

# NEW JERSEY REGISTER



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## THE JOURNAL OF STATE AGENCY RULEMAKING

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(Includes adopted rules filed through February 10, 1988)

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: DECEMBER 21, 1987

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JANUARY 19, 1988

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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 **April 6, 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

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# RULE PROPOSALS

## COMMUNITY AFFAIRS

(a)

### DIVISION OF HOUSING AND DEVELOPMENT

#### Senior Citizen and Disabled Protected Tenancy Administrative Hearings

#### Proposed Amendment: N.J.A.C. 5:24-2.7

Authorized By: Leonard S. Coleman, Jr., Commissioner.

Department of Community Affairs.

Authority: N.J.S.A. 2A:18-61.38.

Proposal Number: PRN 1988-108.

Submit comments by April 6, 1988 to:

Michael L. Ticktin, Esq.

Administrative Practice Officer

Department of Community Affairs

CN 804

Trenton, NJ 08625

The agency proposal follows:

#### Summary

This proposed amendment requires that persons applying for administrative hearings to contest decisions of the local officer or agency responsible for determining whether or not tenants are eligible for senior citizen and disabled protected tenancy include in their request for a hearing the factual and/or legal basis of their disagreement with the decision. In fairness to the hearers of the appeal and to the adverse party, and to avoid waste of time and possible hardship to all parties, it is essential that the basis for disagreement be made clear in advance. The Department considers this requirement to be reasonable, not burdensome and consistent with the requirements applicable to legal proceedings generally.

#### Social Impact

The proposed requirement should have the effect of expediting local administrative proceedings by making the issues known in advance, and of deterring frivolous appeals.

#### Economic Impact

To the extent that hearings are expedited and frivolous appeals are avoided, eligible tenants will be better able to secure their right to the economic benefits of protected tenancy and owners will know sooner which units are and are not subject to protected tenancy, information which is necessary to them for their marketing programs.

#### Regulatory Flexibility Statement

There is no basis for any differential treatment for owners or converters who might qualify as "small businesses" for purposes of the Regulatory Flexibility Act. Small businesses should have the same obligation as larger firms engaged in the same business to state the basis for any appeal that they may make, and have the same right to have that obligation imposed upon their tenants in any appeals the tenants may file.

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

5:24-2.7 Administrative hearings

(a) (No change.)

(b) Application for an administrative hearing shall be made within 10 days of receipt by the aggrieved person of notice of such determination. **The application shall include a verified statement setting forth a credible factual basis for a finding that a determination either granting or denying protected tenancy status, as the case may be, was based upon incorrect or incomplete information and/or setting forth the manner in which the determination is alleged to be contrary to law.**

(c) All notices of determination issued by an administrative agency or officer shall advise the recipient of the right to a hearing and of the 10 day application requirement, **including the information required to be included in the application**, and shall give the name and address of the person to whom applications for hearings are to be made.

(d)-(g) (No change.)

## EDUCATION

(b)

### STATE BOARD OF EDUCATION

#### School Districts: General Provisions Teacher Preparation and Certification

#### Proposed New Rules: N.J.A.C. 6:3-1.23 and 6:11-3.25

#### Proposed Amendments: N.J.A.C. 6:11-4.2, 5.7 and 10

Authorized By: State Board of Education, Saul Cooperman,  
Secretary.

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:6-10,

18A:6-50, 18A:6-7A-1, 18A:7A-1.1, 18A:10-6, 18A:13-14,

18A:16-1, 18A:17-14.1 to 14.3, 18A:17-15, 18A:17-17,

18A:17-20, 18A:17-32, 18A:17-42 to 17-45, 18A-4, 18A:18A-6,

18A:22-1, 18A:22-2, 18A:22-13, 18A:22-14, 18A:22-19,

18A:22-22, 18A:24-11, 18A:28-9 to 28-13, 18A:29-6 to 29-16,

18A:40-12.1, 18A:40-12.2, and 18A:49-1 to 49-8.

Proposal Number: PRN 1988-123.

Submit comments by April 6, 1988 to:

Joseph A. Vuono, Director

Office of Strategic Planning

NJ Department of Education

225 West State Street, CN 500

Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

In 1985, the State Board of Education directed the State Department of Education to study the current system for certifying school principals and to recommend needed improvements. The Department presented the results of its initial study, along with general recommendations, in November 1986. At that time, the State Board adopted a resolution acknowledging the Department's process and one-year timetable for completing its study and recommendations.

During the past 12 months, the Department established two major advisory committees to assist in the process of finalizing its study. A Management Science Panel was convened to recommend areas of knowledge in the field of management education in which principal candidates should be educated and tested. An Internship Panel was established to recommend the educational training and experiences that should be provided in a principal residency. The reports of these advisory committees were presented to the State Board in October 1987, and they provided important bases upon which the proposed rule amendments were formulated.

The proposed rule amendments include the following major recommendations:

N.J.A.C. 6:11-4.2 Provisional Certificate: This proposed amendment would authorize the issuance of provisional certificates to principal residents who meet requirements.

Also, in December 1986, the State Board of Education adopted rules allowing the provisional employment of speech-language pathologists who meet certain requirements (see N.J.A.C. 6:11-12.11(c)(2)). Therefore, an amendment is proposed to the current rule governing the use of the Provisional Certificate in order to establish consistency in the Administrative Code.

N.J.A.C. 6:11-10.2(a)3 Previous Certification and Experience: It is proposed that the following requirements be deleted as common requirements for all administrative endorsements: a standard New Jersey teaching certificate or its equivalent; and three years of successful teaching experience. These requirements are included instead under each individual endorsement for which they apply.

N.J.A.C. 6:11-10.8(a) Principal Certification Requirements: It is recommended that the current standards for principal certification be replaced by the following requirements: a Master's degree in the field of leadership/management (effective upon adoption); a score on a State examination of knowledge of leadership/management (effective Septem-

ber 1988); an assessment of performance in exercises which simulate the duties of principals (effective September 1989); and a principal residency (effective September 1989). In addition, each candidate would be required to possess three years of professional experience in education. This requirement would be eliminated when the residency requirement goes into effect in September 1989.

**N.J.A.C. 6:11-10.8(b) Principal Residency:** These proposed amendments would establish standards governing the operation of principal residencies. They include requirements for gaining entry to a residency program and address criteria for the selection and training of mentors. The proposed amendments would establish procedures for the evaluation and certification of residents, and would permit residents who are not recommended for certification to appear before the State Board of Examiners. The proposed amendments would require that certain "pre-residency" experiences in the areas of curriculum/evaluation and instruction/supervision be completed prior to the time candidates are assigned provisionally to positions as principals. The pre-residency experiences would be of 30-60 days duration. The proposed amendments would also require the completion of a residency of one to two years duration involving a broader range of experiences than those in the pre-residency. Both the pre-residency and the residency would require, among their other experiences, appropriate amounts of teaching and teaching-related experiences depending upon the individual resident's prior background.

**N.J.A.C. 6:11-5.7 Provisional Teacher Program:** This proposed amendment would permit provisional teachers who are not recommended for certification to contest such adverse recommendations.

**N.J.A.C. 6:11-3.25 Procedures for Contesting Certification Recommendations:** This proposed new rule would establish procedures under which provisional teachers and resident principals who are not recommended for certification might contest the adverse recommendations of their mentors.

**N.J.A.C. 6:3-1.23 Support Residencies for Regularly-Certified, Inexperienced First-Year Principals:** This proposed new rule would require local districts to provide residency support programs for those first-year principals who obtained or will obtain their regular principal endorsements before September 1, 1989 prior to the institution of the residency requirement. Such support residencies shall not impose "entry requirements" on regularly-certified principals and they shall not require any special certification evaluation of those to whom the rule applies. No State certification action shall result from any residency provided for a regularly certified, inexperienced first-year principal.

#### **Social Impact**

The proposed new rules and amendments are expected to produce several benefits. They will provide a more structured licensing system and requirements that are consistent with the purposes of State licensure. They will broaden the pool of qualified leaders from which local districts may select their principals. They will provide new principals with training that will help assure their success. The proposed new rules and amendments will provide for far more rigorous screening of candidates than the current system, and will provide clarity and professional distinction to the role of principal.

#### **Economic Impact**

There will be some initial costs associated with the implementation of various aspects of the proposed system. Funds have been appropriated for this purpose. However, as with all aspects of State certification, the system will eventually be supported completely by a combination of State support and fees paid by certification candidates. Districts will provide non-monetary support through their participation except where they choose voluntarily to provide financial support, for example, by reimbursing the fees paid by resident principals they employ. Certification applicants seek educational licenses of their own accord and these licenses qualify them for employment in publicly funded professional careers. Notwithstanding the fact that loans, scholarships and other forms of aid traditionally are made available to candidates who need such assistance, ultimately the cost of licensure should continue to be borne by the beneficiaries of the licensing process.

#### **Regulatory Flexibility Statement**

The proposed new rules and amendments will have no reporting, recording, or compliance requirements for small businesses. All requirements of the amendments impact upon applicants for professional licenses to qualify them for employment.

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

6:3-1.23 [(Reserved)] **Support residencies for regularly-certified, inexperienced first-year principals**

(a) **Regularly-certified, inexperienced first-year principals are individuals who:**

1. **Acquired regular New Jersey school principal endorsements pursuant to N.J.A.C. 6:11-10.8 prior to September 1, 1989;**
2. **Have not previously held full-time employment as principals or vice-principals in New Jersey or elsewhere; and**
3. **Have been offered employment as principals or vice-principals in a New Jersey public school district.**

(b) **Each district employing a regularly-certified, inexperienced first-year principal shall enter into an agreement to provide a principal residency program pursuant to N.J.A.C. 6:11-10.8(b), including a pre-residency experience, except that:**

1. **Entry requirements in N.J.A.C. 6:11-10.8(b)1 shall not apply to regularly-certified, inexperienced first-year principals;**
2. **Special certification evaluations as described in N.J.A.C. 6:11-10.8(b)5 shall not be conducted for regularly-certified, inexperienced first-year principals, and no evaluations or recommendations concerning their certification shall be presented to the State Department of Education; and**
3. **As part of the support residency, the district shall require the new principal to undergo an assessment of performance at a State-approved center during the pre-residency phase. The sole purpose of this assessment shall be to provide a diagnosis of strengths and weaknesses as a basis for designing continuing education and support exercises.**

(c) **The State Department of Education shall monitor local districts to determine compliance with this section.**

6:11-3.25 **Procedure by which provisional staff may contest the certification recommendations of mentors**

(a) **When the Secretary of the State Board of Examiners receives any adverse recommendation concerning the standard certification of a provisional staff member, the Secretary shall notify the provisional staff member of the date upon which the State Board of Examiners will consider such recommendation. If the adverse recommendation has not already been contested by the provisional staff member pursuant to N.J.A.C. 6:11-10.8(b)6iv or N.J.A.C. 6:11-5.7(e), the Secretary shall allow the provisional staff member an additional opportunity to provide the State Board of Examiners with written materials documenting the reasons why the provisional staff member believes standard certification should be awarded.**

(b) **When a provisional staff member contests an adverse recommendation concerning his or her standard certification, the secretary shall formally notify the provisional staff member of the opportunity to request a hearing before an administrative law judge.**

(c) **Upon receipt of such notification, the provisional staff member shall be allowed 20 days to request such a hearing. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.**

(d) **The State Board of Examiners shall take final action on the opinions rendered by administrative law judges concerning the certification of provisional staff members.**

6:11-4.2 **Provisional certificate**

(a) **A provisional certificate is a substandard one-year certificate issued to an applicant who is not eligible for a standard certificate. [It] A provisional certificate may be issued under certain circumstances to an applicant whose preparation does not meet completely the New Jersey requirements for standard certification.**

(b) **To be eligible for the provisional certificate in instructional fields the applicant shall:**

1. **Hold a bachelor's degree from an accredited college or university (except in certain technical fields as noted in N.J.A.C. 6:11-6.3(c)) [and];**

2. **Pass a subject matter test for teaching field(s) or a test of general knowledge for the elementary and nursery endorsements. In order to be eligible to take a subject field test, the applicant must have completed at least 30 semester hours in a coherent major or five years of experience in the subject fields; and**

3. Have been offered employment in a New Jersey public school district approved by the commissioner at the recommendation of the Board of Examiners to offer a certification training program: [and]

[4.](c) Persons who pass the appropriate test as set forth in (b)2 above shall be granted a formal document which will enable them to seek employment as provisional teachers in the public schools.

(d) To be eligible for the provisional certificate for admission to a Principal Residency Program pursuant to N.J.A.C. 6:11-10.8(b), the applicant shall:

1. Hold a master's degree in one of the recognized fields of leadership or management, such as educational administration, public administration, business administration, leadership or management science. In order to be accepted for certification, the degree program must provide study in the following topics, which represent those areas of management that are directly related to education and the principalship: leadership and human resource management; communications; quantitative decision-making; finance; and law. Degree programs may provide study in other areas at the discretion of the sponsoring institution and its faculties. This requirement shall be effective (upon adoption of this amendment).

2. Pass a State-administered examination of knowledge in the areas of leadership and human resource management, communications, quantitative decision-making, finance and law. Within these five topical areas, the examination shall assess leadership and management proficiencies that are validated as being most directly relevant to education and the essential duties of school principals. This requirement shall be effective September 1, 1988;

3. Undergo an assessment of performance, conducted by State-approved assessors, through structured exercises which simulate the duties of school principals, and authorize the State to release the written results of this assessment to potential sponsoring districts and schools; and

4. Obtain an offer of employment as a principal or vice-principal in a school or district which has reviewed the candidate's assessment report and has agreed formally to sponsor the residency.

5. Applicants who meet the requirements of (d)1 through 4 above shall receive eligibility papers which will permit the applicant to seek employment as a principal or vice principal.

(e) To be eligible for the provisional certificate in the field of speech-language pathology, the applicant shall:

1. Hold a master's degree in the field of speech-language pathology; and

2. Pass a State-administered examination of knowledge in the area of speech-language pathology.

6:11-5.7 Recommendation for certification of provisional teachers

(a) At the conclusion of the alternative training program, the chairperson of the Support Team shall prepare a comprehensive evaluation report on the provisional teacher's performance. This report shall be submitted by the Chairperson directly to the Bureau of Teacher Preparation and Certification and shall contain a recommendation as to whether or not a standard certificate should be issued to the provisional teacher.

(b) The final comprehensive evaluation report on each provisional teacher shall be made on standard forms developed by the State Department of Education.

(c) The final report on each provisional teacher shall include one of the following recommendations:

1. Approved: [r]Recommends issuance of a standard certificate[.];

2. Insufficient: [r]Recommends that a standard certificate not be issued but that the candidate be allowed to seek entry on one more occasion in the future into a State-approved training program[.]; or

3. Disapproved: [r]Recommends that a standard certificate not be issued and that the candidate not be allowed to enter into a [s]State-approved training program.

(d) [All certification recommendations must be either accepted or rejected by the State Board of Examiners in accordance with the same procedures used for graduates of New Jersey college preparation programs.] The Support Team chairperson shall provide the provisional teacher with a copy of the provisional teacher's written evaluation report

and certification recommendation before submitting it to the Bureau of Teacher Preparation and Certification.

(e) If the provisional teacher disagrees with the chairperson's recommendation, the provisional teacher may, within 15 days of receipt of the evaluation report and certification recommendation, submit to the chairperson written materials documenting the reasons why the provisional teacher believes standard certification should be awarded. The chairperson shall forward all such documentation to the Bureau of Teacher Preparation and Certification along with the evaluation report and recommendation concerning certification.

#### SUBCHAPTER 10. NEW JERSEY [ADMINISTRATIVE AND SUPERVISORY SUPPLEMENT TO STANDARDS FOR STATE APPROVAL OF TEACHER EDUCATION] STANDARDS FOR CERTIFICATION OF ADMINISTRATIVE AND SUPERVISORY PERSONNEL

6:11-10.1 Use of [supplement] standards

(a) [This supplement] These standards will be used by the Bureau of Teacher [Education and Academic Credentials] Preparation and Certification in the following ways:

1. [In conjunction with the Standards for State Approval of Teacher Education (Subchapter 7, 6:11-7.4) to evaluate and approve administrative and supervisory programs in New Jersey colleges] As a basis for approving college preparation programs for administrative and supervisory personnel.

2. As the basis for evaluating the eligibility of candidates [who have completed administrative and supervisory programs in out-of-State colleges, or wish to qualify for New Jersey certification, based on] for administrative or supervisory certification [and experience in other states].

[3. As the basis for defining the nature and extent of the studies that will constitute certification programs designed by colleges for candidates who already possess the academic degree required for a certificate.]

[4.]3. As the basis for defining the nature and extent of experience background required for administrative and supervisory certificates.

6:11-10.2 [Common requirements; all administrative and supervisory programs] College degrees

(a) Except when specifically indicated below, the following requirements apply to all programs leading to a New Jersey administrative or supervisory certificate.

1. Master's degree:

i. Approved programs, except where noted otherwise, will lead to a master's degree.

ii. Where authorized below, non-degree [C]certificate programs may be designed for students who already hold master's degrees [the appropriate degree required by the certificate, provided it meets the accreditation policies indicated in (b) below]. Such certificate programs must be approved by the New Jersey State Department of Education.

