi-cube vehicles are the same as those for double-trailer truck combinations and are found in N.J.A.C. 16:32-1.3. The appeals process for a maxi-cube vehicle operator who is denied any access permit under N.J.A.C. 16:32-1.3 is found under N.J.A.C. 16:32-1.4.

**Take further notice** that the Department of Transportation will propose amendments to N.J.A.C. 16:32-1.1 et seq. to codify the provisions of this notice and to implement any Federal requirements, which may be made subsequent to this notice.

Questions pertaining to this notice may be directed to:

Norman Deitch, Chief  
Bureau of Traffic Engineering  
New Jersey Department of Transportation  
1035 Parkway Avenue  
Trenton, NJ 08625

**TREASURY-TAXATION**

(d)

**DIVISION OF TAXATION**

**Sanitary Landfill Taxes**

**1988 Tax Rate Changes**

**Public Notice**

**Take notice** that the owners and operators of all sanitary landfill facilities in New Jersey that accept solid waste for disposal are required to file Consolidated Sanitary Landfill Tax Returns (Form SLT-5) on a monthly basis. The five sanitary landfill taxes—the Solid Waste Recycling Tax, the Landfill Closure and Contingency Tax, the Solid Waste Services Tax, the Resource Recovery Investment Tax, and the Solid Waste Importation Tax—are reportable on this consolidated return.

**This notice** is to advise sanitary landfill taxpayers of the tax rate changes provided for by law (N.J.S.A. 13:1E-95, 104 and 138) effective January 1, 1988 for the sanitary landfill taxes.

**Take notice** that effective January 1, 1988:

1. The Resource Recovery Investment Tax increases from \$3.00 per ton or \$0.90 per cubic yard to \$4.00 per ton or \$1.20 per cubic yard;
2. The Solid Waste Services Tax increases from \$0.60 per ton or \$0.18 per cubic yard to \$0.65 per ton or \$0.195 per cubic yard;
3. The Solid Waste Importation Tax increases from \$1.00 per ton or \$0.30 per cubic yard to \$4.00 per ton or \$1.20 per cubic yard;
4. The Solid Waste Recycling Tax remains unchanged at \$1.50 per ton or \$0.45 per cubic yard; and
5. The Landfill Closure and Contingency Tax remains unchanged at \$0.50 per ton or \$0.15 per cubic yard.

The tax rates for all solid waste in liquid form, reportable in gallons, remain the same for all sanitary landfill taxes. Any taxpayer who fails to comply with the new rates will be assessed tax, penalty and interest on any calculated balance of tax due.

**Return packages** containing the 1988 Consolidated Sanitary Landfill Tax Returns (Form SLT-5) with accompanying schedules and instructions (Form SLT-5A) will be mailed to all taxpayers prior to February 1, 1988.

**Any inquiries** regarding the Sanitary Landfill Taxes may be directed to: Special Audit Section, Division of Taxation, 50 Barrack Street, Trenton, NJ 08646, Telephone (609) 292-5300.

## EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter**. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

### OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
1:1	5/4/92	3:23	7/6/92
1:5	10/20/91	3:24	8/20/89
1:6	5/4/92	3:25	8/17/92
1:6A	5/4/92	3:26	12/31/90
1:7	5/4/92	3:27	9/16/90
1:10	5/4/92	3:28	12/17/89
1:10A	5/4/92	3:30	10/17/88
1:10B	10/6/91	3:38	10/5/92
1:11	5/4/92	3:41	10/16/90
1:13	5/4/92		
1:20	5/4/92		
1:21	5/4/92		
1:30	2/14/91		
1:31	6/17/92		

### PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91
4A:6	1/4/93
4A:10	11/2/92

### AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	10/3/88
2:3	6/18/89
2:5	6/18/89
2:6	9/3/90
2:7	9/29/88
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	6/6/88
2:24	2/11/90
2:32	6/1/92
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	8/1/88
2:69	10/3/88
2:70	5/7/90
2:71	9/1/88
2:72	9/1/88
2:73	7/18/88
2:74	9/1/88
2:76	8/29/89
2:90	6/24/90

### COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:3	9/1/88
5:4	10/5/92
5:10	12/1/88
5:11	3/1/89
5:12	1/1/90
5:13	1/1/88
5:14	12/1/90
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:22	12/1/90
5:23	4/1/88
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/1/88
5:31	12/1/89
5:37	11/18/90
5:38	11/7/88
5:51	9/1/88
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91
5:92	6/16/91
5:100	5/7/89

### BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
3:7	9/16/90
3:11	3/19/89
3:13	11/17/91
3:17	6/18/91
3:19	3/17/91
3:21	2/2/92
3:22	5/21/89

### DEPARTMENT OF DEFENSE—TITLE 5A

N.J.A.C.	Expiration Date
5A:2	5/20/90

**EDUCATION—TITLE 6**

N.J.A.C.	Expiration Date
6:2	3/1/89
6:3	8/18/88
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	6/1/89
6:29	3/25/90
6:30	8/31/88
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	5/1/88
6:68	4/12/90
6:69	6/4/91
6:70	1/25/90
6:79	11/25/92

**ENVIRONMENTAL PROTECTION—TITLE 7**

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	12/1/88
7:1E	7/15/90
7:1F	4/20/92
7:1G	10/1/89
7:1H	7/24/90
7:1I	11/18/88
7:2	7/19/88
7:4	Expired 8/16/84
7:6	12/19/88
7:7	5/7/89
7:7E	7/24/90
7:7F	12/6/87
7:8	2/7/88
7:9	1/21/91
(Except for 7:9-1 which expired 4/25/85)	
7:10	9/4/89
7:11	6/6/88
7:12	6/6/88
7:13	5/4/89
7:14	4/27/89
7:14A	6/4/89
7:14B	12/21/92
7:15	4/2/89
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/19/88
7:22	1/5/92
7:23	6/18/89
7:24	5/19/91
7:25	2/18/91
(Except for 7:25-1 which expired 9/17/85)	
7:25A	5/6/90
7:26	11/4/90
7:27	Exempt
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	4/5/87

N.J.A.C.	Expiration Date
7:30	12/4/92
7:36-1	8/5/90
7:36-2	Expired 1/9/86
7:36-3	Expired 1/9/86
7:36-4	8/5/90
7:36-5	Expired 1/9/86
7:36-6	Expired 1/9/86
7:36-7	8/5/90
7:37	Exempt
7:38	9/18/90
7:45	Expired 1/11/85

**HEALTH—TITLE 8**

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	5/21/89
8:9	2/18/91
8:13	9/8/92
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	4/4/88
8:25	5/20/88
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	8/20/89
8:33D	2/1/87
8:33E	6/23/92
8:33F	1/14/90
8:33G	7/20/89
8:33H	7/19/90
8:33I	9/15/91
8:33J	5/17/89
8:33K	4/16/89
8:34	11/18/88
8:39	6/20/88
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/12/91
8:42B	8/1/88
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	12/11/92
8:43F	3/18/90
8:43G	9/8/91
8:44	11/7/88
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:59	10/1/89
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90
8:70	9/17/88
8:71	4/2/89

**HIGHER EDUCATION—TITLE 9**

N.J.A.C.	Expiration Date
9:1	1/17/89
9:2	6/17/90
9:3	10/17/88

<b>N.J.A.C.</b>	<b>Expiration Date</b>	<b>N.J.A.C.</b>	<b>Expiration Date</b>
9:4	10/30/91	10:122A	Exempt
9:5	1/21/91	10:122B	9/10/89
9:6	5/20/90	10:123	7/20/90
9:6A	1/4/93	10:124	12/7/92
9:7	4/13/88	10:125	7/16/89
9:8	11/4/90	10:127	9/19/88
9:9	10/3/88	10:129	10/11/89
9:11	1/17/89	10:130	9/19/88
9:12	1/17/89	10:131	12/7/92
9:14	5/20/90	10:132	1/5/92
9:15	10/25/88	10:140	12/31/86
		10:141	2/21/89