2. College accreditation:

i. Except as indicated below, degrees will be recognized for purposes of administrative and supervisory certification in New Jersey from colleges and/or programs accredited or approved by the [State Board or Department of Education of the] state in which the college exists.

ii. College degrees from colleges in states in which the State Board or Department of Education lacks authority to regulate the establishment of colleges to give approval for purposes of administrative and supervisory education, will be accepted for purposes of such certification in New Jersey if these degrees are accepted for purposes of administrative and supervisory certification by the State Department of Education in the state in which the colleges exist.

iii. Professional preparation presented by students for transfer credit to New Jersey colleges offering administrative and supervisory certificate programs will be determined by the college in which the applicant will complete an approved program]

**ii. Transfer of credit from one college to another shall be determined by the policies of the colleges involved.**

**3. Previous certification and experience:**

i. Each of the administrative and supervisory certificates in this Section, unless indicated otherwise in this Supplement, will require the following:

- (1) A standard New Jersey teacher's certificate or its equivalent;
- (2) Three years of successful teaching experience. Experience in New Jersey public schools must have been completed under an appropriate New Jersey teacher's certificate.]

**6:11-10.3 [Recommendations of national academic and professional organizations] (Reserved)**

[Recommendations and guidelines of the appropriate national academic and professional groups should be given due consideration in developing college programs.]

**6:11-10.4 Authorization**

(a) School administrator: This endorsement is required for the position of superintendent of schools. The holder of this endorsement may also serve as assistant superintendent of schools[, principal,] or supervisor.

(b) Principal: This endorsement is required for the positions of principal or vice-principal. Holders of this endorsement may supervise instruction[, and may also serve as assistant superintendent of schools, and as assistant superintendent in charge of curriculum and/or instruction].

(c) Supervisor: This endorsement is required for supervisors of instruction who do not hold a school administrator's or principal's endorsement. The supervis[ion]or shall be defined as any school officer who is charged with authority and responsibility for the continuing direction and guidance of the work of instructional personnel. This endorsement also authorizes appointment as an assistant superintendent in charge of curriculum and/or instruction.

(d) Assistant superintendent in charge of business: This [certification] endorsement is required for the position of assistant superintendent of schools in charge of business affairs.

(e) School business administrator: This [certification] endorsement is required for the position of school business administrator when the local board of education is granted permission by the State Board of Education to create such a position. The holder of this [certificate] endorsement is authorized to perform such duties as the rules of the State Board of Education shall define.

**6:11-10.5 (Reserved)**

**6:11-10.6 [Requirements: general] (Reserved)**

[Requirements other than, and/or different from, those prescribed in subchapter 7 of this chapter (Standards for the State Approval of Teacher Education) are specified in sections 7 through 14 of this subchapter.]

**6:11-10.7 School administrator [requirements]**

(a) Successful completion of one of the following is required for school administrators:

1. A curriculum approved by the New Jersey State Department of Education as the basis for issuing this endorsement; or

2. A program of college studies in the areas indicated below, including 30 semester-hour graduate credits, in addition to those required for a standard teacher's certificate, and including study in each of the starred areas. This study may be in either separate or integrated courses.

i. \*School administration: Included may be studies in such areas as general school administration, elementary, secondary and vocational administration, school law, school finance, school plant planning and design. These studies may be in either separate or integrated courses;

ii. \*Educational supervision;

iii. \*Curriculum development: [a]A course in general principles of curriculum development, or a combination of specialized courses covering both elementary and secondary, vocational, or adult programs;

iv. The learner and the learning process;

v. Academic disciplines related to school administration, such as[, anthropology, business or public administration, economics, government, intercultural relations, group dynamics, psychology, sociology, labor relations, law, and community organization.

3. When candidates have completed their preparation for this endorsement in an out-of-State college or university, a doctor's degree in educational administration, or completion of an approved two-year graduate program for the preparation of school administrators leading to the specialist in education certificate or similar diploma or degree, from a program accredited by the National Council for Accreditation of Teacher Education (NCATE), will be accepted as meeting the college study requirements indicated above.

4. Successful completion of three years of educational administrative or supervisory experience, under a New Jersey administrative or supervisory endorsement or its equivalent, when spending at least half time in administrative or supervisory duties.

i. One year of this experience requirement will be waived to holders of the doctor's degree in educational administration, received from an accredited institution in a program approved by the Department of Education.

ii. One year of internship in a program approved by the Commissioner of Education may be submitted toward the fulfillment of this experience requirement.

**5. A standard New Jersey teacher's certificate or its equivalent, and three years of successful teaching experience. Experience in New Jersey public schools must have been completed under an appropriate New Jersey teacher's certificate or its equivalent. This experience requirement shall not apply to candidates who hold New Jersey school principal endorsements.**

**6:11-10.8 Principal**

[(a) Successful completion of one of the following is required for principals:

1. A curriculum approved by the New Jersey State Department of Education as the basis for issuing this endorsement; or

2. A program of college studies in the areas indicated below, including twenty-four semester-hour graduate credits in addition to those required for a standard teacher's certificate, and including study in each of the starred areas. This study may be in either separate or integrated courses.

i. \*School administration: Included may be studies in such areas as general school administration, elementary, secondary, and vocational administration, school law, school finance, school plant planning and design. These studies may be in either separate or integrated courses;

ii. \*Educational supervision;

iii. \*Curriculum development: A course in general principals of curriculum development, or a combination of specialized courses covering both elementary and secondary, vocational, or adult programs;

iv. The learner and the learning process;

v. Academic disciplines related to school administration such as anthropology, business or public administration, economics, government, intercultural relations, group dynamics, dynamics, psychology, sociology, labor relations, law, and community organization.

3. When candidates have completed their preparation for this endorsement in an out-of-State college or university, a master's degree in educational administration from a program accredited by the National Council for Accreditation of Teacher Education (NCATE) will be accepted as meeting the study requirements indicated above.]

**(a) Each candidate for the principal endorsement shall:**

**1. Possess a provisional certificate pursuant to N.J.A.C. 6:11-4.2(d);**

**2. Complete a State-approved residency program pursuant to (b) below while employed provisionally as a principal or vice-principal. This requirement shall be effective September 1, 1989; and**

**3. Possess an instructional certificate and three years of professional experience in education. This requirement shall cease to be in effect on September 1, 1989.**

**(b) The principal residency is a training program conducted under the direction of a State-approved mentor and the sponsorship of the public school district or nonpublic school that employs the certification candidate.**

1. In order to enter a residency program, the certification candidate shall:

i. Possess a provisional certificate pursuant to N.J.A.C. 6:11-4.2(d); and

ii. Obtain an offer of employment as a principal or vice-principal in a district or school which has reviewed the candidate's assessment report and has agreed formally to sponsor the residency.

2. The requirements for State-approval of residency programs are as follows:

i. The State Department of Education shall issue a standard agreement detailing the experiences and requirements of the residency. This agreement shall be entered into by the State Department of Education, the sponsoring district, the residency mentor, and the candidate before the residency may be initiated.

ii. Sponsoring districts and mentors may propose modifications to the standard residency agreement in order to accommodate the backgrounds and special training needs of individual candidates.

iii. No residency program may be undertaken without a valid agreement.

3. Each State-approved residency shall provide training in two phases:

i. Pre-residency experiences of no fewer than 30 days nor more than 60 days duration. This phase shall emphasize professional experiences and training in the areas of instruction/supervision and curriculum/evaluation. The pre-residency phase must be completed before the candidate assumes full responsibility on a provisional basis for a principalship or vice-principalship.

ii. Residency experiences which shall be completed while the candidate is serving as a principal or vice principal. The residency phase shall provide professional experiences and training in the areas of instruction/supervision, curriculum/evaluation, pupil personnel, personnel management, community relations, student relations, facilities management, finance, school law, and technical administrative skills. Each residency program shall assure that the resident acquires sufficient familiarity with the teaching process to lead and manage in the school setting. Each residency agreement entered pursuant to (b)(2) above shall include in its prescription appropriate amounts and types of classroom teaching and teaching-related experiences in both the pre-residency and residency phases. The nature and amount of such experiences shall be determined in consideration of the resident's prior experiences and shall be accorded an appropriate place among other important training needs and priorities identified for the individual resident. The residency shall provide at least one experience in an elementary school and at least one experience in a secondary school. The residency phase shall be completed in no less than one year nor more than two years.

4. Each residency shall be under the direction of a mentor who is a certified, experienced principal appointed by the State Department of Education, and who has completed a State-approved orientation and training program.

5. The mentor shall supervise and verify the completion of all required experiences and training by the resident.

i. The primary responsibility of the mentor is to assure that the resident receives appropriate training, support and supervision as the resident carries out his or her critical job responsibilities.

ii. The mentor shall evaluate each resident's ability to exhibit leadership and management capabilities in accord with State-established criteria, on State-developed instruments.

iii. Each mentor shall, with State approval, form an advisory panel of practicing educators and shall convene this panel on at least three occasions for purposes of reviewing the resident's progress and soliciting advice concerning the certification of the resident.

iv. Each resident shall be evaluated formally by the mentor on at least three occasions: after approximately three months, six months and nine months from the start of the residency. The first two of these evaluations shall be conducted mainly for diagnostic purposes while the final evaluation shall be the basis for recommending the resident's certification. Such evaluation shall be conducted in accord with State criteria and reported on State-developed forms. The mentor shall discuss each evaluation report with the resident, and the mentor and resident shall sign each report as evidence of such discussion. Upon completion of each evaluation, the report shall be sent to the Secretary

of the State Board of Examiners; the final evaluation shall be accompanied by the recommendation for certification pursuant to (b) below.

v. Each mentor shall be responsible for supervising no more than three residents concurrently.

6. Standard certification of residents shall be approved or disapproved pursuant to the following procedures:

i. Before the end of the residency year, the mentor shall submit to the Bureau of Teacher Preparation and Certification a comprehensive evaluation report on the resident's performance using State-approved forms and criteria.

ii. This final report shall include one of the following certification recommendations:

(1) **Approved:** Recommends issuance of a standard certificate;

(2) **Insufficient:** Recommends that a standard certificate not be issued but that the candidate be allowed to continue the residency or seek admission to another residency for a maximum of one additional year; or

(3) **Disapproved:** Recommends that a standard certificate not be issued and that the candidate be prohibited from continuing or re-entering a residency.

iii. Candidates who receive a recommendation of "approved" shall be issued a standard certificate.

iv. The mentor shall provide the resident principal with a copy of the resident principal's written evaluation report and certification recommendation before submitting it to the Bureau of Teacher Preparation and Certification.

v. If the resident principal disagrees with the mentor's recommendation, the resident principal may within 15 days of receipt of the evaluation report and certification recommendation submit to the mentor written materials documenting the reasons why the resident principal believes standard certification should be awarded. The mentor shall forward all such documentation to the Bureau of Teacher Preparation and Certification along with the written evaluation report and recommendation for certification.

#### 6:11-10.9 Supervisor

(a) Successful completion of one of the following are required for supervisors:

1. A college curriculum approved by the New Jersey Department of Education as the basis for issuing this endorsement; [OR] or

2. A program of college studies including [twelve] 12 semester hours of graduate study in supervision and curriculum development. Included in this study must be at least one course in the general principles of staff supervision, and one course in the general principles of curriculum development and evaluation. The additional work may be oriented directly toward supervision and curriculum development in particular grade levels, or in specific subject fields.

3. When candidates have completed their preparation for this endorsement in an out-of-State college or university, a master's degree in educational administration or supervision from a program accredited by the National Council for Accreditation of Teacher Education (NCATE) will be accepted as meeting the college study requirements indicated above.

4. A standard New Jersey teacher's certificate or its equivalent, and three years of successful teaching experience. Experience in New Jersey public schools must have been completed under an appropriate New Jersey teacher's certificate or its equivalent.

#### 6:11-10.10 School business administrator

(a) The requirements for school business administrators are:

1. A bachelor's degree based upon a four-year curriculum in an accredited college. The requirement of a master's degree does not apply to this endorsement.

2. Successful completion of one of the following:

i. A standard New Jersey teacher's certificate or its equivalent, and three years of appropriate teaching experience; or

ii. Business training and experience as approved by the Secretary of the State Board of Examiners.

3. Successful completion of one of the following:

i. A college curriculum approved by the New Jersey State Department of Education as the basis for issuing this certificate; or

ii. Thirty semester-hour credits including work in each of the starred fields:

- (1) \*School business administration;
- (2) \*School buildings—including planning, construction and maintenance;
- (3) \*School finance;
- (4) \*School law;
- (5) \*Accounting;
- (6) \*Organization and administration of public education;
- (7) \*Curriculum of public schools;
- (8) Foundations of education, including such courses as history or philosophy of education, principles of elementary education, and principles of secondary education;
- (9) Electives related to administration, curriculum, or the foundations of education.

(b) The policies governing issuance of a school business administrator's certificate are:

1. A person who was employed full time in the district as a school business official on January 2, 1963, does not need a certificate to continue in his present position, but may be issued a certificate authorizing service in his present district if he requests it.

2. A person who was employed full time as a school business official on January 2, 1963, may be issued a school business administrator's certificate upon presentation of 12 semester hours of study, including work in areas in [6:11-10.10](c)2[.ji-v **above**. The additional 18 semester-hour credits required for the certificate will, in these cases, be waived.

3. In cases where applicants submit business training and experience for approval in meeting requirements [6:11-10.10(b)] **in this subsection** for the certificate, the records submitted will be reviewed by a committee for the purpose of determining eligibility.

4. Persons serving full time as school business officials on January 2, 1963, will be considered to have satisfactory "business training and experience" in meeting requirements [6:11-10.10(b)] **in this subsection** for the school business administrator's certificate.

5. In administering the policies above, a "school business official" shall be interpreted as a person who served on a full-time basis on January 2, 1963, as the secretary of any board of education or a business manager in a chapter 6 district. Applications must be accompanied by a statement from the county superintendent of schools, certifying to such service.

6. Persons serving full time as the secretary of the board of education or the business administrator in a chapter 6 district prior to September 1, 1967, may qualify for the school business administrator's certificate by meeting the requirements previously in effect. In such cases, the requirement of a bachelor's degree will not apply.

6:11-10.11 Assistant superintendent for business

(a) The requirements for an assistant superintendent for business are:

1. A master's degree in business, public, or school administration from an accredited or approved institution.
2. Experience in one of the following:
  - i. Three years of successful teaching experience; or
  - ii. Three years of experience as secretary of a board of education or school business administrator under a school business administrator's certificate.

3. Successful completion of one of the following:

- i. A college curriculum approved by the New Jersey State Department of Education as the basis for issuing this endorsement; or
- ii. Thirty-two semester-hour graduate or undergraduate credits in the following fields. These credits must be in addition to those required for the regular instructional certificate and must include work in each of the starred (\*) areas. This work may be in separate or integrated courses:

- (1) \*Administration of public education;
- (2) \*Supervision of instruction in the public schools;
- (3) \*The curriculum of the public schools;
- (4) \*School business administration;
- (5) \*School business—including planning, construction and maintenance;
- (6) \*School finance;

- (7) \*School law;
  - (8) \*Accounting;
  - (9) \*Electives related to the field.
4. These changes shall be effective July 1, 1978.

6:11-10.12 Executive superintendent

(a) This certificate is required for the position of executive superintendent in a city of the first class with a population of over 325,000.

(b) The requirements are as follows:

1. Shall possess and be able to demonstrate a knowledge of the complex problems of an urban community, involving the educational, societal, fiscal and political aspects;

2. Shall possess a master's degree;

3. Shall have five years of administrative experience in which three years must be in an organization of comparable complexity and magnitude;

4. Shall have a knowledge of school board interrelationships, including negotiations;

5. Shall be able to demonstrate knowledge of accounting, school finance, school business administration and Federal programs;

6. Shall have a knowledge of long-range education planning, and a knowledge of planning for capital construction of educational facilities;

7. Shall possess knowledge of organization, curriculum and administration of public education;

8. Shall have a working knowledge of modern management techniques.

6:11-10.13 Assistant executive superintendent with specialization in supervision and curriculum

(a) This certificate is required for the position of assistant executive superintendent in a city of the first class with a population of over 325,000.

(b) The requirements are as follows:

1. Certification to serve as principal issued by New Jersey State Board of Examiners; or in the alternative;

2. A standard New Jersey teacher's certificate or equivalent;

3. Teaching experience;

4. A master's degree;

5. A program of graduate studies including coursework in:

- i. Administration of public education;
- ii. School law, including collective negotiations;
- iii. Public school curriculum;
- iv. Supervision of instruction in public schools;
- v. Administration and supervision of school personnel.

6:11-10.14 Assistant executive superintendent with specialization in business administration

(a) This certificate is required for the position of assistant executive superintendent in a city of the first class with a population of over 325,000.

(b) The requirements are as follows:

1. Bachelor's degree;

2. Approved teaching or business experience;

3. A program of studies including coursework in:

- i. Administration of public education;
- ii. School business administration;
- iii. School buildings, including planning, construction and maintenance;
- iv. School finance;
- v. School law, including collective negotiations;
- vi. Public school curriculum.

## ENVIRONMENTAL PROTECTION

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

### (a)

#### ENVIRONMENTAL CLAIMS ADMINISTRATION

##### Sanitary Landfill Facility Contingency Fund

##### Proposed Repeal and New Rules: N.J.A.C. 7:11

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1E-100 et seq.,

particularly N.J.S.A. 13:1E-106 and 13:1E-114.

DEP Docket Number: 009-88-02.

Proposal Number: PRN 1988-124.

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

March 28, 1988 from 1:00 to 5:00 P.M.; and

March 29, 1988 from 7:00 to 10:00 P.M.

Gloucester County Municipal Building

Council Meeting Room

1261 Chews Landing Road

Laurel Springs, New Jersey

March 30, 1988 from 1:00 P.M. to 5:00 P.M.

War Memorial Theater

Main Ballroom

West Lafayette St. (at foot of Peace St.)

Trenton, New Jersey

Submit comments by April 6, 1988 to:

Gary J. Brower, Esq.