**HUMAN SERVICES—TITLE 10**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
10:1	5/6/88
10:2	1/5/92
10:3	9/19/88
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:12	1/5/92
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:40	3/15/89
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	2/7/88
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/88
10:67	3/3/91
10:68	7/7/91
10:69A	4/26/88
10:69B	11/21/88
10:70	6/16/91
10:71	1/6/91
10:80	8/23/89
10:81	10/15/89
10:82	10/29/89
10:85	1/30/90
10:87	3/1/89
10:89	9/11/90
10:90	10/14/92
10:94	1/6/91
10:95	8/23/89
10:97	4/16/89
10:99	2/19/90
10:100	2/6/89
10:109	3/17/91
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	12/7/92
10:122	8/6/89

**CORRECTIONS—TITLE 10A**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

**INSURANCE—TITLE 11**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
11:1	2/3/91
11:1-20	7/7/88
11:1-22	7/7/88
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	11/7/88
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91

**LABOR—TITLE 12**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:20	11/5/89
12:35	8/5/90
12:45	5/2/88
12:46	5/2/88
12:47	5/2/88
12:48	5/2/88
12:49	5/2/88
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:120	5/3/90
12:175	12/9/88
12:190	1/4/93

N.J.A.C.	Expiration Date
12:195	9/6/88
12:200	8/5/90
12:235	5/5/91

**COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A**

N.J.A.C.	Expiration Date
12A:10-1	8/15/89
12A:11	9/21/92
12A:12	9/21/92
12A:100-1	9/8/91

**LAW AND PUBLIC SAFETY—TITLE 13**

N.J.A.C.	Expiration Date
13:1	7/19/88
13:1C	Expired 12/1/83
13:2	8/5/90
13:3	8/1/88
13:4	1/21/91
13:10	5/27/89
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	10/17/88
13:27	4/1/90
13:27A	11/1/87
13:28	9/3/90
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	10/23/92
13:33	3/18/90
13:34	11/21/88
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	1/6/91
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	11/3/88
13:43	9/8/88
13:44	8/20/89
13:44B	11/2/92
13:44C	6/2/91
13:45A	12/16/90
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	1/4/89
13:47C	8/20/89
13:48	1/21/91
13:49	12/19/88
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:70	2/25/90
13:71	2/25/90
13:75	8/20/89
13:76	9/6/88

**PUBLIC UTILITIES—TITLE 14**

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:11	1/27/92
14:10	9/8/91
14:17	5/7/89
14:18	7/29/90

**ENERGY—TITLE 14A**

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:11	9/20/89
14A:12	2/7/88
14A:13	2/2/92
14A:14	2/6/89
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

**STATE—TITLE 15**

N.J.A.C.	Expiration Date
15:2	3/7/88
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

**TRANSPORTATION—TITLE 16**

N.J.A.C.	Expiration Date
16:1	8/5/90
16:2	10/3/88
16:6	9/3/90
16:13	5/7/89
16:16	11/7/88
16:17	11/7/88
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25-12	Expired 2/5/84
16:25-13	Expired 2/5/84
16:26	8/6/89
16:27	9/8/91
16:28	11/7/88
16:28A	11/7/88
16:29	11/7/88
16:30	11/7/88
16:31	11/7/88
16:31A	10/20/88
16:32	4/15/90
16:33	9/3/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	10/3/88
16:49	3/18/90
16:51	4/6/92
16:53	3/19/89
16:53A	4/15/90
16:53C	9/19/88
16:53D	5/7/89
16:54	4/7/91

<b>N.J.A.C.</b>	<b>Expiration Date</b>	<b>N.J.A.C.</b>	<b>Expiration Date</b>
16:55	11/7/88	18:16	8/12/88
16:56	6/4/89	18:17	8/12/88
16:60	11/7/88	18:18	4/2/89
16:61	11/7/88	18:19	4/6/89
16:62	4/15/90	18:22	4/2/89
16:72	3/31/91	18:23	4/2/89
16:73	1/30/92	18:23A	8/5/90
16:75	6/6/88	18:24	8/12/88
16:76	12/19/88	18:25	1/6/91
16:77	1/21/90	18:26	8/12/88
16:78	10/7/90	18:30	4/2/89
16:79	10/20/91	18:35	8/12/88
		18:36	2/4/90
		18:37	8/5/90
		18:39	9/8/92

**TREASURY-GENERAL—TITLE 17**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
17:1	6/6/88
17:2	12/17/89
17:3	6/6/88
17:4	7/1/90
17:5	12/2/90
17:6	2/19/89
17:7	6/6/88
17:8	6/27/90
17:9	6/6/88
17:10	6/6/88
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
17:20	11/7/88
17:25	6/18/89
17:27	11/7/88
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92

**TREASURY-TAXATION—TITLE 18**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
18:3	4/23/89
18:5	4/16/89
18:6	4/2/89
18:7	4/2/89
18:8	4/2/89
18:9	8/12/88
18:12	8/12/88
18:12A	8/12/88
18:14	8/12/88
18:15	8/12/88

**OTHER AGENCIES—TITLE 19**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
19:3	6/19/88
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	11/7/88
19:4A	5/2/88
19:8	6/1/88
19:9	7/13/88
19:12	8/7/91
19:16	8/7/91
19:17	7/15/88
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/17/88
19:42	5/17/88
19:43	4/27/89
19:44	10/13/88
19:45	4/7/88
19:46	5/4/88
19:47	5/4/88
19:48	10/13/88
19:49	3/29/88
19:50	5/23/88
19:51	8/14/91
19:52	9/25/91
19:53	5/4/88
19:54	4/15/88
19:61	7/7/91
19:65	7/7/91
19:75	1/17/89

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the November 2, 1987 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1987 d.1 means the first rule adopted in 1987.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A number and date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: OCTOBER 19, 1987.**

**NEXT UPDATE WILL BE DATED NOVEMBER 16, 1987.**

**Note:** If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

# N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
19 N.J.R. 1 and 164	January 5, 1987	19 N.J.R. 1259 and 1352	July 20, 1987
19 N.J.R. 165 and 260	January 20, 1987	19 N.J.R. 1353 and 1474	August 3, 1987
19 N.J.R. 261 and 324	February 2, 1987	19 N.J.R. 1475 and 1588	August 17, 1987
19 N.J.R. 325 and 392	February 17, 1987	19 N.J.R. 1589 and 1676	September 8, 1987
19 N.J.R. 393 and 430	March 2, 1987	19 N.J.R. 1677 and 1758	September 21, 1987
19 N.J.R. 431 and 476	March 16, 1987	19 N.J.R. 1759 and 1858	October 5, 1987
19 N.J.R. 477 and 586	April 6, 1987	19 N.J.R. 1859 and 1926	October 19, 1987
19 N.J.R. 587 and 672	April 20, 1987	19 N.J.R. 1927 and 2086	November 2, 1987
19 N.J.R. 673 and 794	May 4, 1987	19 N.J.R. 2087 and 2224	November 16, 1987
19 N.J.R. 795 and 898	May 18, 1987	19 N.J.R. 2225 and 2324	December 7, 1987
19 N.J.R. 899 and 1006	June 1, 1987	19 N.J.R. 2325 and 2510	December 21, 1987
19 N.J.R. 1007 and 1120	June 15, 1987	20 N.J.R. 1 and 124	January 4, 1988
19 N.J.R. 1121 and 1258	July 6, 1987		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>			
1:1-8.2	De novo review by OAL and previous hearing record	19 N.J.R. 1761(a)	R.1987 d.519
1:1-9.1	Scheduling of prehearing conferences	19 N.J.R. 1591(a)	R.1987 d.463
1:1-14.4	Failure to appear at proceeding	19 N.J.R. 1591(b)	R.1987 d.506
1:1-14.5	Ex parte communications and agency heads	19 N.J.R. 1761(b)	
1:1-14.10	Decision to grant requests for interlocutory review where agency head is board or commission: proposal withdrawn	19 N.J.R. 1591(c)	
1:1-14.10, 18.1, 18.4	Interlocutory review of certain issues	19 N.J.R. 1592(a)	R.1987 d.462
1:1-19.1	Settlement terms and consent of agency head	19 N.J.R. 1593(a)	R.1987 d.461
1:1-21.6	Exceptions in uncontested cases	19 N.J.R. 1593(b)	R.1987 d.464
1:5-1.1	Council on Affordable Housing hearings: correction		
1:30-1.2, 2.8	Use of appendices	19 N.J.R. 675(a)	

(TRANSMITTAL 1987-4, dated October 19, 1987)

<b>AGRICULTURE—TITLE 2</b>			
2:71-2.4, 2.5, 2.6	"Jersey Fresh" raspberry standards	19 N.J.R. 1593(c)	R.1987 d.442
2:71-2.4, 2.5, 2.6	Jersey Fresh Logo program	19 N.J.R. 2327(b)	
2:76-7	Review of nonagricultural development projects in agricultural areas	19 N.J.R. 1009(a)	R.1987 d.482

(TRANSMITTAL 1987-7, dated October 19, 1987)

<b>BANKING—TITLE 3</b>			
3:1-1.1	Maximum interest rate on first mortgages on residences with one to six units	19 N.J.R. 2089(a)	
3:1-14	Revolving credit equity loans	19 N.J.R. 1594(a)	
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions	19 N.J.R. 1355(a)	
3:6-4	Banks and savings banks: action upon detection or discovery of crime	19 N.J.R. 1595(a)	
3:6-9	Capital stock savings bank: change in control	19 N.J.R. 1762(a)	
3:10-8, 9	Banks and savings banks: mortgage loan practices	19 N.J.R. 1356(a)	
3:11-12	Commercial loans by savings banks	19 N.J.R. 1679(b)	
3:18-10	Secondary mortgage loan licensure	19 N.J.R. 1929(a)	
3:23-2.1	Secondary mortgage loan licensure	19 N.J.R. 1929(a)	
3:27-6, 7	Savings and loan associations: mortgage loan practices	19 N.J.R. 1358(a)	
3:38-4, 5, 7	Mortgage bankers and brokers: loan practices	19 N.J.R. 1360(a)	

(TRANSMITTAL 1987-6, dated October 19, 1987)

<b>CIVIL SERVICE—TITLE 4</b>			
4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)	
4:1-17, 18, 20, 26	Repeal (see 4A:6-1, 2, 3, 4, 5)	19 N.J.R. 1764(a)	R.1988 d.13
4:1-19, 21.1, 21.3-21.5	Repeal (see 4A:10)	19 N.J.R. 1366(a)	R.1987 d.435
4:2-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)	
4:2-17, 18, 20, 26	Repeal (see 4A:6-1, 2, 3, 4, 5)	19 N.J.R. 1764(a)	R.1988 d.13
4:3-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)	
4:3-17, 20	Repeal (see 4A:6-1, 2, 3, 4, 5)	19 N.J.R. 1764(a)	R.1988 d.13

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4:3-19	Repeal (see 4A:10)	19 N.J.R. 1366(a)	R.1987 d.435	19 N.J.R. 1987(b)
4:4	Repeal (see 4A:6-6)	19 N.J.R. 1774(a)	R.1988 d.11	20 N.J.R. 67(a)

(TRANSMITTAL 19873-3, dated October 19, 1987)

**PERSONNEL—TITLE 4A**

4A:6-1, 2, 3, 4, 5	Leaves, hours of work, employee development	19 N.J.R. 1764(a)	R.1988 d.13	20 N.J.R. 54(a)
4A:6-6	Awards Program	19 N.J.R. 1774(a)	R.1988 d.11	20 N.J.R. 54(a)
4A:8	Layoffs	19 N.J.R. 1363(a)		
4A:10	Violations and penalties	19 N.J.R. 1366(a)	R.1987 d.435	19 N.J.R. 1987(b)

(TRANSMITTAL 1987-1, dated October 19, 1987)

**COMMUNITY AFFAIRS—TITLE 5**

5:11-1.2, 2.1	Relocation assistance: lawful occupancy; eligibility	19 N.J.R. 1596(a)	R.1987 d.518	19 N.J.R. 2388(c)
5:11-3.5	Relocation assistance: scheduling of payments	19 N.J.R. 1930(a)		
5:12-1.1, 2.1, 2.4	Homelessness Prevention Program: eligibility for temporary assistance	19 N.J.R. 1777(a)		
5:13	Limited dividend and nonprofit housing corporations and associations	19 N.J.R. 1861(a)		
5:14-1.1-1.4, 2.1-2.3, 3.1-3.23, 4.1-4.6	Neighborhood Preservation Balanced Housing Programs	19 N.J.R. 589(a)		
5:18-2.4, 2.5, 2.6, 2.8	Uniform Fire Code: life hazard uses; annual registration fees	19 N.J.R. 1680(a)	R.1987 d.508	19 N.J.R. 2266(a)
5:19	Continuing care retirement communities: disclosure requirements	19 N.J.R. 597(a)		
5:23-1.1, 3.10, 4.40, 5.2, 5.4, 5.18, 5.20, 5.21-5.26	UCC: local agency classification; appeal boards; licensing	19 N.J.R. 1264(a)	R.1987 d.509	19 N.J.R. 2270(a)
5:23-2.38, 3.11, 7.2, 7.3, 7.100-7.116	Barrier free subcode: recreation standards	19 N.J.R. 1270(a)		
5:23-3.2	Uniform Construction Code: commercial farm buildings	19 N.J.R. 1778(a)		
5:23-3.2	Commercial farm building subcode: public hearings	19 N.J.R. 1862(a)		
5:23-3.18	Energy Subcode: checkmetering in multifamily buildings; lighting efficiency in existing buildings	19 N.J.R. 1862(b)		
5:23-4.20, 8.17	Uniform Construction Code: inspection fees	19 N.J.R. 1684(a)	R.1987 d.490	19 N.J.R. 2134(a)
5:23-8	Asbestos Hazard Abatement Subcode	19 N.J.R. 902(a)	R.1987 d.525	19 N.J.R. 2389(a)
5:26-2.3, 2.4	Planned real estate development: plan review fees	19 N.J.R. 1684(a)	R.1987 d.490	19 N.J.R. 2134(a)
5:80-21	Housing and Mortgage Finance: single family loans	18 N.J.R. 2238(a)	R.1978 d.517	20 N.J.R. 70(a)
5:80-26	Housing resale and rental affordability control	19 N.J.R. 802(a)		
5:92-1.3, 6.1	Council on Affordable Housing: rehabilitation component and credits	19 N.J.R. 1863(a)		
5:92-5.14	Council on Affordable Housing: low and moderate income split	19 N.J.R. 1597(a)	R.1988 d.27	20 N.J.R. 71(a)
5:92-12.11	Council on Affordable Housing: rental surcharge	19 N.J.R. 1597(a)		
5:92-16	Council on Affordable Housing: accessory apartments	19 N.J.R. 2089(b)		
5:100-2.5	Failure to report suspected abuse or exploitation of institutionalized elderly	19 N.J.R. 1686(a)		
5:100-2.5	Failure to report suspected abuse or exploitation of institutionalized elderly: extension of comment period	19 N.J.R. 2090(a)		

(TRANSMITTAL 1987-8, dated October 19, 1987)

**DEFENSE—TITLE 5A**

(TRANSMITTAL 1, dated May 20, 1985)

**EDUCATION—TITLE 6**

6:20-3.1	Reproposed: Determining tuition rates for sending and receiving districts	19 N.J.R. 2329(a)		
6:31-1	Bilingual education	19 N.J.R. 1126(a)	R.1987 d.523	19 N.J.R. 2397(a)
6:46	Local area vocational school districts and private vocational schools	19 N.J.R. 1368(a)	R.1987 d.434	19 N.J.R. 1989(a)
6:64	County and local library services	19 N.J.R. 1931(a)		
6:79-1	Child nutrition programs	19 N.J.R. 1599(a)	R.1987 d.524	19 N.J.R. 2399(a)

(TRANSMITTAL 1987-9, dated October 19, 1987)