Office of Regulatory Services

New Jersey Department of Environmental Protection

CN 402

Trenton, N.J. 08625

The agency proposal follows:

#### Summary

The Department of Environmental Protection (Department) is proposing new rules, N.J.A.C. 7:11, "Sanitary Landfill Facility Contingency Fund," which establish procedures governing the preparation, submission and review of claims for damages proximately resulting from the operations or closure of a sanitary landfill. The new rules are being proposed pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq. The proposed new rules provide requirements, criteria and standards which must be met by claimants in order to receive payments from the Sanitary Landfill Contingency Fund (the "Fund"). The rules also seek to codify the procedures the Department has established regarding claims documentation by claimants.

The proposed new rules will replace the current Sanitary Landfill Facility Contingency Fund rules codified at N.J.A.C. 7:11 which the Department proposes to repeal. The Department determined the existing rules be proposed for repeal and new rules proposed because of the extensive changes and additions being made.

The Department has determined that current claims handling policies result in claims being filed in a pattern unrelated to the landfill itself. These policies, in the area of property value diminution, appear to create the very condition which the law intended to remedy. The purpose of these new rules is to preclude this situation and to provide for the efficient processing of claims against the Fund.

The proposed new rules consist of the following six subchapters:

N.J.A.C. 7:11-1, "General Provisions", establishes the scope, construction and purpose of the chapter and delineates the liabilities of owners and operators and the Fund for damages. The proposed new rules clarify the requirements that were in the previous subchapter 1.

N.J.A.C. 7:11-2, "Filing and Processing of Claims," establishes the time limitation for filing claims, describes how the claim is to be filed and sets forth how the Department will process the claim.

N.J.A.C. 7:11-3, "Eligibility for and Proof of Damages", provides eligibility criteria and establishes for each type of claim (real or personal property, property value diminution, damages to natural resources, personal injuries, and threats to public health, safety or welfare) the evidence which must be submitted by the claimant to prove his or her damages.

N.J.A.C. 7:11-4, "Amounts of Damage Awards" sets forth the standards by which the Department will pay damages based on evidence

submitted by the claimant and verification of such evidence by the Department.

N.J.A.C. 7:11-5, "Settlement and Investigation of Claims" requires notification to the Department of any private settlement by a claimant. The subchapter also addresses the Department's claims investigation process and the settlement of a claim against the Fund and also sets forth the current adjudicatory hearing process.

N.J.A.C. 7:11-6, "Payment of Claim", delineates the standard claims payment process as well as exceptions, provides conditions of payment, and standards for the filing and satisfaction of liens.

#### Social Impact

The proposed new rules should have a positive social impact overall. They will establish with much greater specificity than the original rules the body of criteria and standards the Fund uses for assessing compensation for property value diminution claims which is the major type of damages alleged in most pending claims. Consequently, they should promote more efficient and expeditious claims processing by the Fund since claimants will be apprised of the type and form of damage proofs which must be produced in order to secure compensation.

#### Economic Impact

Although the proposed new rules may be perceived as having a negative economic impact for pending claimants who, under existing rules could have been compensated prior to sale of their real estate and do not now wish to sell the concerned property, the Department expects that the proposed new rules will, in fact, have a net economic benefit for such claimants and their neighbors. The proposed new rules are intended to discourage a developing trend of perceived diminution in property values further and further away from the landfill.

#### Environmental Impact

A positive impact upon the environment of New Jersey will result from the application of the new rules. Besides compensating for property value diminution, the Fund may, in appropriate cases, provide compensation for the cost of restoring and replacing any natural resource damaged or destroyed, including any potable water supply, as well as the costs of the design, construction, installation, operation and maintenance of any device or action deemed necessary by the Department to cleanup, remedy, mitigate, monitor or analyze any threat to the public health, safety or welfare of the citizens of New Jersey.

#### Regulatory Flexibility Statement

These proposed new rules would apply to all persons who claim damages proximately resulting from the operations or closure of any sanitary landfill. Small businesses, as defined in the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169), will be eligible to file as claimants. Since there is no requirement that a small business file a claim, the rule does not impose reporting, recordkeeping, or other compliance requirements on small businesses. Since these rules impose no additional mandatory costs on small businesses, no exemption from any of the requirements is necessary.

**Full text** of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 7:11.

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

### CHAPTER II

#### SANITARY LANDFILL FACILITY CONTINGENCY FUND

##### SUBCHAPTER I. GENERAL PROVISIONS

###### 7:11-1.1 Scope

This chapter shall constitute the rules governing submission of a claim for compensation for damages proximately resulting from the operations or closure of any sanitary landfill, pursuant to the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq., including Department procedures for review and decision making regarding such claims.

###### 7:11-1.2 Construction

This chapter shall be liberally construed to allow the Department of Environmental Protection to fulfill the purposes of the act concerning claims for compensation for damages proximately resulting from the operations or closure of a sanitary landfill.

## 7:11-1.3 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the chapter shall not be affected thereby.

## 7:11-1.4 Purpose

(a) This chapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq.;

2. To establish rules for administration of the Sanitary Landfill Facility Contingency Fund, established pursuant to the Act, for the purpose of providing adequate compensation for damages as defined herein; and

3. To protect and insure that the taxes credited to the Fund are spent in a proper manner and for the intended purposes.

## 7:11-1.5 Definitions

The following words and terms, when used in this chapter, shall have the following meanings. Where words and terms are used which are not defined herein, the definitions of those words and terms will be the same as the definitions found at N.J.A.C. 7:26-1.4.

"Act" means the Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq.

"Claim" means the request for compensation for damages pursuant to the Act as applied for in the manner prescribed in this chapter.

"Closure" means the construction and implementation of all environmental safeguards required by law or by the sanitary landfill's approved Closure and Post-Closure Plan and the facility's approved engineering design subsequent to the termination of operations at any point of that facility. Closure includes all activities and costs associated with the design, purchase, construction and maintenance of all measures necessary to prevent, minimize or monitor pollution or health hazards resulting from sanitary landfills subsequent to the termination of operations at any portion thereof, including but not necessarily limited to:

1. The costs of placement of acceptable cover;
2. The installation of methane gas monitoring, venting, or evacuation systems; and
3. The installation and monitoring of wells or of leachate collection and control systems at the site or in the vicinity of any sanitary landfill.

"Damages" means and includes, but is not limited to, the following:

1. The cost of restoring, repairing or replacing any real or personal property damaged or destroyed, and the diminution in fair market value of any real property;
2. The cost of restoration and replacement, where possible, of any natural resource damaged or destroyed, including any potable water supply;
3. The cost of any personal injuries, including medical expenses, incurred and income lost as a result thereof; and
4. The cost of the design, construction, installation, operation and maintenance of any device or action or other measure deemed necessary by the Department to clean up, remedy, mitigate, monitor or analyze any threat to the environment and public health, safety or welfare of the citizens of this State, including the installation, maintenance, sampling and analysis of methane gas, monitors, vents, evacuation systems, groundwater monitoring wells, leachate collection systems and the restoration or replacement of any public or private potable water supply, or the connection to an alternative water supply.

"Department" means the New Jersey Department of Environmental Protection.

"Filing date" or "filed" means the date the claim is received by the Department.

"Fund" means the Sanitary Landfill Facility Contingency Fund established pursuant to the Act.

"Improvements" means all structures or buildings now or hereafter located upon claimant's property or on any part thereof, including

all plant equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures or buildings.

"Landfill area" means the portion of the sanitary landfill upon which disposal of solid waste (including hazardous waste) actually occurs or has occurred.

"Operations" means the act or acts of accepting, disposing, depositing, or otherwise discarding solid waste in a sanitary landfill, and all activities associated with such act or acts.

"Owner or operator" means and includes, in addition to the usual meanings thereof, every person who operates or operated a sanitary landfill and every agent or representative of such operator, every owner of record of any interest in land whereon a sanitary landfill is or has been located, and any person who owns or owned a majority interest in any other corporation which is the owner or operator of any sanitary landfill.

"Person" means an individual, trust, firm, joint stock company, partnership, corporation (including a government corporation), company, partnership, society, association, state, municipality, commission, political subdivision of a state, the Federal government or Federal agency, or any interstate body.

"Physical intrusion" means the existence of methane gas or leachate on or under a claimant's real property.

"Sanitary landfill" means a facility which is, or at one time was, governmentally approved, at which solid waste (including hazardous waste) is or has been deposited, disposed or otherwise discarded on or into the land as fill for a period of time exceeding six months.

## 7:11-1.6 Liabilities for damages

(a) Every owner or operator of a sanitary landfill shall be jointly and severally liable for the proper operations and closure of the sanitary landfill as required by law, and for any direct or indirect damages, no matter by whom sustained, proximately resulting from the operations or closure of the sanitary landfill.

(b) The Fund shall be credited with all tax revenues collected from sanitary landfill owners or operators pursuant to the Act and shall be strictly liable for all direct and indirect damages proximately resulting from the operations or closure of any sanitary landfill.

(c) The moneys in the Fund shall be disbursed by the Department for the following purposes and no other:

1. Administrative costs incurred by the Department in administering the Fund pursuant to the Act; and
2. Payment of compensable damages.

## 8:11-1.7 Compensable damages

(a) The Department will pay from the Fund only those claims for damages for which the claimant can produce substantial evidence pursuant to N.J.A.C. 7:11-3.

(b) In determining the amount of an award, the Department shall reduce the award by the amount of any prior compensation for the claimed damages received by the claimant from any insurance program, or from any other State or Federal program.

(c) Any costs incurred by the claimant prior to the filing of a claim or during the pendency of a claim shall not prejudice the rights of the Department to evaluate the reasonableness of said costs prior to the granting of any award.

## 7:11-1.8 Duty to mitigate damages

The claimant shall exercise reasonable diligence and ordinary care to avoid aggravating his or her injury or increasing his or her damages.

## SUBCHAPTER 2. FILING AND PROCESSING OF CLAIMS

## 7:11-2.1 Timely filing of claims

(a) Claims shall be filed not later than one year after the date of discovery of damage and in the manner prescribed in N.J.A.C. 7:11-2.2

(b) The claimant shall be forever barred from recovering against the Fund if he or she failed to file his or her claim with the Department within one year of the date of discovery of the damage.

## 7:11-2.2 Filing of claims

(a) All claims shall be filed on forms provided by and available from the Department upon request at the address stated in (b) below.

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**ENVIRONMENTAL PROTECTION**

(b) The claim, once signed and certified under oath, shall be mailed by certified mail, return receipt requested, or delivered by hand to the Sanitary Landfill Facility Contingency Fund, Environmental Claims Administration, New Jersey Department of Environmental Protection, CN 402, Trenton, New Jersey 08625.

(c) The claim shall include:

1. The name and mailing address of the claimant;
2. The mailing address to which the claimant desires notice to be sent;
3. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
4. A general description of the damage incurred so far as it may be known at the time of presentation of the claim;
5. The name or names of the owner or operator;
6. The amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective damage, insofar as it may be known at the time of the presentation of the claim together with the basis of computation of the amount claimed; and
7. The amount received from any other source as compensation for the damage claimed.

(d) Any claimant may obtain from the Department, upon written request therefor, the names and addresses of the owners and operators of the sanitary landfill.

(e) All damages shall be stated in their entirety in a single claim. Damages of which the claimant knew or, through the exercise of reasonable diligence, should have known at the time of filing the claim which are not included in a claim at the time a settlement is concluded shall be deemed waived.

(f) The claim shall be signed by the claimant, except as provided in (f)1 below.

1. Where the claimant is a minor or incompetent, as defined under New Jersey law, or is deceased, the claim may be signed by the claimant's parent, guardian, executor, or court-appointed representative, as the case may be.

(g) No claim by a subrogee or an assignee may be filed with or processed by the Department.

**7:II-2.3 Priority for review of claims**

Completed claims shall be processed in the order in which they are filed with the Department, except in cases where the claimant has demonstrated to the Department's satisfaction that extraordinary personal hardship will otherwise result.

**7:II-2.4 Processing of claims**

(a) Upon receipt of a claim, the Department shall review same within a reasonable time and, upon completion of its review, shall notify the claimant in writing whether the application is complete.

1. If incomplete, the Department shall provide the claimant with a list of the information necessary to make the application complete.

i. The Department shall specify a reasonable period of time for submitting the necessary information; and

ii. The claimant shall submit all requested information within the specified period of time or the claim shall be denied, unless the claimant submits a written request to the Department for an additional period of time, which request includes specific reasons why the necessary information was not submitted within the specified period of time, and the Department approves the request.

(b) When, in the opinion of the Department, the claim is complete pursuant to N.J.A.C. 7:II-1.6, the Department shall notify the owner or operator of the sanitary landfill by mailing a notice of the claim by certified mail, return receipt requested, to such owner or operator. In the case of multiple, related claims (series claims), the Department will notify the owner or operator of the sanitary landfill of the first claim of the series only. This notification will include an estimate of the approximate number of claims expected in that series if known, and will give notice that copies of all further claims must be requested in writing.

**SUBCHAPTER 3. ELIGIBILITY FOR AND PROOF OF DAMAGES**

**7:II-3.1 Eligibility of claimant**

(a) Except as provided in (b) below, any person, except subrogees

and assignees, who has incurred any direct or indirect damages as a proximate result of the operations or closure of a sanitary landfill is eligible to file a claim under this chapter.

(b) Any person directly or indirectly responsible for the action upon which a claim is based is not eligible for compensation.

**7:II-3.2 Criteria for claims based on real or personal property damage**

(a) The claimant shall submit the following to prove damages to real or personal property involving costs of restoring, repairing, or replacing such property:

1. Evidence that such damages were caused by the operation or closure of a sanitary landfill;
2. Evidence of the existence of and value at time of damage of the real or personal property for which claim is submitted; and
3. Receipts or estimates for costs of restoring, repairing or replacing damaged property.

**7:II-3.3 Criteria for claims based on real property value diminution damage**

(a) Claims for real property value diminution as a result of the operation or closure of a sanitary landfill are compensable upon sale of the property. The claimed property must be located within one-half mile of the landfill area except:

1. Claims for property value diminution which were filed prior to March 7, 1988 are not subject to the one-half mile limitation, or to the criteria at (d) below if the damaged property was sold prior to March 7, 1988, but shall meet all other criteria of this section.

2. Claims for property diminution which include physical intrusion are not subject to the one-half mile limitation but shall meet all other criteria of this section.

(b) All claims filed subsequent to the effective date of this chapter for which the property has been sold prior to receipt of an appraisal of the subject property value from the Department are barred from compensation.

(c) The Department shall notify each claimant who filed a claim before March 7, 1988 of the requirements of this chapter. Such claimants shall then have 60 days from receipt of such notice to inform the Department by certified mail, return receipt requested, of their intent to pursue their claim for property value diminution pursuant to this chapter or to withdraw that claim for those damages.

(d) The Department will provide a claimant with the Department's appraisal of the value of the subject property absent any landfill effects. Claimant shall, within 45 days of receipt of such appraisal, offer the property for sale at no less than the Department's appraisal value for at least 60 days and attempt to sell in good faith. The claimant shall submit to the Department a copy of the brokerage agreement. Failure to list the property for sale within 45 days of receipt of the appraisal will result in denial of the claim. If no offers are received from responsible buyers for that price, the claimant may reduce the price by 2.5 percent per month. Any variation from the above formula allowing for a larger or smaller percent reduction or an accelerated or decelerated time frame for reductions shall be approved in advance by the Department.

(e) Within 60 days after the settlement date for the property or the effective date of this rule, whichever occurs last, the claimant shall submit to the Department, as evidence of the sale and that the sale was a good faith sale, the following:

1. All written offers for the property;
2. The contract of sale for the property;
3. The settlement sheet(s), including the one required by the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C.A. 2601 et seq.;
4. The deed;
5. An affidavit by the claimant stating the total sales price of the property, that no other money or other compensation has been received from any person for the property and that the documents submitted pursuant to (e)1 through 4 above are true copies of the original documents used in the sale transaction; and
6. An affidavit from the claimant's realtor providing the following information:
  - i. How long the property was up for sale;
  - ii. What the initial listing price was;

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iii. A list of any changes in the listing price;

iv. A record of all inquiries, showings or open houses held for the purpose of selling the claimant's property. This record shall include the names and addresses of all persons who inquired about, were shown or attended open houses held for the purpose of selling the property and will include a description of the reactions of these persons to the property;

(1) Claimants who filed claims and sold property prior to March 7, 1988 will not be required to submit the names and addresses of the persons who inquired about, were shown or attended open houses held for the purposes of sale of the property; and

v. The number of offers received, the amount of each offer and date received.

(f) Claimants who satisfy the criteria of (a) through (d) above and have been unable to sell the property after one year of continuous good faith attempts to sell, measured from the date of listing, shall be eligible to recover damages calculated in accordance with N.J.A.C. 7:11-4.2(b). If the property is sold within two years of settlement, claimant shall satisfy all requirements of (e) above, and any paid settlement shall be subject to adjustment pursuant to N.J.A.C. 7:11-4.2(b)1.

**7:11-3.4 Criteria for damages to natural resources**

(a) For damages to any natural resources, including any potable water supply, the claimant shall submit evidence that any such damage was caused by the operation or closure of a sanitary landfill.

(b) No claims for damages to natural resources shall be paid unless the claimant has demonstrated to the Department's satisfaction that the actions taken or to be taken are or were reasonable and appropriate under the circumstances.

**7:11-3.5 Criteria for personal injuries damage**

(a) The claimant, as proof of damages involving the cost of any personal injuries including medical expenses incurred and income lost as a result thereof, shall submit the following:

1. Evidence that such damages were caused by the operation or closure of a sanitary landfill;
2. A specific statement as to the nature of the health injuries;
3. Detailed records substantiating the material health effects or damages suffered by the claimant including any medical records, prognosis statements, and documentation indicating the monetary value of medical attention; and
4. Evidence of income lost as a result of injury such as pay receipts or copies of income tax returns.

**7:11-3.6 Criteria for damages based on threats to the environment and public health, safety or welfare**

(a) For damages related to the cost of design, construction, installation operation and maintenance of any device or action deemed necessary by the Department to cleanup, remedy, mitigate, monitor or analyze any threats to the environment and public health, safety or welfare of the citizens of New Jersey, including the installation, maintenance, sampling and analysis of methane gas, monitors, vents, evacuation systems, groundwater monitoring wells, leachate collection systems, and the restoration or replacement of any public or private potable water supply, or the connection to an alternative water supply, the claimant shall submit evidence that any such related damages were or are being caused by the operation or closure of a sanitary landfill.

(b) No claims for damages to natural resources shall be paid unless the claimant has demonstrated to the Department's satisfaction that the actions taken or to be taken are or were reasonable and appropriate under the circumstances.

**SUBCHAPTER 4. AMOUNTS OF DAMAGE AWARDS****7:11-4.1 Real or personal property damage; actual**

If the claimant submits all evidence required by N.J.A.C. 7:11-3.2, and if, after verification of the reasonableness of all estimates and receipts submitted, the Department is satisfied with the evidence submitted, the Department may pay damages based on the claims submitted.

**7:11-4.2 Real property damages; property value diminution**

(a) Upon satisfactory sale of a property pursuant to the requirements of N.J.A.C. 7:11-3.3, the Department will pay the claimant damages in an amount equal to the Department's appraisal of the property value absent the landfill minus the actual selling price.

(b) In the event that a claimant makes a good faith attempt to sell the property in accordance with the requirements of N.J.A.C. 7:11-3.3 and cannot do so within one year measured from the date of the initial real estate listing, the Department will, upon verification of the good faith nature of the attempt, appraise the value of the property absent the landfill and survey sales based claims settlements in the area to determine the average percentage diminution for the area. The Department may pay, as damages, the dollar value arrived at by multiplying the appraised value of the property absent the landfill by the average diminution percentage determined for the area.

1. If a sale occurs within two years after initial settlement with the Fund, upon satisfaction of all requirements of N.J.A.C. 7:11-3.3(f), a further claim may be awarded based on a comparison of the initial settlement paid with actual diminution. Actual diminution shall be determined by subtracting the sales price received from the appraisal value of the property absent the landfill. The Department may pay the difference between the two figures where the actual diminution is greater than the initial settlement paid. If the initial settlement paid is greater than the actual diminution upon sale, the claimant shall be liable to the Fund for the excess settlement received.

(c) The Department will not, in compensating damages claimed under (a) or (b) above, include in its calculation of the appraisal of the value of the damaged property, the values of any improvements to the property made after the date of discovery of damages.

**7:11-4.3 Damages to natural resources**

If the claimant submits all evidence required by N.J.A.C. 7:11-3.4, and if, after verification of the reasonableness of receipts or estimates submitted, the Department is satisfied with the evidence submitted, the Department may pay the amount substantiated by the submitted documents. The Department reserves the right to perform or contract for the performance of any prospective remedial action necessary in lieu of payment to the claimant.

**7:11-4.4 Personal injuries**

If the claimant submits all evidence required by N.J.A.C. 7:11-3.5, and if, after verification of the reasonableness of receipts and opinions supplied, the Department is satisfied with the evidence submitted, the Department may pay damages based on the documentation submitted.

**7:11-4.5 Threats to the environment and the public health, safety or welfare**

If the claimant submits all evidence required by N.J.A.C. 7:11-3.6 and if, after verification of the reasonableness of the evidence submitted, the Department is satisfied with the evidence submitted, the Department may pay for the costs of the devices or actions or other measures determined by it to be necessary to remedy the threat to public health, safety, welfare or the environment. The Department reserves the right to perform or contract for the performance of any prospective remedial action necessary in lieu of payment to the claimant.

**SUBCHAPTER 5. SETTLEMENT AND INVESTIGATION OF CLAIM****7:11-5.1 Settlement of claim with owner or operator**

(a) Prior to any private settlement with the owner or operator concerning the damages, the claimant shall notify the Department by certified mail of the terms of the settlement at least two weeks prior to the private settlement date.

(b) If the claimant privately settles with the owner or operator, any payment the claimant receives as a result of that settlement shall be deducted from the amount of compensation awarded by the Department regarding that claimant's damages; provided, however, that if the settlement terms release the owner or operator from further liability, the settlement shall be an absolute bar to any claim for damages from the Fund.

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### 7:11-5.2 Investigation of claim

(a) The claimant shall allow the Department to inspect all records relating to his or her claim for damages including, but not limited to, financial, medical, employment and property records, insurance policies and any documents supporting the claimant's proposal to remedy the damages.

(b) In investigating claims for personal injuries, the Department may direct a medical examination of the claimant by an independent physician selected by the Department. The claimant shall present himself or herself to the physician selected at the time and place designated by the physician.

1. A written report of such examination shall be filed by the examining physician with the Department and a copy mailed by the Department to the claimant.

2. If the Department has directed a medical examination by a physician selected by the Department, such physician's fee shall be paid by the Department from the Fund.

(c) The claimant shall allow the Department or its authorized representative to examine all personal and real property related to his or her claim for damages. The Department may require an appraisal of any property for which a claim has been made. This appraisal will be performed by an appraiser selected by the Department.

1. The appraisal shall be filed by the examining appraiser with the Department and a copy mailed by the Department to the claimant upon his or her request.

2. If the Department has required an appraisal by an appraiser selected by the Department, such appraiser's fee shall be paid by the Department from the Fund.

(d) The claimant shall cooperate fully with the investigators, agents or representatives of the Department in the investigation of a claim in order to be eligible for any award. In the event that such cooperation is refused or denied, the Department may deny such claim.

### 7:11-5.3 Determination of claims

(a) The Department, after investigation of a claim, shall:

1. Offer a settlement of the claim against the Fund; or
2. Deny the claim.

(b) The Department shall render its decision in writing, and the reasons therefor, and shall forward a copy thereof by certified mail, return receipt requested, to the claimant.

(c) If the claimant accepts the offer of settlement or fails to request an adjudicatory hearing pursuant to N.J.A.C. 7:11-5.4, the claimant shall be forever barred from filing another claim to recover against the Fund for those damages settled or denied.

(d) Any claimant aggrieved by the Department's offer of settlement or denial of his or her claim may request an adjudicatory hearing by following the procedures set forth at N.J.A.C. 7:11-5.4.

### 7:11-5.4 Adjudicatory hearings

(a) Within 20 calendar days from receipt of a decision by the Department rendered pursuant to N.J.A.C. 7:11-5.3, the claimant may submit a written request to the Department for an adjudicatory hearing to contest such action.

1. Any request for an adjudicatory hearing shall be based on specific relevant issues raised by the claimant.

2. The claimant shall include the following information in a request for an adjudicatory hearing:

- i. The name, address and telephone number of the claimant or his or her authorized representative;
- ii. The Department's claim number for the claim;
- iii. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- iv. A reference to the particular sections of the statutes and rules involved;
- v. A short and plain statement of the matters of law and fact asserted;

vi. The claimant's factual position on each question alleged to be at issue, its relevance to the Department's decision and an estimate of the amount of hearing time necessary to adjudicate all factual issues; and

vii. Evidence supporting the claimant's factual position and proposed resolution and copies of other written documents relied upon to support the request for a hearing.

(b) If the claimant fails to include all the information required by (a)2 above, the Department shall deny the request for a hearing and the Department's decision shall constitute final agency action on the matter.

(c) If it grants the hearing request, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

## SUBCHAPTER 6. PAYMENT OF CLAIM

### 7:11-6.1 Payment of claim

(a) Except as provided in (b) and (c) below, the Department shall make claim payments in a single lump sum payment.

(b) The Department may bifurcate multiple damages filed in a single claim and may make payments separately thereon.

(c) In the event that the total amount of claims awarded exceeds the current balance of the Fund, each award shall be paid on a prorated basis over time without interest until the award is paid in full.

### 7:11-6.2 Conditions of payment

(a) No payment of any damages from the Fund shall be made unless the Department acquires, by subrogation, all rights of the claimant to recovery of such damages from an owner or operator of a sanitary landfill.

1. The claimant shall not prejudice such subrogation rights in any manner;

2. The claimant shall cooperate fully with the Department in the preparation of a case for trial and at the trial, should the Department commence a civil action to recover any amount awarded; and

3. The claimant shall allow the Department to join his or her claim with as many claims as the Department may have against an opposing party in any civil action commenced to recover any amounts awarded.

(b) No payment of any damages from the Fund shall be made unless the claimant executes a written release of all damages occurring prior to execution of the release except those damages which could not reasonably have been discovered prior to signing the release. This release shall contain all conditions precedent to payment of the claim required by this chapter. In releases executed for damages for non-sales based real property value diminution, such release shall include an agreement by the claimant that any lien filed pursuant to N.J.A.C. 7:11-6.3 shall be satisfied at the closing of the sale of the real property by the claimant.

(c) The claimant shall include in the agreement of sale and in the deed a covenant which shall run with the land indicating that the claimant has negotiated with the Department for specific enumerated damages and that these damages have been satisfied. In the case of property value diminution claims, such covenant shall state that further payment from the Fund for similar damage is barred.

### 7:11-6.3 Lien for non-sale based settlements

(a) For property diminution claims, the Department may file a lien against real property settled on a non-sales basis in the amount of the Department's settlement with the claimant. In the event of a sale within two years of settlement, any amount in excess of the Department's appraised value of the property including the effects of landfill shall be reimbursed by the claimant to the Fund. The reimbursement shall not exceed the amount of the initial payment of the claim between the claimant and the Department.

(b) For the purposes of (a) above, the appraised value of the property including the effects of the landfill shall be calculated by subtracting the initial settlement amount from the Department's appraisal of the value of the property absent the landfill.

(c) Liens filed pursuant to this section will be released by the Department only upon receipt of an affidavit from the claimant

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setting forth the sale price and, when such price indicates that an excess settlement from the Fund has been paid to the claimant, a cashiers check in the amount of any such excess.

**(a)****NEW JERSEY WATER SUPPLY AUTHORITY****New Jersey Water Supply Authority  
Policies and Procedures****Proposed Readoption with Amendments: N.J.A.C.  
7:11****Extension of Public Comment Period: N.J.A.C.  
7:11-2**

Authorized By: Richard T. Dewling, Chairman, New Jersey  
Water Supply Authority and Commissioner, Department of  
Environmental Protection.

Authority: N.J.S.A. 58:1B-7.

DEP Docket Number: 007-88-02.

Proposal Number: PRN 1988-119.

Submit comments by April 6, 1988 to:

Catherine A. Tormey, Esq.  
Office of Regulatory Services  
Department of Environmental Protection  
CN 402  
Trenton, N.J. 08625; and  
Rocco D. Ricci, Executive Director  
New Jersey Water Supply  
P.O. Box 5196  
Clinton, New Jersey 08809

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:11 expires on June 6, 1988. The New Jersey Water Supply Authority (hereafter "the Authority") has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Authority, therefore, proposes to readopt these rules with amendments.

N.J.A.C. 7:11-1 pertains to the permissible uses of the property and waters under the jurisdiction of the Authority. The Authority lands and waters include the Delaware and Raritan Canal Transmission Complex, the Spruce Run-Round Valley Reservoir Complex and any other water supply facilities owned or operated by the State which may be acquired pursuant to any past or future bond issues including the Water Supply Bond Act of 1981, P.L. 1981, c.261.

N.J.A.C. 7:11-1 (Use of Water Supply Authority Property) was originally filed and became effective on January 1, 1975 as R.1974 d.362. At that time, the subchapter was titled Delaware and Raritan Canal and had limited effect since the scope of the rules was limited in application to one portion of Authority lands and waters. In addition, the subchapter provided little substantive guidance as to how the Delaware and Raritan Canal property could be used. In the July 20, 1987 New Jersey Register (see 19 N.J.R. 1274(a)), the Authority proposed to repeal Subchapter 1 in its entirety and promulgate new rules for subchapter 1, more appropriately titled Use of Water Supply Authority Property. Elsewhere in this issue of the New Jersey Register, the Department is adopting the new N.J.A.C. 7:11-1 with changes upon adoption.

By this rule proposal, several amendments are being proposed to subchapter 1 which resulted from comments received for the proposed new rules N.J.A.C. 7:11-1. The proposed changes permit small groups of people to picnic on the Delaware and Raritan Canal, prohibit the operation of motor vehicles on recreational trails, and prohibit all boats from entering areas marked as "keep out" or the like.

A summary of each section in Subchapter 1 follows:

N.J.A.C. 7:11-1.1 provides the scope of the subchapter by identifying the Authority lands and waters to which the subchapter applies.

N.J.A.C. 7:11-1.2 specifies that the subchapter shall be liberally construed.

N.J.A.C. 7:11-1.3 sets forth that the Executive Director of the Authority shall exercise authority in any matters not governed by the subchapter.

N.J.A.C. 7:11-1.4 sets forth the relationship of the subchapter to other Federal and State laws.

N.J.A.C. 7:11-1.5 provides that the purposes of the subchapter are to protect Authority resources and the health and welfare of persons using those resources, and provides the standard by which persons may be removed from Authority lands or waters.

N.J.A.C. 7:11-1.6 provides definitions of the words and terms used throughout this subchapter.

N.J.A.C. 7:11-1.7 reserves to the Authority the right to designate or direct that recreation or other public use of Authority lands or waters be carried out only in specific areas.

N.J.A.C. 7:11-1.8 requires that all persons use Authority lands or waters in conformance with posted instructions or issued permits.

N.J.A.C. 7:11-1.9 provides that the Authority may limit or close to the public use of specific lands or waters and further provides the means by which notice of such limitation or closure shall be communicated.

N.J.A.C. 7:11-1.10 prohibits posting of signs, soliciting and selling without written Authority permission.

N.J.A.C. 7:11-1.11 prohibits commercial activities on Authority lands and waters without a permit, contract or lease.

N.J.A.C. 7:11-1.12 prohibits the possession or consumption of alcoholic beverages except in designated areas.

N.J.A.C. 7:11-1.13 prohibits dumping, littering or burning of trash.

N.J.A.C. 7:11-1.14 sets forth the restrictions which apply to furred animals or pets on Authority property.

N.J.A.C. 7:11-1.15 provides an exemption from the previous section for seeing eye dogs, and exempts hunting dogs from the leashing requirements of N.J.A.C. 7:11-1.14.

N.J.A.C. 7:11-1.16 prohibits the damaging of Authority property without Authority permission and exempts certain trapping and hunting activities from this prohibition.

N.J.A.C. 7:11-1.17 prohibits disruptive conduct on Authority property.

N.J.A.C. 7:11-1.18 prohibits the start or maintenance of any open fire without written permission of the Authority.

N.J.A.C. 7:11-1.19 restricts picnicking to designated areas.

N.J.A.C. 7:11-1.20 prohibits target practice with firearms unless written permission is obtained.

N.J.A.C. 7:11-1.21 prohibits the use of metal detectors unless written permission is obtained.

N.J.A.C. 7:11-1.22 restricts horseback riding to designated areas.

N.J.A.C. 7:11-1.23 restricts hiking to designated areas.

N.J.A.C. 7:11-1.24 restricts camping to designated areas.

N.J.A.C. 7:11-1.25 restricts swimming to designated areas.

N.J.A.C. 7:11-1.26 prohibits spelunking unless written permission is obtained.

N.J.A.C. 7:11-1.27 requires that individual and group recreational activities shall also comply with State Park Service or Division of Fish, Game and Wildlife rules on Authority property under administrative control of those agencies, and requires the obtaining of permits for certain activities.

N.J.A.C. 7:11-1.28 sets forth restrictions for hunting, fishing and trapping on Authority lands and waters.

N.J.A.C. 7:11-1.29 sets forth requirements for operation of motor vehicles on Authority property.

N.J.A.C. 7:11-1.30 prohibits the operation on Authority lands of motor vehicles not requiring licensing by Division of Motor Vehicles unless written permission is obtained for such operation; permits the designation of specific hours and locations for operation of such vehicles; and prohibits operation of motor vehicles on ice-covered waters without a permit.

N.J.A.C. 7:11-1.31 requires that motor vehicles operated on Authority lands conform to motor vehicle laws in addition to conformance with this subchapter.

N.J.A.C. 7:11-1.32 sets forth specific requirements for the operation of motor vehicles on Authority lands.

N.J.A.C. 7:11-1.33 prohibits the use of snowmobiles on Authority lands and waters.

N.J.A.C. 7:11-1.34 sets forth motor vehicle speed limits on Authority lands.

N.J.A.C. 7:11-1.35 restricts vehicle parking to designated areas.

N.J.A.C. 7:11-1.36 applies State Park Service rules to boating activities on Authority waters in addition to application of this subchapter.

N.J.A.C. 7:11-1.37 restricts the operation of boats on Authority waters.

N.J.A.C. 7:11-1.38 restricts sledding, skiing and tobogganing to designated areas.

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N.J.A.C. 7:11-1.39 restricts ice fishing.

N.J.A.C. 7:11-1.40 restricts ice skating to designated areas.

N.J.A.C. 7:11-1.41 imposes restrictions on ice boating.

N.J.A.C. 7:11-1.42 prohibits trespassing in designated areas.

N.J.A.C. 7:11-1.43 extends restricted areas during periods of low water levels.

N.J.A.C. 7:11-1.44 applies swimming and dock building restrictions to the Delaware and Raritan Canal in addition to all other restrictions of this subchapter.

N.J.A.C. 7:11-1.45 prohibits the use or possession of explosives on Authority property without written permission.