**ENVIRONMENTAL PROTECTION—TITLE 7**

7:1-3, 4	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)	R.1987 d.528	19 N.J.R. 2435(a)
7:1G-2.1, 2.2, 4.1, 4.2, 5.4	Worker and Community Right to Know: hazardous substances and materials	19 N.J.R. 438(a)		
7:1G-2.1, 2.2, 4.1, 4.2, 5.4	Worker and Community Right to Know: extension of comment period	19 N.J.R. 2234(a)		
7:1G-3.2, 5.2, 7	Worker and Community Right to Know: assessment of civil administrative penalties for nondisclosure of information	19 N.J.R. 703(a)		
7:1G-3.2, 5.2, 7	Worker and Community Right to Know: extension of comment period	19 N.J.R. 2234(b)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
7:2-11	Natural Areas System	18 N.J.R. 2349(b)	R.1987 d.533	19 N.J.R. 2409(a)
7:7-2.1, 2.3	Coastal Permit Program: CAFRA exemptions; waterfront development	19 N.J.R. 807(a)		
7:7-2.2	Monmouth County wetlands maps	18 N.J.R. 2162(a)	R.1987 d.446	19 N.J.R. 1999(a)
7:7-2.2	Coastal wetlands maps for Gloucester County	19 N.J.R. 2090(b)		
7:7A	Freshwater Wetlands Protection Act rules	19 N.J.R. 2330(a)		
7:7E-7.4, 8.11	Coastal resources and development: high rise structures; public access to Hudson River waterfront	19 N.J.R. 1034(a)		
7:7F	Shore Protection Program	19 N.J.R. 2091(a)		
7:8	Storm water management	19 N.J.R. 2227(a)		
7:8-1.3, 1.7, 2.1, 2.2, 2.6, 3.4, 3.6	Stormwater management	19 N.J.R. 488(a)	R.1987 d.513	19 N.J.R. 2276(a)
7:9-1	Sewer systems and wastewater treatment plants	19 N.J.R. 2227(b)		
7:9-15.6	Phase II lake restoration projects: State funding level	19 N.J.R. 909(a)	R.1987 d.447	19 N.J.R. 2000(a)
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	19 N.J.R. 1381(a)		
7:10-16	Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water	19 N.J.R. 2228(a)		
7:10-16.13, 16.14, 16.15	Hazardous contaminants in drinking water: pre-proposal concerning short-term action levels, sampling response levels, and unregulated and total volatile organics	19 N.J.R. 2231(a)		
7:11-1	Use of Water Supply Authority property	19 N.J.R. 1274(a)		
7:12	Classification of shellfish growing waters	19 N.J.R. 1129(a)	R.1987 d.488	19 N.J.R. 2136(a)
7:13-7.1	Redelineation of Hackensack River in Oradell	19 N.J.R. 1935(a)		
7:13-7.1(b)	Redelineation of Jumping Brook in Neptune	19 N.J.R. 2233(a)		
7:13-7.1(d)	Redelineation of Raritan River and Peters Brook: re-proposed	19 N.J.R. 167(b)		
7:13-7.1(d)	Flood plain delineations in Passaic-Hackensack and Raritan basins	19 N.J.R. 489(a)	R.1987 d.489	19 N.J.R. 2150(a)
7:13-7.1(d)	Redelineations along Green Brook, Union County	19 N.J.R. 1384(a)	R.1987 d.487	19 N.J.R. 2151(a)
7:13-7.1(d)	Redelineation of Big Bear Brook, Mercer County	19 N.J.R. 1933(a)		
7:13-7.1(d)	Redelineation of Carter's Brook, Middlesex County	19 N.J.R. 1933(b)		
7:13-7.1(d)	Redelineation of Lawrence, Ireland, Mae, Harry's and Oakeys brooks in Mercer and Middlesex counties	19 N.J.R. 1934(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System	18 N.J.R. 2085(a)	R.1987 d.458	19 N.J.R. 2152(a)
7:14A-1.9, 12	Sewer connection bans	18 N.J.R. 2163(a)	R.1987 d.445	19 N.J.R. 2000(b)
7:14A-1.9, 12	Sewer connection bans: extension of comment period	19 N.J.R. 263(b)		
7:14A-5.12	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:14A-6.4	Groundwater monitoring parameters for hazardous waste facilities	19 N.J.R. 1863(b)		
7:14A-8	NJPDES permit program: public notice and comment	19 N.J.R. 1864(a)		
7:14A-11.1	Hazardous waste management: public access to records and information	19 N.J.R. 1869(a)		
7:14B	Underground storage tanks	19 N.J.R. 1477(a)	R.1987 d.531	19 N.J.R. 2417(a)
7:22-3.4, 3.6-3.11, 3.13, 3.32, 4.4, 4.6-4.11, 4.13, 4.32, 5.11	Wastewater Treatment Financing Program	19 N.J.R. 1600(a)		
7:22-9	Wastewater treatment: contract awards to small, female, and minority-owned businesses	19 N.J.R. 1604(a)		
7:25-1	Shellfishing license program	19 N.J.R. 2358(a)		
7:25-6	1988-89 Fish Code	19 N.J.R. 1385(a)	R.1988 d.15	20 N.J.R. 72(a)
7:25-18.5	Drifting and anchored gill net seasons; netting mesh in staked gill net fishery	19 N.J.R. 1609(a)		
7:26-1.1, 1.4, 1.6, 2.1, 7.5, 8.1, 8.2, 8.13, 8.15, 9.1, 10.7, 11.5, 11.6, 12.1, 12.3	Solid waste defined; hazardous waste recycling	19 N.J.R. 1035(a)	R.1987 d.534	19 N.J.R. 2426(a)
7:26-1.4, 8.2, 8.3, 8.5, 8.12, 8.14, 9.4, App. A, 12.1, 12.5, 12.12	Hazardous waste management	19 N.J.R. 1936(a)		
7:26-1.4, 9.8-9.11, 9.13, App. A, 12.3	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:26-1.9, 12.2, 17	Hazardous waste management: public access to records and information	19 N.J.R. 1869(a)		
7:26-2.13	Solid waste facilities: recordkeeping	19 N.J.R. 171(a)		
7:26-2.13	Recordkeeping at solid waste facilities: extension of comment period for proposal at 19 N.J.R. 171(a)	19 N.J.R. 2364(a)		
7:26-3.2, 3.4	Compliance with designated truck routes by solid waste registrants and operators	19 N.J.R. 1610(a)	R.1987 d.535	19 N.J.R. 2434(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties	19 N.J.R. 1142(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Cumberland and Gloucester counties	19 N.J.R. 1481(a)		
7:26-8.13, 8.15, 8.16	Hazardous waste criteria	19 N.J.R. 1278(a)	R.1987 d.486	19 N.J.R. 2165(a)
7:26-8.14	Ethylene bisdithiocarbamic acid (EBDC) production	19 N.J.R. 1938(a)		
7:26-8.19, 10.6	Hazardous waste management: approval of alternate test methods; surface impoundments	19 N.J.R. 1482(a)	R.1987 d.514	19 N.J.R. 2278(a)
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management	18 N.J.R. 2356(a)	R.1987 d.532	19 N.J.R. 2424(a)
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management: extension of comment period	19 N.J.R. 263(c)		
7:26-12.2	Hazardous waste facilities: application signatories	19 N.J.R. 11(b)		
7:26-14.1, 14A	Resource Recovery and Solid Waste Disposal Facility Loans	19 N.J.R. 828(a)		
7:26B	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)	R.1987 d.528	19 N.J.R. 2435(a)
7:27-16.1, 16.3	Stage II recovery of gasoline vapors	19 N.J.R. 1938(b)		
7:28-3	Registration of ionizing radiation-producing machines and radioactive materials	19 N.J.R. 836(a)	R.1987 d.485	19 N.J.R. 2167(a)
7:28-4	Naturally-occurring and accelerator-produced radioactive materials: handling and use	19 N.J.R. 1041(a)	R.1987 d.483	19 N.J.R. 2171(a)
7:28-5	Designation of controlled areas for use of radiation and radioactive materials	19 N.J.R. 839(a)	R.1987 d.484	19 N.J.R. 2180(a)
7:29B	Determination of noise from stationary sources	19 N.J.R. 1483(a)		
7:29B	Determination of noise from stationary sources: extension of comment period	19 N.J.R. 2092(a)		
7:31-1, 2, 3, 4	Toxic Catastrophe Prevention Act program	19 N.J.R. 1687(a)		
7:31-1, 2, 3, 4	Toxic Catastrophic Prevention Act program: extension of comment period	19 N.J.R. 2092(b)		
7:30	Pesticide Control Code	19 N.J.R. 1611(a)	R.1988 d.9	20 N.J.R. 75(a)
7:36	Green Acres Program	19 N.J.R. 2358(b)		
7:50	Pinelands Comprehensive Management Plan	18 N.J.R. 2239(a)	R.1987 d.436	19 N.J.R. 2010(a)