N.J.A.C. 7:11-1.46 prohibits the damaging or disturbance of Authority-owned early warning systems.

N.J.A.C. 7:11-1.47 applies the principle of severability to the subchapter.

Proposed amendments to N.J.A.C. 7:11-2 were published in the New Jersey Register on January 19, 1988 at 20 N.J.R. 144(a). A public hearing concerning these proposed amendments was held on February 5, 1988. By this notice, the comment period for this proposal is extended to April 6, 1988.

N.J.A.C. 7:11-2, entitled Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir Systems, pertains to the setting of rates for the purchase of water by water users and the procedures to be followed when the rate is to be changed. As explained above, this subchapter is the subject of an outstanding proposal which is incorporated here by reference and made part of this readoption.

A summary of each section in Subchapter 2 follows:

N.J.A.C. 7:11-2.1 requires that certain rates be paid for raw water diverted from the system, that the rates be incorporated in all water use agreements, and what the rate shall include.

N.J.A.C. 7:11-2.2 sets forth the general rate schedule for operations and maintenance.

N.J.A.C. 7:11-2.3 provides a detailed description of and assessments for certain debt service items.

N.J.A.C. 7:11-2.4 sets forth the daily allotment charge for use of water.

N.J.A.C. 7:11-2.5 sets forth the basis for determining rates for diversions, withdrawals or allocations of water from the Raritan River Basin.

N.J.A.C. 7:11-2.6 explains the term "production factor" and its applicability.

N.J.A.C. 7:11-2.7 explains how the Annual Demand Charge for a given water allocation shall be computed and how it shall be paid.

N.J.A.C. 7:11-2.8 sets forth the terms by which standby water service may be authorized.

N.J.A.C. 7:11-2.9 sets forth the standby charge applied to water withdrawn by a user classified under standby service.

N.J.A.C. 7:11-2.10 reserves the Authority's right to review and revise the General Rate Schedule and debt service assessment rate.

N.J.A.C. 7:11-2.11 sets forth the procedures to be followed for rate adjustments.

N.J.A.C. 7:11-2.12 establishes and describes a special user rate for certain waters withdrawn and returned to the Raritan River Basin.

N.J.A.C. 7:11-2.13 describes the short term availability of uncommitted capacity and the applicable rate for purchase.

N.J.A.C. 7:11-2.14 provides for and describes the calculation of late payment interest charges.

N.J.A.C. 7:11-3, entitled Rules for the Use of Water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System, sets forth the water management requirements for these named facilities as administered by the Authority. No changes are being proposed to this subchapter at this time.

A summary of each section of Subchapter 3 follows:

N.J.A.C. 7:11-3.1 informs potential water users where they may obtain and subsequently submit an application for water supply.

N.J.A.C. 7:11-3.2 details the procedure for the public hearings required to be held on each application with certain exceptions.

N.J.A.C. 7:11-3.3 discusses the general terms for all formal water use agreements for any water withdrawn from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System.

N.J.A.C. 7:11-3.4 states that the most current rates, charges and debt service assessments as set forth in N.J.A.C. 7:11-2 will apply to water diverted from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir System.

N.J.A.C. 7:11-3.5 describes the payment procedures for water allocated from the System.

N.J.A.C. 7:11-3.6 establishes factors for consideration of each application for the diversion, withdrawal or allocation of water from the Raritan River downstream of the Spruce Run/Round Valley Reservoir System.

N.J.A.C. 7:11-3.7 explains that contract allocation will be in terms of million gallons per day and that the maximum permitted withdrawal rate shall be specified in the water use agreement by the Authority.

N.J.A.C. 7:11-3.8 details the calculation of the production factor for the purpose of determining the prevailing charge for an allocation.

N.J.A.C. 7:11-3.9 discusses the effective date and expiration date for water use agreements.

N.J.A.C. 7:11-3.10 details the procedure by which a user may apply for a renewal of its water use agreement.

N.J.A.C. 7:11-3.11 allows the Authority to unilaterally revoke a water use agreement and require submission of a new application for a user withdrawing less than 50 percent of its allotted diversion for a period of 12 consecutive months.

N.J.A.C. 7:11-3.12 establishes the Authority's right to temporarily curtail or suspend a user's withdrawal of water under certain circumstances.

N.J.A.C. 7:11-3.13 establishes that the Authority shall not be considered in default of any of its obligations for failure to perform due to strikes, natural disasters or acts of God and certain other reasons.

N.J.A.C. 7:11-3.14 requires that the agreement to withdraw water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System may not be assigned or transferred without the Authority's prior written approval.

N.J.A.C. 7:11-3.15 details the procedures and reporting requirements for diversion scheduling purposes, and allows for recovery of certain damages by the Authority under certain circumstances.

N.J.A.C. 7:11-3.16 prohibits a user from withdrawing a quantity of water in excess of its advance notice of daily demand given to the Authority pursuant to N.J.A.C. 7:11-3.15.

N.J.A.C. 7:11-3.17 establishes a rate of \$1,000 for each million gallons withdrawn over five percent in excess of advance notice of daily demand from the Raritan Basin streams and the Delaware and Raritan Canal. Temporarily waives the penalty for overdraft from Raritan Basin streams.

N.J.A.C. 7:11-3.18 details the requirements for installing and constructing withdrawal apparatus, equipment, structures and facilities in the Delaware and Raritan Canal.

N.J.A.C. 7:11-3.19 establishes requirements for the installation and maintenance of meters by users.

N.J.A.C. 7:11-3.20 describes the procedures to be followed and the Authority's response in the case of meter failure.

N.J.A.C. 7:11-3.21 details the procedures involved in meter reading and appropriate recordkeeping requirements.

N.J.A.C. 7:11-3.22 establishes the general requirement that the user must furnish such assistance as required by the Authority to monitor the implementation of the water use agreement.

N.J.A.C. 7:11-3.23 requires that users shall at all times defend, save, hold harmless and indemnify the Authority.

N.J.A.C. 7:11-3.24 requires all users of water from the Delaware and Raritan Canal to maintain public liability and property damage insurance on property and facilities constituting the user's withdrawal system operated and maintained on canal property.

N.J.A.C. 7:11-3.25 stipulates that water withdrawn from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System is raw water, that the Authority does not guarantee the quality of the water supplied, and that no claims regarding quality variation will be recognized by the Authority.

N.J.A.C. 7:11-3.26 stipulates that a user's discharge into the Delaware and Raritan Canal requires prior written approval and that water may only be returned to the Delaware and Raritan Canal if the quality of the Delaware and Raritan Canal water will not be impaired as determined by the Authority.

N.J.A.C. 7:11-3.27 describes the conditions and requirements for discharge structures in the Delaware and Raritan Canal.

N.J.A.C. 7:11-3.28 details the procedures for disposition of all facilities installed by the user on Delaware and Raritan Canal property after expiration of a water use agreement.

**Social Impact**

Once readopted, the rules will continue to provide reasonable and necessary standards for the regulation of the use of Authority facilities

as well as reasonable mechanisms for the setting of water use rates and the policies and procedures governing that use.

Subchapter 1 has and will continue to have a positive social impact by providing specific guidelines governing a wide variety of activities that may take place on Authority property. These specific provisions allow the Authority to accomplish a two-fold objective: to preserve the water systems which the Authority is charged with operating and to protect the public's health, welfare and safety while using the Authority's facilities. The proposed amendments to Subchapter 1 will also result in the same positive social impact.

Subchapter 2 will have minimum social impact. This subchapter represents the Authority's efforts to ensure that rates for water withdrawn, diverted or allocated from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir Complex are equitably assessed and sufficient to provide the revenues required by the Authority. In this way, Authority facilities may be properly maintained so that water user's needs can be met.

By providing specific guidance to water users as to contract procedures, payment terms and general requirements for water use agreements for water withdrawn, allocated or diverted from Authority facilities, the Authority, pursuant to N.J.A.C. 7:11-3, is thereby able to properly manage the water facilities under its jurisdiction in a consistent manner.

**Economic Impact**

Subchapter 1 and the three proposed amendments to it will have an indirect, positive economic impact. Since the Authority charges no fees to the public for use of Authority facilities, the public will experience no direct economic effect of the proposed rules. The proposed rules will, however, help to prevent and deter damage to Authority property by clearly establishing permissible uses and warning that criminal penalties will accompany any misuse. Decreased property abuse and damage mean decreased costs for maintenance, repair and replacement of Authority facilities, which in turn, help to avoid budget increases for maintenance and upkeep.

Proposed amendments to subchapter 2 remain outstanding (see 20 N.J.R. 144(a)). Most ratepayers will experience no net increase in the total water rate set forth at subchapter 2 because of adjustments made to the debt service payment component of the rate. A small group of users, who had not previously paid a component being adjusted, will experience a small rate increase.

Subchapter 3 will result in minimum economic impact since the proposed rules continue established policies of the Authority which control the withdrawal, allocation or diversion of water from Authority facilities.

**Environmental Impact**

The rules proposed for re-adoption have an overall positive environmental impact. By regulating the recreational and nonrecreational use of its facilities in accordance with N.J.A.C. 7:11-1, the Authority is able to minimize environmental damage to the lands and waters under its jurisdiction while still providing the public with attractive facilities to enjoy. The proposed changes to subchapter 1 result in the same benefit. Similarly, subchapters 2 and 3 provide the Authority with the revenue and management authority needed to upkeep and preserve its facilities.

**Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, P.L. 1986, c.169 (herein "the Act"), the Authority has determined that the proposed re-adoption of N.J.A.C. 7:11 will not impose recordkeeping, reporting or other compliance requirements on small businesses because "small businesses" as defined in the Act are not impacted by the requirements of these rules.

**Full text** of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:11.

**Full text** of the proposed changes to N.J.A.C. 7:11-1 follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

**Full text** of the proposed changes to N.J.A.C. 7:11-2 may be found at 20 N.J.R. 144(a).

7:11-1.6 Definitions

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

...

"Round Valley Recreation Area" means those areas of the Round Valley Reservoir which are under the administrative jurisdiction of the State Park Service and/or the Division of Fish, Game and Wildlife for the purpose of providing public recreational activities, including but not limited to swimming beaches, camping and picnic sites, horse trails [and], boat launching areas, **and office, research and maintenance areas.**

"Spruce Run Recreation Area" means those areas of the Spruce Run Reservoir which are under the administrative jurisdiction of the State Park Service and/or the Division of Fish, Game and Wildlife for the purpose of providing public recreational activities, including but not limited to swimming beaches, camping and picnic sites, [and] boat launching or storage areas, **and office, research and maintenance areas.**

7:11-1.19 Picnicking

No person shall picnic, with or without cooking grills, on property under the jurisdiction of the Authority except for those areas which are designated for such use. **This provision shall not apply to informal picnicking by a small number of persons along the D & R Canal.**

7:11-1.27 Recreational activities

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

(c) No person shall engage in the following activities on Authority lands and waters without a written permit issued by the Executive Director or his or her designee:

1.-6. (No change.)

**7. Model boating operation;**

Renumber existing 7.-10. as **8.-11.** (No change in text.)

7:11-1.32 Operation of motor vehicles

(a) (No change.)

(b) No person shall operate a motor vehicle at any time on or over any road designated by "closed" signs or barriers. No person shall operate a motor vehicle on or over any cultivated or planted area, **recreational trails**, transmission line, survey line or in the woods or fields unless a permit is issued by the Executive Director or his or her designee.

(c)-(d) (No change.)

7:11-1.37 Additional boating restrictions

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

(d) [(Reserved)] **All boats are prohibited from entering areas marked with buoys, "Keep Out" signs, or "Restricted Area" signs.**

(e) (No change.)

**(a)**

**DIVISION OF WATER RESOURCES**

**Bureau of Marine Water Classification and Analysis  
Shellfish Growing Water Classification**

**Proposed Re-adoption with Amendments: N.J.A.C. 7:12**

Authority: N.J.S.A. 13:1D-9 and 58:24-1 et seq.  
DEP Docket Number: 008-88-02.  
Proposal Number: PRN 1988-118.

Submit comments by April 6, 1988 to:  
Martin J. McHugh, Esq.  
Office of Regulatory Services  
Department of Environmental Protection  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:12 expires on June 6, 1988. The Department of Environmental Protection (Department) has reviewed this chapter and has determined that, with certain amendments, it continues to be necessary, reasonable and proper for the purpose for which it was originally promulgated, that is, for the classification of shellfish growing waters and to regulate the harvest and utilization of

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shellfish from condemned areas in order to further the protection of public health. Therefore, the Department proposes to readopt N.J.A.C. 7:12 with amendments.

A summary of the chapter follows:

N.J.A.C. 7:12-1 provides the general provisions of the chapter including the definitions of words and terms used throughout the chapter.

N.J.A.C. 7:12-2 delineates the boundaries of those shellfish growing waters classified as Prohibited.

N.J.A.C. 7:12-3 delineates the boundaries of those shellfish growing waters classified as Special Restricted.

N.J.A.C. 7:12-4 delineates those shellfish growing waters classified as Seasonally Approved.

N.J.A.C. 7:12-5 delineates those shellfish growing waters classified as Seasonal Special Restricted.

N.J.A.C. 7:12-6 is reserved.

N.J.A.C. 7:12-7 establishes and delineates areas as sanctuaries.

N.J.A.C. 7:12-8 is reserved.

N.J.A.C. 7:12-9 concerns Special Permits.

N.J.A.C. 7:12-9.1, General provisions sets the ground rules for the utilization of shellfish from Condemned areas.

N.J.A.C. 7:12-9.2, Applications, lists the several Special Permit applications.

N.J.A.C. 7:12-9.3, Bait program: sea clams, sets mechanisms to harvest and sell sea clams for bait from Condemned areas.

N.J.A.C. 7:12-9.4, Bait program: soft clams and/or hard clams, allows for the utilization of soft clams and hard clams as bait as a by-product of the depuration facilities.

N.J.A.C. 7:12-9.5, Depletion program, allows the Department to issue Special Permits for the harvest of shellfish from areas affected by intermittent pollution.

N.J.A.C. 7:12-9.6, Soft clam depuration harvester program, allows individuals to harvest soft clams to be sold to a depuration facility.

N.J.A.C. 7:12-9.7, Relay program, allows individuals to harvest hard clams from Condemned areas and replant them on special leased grounds for the purpose of cleansing.

N.J.A.C. 7:12-9.8, Transfer program, allows shellfish from leased grounds in Condemned areas to be relocated to leased grounds in Approved areas for cleansing.

N.J.A.C. 7:12-9.9, Transplant program, allows seed oysters to be harvested from Condemned areas to be planted on leased grounds.

N.J.A.C. 7:12-9.10, Possession and/or plant program: bait store, controls the manner in which bait shellfish from Condemned areas are handled.

N.J.A.C. 7:12-9.11, Possession and/or processing plant program: depuration plant, allows a State certified depuration plant to purchase soft clams from individuals who are issued a permit under N.J.A.C. 7:12-9.6.

N.J.A.C. 7:12-9.12, Possession and/or processing plant program: seed oysters, allows the holder of leased ground to purchase and plant seed oysters harvested from Condemned areas under a permit issued in accordance with N.J.A.C. 7:12-9.9.

N.J.A.C. 7:12-9.13, Hard clam depuration/harvester (pilot) program: depuration harvester permit, allows individuals to harvest hard clams from certain Special Restricted areas for depuration in accordance with N.J.A.C. 7:17.

N.J.A.C. 7:12-9.14, Hard clam possession and/or processing plant (pilot) program: depuration plant, allows a certified depuration plant to

purchase and possess hard clams harvested from certain Special Restricted areas in accordance with N.J.A.C. 7:17.

N.J.A.C. 7:12-9.15, Scientific collection and non-human consumption program, allows shellfish to be harvested from Condemned areas for research and/or non-human consumption.

As may be inferred from above, the provisions at N.J.A.C. 7:12-2 to 8 address the quality of water in which shellfish grow. Shellfish harvested from condemned areas have the potential to adversely affect the health of humans who might consume them. Proposed changes to this chapter result from water quality investigations and surveys conducted by the Bureau of Marine Water Classification and Analysis within the Division of Water Resources. The investigatory work consists of the collection and analysis of water samples, the inventory of actual and potential sources of pollution, and hydrographic studies of flow patterns which distribute pollution. These surveys are conducted in accordance with applicable State and Federal (Food and Drug Administration (FDA)) guidelines and regulations as described in the National Shellfish Sanitation Program Manual of Operations (Part I—Sanitation of Shellfish Growing Areas). The FDA further requires that each State appraise, every two years, the quality of those waters classified as Approved for the harvest of shellfish. New Jersey conducts investigatory work and research and, pursuant to N.J.S.A. 58:24-1 et seq., revises this chapter annually.

The recommendations for revision to this chapter are supported by two bases: changes in water quality, and enhanced monitoring and/or changes in wastewater treatment.

Changes in water quality were seen as the cause for redefining the classification of waters in Channel Creek (five acres reclassified from Approved to Special Restricted), Dinner Pt. Creek (10 acres reclassified from Approved to Special Restricted), in the Absecon Bay area (120 acres reclassified from Seasonal to Approved and 540 acres reclassified from Special Restricted to Seasonal), in the Great Sound area (280 acres reclassified from Prohibited to Special Restricted and 480 acres reclassified from Special Restricted to Seasonal), and in the Delaware Bay (Maurice River Cove off Dividing Creek—350 acres reclassified from Approved to Seasonal and Beadons Creek—a small area (too small to calculate) reclassified from Approved to Special Restricted).

Increased or enhanced monitoring and the regionalization of wastewater treatment plants are the basis for changing approximately 590 acres in the ocean off Atlantic City from Prohibited to Approved and approximately 168 acres in Absecon Inlet from Special Restricted to Seasonal.