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**HEALTH—TITLE 8**

8:31B-3.7, 3.17, 3.27, 3.51, 3.55, 3.73, 4.42	Hospital reimbursement for existing capital indebtedness	19 N.J.R. 1145(a)	R.1988 d.24	20 N.J.R. 77(a)
8:31B-3.24, 3.51, 3.71, 3.73	Hospital reimbursement: indirect costs	19 N.J.R. 1147(a)	R.1988 d.25	20 N.J.R. 82(a)
8:31B-3.38	Apportionment of full financial elements	19 N.J.R. 1279(a)		
8:31B-4.38	Hospital reimbursement: uncompensated care coverage for outpatient dialysis	19 N.J.R. 2092(c)		
8:31B-4.62	Hospital reimbursement: outpatient HealthStart maternal and pediatric care	19 N.J.R. 2365(a)		
8:33E-1.1, 1.2, 1.3	Certificate of Need: cardiac diagnostic facilities	19 N.J.R. 1282(a)		
8:33E-2.2, 2.3, 2.4	Certificate of Need: cardiac surgery centers	19 N.J.R. 1283(a)		
8:33F-1.2, 1.4	Back-up and acute hemodialysis treatment: annual inpatient admissions for applicant hospital	19 N.J.R. 2093(a)		
8:33G-3.11	Long-term care beds for former psychiatric hospital patients	19 N.J.R. 614(a)		
8:33H-2.1, 3.1, 3.3, 3.5	"Specialized" long-term care: licensure track records; location of residential health care facilities	19 N.J.R. 1149(a)	R.1987 d.453	19 N.J.R. 2181(a)
8:33L	Home Health Agency Policy Manual: Certificate of Need review	19 N.J.R. 1483(c)	R.1987 d.452	19 N.J.R. 2184(a)
8:43E-1	Certificate of Need policy manual for health care facilities and services	19 N.J.R. 1872(a)	R.1988 d.21	20 N.J.R. 86(a)
8:43E-1	Repeal (see 8:43I-1)	19 N.J.R. 2365(b)		
8:43E-2	Psychiatric inpatient beds: adult open acute	19 N.J.R. 1873(a)	R.1988 d.22	20 N.J.R. 86(b)
8:43E-3	Psychiatric inpatient screening beds	19 N.J.R. 1875(a)	R.1988 d.20	20 N.J.R. 88(a)
8:43E-4	Children's acute psychiatric beds	19 N.J.R. 1876(a)	R.1988 d.19	20 N.J.R. 88(b)
8:43E-4	Child and adolescent acute psychiatric beds	19 N.J.R. 2094(a)		
8:43E-5	Intermediate adult and special psychiatric beds	19 N.J.R. 1877(a)	R.1988 d.18	20 N.J.R. 89(a)
8:43G-1	Repeal (see 8:43I-1)	19 N.J.R. 2365(b)		
8:43I-1	Hospital Policy Manual	19 N.J.R. 2365(b)		
8:61-2	Retrovir (AZT) reimbursement program	19 N.J.R. 2067(a)	R.1988 d.6	20 N.J.R. 89(b)
8:65-7.14	Controlled substances: Schedule III and IV prescription refills	19 N.J.R. 1612(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 641(a), 880(a), 1314(a), 1644(b), 2279(a))	19 N.J.R. 13(a)	R.1987 d.522	19 N.J.R. 2402(a)
8:71	Interchangeable drug products (see 19 N.J.R. 1312(b), 1644(a), 2278(b))	19 N.J.R. 615(a)	R.1987 d.520	19 N.J.R. 2400(a)
8:71	Interchangeable drug products (see 19 N.J.R. 2279(b))	19 N.J.R. 1488(a)	R.1987 d.521	19 N.J.R. 2401(a)
8:71	Interchangeable drug products: public hearing	19 N.J.R. 1878(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>HIGHER EDUCATION—TITLE 9</b>				
9:1-7	Fraudulent academic degrees	19 N.J.R. 1284(a)	R.1987 d.430	19 N.J.R. 2053(a)
9:2-8	Petitions for rulemaking	19 N.J.R. 913(a)	R.1987 d.429	19 N.J.R. 2053(b)
9:5-1.1	Independent student status	19 N.J.R. 2372(a)		
9:6A	State college personnel system	19 N.J.R. 1613(a)	R.199 d.14	20 N.J.R. 89(a)
9:7-2.3	Student assistance and foreign nationals	19 N.J.R. 2101(a)		
9:7-2.6	Independent student status	19 N.J.R. 2101(b)		
9:7-2.10, 2.11	Tuition Aid Grant benefits	19 N.J.R. 1153(a)	R.1987 d.440	19 N.J.R. 2054(a)
9:7-9.9, 9.11, 9.12	Congressional Teacher Scholarship Program	19 N.J.R. 2102(a)		
9:7-9.9, 9.11, 9.12, 9.15	Congressional Teacher Scholarship Program	19 N.J.R. 1154(a)	R.1987 d.441	19 N.J.R. 2055(a)
9:9-1.12, 1.13, 1.16	Repayment of student loans: nonconverted accounts	19 N.J.R. 1619(a)		
9:9-3.5	Capitalization of PLUS loan interest	19 N.J.R. 498(b)	R.1987 d.456	19 N.J.R. 2187(a)
9:11-1.1, 1.7, 1.8, 1.22, 1.23	EOF grant awards for approved part-time enrollment	19 N.J.R. 2373(a)		
9:11-1.3, 1.4	Educational Opportunity Fund: eligible non-citizens: independent student status	19 N.J.R. 2234(c)		
9:11-1.4	Educational Opportunity Fund: student dependency status defined	19 N.J.R. 266(a)	R.1987 d.491	19 N.J.R. 228 i(a)
9:11-1.5	EOF: financial eligibility for undergraduate grants	19 N.J.R. 499(a)	R.1987 d.492	19 N.J.R. 2282(a)
9:11-1.7	Equal Opportunity Fund grants: graduate awards	19 N.J.R. 1879(a)		
9:11-2	Martin Luther King Physician-Dentist Scholarship Program	19 N.J.R. 2374(a)		

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<b>HUMAN SERVICES—TITLE 10</b>				
10:4	Communication with communities regarding development of group homes	19 N.J.R. 1976(a)		
10:8	Personal needs allowance for indigent persons in State and county institutions	19 N.J.R. 617(a)		
10:49-1.3-1.6	HealthStart: comprehensive maternity and pediatric care services	19 N.J.R. 1978(a)		
10:49-1.4	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:50-1.1-1.5, 2.3-2.8, 3.1, 3.2	Livery service for ambulatory Medicaid patients	19 N.J.R. 2103(a)		
10:51-1.6, 1.11, 1.16, 1.18, 3.5, 3.10, 3.14, 5.14, 5.18	Pharmacy Manual: payment limits for Medicaid and PAAD reimbursement	Emergency (expires 12-24-87)	R.1987 d.494	19 N.J.R. 2203(a)
10:51-1.17	Medicaid and PAAD: legend drug dispensing fee	19 N.J.R. 1711(a)	R.1987 d.530	19 N.J.R. 2402(b)
10:51-5.6	Pharmaceutical Assistance to Aged and Disabled: income limits	19 N.J.R. 2375(a)		
10:52-1.6, 1.8	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:52-1.7	HealthStart	19 N.J.R. 1978(a)		
10:53-1.5, 1.7	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:53-1.6	HealthStart	19 N.J.R. 1978(a)		
10:54-1.1, 1.2	HealthStart	19 N.J.R. 1978(a)		
10:58-1.2, 1.3	HealthStart	19 N.J.R. 1978(a)		
10:60-2.2	Personal care assistance services	19 N.J.R. 1489(a)	R.1987 d.451	19 N.J.R. 2188(a)
10:61-2.4, 2.5	Independent laboratories: standardized claim form	19 N.J.R. 1779(a)		
10:64-1.4, 2.1, 2.2, 2.5, 2.6, 3.5	Hearing aid providers: standardized claim form	19 N.J.R. 1779(a)		
10:66-1.3, 1.6	HealthStart	19 N.J.R. 1978(a)		
10:66-3	Family planning services provided by independent clinics	19 N.J.R. 2376(a)		
10:66-3.2	Personal care assistance services	19 N.J.R. 1489(a)	R.1987 d.451	19 N.J.R. 2188(a)
10:69A-1.2, 6.2, 6.6, 6.10	PAAD income limits	19 N.J.R. 2375(a)		
10:69C	Statewide Respite Care Program	19 N.J.R. 1712(a)		
10:81-7.46	PAM: reporting criminal offenses	19 N.J.R. 1389(a)	R.1987 d.449	19 N.J.R. 2056(a)
10:81-8.22, 14.20	PAM: extension of Medicaid benefits to certain employed persons	Emergency (expires 12-24-87)	R.1987 d.495	19 N.J.R. 2206(a)
10:81-8.23	Medicaid Special: pregnancy examinations	19 N.J.R. 1490(a)	R.1987 d.455	19 N.J.R. 2189(a)
10:81-11.4	PAM: recovery of child support overpayments	19 N.J.R. 1171(a)	R.1987 d.467	19 N.J.R. 2189(b)
10:81-11.7	Child support enforcement program	19 N.J.R. 1879(b)		
10:81-11.18	PAM: child support guidelines	18 N.J.R. 2178(a)	R.1987 d.498	19 N.J.R. 2282(b)
10:82-1.3, 4.16	ASH: household defined; court-ordered support	19 N.J.R. 31(b)		
10:82-2.6	Initial eligibility in AFDC	19 N.J.R. 1781(a)		
10:82-4.15	Lump sum income and AFDC eligibility	19 N.J.R. 1782(a)		
10:82-5.10	Emergency Assistance in AFDC program	19 N.J.R. 1171(b)	R.1987 d.466	19 N.J.R. 2190(a)
10:85-1.5	General Assistance Program audits	19 N.J.R. 2376(b)		
10:85-2.7	GAM: reporting criminal offenses	19 N.J.R. 1393(a)	R.1987 d.448	19 N.J.R. 2056(b)
10:85-3.5	GAM: monthly case reviews	19 N.J.R. 2111(a)		
10:85-4.6	Emergency Assistance in GA program	19 N.J.R. 1715(a)	R.1988 d.26	20 N.J.R. 96(a)
10:85-4.8	GAM: funeral and burial expenses	19 N.J.R. 1619(b)		

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10:85-6.3	General Assistance Program statement of refunds: preparation of Form GA-12	19 N.J.R. 2377(a)		
10:87-5.9	Food Stamps eligibility: income exclusion and utility allowance payments	19 N.J.R. 1986(a)		
10:87-12.1, 12.2	Food Stamp Program: income deductions and maximum coupon allotments	19 N.J.R. 1916(a)	R.1987 d.529	19 N.J.R. 2402(c)
10:89-2.2, 2.3, 3.2, 3.3, 3.4, 3.6, 4.1	Home Energy Assistance program	Emergency (expires 12-27-87)	R.1987 d.496	19 N.J.R. 2208(a)
10:90	Monthly Reporting Policy Handbook	19 N.J.R. 1517(a)	R.1987 d.454	19 N.J.R. 2193(a)
10:121A	Adoption Agencies: Manual of Standards	19 N.J.R. 1519(a)	R.1987 d.505	19 N.J.R. 2288(a)
10:124	Children's shelter facilities and homes	19 N.J.R. 1394(a)	R.1987 d.504	19 N.J.R. 2300(a)
10:131	Adoption Assistance and Child Welfare Act of 1980	19 N.J.R. 1285(a)	R.1987 d.503	19 N.J.R. 2301(a)

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**CORRECTIONS—TITLE 10A**

10A:3-4.1	Off-duty carrying of firearms	19 N.J.R. 1717(a)	R.1987 d.515	19 N.J.R. 2302(a)
10A:4-1.2	Girl's Unit at Skillman: disciplinary process	19 N.J.R. 1531(a)	R.1987 d.526	19 N.J.R. 2403(a)
10A:4-9.18	Inmate discipline: suspending sanctions	19 N.J.R. 1717(b)		
10A:6	Inmate access to courts	19 N.J.R. 914(a)	R.1987 d.444	19 N.J.R. 2057(a)
10A:8	Inmate orientation and handbook	19 N.J.R. 1531(b)	R.1987 d.459	19 N.J.R. 2194(a)
10A:9-2.1	Inmate reception classification process	19 N.J.R. 1395(a)	R.1987 d.460	19 N.J.R. 2195(a)
10A:9-4.5	Inmate classification: increasing custody status	19 N.J.R. 1782(b)		
10A:9-4.5	Reduction of inmate custody status	19 N.J.R. 2235(a)		
10A:10-6.3, 6.6	International transfer of inmates	19 N.J.R. 1620(a)		
10A:16-2.11	Pregnancy testing of new inmates	19 N.J.R. 1396(a)	R.1987 d.443	19 N.J.R. 2060(a)
10A:71-3.2, 3.4, 3.18-3.23, 3.25-3.28, 3.30, 3.43, 6.9	Parole Board rules	19 N.J.R. 1396(b)		

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**INSURANCE—TITLE 11**

11:1-1.1	Organization of department	Exempt	R.1988 d.1	20 N.J.R. 99(a)
11:1-25	Official department mailing list: address information	19 N.J.R. 2236(a)		
11:3-22.3	Submission of automobile coverage option survey	19 N.J.R. 2237(a)		
11:3-23	Dangerous drivers or drivers with excessive claims	19 N.J.R. 1880(a)	R.1987 d.527	19 N.J.R. 2403(b)
11:4-2	Replacement of life insurance policy	19 N.J.R. 1286(a)		
11:4-18.3, 18.5, 18.10	Individual health policies: loss ratio standards	19 N.J.R. 1620(b)		
11:4-28	Group coordination of health care benefits	19 N.J.R. 845(a)		
11:5-1.23	Full cooperation among real estate brokers and waiver of cooperation	19 N.J.R. 1621(a)		
11:5-1.23	Real estate licensee's obligation to disclose certain information concerning a property and to submit to a seller all written offers: pre-proposal	19 N.J.R. 2238(a)		
11:5-1.25	Sale of interstate real properties: advertisements	19 N.J.R. 1718(a)		
11:5-1.27	Real estate brokers pre-licensure course	19 N.J.R. 1051(a)		
11:13	Commercial lines insurance	19 N.J.R. 1783(a)	R.1987 d.512	19 N.J.R. 2302(b)
11:17-1, 2, 5	Insurance producer licensing: pre-proposed new rules	19 N.J.R. 2112(a)		

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**LABOR—TITLE 12**

12:15-1.3	Unemployment compensation and temporary disability: 1988 maximum weekly benefits	19 N.J.R. 1622(a)	R.1987 d.468	19 N.J.R. 2196(a)
12:15-1.4	Unemployment compensation: 1988 taxable wage base	19 N.J.R. 1623(a)	R.1987 d.469	19 N.J.R. 2196(b)
12:15-1.5	Unemployment compensation: 1988 contribution rate for governmental entities	19 N.J.R. 1624(b)	R.1987 d.473	19 N.J.R. 2196(c)
12:15-1.6	Base week earnings for claim eligibility	19 N.J.R. 1623(b)	R.1987 d.470	19 N.J.R. 2196(d)
12:15-1.7	Alternate earnings test	19 N.J.R. 1623(c)	R.1987 d.471	19 N.J.R. 2196(e)
12:18-2.13	Temporary Disability: approval of private plan coverage	19 N.J.R. 2238(b)		
12:60	Prevailing wages for public works	19 N.J.R. 345(b)		
12:100-2.1, 4.2, 5.2, 6.2	Public employees and hazardous waste operations	19 N.J.R. 1533(a)	R.1987 d.439	19 N.J.R. 2060(b)
12:100-4.2	Public employee safety and health: exposure to benzene	19 N.J.R. 2239(a)		
12:100-5.2, 6.2, 7	Public employees and exposure to toxic and hazardous substances	19 N.J.R. 267(a)		
12:110	Public employee occupational safety and health	19 N.J.R. 1941(a)		
12:190	Explosives	19 N.J.R. 1883(a)	R.1988 d.16	20 N.J.R. 99(b)
12:235-1.6	Workers' compensation: 1988 maximum weekly benefit	19 N.J.R. 1624(a)	R.1987 d.472	19 N.J.R. 2197(a)