The proposed upgrading of approximately 1045 acres of ocean water off Ocean County from Prohibited to Approved is directly related to the improvements made to the wastewater treatment facilities at Ciba-Geigy Corporation, Toms River. The condemnation of approximately 2795 Approved acres off of the Wildwoods is being made in anticipation of a new treatment facility that will come on-line in March of 1988 and will discharge treated effluent into the area proposed to be closed. This new plant, however, will eliminate several smaller and less efficient facilities that presently discharge to the back bays. It is anticipated that water quality in these areas may show sufficient improvement to allow for reclassification in the future.

These proposed amendments will result in the reclassification of approximately 6215 acres with a net loss of approximately 105 acres. The names of the waterways and number of acres reclassified are listed below in general terms.

Chart #	AREA	ACTION	ACRES
4	Atlantic Ocean	Prohibited to Approved (Ocean, County-Dover Township)	1045
5	Little Egg Harbor	Approved to Special Restricted (Channel Creek)	5
5	Little Egg Harbor	Approved to Special Restricted (Dinner Pt. Creek)	10
7	Atlantic Ocean	Prohibited to Approved (Absecon Inlet)	590
7	Absecon Inlet- Absecon Bay Area	Special Restricted to Seasonal Seasonal to Approved	540
9	Gull Island Thorofare- Cresse Thorofare	Prohibited to Special Restricted Special Restricted to Seasonal	280 480
9	Atlantic Ocean	Approved to Prohibited (Wildwood Area)	2795
10	Delaware Bay Area (Maurice River Cove) (Beadons Creek)	Approved to Seasonal Approved to Special Restricted	350 Too small to calculate

N.J.A.C. 7:12-9 sets forth the several special permit programs that utilize shellfish from condemned areas. N.J.A.C. 7:12-9.1(b) is amended to further the effective enforcement of this chapter pursuant to N.J.S.A. 58:24-1 et seq., specifically N.J.S.A. 58:24-9. The requirement that all permit applicants be above the age of 18 will ensure that those permit holders in violation of this chapter can be prosecuted to the full extent of N.J.S.A. 58:24-9. The amended provision requiring permit applicants to be above the age of 18 should also add to the Department's efforts to protect the health of consumers of shellfish from these condemned or restricted areas. In addition, corrections to chapter text are proposed.

**Social Impact**

In addition to the more than 23,000 persons licensed to harvest shellfish, the adoption of this proposal will benefit the far greater number of consumers who utilize the shellfish harvested from New Jersey waters. At the same time, the downgrading of some waters may in limited cases reduce recreational opportunities. The continued monitoring efforts undertaken by the Department insure that the State's shellfish resource remain a wholesome food product, available to both recreational and commercial harvesters. The change to N.J.A.C. 9.1(b) which limits the issuance of special permits to applicants above the age of 18 will add to the Department's efforts in protecting the health of the shellfish consuming public in the following manner:

1. The harvest of shellfish from condemned or otherwise restricted waters under special permit will be conducted by adults, generally presumed to be more cognizant of the implications of harvesting shellfish from condemned areas; and
2. Effective enforcement of these rules is enhanced as all special permit holders will now be subject to prosecution for violations pursuant to N.J.S.A. 58:24-9.

**Economic Impact**

The overall economic impact of these regulatory changes, representing a net change of less than one percent of New Jersey's estuarine and coastal waters, will not be highly significant in that shellfish in the areas being downgraded may still be harvested in conjunction with a State-sanctioned relay program. Administrative costs to the State are minimal.

**Environmental Impact**

The continuous monitoring of New Jersey's shellfish growing waters benefits the State not only by affording protection from shellfish related disease, but also by serving as an environmental yardstick by which the progress of pollution abatement programs can be measured. In addition, the demand for increased recreational, residential and commercial facilities in New Jersey's coastal zone continues to present a dilemma to environmental planners. The level of discord associated with the conflicting interests that depend upon publicly owned and managed natural resources can only be expected to increase. Therefore the need for an objective method of evaluating the impact of man's activities upon complex estuarine and marine systems is increasing. The criteria associated with the National Shellfish Sanitation Program, which forms the basis of these water quality classifications, is but one suggested method that can be utilized to quantify the impact of development.

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

**Regulatory Flexibility Statement**

The proposed readoption applies to shellfishermen. It is estimated that of the total number of approximately 23,000 shellfishermen impacted by this proposed readoption, the majority are "small businesses" as defined in the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169) and will be impacted. In order to comply with this proposed readoption, the small businesses will have to comply with the requirements as set forth in the Summary above. It is unlikely that small businesses will need to make additional expenditures, in terms of professional services or additional capital costs, to comply with these requirements. In developing this proposed readoption, the Department has balanced the need to protect the environment against the economic impact of the proposed readoption and has determined that to minimize the impact would endanger the environment, public health and public safety and, therefore, no exemption from coverage is provided.

**Full text** of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:12.

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

7:12-1.2 Definitions

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

...  
 "Seasonal Special Restricted Areas" means certain Condemned waters meeting specified sanitary standards as set forth by the Interstate Shellfish Sanitation Conference (ISSC), formerly the National Shellfish Sanitation Program, during a portion of the year. The areas so designated will automatically, by operation of regulations according to the schedule in N.J.A.C. 7:12-[1.6]5, be available for use under the special permit programs sanctioned by the [department] **Department**.  
 ...

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

- (a) The following shellfish growing waters are classified Prohibited:
- 1.-13. (No change.)
  14. Stone Harbor area (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4):
    - i. All of the Great Channel south [and east of a line from a Department maintained marker at the mouth of Muddy Hole and

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bearing approximately 014 degrees T to another Department maintained marker on the opposite shore] of the Stone Harbor Boulevard Bridge.

ii.-xii. (No change.)

15.-19. (No change.)

20. Atlantic Ocean:

i. (No change.)

ii. All of the ocean waters inshore of a line beginning at the water tank located on Lake Avenue, Borough of Bay Head, with coordinates of latitude 40 degrees 04.1 minutes N., longitude 74 degrees 02.7 minutes W., and bearing approximately 146 degrees T for approximately 2.2 nautical miles until it intersects a line bearing approximately 056 degrees T from the water tank located on Normandy Way in the Normandy Beach section of Dover Township, with coordinates of latitude 39 degrees 59.9 minutes N., longitude 74 degrees 03.8 minutes West. This point of intersecting lines is approximately two nautical miles from the shoreline and has coordinates of latitude 40 degrees 01.6 minutes N., longitude 74 degrees 00.5 minutes West. The line then continues bearing approximately 236 degrees T (reciprocal 056 degrees T) from the point of intersection [towards] to the above noted water tank in Normandy Beach [for approximately 1.4 nautical miles until it is one nautical mile directly offshore.] and terminating;

iii. All of the ocean waters inshore of a line beginning at the three story wood frame dwelling located on the beach between Tuna Way and Kittiwake Avenue in the Ocean Beach section of Dover Township, with coordinates of latitude 39 degrees 59.3 minutes N., longitude 74 degrees 3.8 minutes W., and bearing approximately 100 degrees T for approximately one nautical mile from the shoreline to point with coordinates of 39 degrees 59.1 minutes N., longitude 74 degrees 2.5 minutes W., then continuing in a southerly direction one nautical mile offshore until it intersects a line bearing approximately 132 degrees T from the water tank located on 127 Decatur Avenue, Borough of Seaside Park, with coordinates of latitude 39 degrees 56.1 minutes N., longitude 74 degrees 04.7 minutes W., then proceeding in a southeasterly direction along that line for approximately 0.6 nautical miles until it intersects a line bearing approximately 096 degrees T from the water tank located on the corner of Barnegat Avenue and 12th Avenue, Borough of Seaside Park, with coordinates of latitude 39 degrees 54.9 minutes N., longitude 74 degrees 05.0 minutes West. This point of intersecting lines is approximately 1.5 nautical miles from the shoreline and has coordinates of latitude 39 degrees 54.7 minutes N., longitude 74 degrees 02.7 minutes West. The line[s] continues from this point along the shoreline in a southerly direction 1.5 nautical miles offshore until it intersects a line bearing approximately 096 degrees T from the cupola located on top of Island Beach State Park's Maintenance Center (the old Coast Guard Station number 110), with coordinates of latitude 39 degrees 53.7 minutes N., longitude 74 degrees 04.9 minutes West. This point of intersecting lines has coordinates of latitude 39 degrees 53.6 minutes N., longitude 74 degrees 02.9 minutes West. The line continues from this point bearing approximately 218 degrees T (reciprocal 038 degrees T) to the first ocean bath house and concession building from the entrance of Island Beach State Park (approximately 3.3 statute miles south of the park's entrance) with coordinates of latitude 39 degrees 51.2 minutes N., longitude 74 degrees 05.2 minutes W., and terminating;

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

[iv.] v. All of the ocean waters inshore of a line beginning at the [water tank at 44th Street and Bayshore Avenue, City of Brigantine, with coordinates of latitude 39 degrees 23.5 minutes N., longitude 74 degrees 23.8 minutes W., and bearing approximately 179 degrees T for approximately 2.5 nautical miles to a point with coordinates of latitude 39 degrees 21.0 minutes N., longitude 74 degrees 23.7 minutes W. (generally marked by a buoy charted "1" F1 G 4s GONG at the entrance to Absecon Inlet), then bearing approximately 299 degrees T (reciprocal 119 degrees T) for approximately 1.1] light chartered as F1 G 4sec 29ft 6M "7" at the end of Absecon Inlet's southwest jetty and bearing approximately 017 degrees T towards the ocean end of Absecon Inlet's northeast jetty until it intersects a line bearing approximately 148 degrees T (reciprocal 328 degrees T) from the center span of the Vincent Haneman Bridge (Route 87). This point of intersecting lines has coordinates of latitude 39 degrees 22.0 minutes

N., longitude 74 degrees 24.4 minutes West, then proceeding in a southeasterly direction along that line for approximately 0.6 nautical miles to a point with coordinates of latitude 39 degrees 21.5 minutes N., longitude 74 degrees 23.9 minutes W. (generally marked by a buoy charted as R. "2" F1 R 2.5s), then bearing approximately 275 degrees T (reciprocal 095 degrees T) for approximately 0.5 nautical miles towards the outermost tip of Garden Pier, Atlantic City, until it is 0.25 miles directly offshore, then parallel along the shoreline in a southwesterly direction, 0.25 nautical miles offshore, for approximately [1.2]1.3 nautical miles until it intersects a line bearing approximately 153 degrees T from the center of Convention Hall, Atlantic City, then proceeding in a southeasterly direction along that line for approximately 1.75 nautical miles to a point with coordinates of latitude 39 degrees 19.4 minutes N., longitude 74 degrees 25.1 minutes W., then from this point which is approximately 2 nautical miles offshore, the line runs parallel to the shoreline in a southwesterly direction for approximately 2.1 nautical miles to a point with coordinates of latitude 39 degrees 18.4 minutes N., longitude 74 degrees 27.5 minutes W., then bearing approximately 333 degrees T (reciprocal 153 degrees T) for approximately 1.9 nautical miles to the outermost tip of Ventnor City Fishing Pier located at the Boardwalk and South Cambridge Avenue, City of Ventnor, then along that pier to the shore and terminating. This closure adjoins those Special Restricted waters defined in N.J.A.C. 7:12-3.2(a)23i:

[v.-vii.] vi.-viii. (No change in text.)

[viii.] ix. All of the ocean waters inshore of a line beginning at the American Legion Building (the old Coast Guard Station) located at the corner of Second Avenue and 117th Street, Borough of Stone Harbor, with coordinates of latitude 39 degrees 02.4 minutes N., longitude of 74 degrees 46.2 minutes W., and bearing approximately 180 degrees T for approximately 3.4 nautical miles to a point with coordinates of latitude 38 degrees 59.0 minutes N., longitude 74 degrees 46.2 minutes W. (generally marked by a buoy charted as R "8" F1 R 4sec BELL at the entrance of Hereford Inlet), then bearing approximately 246 degrees T [for approximately 4.9 nautical miles to] towards the 641 ft F1 R Lt LORAN TOWER located on the United States Coast Guard Electronic Engineering Center, Lower Township, with coordinates of latitude 38 degrees 57.0 minutes N., and longitude of 74 degrees 52.0 minutes W., for approximately 2.8 nautical miles until it intersects a line bearing approximately 130 degrees T from the standpipe located on the corner of Park Boulevard and Myrtle Road, Borough of Wildwood Crest, with coordinates of latitude 38 degrees 58.4 minutes, N., longitude 74 degrees 50.4 minutes W. This point of intersecting lines is approximately 0.5 nautical miles from the shoreline and has coordinates of latitude 38 degrees 57.9 minutes N., longitude 74 degrees 49.5 minutes W. Then proceeding in a southeasterly direction along that line for approximately 1.5 nautical miles from the shoreline to a point with coordinates of 38 degrees 57.2 minutes N., longitude 74 degrees 48.5 minutes W., then proceeding parallel to the shoreline in a southwesterly direction 1.5 nautical miles offshore for approximately 2.4 nautical miles to a point with coordinates of latitude 38 degrees 55.4 minutes N., longitude 74 degrees 50.5 minutes W., then bearing approximately 310 degrees T (reciprocal 130 degrees T) for approximately 1.2 nautical miles to the light at the end of the eastern jetty of Cape May Inlet charted as F1 4 sec 30 ft 7M, then along that jetty to the shore and terminating. This closure adjoins those Prohibited waters defined in (a)16i above; and

[ix.] x. (No change in text.)

#### 7:12-3.2 Shellfish growing waters that are classified as Special Restricted

(a) The following shellfish growing waters are classified as Special Restricted:

1.-14. (No change.)

[15. All of Cedar Run and tributaries west from a straight line across the creek bearing 210 degrees T from Flashing Red light number "2" (F1 R "2") in Cedar Run. (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4.)]

15. Cedar Run area. (Note: A portion is designated as Seasonal. See N.J.A.C. 7:12-4):

i. All those waters of Cedar Run and tributaries north and west from a straight line beginning at Flashing Red light number "2" (F1 R "2")

marking the Cedar Run channel and bearing approximately 220 degrees T to the southern shore where this line terminates.

ii. All those waters of Channel Creek and tributaries north and west of a line beginning on the southernmost point of land on Horse Point and bearing approximately 267 degrees T to a Department maintained marker located on the western shore.

[16. All of Westecunk Creek and tributaries west from a straight line across the creek beginning at Flashing light 4 second 10 ft "1" (F1 4sec 10ft "1") at the mouth of Westecunk Creek and bearing approximately 006 degrees T to a point of land on the southern bank at the mouth of Dinner Point Creek.]

**16. Westecunk Creek Area:**

i. All those waters of Dinner Point Creek north and west of a line connecting two Department maintained markers (approximate bearing from the northernmost to southernmost marker 057 degrees T) at its mouth where it empties into Little Egg Harbor Bay (The southernmost Department maintained marker coincides with that utilized in N.J.A.C. 7:12-3.2(a)16iii below.); and

ii. All those waters of Westecunk Creek and tributaries west of a line beginning at Flashing light 4 second 10 ft "1" (F1 4sec 10ft "1") and bearing approximately 006 degrees T to a Department maintained marker located on the northern bank of Westecunk Creek at its mouth.

17.-21. (No change.)

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

i. All of Black Hole and St. George's Thorofare east of a line from the point on the eastern shore at the mouth of Conch Lagoon and bearing approximately [350] 358 degrees T to the opposite shore.

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

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

i. All of Absecon Inlet and Absecon Channel contained within a line from the base of the Vincent Haneman Bridge (Rte. 87) (at Harrah's Casino) and continuing along that shoreline crossing the mouth of Clam Creek and continuing to the seaward end of the jetty on the western shore, at the mouth of Absecon Inlet, then channelward to a line from R "2" (F1R2.5s) and bearing approximately 328 degrees T to the midspan of the Vincent Haneman Bridge (Rte. 87), then running northwest along that line to the Rte. 87 bridge, then westward along the bridge to the point of origin at the base of the bridge.

ii.-viii. (No change.)

24.-29. (No change.)

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

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

i. All of Gull Island Thorofare and Muddy Hole contained within a line from the mouth of Jugs Creek and continuing along the shoreline of Great Channel, across the mouth of Oldman Creek, continuing along the shoreline and across the mouth of Stone Harbor Creek and along

the Stone Harbor shoreline to the Stone Harbor Boulevard Bridge, then along the bridge and along the western shoreline of Muddy Hole to the Department maintained marker at its mouth, then bearing approximately 022 degrees T to the point of origin at the mouth of Jugs Creek.

31.-32. (No change.)

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

i.-vii. (No change.)

viii. **Beadons Creek: All of Beadons Creek;**

[viii.-ix.] ix.-x. (No change in text.)

34. (No change.)

7:12-4.1 Seasonally Approved growing waters (Approved November 1 through April 30 yearly, Special Restricted May 1 through October 31, yearly)

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

1.-3. (No change.)