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**COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A**

12A:9-1	Services to small businesses and women and minority businesses	19 N.J.R. 2378(a)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12A:12-2	Local Development Financing Fund	19 N.J.R. 2381(a)		
12A:50-1	Cogeneration: reporting by non-utility generators	19 N.J.R. 2383(a)		

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**LAW AND PUBLIC SAFETY—TITLE 13**

13:1-4.6	Police training: instruction in radar operation	19 N.J.R. 2123(a)		
13:21-21	Auto body repair facilities	19 N.J.R. 1624(c)		
13:27-3, 4	Architectural practice; definitions	19 N.J.R. 1783(b)		
13:27-5.8	Architects and certified landscape architects: licensing examination fees	19 N.J.R. 2123(b)		
13:27-8.14	Advertising by persons not certified as landscape architects	19 N.J.R. 400(a)	R.1987 d.480	19 N.J.R. 2197(b)
13:29-5	Board of Accountancy: Quality Enhancement Program	19 N.J.R. 2240(a)		
13:30-8.17	Designation of dentist of record for patient in multi-dentist facility	19 N.J.R. 1629(a)		
13:32-1	Rules of Board of Examiners of Master Plumbers	19 N.J.R. 1630(a)	R.1987 d.481	19 N.J.R. 2197(c)
13:33-1.41	Ophthalmic dispensers and technicians: Board of Examiners fees	19 N.J.R. 2242(a)		
13:35-1.5	Participation in medical residency programs	19 N.J.R. 2243(a)		
13:35-3.11	Post-graduate training of graduates of foreign medical schools	19 N.J.R. 1534(a)	R.1988 d.7	20 N.J.R. 102(a)
13:35-6.7	Medical examiners board: prescribing of amphetamines and sympathomimetic amine drugs	19 N.J.R. 1786(a)		
13:35-8	Hearing aid dispensers	19 N.J.R. 1949(a)		
13:36-2.1	Qualification as mortuary science intern	19 N.J.R. 2245(a)		
13:37-12.1	Board of Nursing fee schedule	19 N.J.R. 1886(a)	R.1987 d.536	19 N.J.R. 2405(a)
13:39	Board of Pharmacy rules	19 N.J.R. 1952(a)		
13:40-5.1	Corner markers and ultimate user of land survey	19 N.J.R. 1631(a)		
13:42-1.1, 3.1	Board of Psychological Examiners: oral examination process	19 N.J.R. 2246(a)		
13:42-1.2	Board of Psychological Examiners: application, examination and licensure fees	19 N.J.R. 1632(a)	R.1988 d.12	20 N.J.R. 102(b)
13:44B-1	Compensation of professional and occupational licensing board members	19 N.J.R. 444(a)	R.1987 d.438	19 N.J.R. 2060(c)
13:44C	Practice of audiology and speech-language pathology	19 N.J.R. 1412(a)		
13:45A-12	Sale of dogs and cats	19 N.J.R. 853(a)		
13:45A-21, 22	Sale of Kosher food and food products	19 N.J.R. 1060(a)	R.1987 d.450	19 N.J.R. 2060(d)
13:45A-24	Sale of gray market merchandise	19 N.J.R. 179(a)		
13:45A-25.1	Sellers of health club services: registration fee	19 N.J.R. 1967(a)	R.1988 d.23	20 N.J.R. 103(a)
13:46-8.3, 8.12, 8.13	Boxing rules	19 N.J.R. 1787(a)	R.1988 d.17	20 N.J.R. 103(b)
13:46-12.13	Boxing show hygiene	19 N.J.R. 1886(b)	R.1988 d.8	20 N.J.R. 103(c)
13:47C-2.1	Meat, poultry, fish and shellfish sold by net weight	19 N.J.R. 1787(b)		
13:47C-2.5	Weights and measures: ready-to-eat foods	19 N.J.R. 2124(a)		
13:70-1.30	Thoroughbred racing: horsemen associations	19 N.J.R. 1418(a)		
13:70-20.11	Thoroughbred racing: entering or starting nerved horses	19 N.J.R. 1788(a)		
13:70-20.11	Thoroughbred racing: correction to proposal concerning nerved horses	19 N.J.R. 2124(b)		
13:70-29.53	Thoroughbred racing: trifecta wagering	19 N.J.R. 2385(a)		
13:71-1.25	Harness racing: horsemen associations	19 N.J.R. 856(a)		
13:71-20.23	Harness racing: nerving and registration of nerved horses	19 N.J.R. 2125(a)		
13:71-27.50	Harness racing: trifecta wagering	19 N.J.R. 2385(b)		
13:75-1.6	Violent crimes compensation: eligibility of claims	19 N.J.R. 1967(b)		
13:76-1.3, 3.1, 3.2, 5.1	Arson investigation training	19 N.J.R. 1788(b)		
13:77	Equitable distribution of forfeited property to law enforcement agencies	19 N.J.R. 1534(a)		

(TRANSMITTAL 1987-10, dated October 19, 1987)

**PUBLIC UTILITIES—TITLE 14**

14:3-7.12A	Residential electric and gas service during heating season	18 N.J.R. 2315(a)	R.1987 d.516	19 N.J.R. 2405(b)
14:10-1.16	Uniform system of accounts for telephone companies	19 N.J.R. 1789(a)	R.1988 d.10	20 N.J.R. 103(d)
14:11-6	Interest on fuel clause overrecoveries	19 N.J.R. 1967(c)		
14:18-3	Cable TV: pre-proposal for telephone service standards	19 N.J.R. 2125(b)		

(TRANSMITTAL 1987-6, dated September 21, 1987)

**ENERGY—TITLE 14A**

14A:3-4.1-4.6	Energy subcode	19 N.J.R. 433(b)	R.1987 d.387	19 N.J.R. 1793(a)
14A:3-7	Individual electric metering in residential buildings: repeal	19 N.J.R. 2247(a)		
14A:3-7, 9	Repeal (see 5:23-3.18)	19 N.J.R. 1862(b)		
14A:4-1.1-3.1	Solar energy property tax exemptions	19 N.J.R. 433(b)	R.1987 d.387	19 N.J.R. 1793(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
14A:22-1.2, 2.1, 3.1, 3.2, 3.8, 4.1, 5.1, 8.1	Commercial and apartment conservation service program	19 N.J.R. 2247(b)		

(TRANSMITTAL 1987-3, dated September 21, 1987)

STATE—TITLE 15 15:10-6	Voting accessibility for elderly and handicapped	19 N.J.R. 2249(a)		
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(TRANSMITTAL 1987-1, dated February 17, 1987)

**PUBLIC ADVOCATE—TITLE 15A**

(TRANSMITTAL 1987-1, dated April 20, 1987)

**TRANSPORTATION—TITLE 16**

16:25	Utility accommodation on highway rights-of-way	19 N.J.R. 1064(a)		
16:25A	Soil erosion and sediment control on DOT projects	19 N.J.R. 2126(a)		
16:28-1.10, 1.18, 1.120	Speed rates along U.S. 46 in White Township, Route 34 in Matawan, and Route 38 in Burlington County	19 N.J.R. 1968(a)		
16:28-1.25, 1.79, 1.80	Speed limits along Routes 23 and 94 in Hamburg, Route 172 in New Brunswick	19 N.J.R. 1887(a)	R.1988 d.3	20 N.J.R. 104(b)
16:28-1.57	School zones along U.S. 30 in Lindenwold and Laurel Springs	Emergency (expires 12-24-87)	R.1987 d.493	19 N.J.R. 2211(a)
16:28-1.76	Speed rate on Route 15 in Morris and Sussex counties	19 N.J.R. 1839(a)	R.1988 d.2	20 N.J.R. 104(a)
16:28A-1.5, 1.36, 1.38, 1.45	Parking restrictions along Routes 5, 57, 71, and 94	19 N.J.R. 1632(b)	R.1987 d.479	19 N.J.R. 2198(a)
16:28A-1.7, 1.15, 1.18, 1.22, 1.32	Parking restrictions along U.S. 9, Routes 23, 27, 31, and U.S. 46	19 N.J.R. 1633(a)	R.1987 d.478	19 N.J.R. 2199(a)
16:28A-1.7, 1.61	Parking restrictions along U.S. 9 in Middle Township and U.S. 9W in Tenafly	19 N.J.R. 2253(a)		
16:28A-1.11, 1.33, 1.61	No parking zones along Routes 21 in Newark, 47 in Franklin, and U.S. 9W in Alpine	19 N.J.R. 1888(a)	R.1988 d.5	20 N.J.R. 105(a)
16:28A-1.15, 1.19	No parking zones along Route 23 in Pequannock and Route 28 in Garwood	19 N.J.R. 1889(a)	R.1988 d.4	20 N.J.R. 105(b)
16:28A-1.25, 1.33, 1.34, 1.100	Restricted parking on Routes N.J. 35 in Seaside, N.J. 47 in Glassboro, N.J. 49 in Salem, and N.J. 50 in Upper Township	19 N.J.R. 2127(a)		
16:29-1.18	No passing zones along Route 154 in Cherry Hill	19 N.J.R. 2253(b)		
16:30	Pre-proposal: Exclusive bus lane on Routes 3 and 495	19 N.J.R. 1421(b)		
16:30-4.2	Bicycle restrictions along Route 88 in Point Pleasant	19 N.J.R. 2254(a)		
16:30-9.1, 9.2	Restrictions on Morgan Bridge along Route 35, Middlesex County, and Veterans Memorial Bridge along Route 88, Point Pleasant	19 N.J.R. 2254(b)		
16:31-1.24	No left turn on Route N.J. 82 in Union	19 N.J.R. 2128(a)		
16:44-1.1	Contract administration: composition of Pre-qualification Committee	19 N.J.R. 1634(a)	R.1987 d.499	19 N.J.R. 2303(a)
16:56-4.1, 11.2	Airport safety improvement aid	19 N.J.R. 1634(b)	R.1987 d.465	19 N.J.R. 2200(a)

(TRANSMITTAL 1987-9, dated October 19, 1987)

**TREASURY-GENERAL—TITLE 17**

17:1-1.10	Positive or negative balances in retirement accounts	19 N.J.R. 2129(a)		
17:2-3.3	PERS: contributory insurance rate	19 N.J.R. 1636(a)	R.1987 d.510	19 N.J.R. 2303(c)
17:2-4.4	Public Employees' Retirement System: accrual of loan interest	19 N.J.R. 194(a)	R.1987 d.511	19 N.J.R. 2303(d)
17:2-7.1	Public Employees' Retirement System: transfer of service credit	19 N.J.R. 2386(a)		
17:4-7.1	Police and Firemen's Retirement System: transfer of service credit	19 N.J.R. 2255(a)		
17:9-6.1	State Health Benefits Program: coverage after retirement	19 N.J.R. 1636(b)	R.1987 d.497	19 N.J.R. 2303(b)
17:20-4	Licensure as ticket sales agent of State Lottery	19 N.J.R. 1969(a)		
17:20-7	Payment of State Lottery prizes	19 N.J.R. 1889(b)		
17:30	Urban Enterprise Zone Authority: comment period reopened	19 N.J.R. 354(a)		
17:32	State Planning Rules	19 N.J.R. 1971(a)		

(TRANSMITTAL 1987-8, dated August 17, 1987)

**TREASURY-TAXATION—TITLE 18**

18:2-2	Post tax amnesty	19 N.J.R. 2255(b)		
18:3-2.1	Tax rate on wine produced from New Jersey grapes	19 N.J.R. 1181(a)	R.1987 d.475	19 N.J.R. 2200(b)
18:5-12.2	Post tax amnesty	19 N.J.R. 2255(b)		
18:7-3.15, 11.12, 13.1, 13.7, 13.12, 13.13, 14.1, 14.3, 14.7, 14.13-14.17, 14.20	Post tax amnesty	19 N.J.R. 2255(b)		
18:8-4.5, -8	Post tax amnesty	19 N.J.R. 2255(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
18:9-8.5-8.7	Post tax amnesty	19 N.J.R. 2255(b)		
18:12-7.4	Homestead rebate and residents of continuing care retirement communities	19 N.J.R. 1637(a)	R.1987 d.477	19 N.J.R. 2201(a)
18:12-7.12	Homestead rebate: extension of filing deadline	Emergency (expires 1-31-88)	R.1987 d.537	19 N.J.R. 2498(a)
18:12A-1.6, 1.20	Filing cross-petition of appeal with county tax board	19 N.J.R. 2264(a)		
18:15-1.1	Woodland management plan: correction to proposal	19 N.J.R. 1640(a)		
18:15-1.1, 2.7-2.14	Farmland assessment: woodland in agricultural use	19 N.J.R. 1538(a)	R.1987 d.507	19 N.J.R. 2304(a)
18:15-1.1, 2.7-2.14	Woodland in agricultural use: operative date	19 N.J.R. 1640(b)		
18:18-8.11, 12.5, 12.7	Post tax amnesty	19 N.J.R. 2255(b)		
18:22-2.4, 8.4	Post tax amnesty	19 N.J.R. 2255(b)		
18:24-7.8	Sales of motor vehicles to military personnel stationed in State	19 N.J.R. 1181(b)	R.1987 d.474	19 N.J.R. 2201(b)
18:26-8.4, 9.8	Post tax amnesty	19 N.J.R. 2255(b)		
18:35-1.9, 1.18, 1.19, 1.20	Post tax amnesty	19 N.J.R. 2255(b)		
18:35-1.13	Sale of principal residence	19 N.J.R. 1182(a)	R.1987 d.476	19 N.J.R. 2201(c)
18:37-2.1, 2.2, -3, -4	Post tax amnesty	19 N.J.R. 2255(b)		
18:38	Litter control tax	19 N.J.R. 400(b)		

(TRANSMITTAL 1987-5, dated September 21, 1987)

**TITLE 19—OTHER AGENCIES**

19:4-4.35, 4.39, 4.41	Residential development in waterfront recreation zones	19 N.J.R. 2386(b)		
19:4-6.28	Rezoning in Little Ferry	19 N.J.R. 53(b)		
19:4-6.28	Rezoning in East Rutherford	19 N.J.R. 1975(a)		
19:9-1.6	Sleeping in parked vehicles	19 N.J.R. 1637(b)		
19:9 Exh. A	Prequalification of bidders for widening contracts	19 N.J.R. 2129(b)		
19:17-2.1, 3.1-4.5	PERC Appeal Board procedure: rescheduled public hearing	19 N.J.R. 404(a)		
19:25-19.3	Personal financial disclosure: reporting of earned income	19 N.J.R. 1541(a)		

(TRANSMITTAL 1987-6, dated October 19, 1987)

**TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY**

19:40-1.2	Affiliation and slot machine mix	19 N.J.R. 1890(a)		
19:45-1.1	Affiliation and slot machine mix	19 N.J.R. 1890(a)		
19:45-1.2, 1.46	Reporting of complimentary items and services	19 N.J.R. 1975(b)		
19:45-1.17	Storage of emergency drop boxes	19 N.J.R. 1290(a)	R.1987 d.457	19 N.J.R. 2202(a)
19:45-1.33	Accuracy procedures for currency counting machines	19 N.J.R. 923(a)	R.1987 d.428	19 N.J.R. 2065(a)
19:45-1.33, 1.42, 1.43	Count times for cash and coin	19 N.J.R. 2265(a)		
19:46-1.32	Affiliation and slot machine mix	19 N.J.R. 1890(a)		
19:47-1.11	Rules of the games: craps	19 N.J.R. 1542(a)		
19:47-5.3	Roulette and "no more bets" procedure	19 N.J.R. 1638(a)		
19:47-8.2	Big Six minimum wagers	19 N.J.R. 858(b)	R.1987 d.433	19 N.J.R. 2066(a)
19:53-1.3, 1.13	Casino licensee's EEO/AA office	19 N.J.R. 1638(b)		
19:53-1.5	Pre-proposal: Affirmative action employment goals for handicapped or disabled persons	19 N.J.R. 1182(a)		
19:54-2.2	Affiliation and slot machine mix	19 N.J.R. 1890(a)		

(TRANSMITTAL 1987-7, dated October 19, 1987)