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

i. All of Middle Thorofare, Wills Thorofare, Absecon Channel, **Absecon Inlet, Little Panama, Lower Water Thorofare** and Absecon Bay contained within a line beginning at [day beacon "73" (located at the Confluence of Broad Creek and Man Killer Bay) and bearing approximately 227 degrees T to] the point of land on the western shore at the mouth of Point Bar Thorofare, then along that shoreline and across the mouth of Newfoundland Thorofare, then along that shoreline and across the mouth of Jonathan Thorofare, then along that shoreline to the Department maintained marker located at the mouth of the first major man-made cut or lagoon (not including mosquito ditches) and bearing approximately 036 degrees T to another Department maintained marker on the opposite bank and continuing along that shoreline in a northeast direction to the Department maintained marker, then bearing approximately [120]137 degrees T to [the point of land on the north shore of Cordery Thorofare, then across the mouth of Cordery Thorofare, then along that shoreline in a southerly direction to] a Department maintained marker, then bearing approximately 165 degrees T across the mouth of Steelman Thorofare to a Department maintained marker, then along the northeast shore of Wills Thorofare and Absecon Channel [to Middle Thorofare, then across Middle Thorofare to its point of origin at buoy "73" and terminating.], then across the mouth of Middle Thorofare and along the eastern shoreline of two unnamed islands, including Low Water Thorofare and an unnamed thorofare, and across the mouth of Little Panama and along the shoreline in a southerly direction to Absecon Channel, then in a seaward direction across the mouth of St. George's Thorofare and along that shoreline to the seaward end of the jetty, then channelward to a line from R "2" (F1R2.5s) and bearing approximately 328 degrees T to the midspan of the Vincent Haneman Bridge, then along that line to the Rte. 87 bridge, then along the bridge in a westerly direction to the base of the bridge, then along the shoreline in a northerly direction across the mouth of Clam Thorofare and Beach Thorofare and along that shoreline to the point of origin at the point of land at Point Bar Thorofare.

ii. (No change.)

5.-9. (No change.)

10. Great Sound area:

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

(1) All of Holmes Creek and Holmes Creek Cove contained within a straight line beginning at Halfmile Point and bearing approximately 335 degrees T to the opposite shore and along that shoreline in a westerly direction, excluding drainage ditches which remain condemned to the mouth of Holmes Creek, then continuing along the northern side of Holmes Creek to the first drainage ditch, then directly across Holmes Creek and continuing along that shoreline to

the cove and along that shoreline to the point of origin at Halfmile Point and terminating[.]; and

ii. All of Cresse Thorofare, Gull Island Thorofare, Jugs Creek and Goths Creek contained within a line starting at a Department maintained marker on Halfmile Point, continuing along the shoreline of Cresse Thorofare in a southerly direction, across the mouth of Little Oyster and Oyster Creeks, continuing along the shoreline and across the mouth of Scotch Bonnet and continuing along the shoreline including Goths Creek, to the Department maintained marker on the western shore at the mouth of Muddy Hole and then bearing approximately 022 degrees T to and including Jugs Creek, then along that shoreline in a northerly direction along Sturgeon Hole to a Department maintained marker, then bearing approximately 250 degrees T to a Department maintained marker on Gull Island and continuing to the point of origin at Halfmile Point.

11. Delaware Bay area:

i.-ii. (No change.)

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

(1) All those waters inside of a line beginning at the East Point Lighthouse and bearing approximately 311 degrees T (known as the Summer Line) to a marker on the western bank at the mouth of New England Creek, then along the shoreline in a westerly direction to the first tower, then bearing approximately 144 degrees T to Flashing Green 4 Second 5 (F1 G 4 sec "5"), then bearing approximately 048 degrees T to the East Point Lighthouse and terminating[.]; and

(2) All those waters adjacent to the mouth of Oranoaken Creek and Dividing Creek, from a Department maintained marker on the shoreline approximately 1100 yards southwest of the mouth of Oranoaken Creek and bearing approximately 059 degrees T to another Department maintained marker on the shore 900 yards east of Dividing Creek.

iv.-vi. (No change.)

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

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

(1) (No change.)

7:12-9.1 General provisions

(a) (No change.)

(b) Said permits may be issued to persons **above the age of 18** making application for purposes of transplanting, relaying, depletion, bait harvesting, depuration/controlled purification, research or other purposes approved by the [d]Department.

(c) Each application shall be accompanied by a fee in the amount of \$25.00 (check or money order may payable to New Jersey Department of Environmental Protection). Forms may be obtained from the New Jersey Department of Environmental Protection, Division of Water Resources, Bureau of Marine Water Classification and Analysis, Stoney Hill Road, **P.O. Box 405**, Leeds Point, [Absecon,] New Jersey [08201] **08220**, and New Jersey Marine Police stations located throughout the State. Duplicate permits may be issued upon written request to the Bureau of Marine Water Classification and Analysis at the aforementioned address [and] if accompanied by a \$10.00 check or money order payable to the New Jersey Department of Environmental Protection.

(d)-(j) (No change.)

7:12-9.15 [Scientific and Non-Human Collection Program] **Scientific Collection and Non-Human Consumption Program**

The [d]Department may continue to issue special permits for the collection of shellfish from waters classified other than Approved for the purpose of non-human consumption and scientific research. Conditions of the permit will be tailored as necessary to the specific program(s) requested. This permit is issued in conjunction with, and to the holder of, the collection permit issued by the Division of Fish, Game, and Wildlife pursuant to authority granted at N.J.S.A. 23:4-52.

(a)

## DIVISION OF WATER RESOURCES

### Civil Administrative Penalties and Adjudicatory Hearings

#### Proposed Repeal and New Rules: N.J.A.C. 7:14-8 Proposed Amendment: N.J.A.C. 7:19-6.14.

Authority: N.J.S.A. 58:10A-1 et seq., specifically 58:10A-10; 58:11-64 et seq., specifically 58:11-71; 58:1A-1 et seq., specifically 58:1A-16; and 58:10A-21 et seq., specifically 58:10A-32.

DEP Docket Number: 006-88-02.

Proposal Number: PRN 1988-120.

A public hearing concerning this proposal will be held on:

April 4, 1988 at 9:30 A.M.  
New Jersey State Library  
1st Floor  
185 West State Street  
Trenton, New Jersey

Submit written comments by April 6, 1988 to:

Ed Morrison  
Office of Regulatory Services  
Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Legislature, pursuant to P.L. 1986, c.170, Section 3, has increased the maximum allowable civil administrative penalty from \$5,000 to \$50,000 for each violation of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. The Legislature has further modified the Water Pollution Control Act to provide that each day during which a violation continues "shall constitute an additional, separate, and distinct offense". Therefore, each individual violation of the Water Pollution Control Act including, but not limited to, violation of a provision of any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto, may subject the violator to a civil administrative penalty of up to \$50,000 for that violation and for each day that the violation continues.

The Department of Environmental Protection ("the Department") proposes to modify N.J.A.C. 7:14-8 to implement the provisions of this new statute and to clarify the procedures governing assessment of civil administrative penalties. The Department is also proposing to eliminate the previous distinction between discharge and non-discharge violations and to assess civil administrative penalties under the Water Pollution Control Act on the basis of environmental damage and the type of conduct of the violator; specifically, whether the violator's action was intentional, unintentional but foreseeable, or unintentional and unforeseeable. In calculating the civil administrative penalty, the Department may, in its discretion, adjust a penalty figure to take into consideration other relevant factors including, but not limited to, the economic benefit which the violator has received by not complying or by delaying compliance with the requirements of the Water Pollution Control Act or any rule, regulation, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto. In addition to this civil administrative penalty which the Department may assess under the Water Pollution Control Act, specific civil administrative penalty formulae are proposed for falsification of information, failure to allow entry and

inspection, conducting unapproved activities, failure to properly conduct monitoring or sampling, failure to pay a permit fee or a civil administrative penalty, and/or violation of an administrative order.

The Legislature has empowered the Department to assess civil administrative penalties under the recently enacted statute known as the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., on the same basis and with the same maximum allowable civil administrative penalties as provided under the Water Pollution Control Act. Therefore, each violation of each provision of N.J.S.A. 58:10A-21 et seq. constitutes an additional, separate and distinct offense subjecting the violator to a maximum civil administrative penalty of up to \$50,000 for that violation and for each day that the violation continues.

The Department is also proposing civil administrative penalties for violation of the rules governing laboratory certification and standards of performance set forth at N.J.A.C. 7:18-1 et seq. These rules were adopted pursuant to both the Water Pollution Control Act and the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. The Department will assess a civil administrative penalty of not more than \$50,000 per violation, as provided for under the Water Pollution Control Act for violations of N.J.A.C. 7:18-1 et seq., which relate to those activities regulated under the authority of the Water Pollution Control Act or those activities regulated under the authority of both the Water Pollution Control Act and the Safe Drinking Water Act.

The civil administrative penalties which the Department may assess for violation of the Water Supply and Wastewater Operators' Licensing Act, N.J.S.A. 58:11-64 et seq., and the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., were not impacted by P.L. 1986, c.170. The Department, however, is proposing to adjust the civil administrative penalties that it may assess under the Water Supply and Wastewater Operators' Licensing Act within the existing statutory civil administrative penalty scheme and is providing standards at N.J.A.C. 7:19-6.14 for civil administrative penalties assessed under the Water Supply Management Act.

The Department further proposes to modify the procedures governing the request for an adjudicatory hearing with respect to the assessment of a civil administrative penalty or the issuance of an administrative order.

#### Social Impact

The Department's proposal to increase the civil administrative penalties which may be assessed under the Water Pollution Control Act and the Water Supply and Wastewater Operators' Licensing Act and to provide for penalties under the Water Supply Management Act and the New Jersey Underground Storage of Hazardous Substances Act will have a positive social impact by discouraging noncompliance. As the Legislature declared in the Water Pollution Control Act, "[i]t is the policy of this State to restore, enhance and maintain the chemical, physical, and biological integrity of its waters, to protect public health, to safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial and other uses of water". N.J.S.A. 58:10A-2. The Legislature underscored this declaration by recently providing the Department with the authority to increase penalty assessments for violation of the Water Pollution Control Act, and the Department is using its existing authority to adjust the allowable penalties under the Water Supply and Wastewater Operators' Licensing Act and to assess penalties under the Water Supply Management Act and the New Jersey Underground Storage of Hazardous Substances Act.

#### Economic Impact

For those who comply with the Water Pollution Control Act, the Water Supply Management Act, the New Jersey Underground Storage of Hazardous Substances Act, and the Water Supply and Wastewater Operators' Licensing Act, no economic impact will occur; the economic impact of this chapter will only be felt by violators of the statutes specified above. The extent of the economic impact will depend on factors such as the particular statute violated, the extent of the environmental damage and the conduct of the violator. The Legislature, in amending the penalty provision of the Water Pollution Control Act, has provided the Department with the authority to assess civil administrative penalties that are 10 times greater than were previously allowed under the Act. This increase in civil administrative penalties was intended to deter the kind of activity for which civil administrative penalties may be assessed.

#### Environmental Impact

This rulemaking is intended to serve as a strong deterrent to those who would violate environmental statutes. The Department anticipates that the proposed new rules will, by providing extensive civil administrative penalties for the violation of the State's environmental statutes, provide

the regulated community with a strong incentive to conduct their activities in conformance with the Department's rules, thereby protecting public health and the natural resources of this State. The Department's action is consistent with the recent decision of the Appellate Division of the New Jersey Superior Court in *State of New Jersey, Department of Environmental Protection and the New Jersey Pinelands Commission v. John Lewis*, 215 N.J. Super. 564 (App. Div. 1987). Penalties will, upon adoption of these new rules, be assessed in an amount which will effectively "strip violators not only of profits made in connection with their illegal [activities], but also in a sufficient amount to deter others from polluting the environment. The penalty that may be imposed will be large enough so as not to become the mere equivalent of a permit fee or a mere cost of doing business [in this State]." *Id.* 215 N.J. Super. at 576. Those who violate a State statute should neither profit by their action nor escape responsibility for such action.

#### Regulatory Flexibility Statement

The proposed new rules and amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses; therefore, no regulatory flexibility analysis is required. The purpose of these rules is to supplement the enforcement authority for existing compliance requirements. The Department, in accordance with its mandate to protect human health and the environment, has determined that in assessing a penalty it would not be appropriate to take into consideration the size of the business. It has been the Department's experience that statutory violations and the threat to human health and the environment caused thereby have no correlation to business size.

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

#### 7:19-6.14 Penalties

Any person [that] **who** violates any provisions of this subchapter shall be subject to [the remedies and penalties set forth in section 16 of the Act (N.J.S.A. 58:1A-16)] **the civil administrative penalties provided pursuant to N.J.A.C. 7:14-8.**

**Full text** of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 7:14-8.

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

### SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

#### 7:14-8.1 Authority and purpose

(a) This subchapter shall govern the Department's assessment of civil administrative penalties for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., including violation of any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant to the Water Pollution Control Act, violation of the rules governing laboratory certification and standards of performance, N.J.A.C. 7:18, and for violations of the Water Supply and Wastewater Operators' Licensing Act, N.J.S.A. 58:11-64 et seq., the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., and N.J.S.A. 58:10A-21 et seq. (also known as the New Jersey Underground Storage of Hazardous Substances Act). This subchapter shall also govern the procedure for requesting an adjudicatory hearing with respect to the assessment of a civil administrative penalty or the issuance of an administrative order.

(b) The Department may assess a civil administrative penalty of not more than \$50,000 for each violation of each provision of either the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, or not more than \$100,000 for a violation of both statutes. Each day during which such violation continues shall constitute an additional, separate, and distinct offense.

(c) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall be deemed to affect the availability of any other enforcement provision provided for by N.J.S.A. 58:10A-10, or any other statute, in connection with the violation for which the assessment is levied.

#### 7:14-8.2 Definitions

As used in this subchapter, the following words and terms shall,

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**Interested Persons see Inside Front Cover**

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in addition to those provided in N.J.A.C. 7:14A-1.9, have the following meanings unless the context clearly indicates otherwise:

"Hazardous pollutant" means:

1. Any "toxic pollutant" as defined in N.J.A.C. 7:14A-1.9;
2. Any "hazardous substance" as defined in N.J.A.C. 7:14A-1.9;
3. Any substance regulated as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §135 et seq.;
4. Any substance the use or manufacture of which has been prohibited under the Federal Toxic Substances Control Act, 15 U.S.C. §2601 et seq.;
5. Any substance listed as a known carcinogen on the registry of the National Institute of Occupational Safety and Health (NIOSH); and
6. Any "hazardous waste" as defined or identified in N.J.A.C. 7:26-8 or as defined or identified in 40 CFR Part 261.

**7:14-8.3 Procedures for assessment of civil administrative penalties**

(a) To assess a civil administrative penalty under the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, the Water Supply and Wastewater Operators' Licensing Act, and the Water Supply Management Act, the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment shall:

1. Identify the section of the statute, rule, regulation, water quality standards, effluent limitation, administrative order or permit violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of civil administrative penalties to be imposed pursuant to this subchapter; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to N.J.A.C. 7:14-8.4.

(b) Payment of the civil administrative penalty is due upon issuance by the Department of a Final Order or when the Notice of Civil Administrative Penalty Assessment becomes a Final Order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:14-8.4, the Notice of Civil Administrative Penalty Assessment becomes a Final Order on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;
2. If the Department denies the hearing request, a Notice of Civil Administrative Penalty Assessment shall become a Final Order upon receipt of notice of such denial; or
3. If the Department conducts an adjudicatory hearing, the Department, after the hearing and upon a finding that a violation has occurred, shall issue a Final Order of a contested case specifying the amount of the civil administrative penalty being assessed.

**7:14-8.4 Procedures for a request for an adjudicatory hearing to contest an administrative order and/or a civil administrative penalty assessment**

(a) To request an adjudicatory hearing under the Water Pollution

Control Act, the New Jersey Underground Storage of Hazardous Substances Act, the Water Supply and Wastewater Operators' Licensing Act, or the Water Supply Management Act, the violator shall submit the following information in writing to the Department:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The violator's defenses to each of the findings of fact stated in short and plain terms;
3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;
4. Information supporting the request and copies of other written documents relied upon to support the request;
5. An estimate of the time required for the hearing (in days and/or hours); and
6. A request, if necessary, for a barrier-free hearing location.

(b) All requests for adjudicatory hearings shall comply with N.J.A.C. 7:14-8.4(a) and shall be received by the Department within 20 days after receipt by the violator of a Notice of a Civil Administrative Penalty Assessment and/or an Administrative Order; failure to do so shall constitute grounds for denial of the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the request for a hearing.

(d) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

**7:14-8.5 Civil administrative penalty determination**

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$50,000 for each violation of each provision of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act and for violations of any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto.

(b) The Department shall consider each violation of any provision of any rule, water quality standard, effluent limitation, administrative order or permit as an additional, separate and distinct violation.

(c) Except for those violations set forth in N.J.A.C. 7:14-8.6 through 8.11, the Department shall assess a civil administrative penalty on the basis of the environmental damage and the conduct of the violator within the following ranges:

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		Major	Moderate	Minor
CONDUCT	Major	\$40,000-\$50,000	\$30,000-\$40,000	\$15,000-\$25,000
	Moderate	\$30,000-\$40,000	\$10,000-\$20,000	\$3,000-\$6,000
	Minor	\$15,000-\$25,000	\$3,000-\$6,000	\$1,000-\$2,500

(d) The environmental damage factor of the violation shall be determined as major, moderate or minor as follows:

1. Major environmental damage shall include:

- i. Any violation which has caused or may cause serious harm to human health or the environment; or
- ii. Any violation of an effluent limitation which is measured by concentration or mass:

(1) Any discharge exceeding the effluent limitation set forth in a permit or administrative order by more than 50 percent for a hazardous pollutant; or

(2) Any discharge exceeding the effluent limitation set forth in a permit or administrative order by more than 100 percent for a non-hazardous pollutant;

2. Moderate environmental damage shall include:

- i. Any violation which has caused or may cause substantial harm to human health or the environment; or
- ii. Any violation of an effluent limitation which is measured by concentration or mass:

(1) Any discharge exceeding the effluent limitation set forth in a permit or administrative order by 26 to 50 percent for a hazardous pollutant; or

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(2) Any discharge exceeding the effluent limitation set forth in a permit or administrative order by 51 to 100 percent for a non-hazardous pollutant;

3. Minor environmental damage shall include:

i. Any violation not included in (d)1 or 2 above, or (d)3ii below; or

ii. For violation of an effluent limitation which is measured by concentration or mass:

(1) Any discharge exceeding the effluent limitation set forth in a permit or administrative order by up to 25 percent for a hazardous pollutant; or

(2) Any discharge exceeding the effluent limitation set forth in a permit or administrative order by up to 50 percent for a non-hazardous pollutant.

(e) The conduct factor of the violator shall be determined as major, moderate or minor as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate conduct shall include any unintentional but foreseeable action by the violator; or

3. Minor conduct shall include any other conduct not identified in (e)1 or 2 above.

(f) The penalty determined pursuant to (c) above shall be adjusted to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and severity of the violation(s);

3. The measures taken by the violator to mitigate the current violation or to prevent future violations; and/or

4. The deterrent effect of the penalty.

**7:14-8.6 Civil administrative penalty for submitting inaccurate or false information**

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, record, or other document required to be submitted or maintained, or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) Each day, from the day of submittal of the false or inaccurate information to the Department to the day of receipt of correction by the Department, shall be an additional, separate and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty based on the conduct of the violator as follows:

1. For each intentional, deliberate, purposeful knowing or willful act or omission by the violator the civil administrative penalty shall be in an amount of not more than \$50,000 nor less than \$40,000 per act or omission; and

2. For each other violation, the civil administrative penalty shall be in the amount of \$1,000.

**7:14-8.7 Civil administrative penalty for failure to allow entry and inspection**

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who refuses, inhibits or prohibits immediate entry and inspection of any premise, building or place by any authorized Department representative.

(b) Each day, from the initial day of failure by the violator to allow immediate entry and inspection to the day of receipt by the Department of written notification from the violator that the violator will not refuse, inhibit or prohibit immediate entry and inspection, shall be an additional, separate and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty as follows:

1. For refusing, inhibiting or prohibiting immediate entry and inspection of any premise, building or place for which an adminis-

trative order or permit exists under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act the civil administrative penalty shall be in an amount of not more than \$30,000 nor less than \$20,000; and

2. For any other refusal, inhibition, or prohibition of immediate entry and inspection the penalty shall be in an amount of not more than \$5,000 nor less than \$3,000.

**7:14-8.8 Civil administrative penalty for conducting unapproved activities**

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who:

1. Approves, endorses, builds, modifies, or operates a facility or treatment works, as defined by N.J.A.C. 7:14A-1 et seq., in violation of any rule, administrative order, or permit issued pursuant to the Water Pollution Control Act; or

2. Replaces, expands, or substantially modifies a facility as defined by N.J.A.C. 7:14C-1 et seq., in violation of any rule, administrative order, or permit issued pursuant to the New Jersey Underground Storage of Hazardous Substances Act.

(b) The Department shall determine the amount of the civil administrative penalty for violations described in (a) above based on the following:

1. For the approval or endorsement of a treatment works, the penalty shall be in an amount equal to 25 percent of the value of the facility or treatment works up to a maximum of \$50,000 per violation;

2. For the building, installation, substantial modification, replacement or expansion of a facility or treatment works, the civil administrative penalty shall be in an amount equal to 50 percent of the capital cost of the facility or treatment works up to a maximum of \$50,000 per violation or part thereof that the construction of the facility or treatment works continues without the required Department approval; and

3. For the operation of any facility or treatment works, the civil administrative penalty shall be in an amount equal to 100 percent of the value of the facility or treatment works to a maximum of \$50,000 per violation or part thereof that the operation of the facility or treatment works continues without the required Department approval.

**7:14-8.9 Civil administrative penalty for failure to properly conduct monitoring or sampling under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act**

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to carry out monitoring or sampling activities or to submit discharge or monitoring reports required by the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) The Department shall determine the amount of the civil administrative penalty based on the conduct of the violator as follows:

1. For any intentional, deliberate, purposeful, knowing or willful act or omission by the violator the civil administrative penalty shall be in an amount of not more than \$50,000 nor less than \$40,000;

2. For any unintentional but foreseeable act or omission by the violator, the civil administrative penalty shall be in amount not more than \$40,000 nor less than \$30,000; or

3. For any other violation the civil administrative penalty shall be in an amount not more than \$25,000 nor less than \$15,000.

**7:14-8.10 Civil administrative penalty for failure to pay a permit fee or civil administrative penalty**

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to pay a permit fee or fails to pay a civil administrative penalty assessed pursuant to the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act when due.

(b) The Department shall assess a civil administrative penalty in an amount equal to the unpaid permit fee, up to a maximum of \$50,000 per violation.

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**Interested Persons see Inside Front Cover**

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(c) The Department shall assess a civil administrative penalty in an amount equal to the unpaid civil administrative penalty up to a maximum of \$50,000 per violation.

(d) Each day a permit fee or civil administrative penalty is not paid shall constitute an additional, separate and distinct violation.

**7:14-8.11 Civil administrative penalty for violation of the rules governing laboratory certification and standards of performance**

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$50,000 for each violation of each provision of the rules governing laboratory certification and standards of performance (N.J.A.C. 7:18), adopted pursuant to the Water Pollution Control Act including but not limited to, a violation of any certification or administrative order issued pursuant thereto.

(b) The Department shall consider each violation of each provision of any rule, certification or administrative order as an additional, separate and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty on the basis of the provision violated and the frequency of the violation as follows:

Citation (N.J.A.C.)	1st Violation	2nd Violation	3rd and Subsequent Violation
7:18-2.1	\$10,000	\$25,000	\$50,000
7:18-2.3(f)iv	\$10,000	\$25,000	\$50,000
7:18-2.4(d)	\$10,000	\$25,000	\$50,000
7:18-2.7	\$300	\$900	\$3,000
7:18-2.8	\$300	\$900	\$3,000
7:18-2.9	\$300	\$900	\$3,000
7:18-2.10(a)	\$300	\$900	\$3,000
7:18-2.10(c)	\$300	\$900	\$3,000
7:18-2.10(d)	\$300	\$900	\$3,000
7:18-2.10(f)	\$100	\$300	\$1,000
7:18-2.10(g)	\$10,000	\$25,000	\$50,000
7:18-2.11(a)	\$10,000	\$25,000	\$50,000
7:18-2.11(d)	\$10,000	\$25,000	\$50,000
7:18-2.11(f)	\$100	\$300	\$1,000
7:18-2.12(b)1	\$100	\$300	\$1,000
7:18-2.12(b)2	\$300	\$900	\$3,000
7:18-2.12(b)3	\$300	\$900	\$3,000
7:18-2.12(b)4	\$300	\$900	\$3,000
7:18-2.12(c)3	\$300	\$900	\$3,000
7:18-2.12(c)5	\$300	\$900	\$3,000
7:18-2.12(c)12	\$10,000	\$25,000	\$50,000
7:18-2.14	\$100	\$300	\$1,000
7:18-3	\$300	\$900	\$3,000
7:18-4	\$300	\$900	\$3,000
7:18-5	\$300	\$900	\$3,000
7:18-6	\$300	\$900	\$3,000

(d) The Department shall classify a violation as first, second, and third and subsequent, as follows:

1. A first violation shall include a violation of any provision of N.J.A.C. 7:18 where the violator has not received written notice from the Department, as provided for in (e) below, of any prior violation of the same section within the past four years;

2. A second violation shall include a violation of any provision of N.J.A.C. 7:18 where the violator has received one written notice from the Department, as provided for in (e) below, of any prior violation of the same section within the past two years; and

3. A third and subsequent violation shall include a violation of any provision of N.J.A.C. 7:18 where the violator has received more than one written notice from the Department, as provided for in (e) below, of any prior violation of the same section within the past three years.

(e) Notice, for the purposes of (d) above, shall mean receipt by the violator of any one of the following documents from the Department:

- i. Notice of Violation;
- ii. Administrative Order;
- iii. Notice of Civil Administrative Penalty Assessment;

- iv. Notice of Intent to Suspend;
- v. Notice of Decertification; and/or
- vi. Notice of Intent to Revoke.

**7:14-8.12 Civil administrative penalty for economic benefit**

The Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as a civil administrative penalty the economic benefit (in dollars) which the violator has or could have realized as a result of not complying, or by delaying compliance, with the requirements of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

**7:14-8.13 Water Supply and Wastewater Operators' Licensing Act and Water Supply Management Act civil administrative penalties**

(a) The Department may assess a civil administrative penalty of not more than \$5,000 per day for each violation of each provision of the Water Supply and Wastewater Operators' Licensing Act and the Water Supply Management Act including, but not limited to, a violation of any rule, license, or administrative order issued pursuant thereto.

(b) The Department shall consider each violation of each provision of any rule, license or administrative order as a separate and distinct violation. Each day during which a violation continues shall constitute an additional, separate and distinct offense subjecting the violator to the penalty schedule set forth in (c) below.

(c) Except as provided in (d) and (e) below, the Department shall assess a civil administrative penalty for each violation of each provision of the Water Supply and Wastewater Operators' Licensing Act and the Water Supply Management Act and each violation of each provision of any rule, administrative order, permit or license as follows:

- 1. For the first violation, not more than \$1,000;
- 2. For the second violation, not more than \$2,500; and
- 3. For the third and subsequent violation, not more than \$5,000.

(d) The Department shall classify a violation as first, second, and third and subsequent, as follows:

1. A first violation shall include a violation where, within the four years prior to such violation, the violator has not received written notice from the Department, as provided for in (f) below, for violation of the same provision;

2. A second violation shall include a violation where, within the two years prior to such violation, the violator has received one written notice from the Department, as provided for in (f) below, for violation of the same provision; and

3. A third and subsequent violation shall include a violation where, within the three years prior to such violation, the violator has received more than one written notice from the Department, as provided for in (f) below, for violation of the same provision.

(e) The Department shall assess a civil administrative penalty of \$5,000 for refusing, inhibiting or prohibiting immediate entry and inspection of any premise, building, or place by any authorized Department personnel. Each day, from the initial day of failure by the violator to allow immediate entry and inspection to the day of receipt by the Department of written notification from the violator that the violator will not refuse, inhibit, or prohibit immediate entry and inspection, shall be an additional, separate and distinct violation.

(f) The Department shall assess a civil administrative penalty against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, record, or other document required to be submitted or maintained under the Water Supply and Wastewater Operators' Licensing Act or the Water Supply Management Act and each violation of each provision of any rule, administrative order, permit or license, or who fails to submit or maintain any application, record, or other document required to be submitted or maintained under the Water Supply and Wastewater Operators' Licensing Act or the Water Supply Management Act and each violation of each provision of any rule, administrative order, permit or license, or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained by the Water Supply and Wastewater Operators' Licen-

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ing Act, or the Water Supply Management Act. Each day, from the day of submittal of the false or inaccurate information to the Department to the day of receipt by the Department of a written correction of the inaccurate information or falsified statement, shall be an additional, separate and distinct violation. The Department shall determine the amount of the civil administrative penalty based on the conduct of the violator as follows:

1. For any intentional, deliberate, purposeful, knowing or willful act or omission by the violator the civil administrative penalty shall be in an amount of not more than \$5,000 nor less than \$4,000;
2. For any unintentional but foreseeable act or omission the civil administrative penalty shall be in amount not more than \$4,000 nor less than \$3,000; or
3. For any other violation the civil administrative penalty shall be in an amount not more than \$2,500 nor less than \$1,500.

**(a)**

**DIVISION OF FISH, GAME AND WILDLIFE**  
**Higbee Beach Wildlife Management Area**  
**Proposed Amendment: N.J.A.C. 7:25-2.20**

Authority: N.J.S.A. 23:2A-5, 23:2A-7, and N.J.S.A. 23:7-9.  
 DEP Docket Number: 005-88-02.  
 Proposal Number: PRN 1988-121.

Submit written comments by April 6, 1988 to:  
 Martin J. McHugh, Esq.  
 New Jersey Department of Environmental Protection  
 Office of Regulatory Services  
 CN 402  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

This proposed amendment will provide protection of the critical wildlife habitat beach and dune areas of the Higbee Beach Wildlife Management Area (HBWMA). The south-end beach area (approximately 0.8 miles) will be closed to all public access and use, except upon prior written approval from the Department, during the time critical to breeding endangered beachnesting birds (April 15-September 15). The north-end beach area (approximately 0.3 miles in length) will be open year-round for those public uses permissible under current wildlife management area use rules found at N.J.A.C. 7:25-2. The dune areas of HBWMA will remain closed to public access and use, except upon prior written approval from the Department. Dune areas may be observed from established trails as described in the existing rule at N.J.A.C. 7:25-2.20(a)1. The proposed amendment implements the primary management objective on the HBWMA as described in the 1983 management plan: the maintenance and enhancement of the use of HBWMA by migratory and resident endangered and threatened species of wildlife, while preserving the secondary management objectives for HBWMA, which include the encouragement of compatible recreation.

**Social Impact**

This proposed amendment will limit human disturbance to beachnesting endangered species and prevent destruction of the sensitive dune ecosystem. Some wildlife management area users may feel adversely affected by the restriction of beach use to less than one-third of the total beach length. However, bird watching and nature study may continue through use of designated trails from which dune areas may be observed.

**Economic Impact**

No adverse economic effects are anticipated of users for HBWMA. Increased costs to the Department will occur due to law enforcement and beach maintenance required especially on the north-end beach area.

**Environmental Impact**

The proposed amendment should have a substantially positive environmental impact in that the threat to critical habitat and the dune ecosystem will be reduced through use restriction. Additionally, potential harassment of beachnesting birds during their nesting and rearing activities by users of the area should be substantially reduced. The proposed amendment clarifies the restriction on dune access already established through the Division's existing trail system at HBWMA pursuant to N.J.A.C. 7:25-2.20(a)1 and 2. Restrictions to dune access should reduce

the environmental degradation of fragile habitat that is attributable to human use. Continuing scientific studies and management efforts to assist and restore endangered species will be facilitated by these restrictions.

**Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, P.L. 1986, c.169, the Department has determined that this rule would not impose reporting, recordkeeping, or other compliance requirements on small businesses.

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

## 7:25-2.20 Higbee Beach

(a) In addition to all regulations prescribed in this subchapter affecting the designated Wildlife Management Areas listed at N.J.A.C. 7:25-1.8, the following additional regulations shall apply to the public use of the Higbee Beach Wildlife Management Area (HBWMA):

1.-5. (No change.)

6. From 12:01 A.M. on April 15 until 12:01 A.M. on September 15 of each year, that part of the HBWMA designated as the south-end beach area, as described on the maps posted at the HBWMA parking lot, available at the Division's Endangered and Nongame Species office located at the HBWMA and at the Division's Trenton office (501 E. State Street, Station Plaza 5, Third Floor, CN 400, Trenton, N.J. 08625), and on file with the Office of Administrative Law, shall be closed to all public access and use, except upon prior written approval from the Department, which may be obtained from the Division's Trenton office.

7. That part of the HBWMA designated as the north-end beach area, as described on the maps posted and available in accordance with (a)6 above, shall be open year-round to public access and use for those activities permissible under N.J.A.C. 7:25-2.

8. At all times, the dune areas of HBWMA are closed to all public access and use, except upon prior written approval from the Department, which may be obtained from the Division's Trenton office at the address listed in (a)6 above. Dune areas may be observed from established trails as designated and described on the maps posted and available in accordance with (a)6 above. Entry onto the dunes from established trails is prohibited at all times.

**(b)**

**DIVISION OF HAZARDOUS WASTE MANAGEMENT**  
**Hazardous Waste Research and Testing Facilities**  
**Rule Pre-proposal: N.J.A.C. 7:26-1.4, 7.4, 9.1 and 12.1**

Authority: N.J.S.A. 13:E-6.  
 DEP Docket Number: 004-88-02.  
 Pre-Proposal Number: PPR 1988-2.

**Take notice** that the New Jersey Department of Environmental Protection ("Department"), pursuant to its authority at N.J.S.A. 13:1E-6(a), will receive preliminary comments with respect to the initiation of subsequent rulemaking procedures concerning hazardous waste testing and research facilities. The Department is considering proposing rules which will exempt from the requirement to have a valid hazardous waste treatment, storage or disposal facility permit those facilities which accept samples of hazardous waste for the purpose of performing research. This exemption would apply to three classes of research facilities: academic, governmental and industrial. Certain requirements (such as limits on the volumes of hazardous wastes that could be accepted each month) would be placed on each type of facility in order to prevent unregulated disposal or other environmental abuse. This pre-proposal includes a requirement that research facilities submit an annual facility report. Those facilities which do not meet the small quantity generator limits set forth at N.J.A.C. 7:26-8.3 would also be required to file a generator's annual report. Research facilities may serve a number of different purposes. They may search for innovative treatment methods, conduct toxicity studies, or evaluate the applicability of certain forms of treatment to specific wastes.

The Department is seeking comments from all concerned parties in connection with hazardous waste testing and research facilities, including but not limited to the following:

1. What limits, if any, should be placed on the amount of waste a research facility may accept? Should there be different limits for the different classes of facilities?
2. Should the research facility exemption be limited to pilot-scale facilities, or should it also be applicable to full-scale operations?
3. Exactly what constitutes "research"? How may this term be defined in order to exclude "sham-research" or illegal disposal disguised as research?
4. What closure/post-closure requirements should be imposed on research facilities? What would constitute adequate closure or post-closure care?
5. How long may hazardous wastes be kept on site before being used in research? How long after?

**Interested persons** may submit data, views or information relevant to this pre-proposal, in writing, on or before April 6, 1988. These submissions and any inquiries about submissions or responses should be sent to:

Ann Zeloof, Esq.  
Office of Regulatory Services  
New Jersey Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625

The Department is considering the following amendments to N.J.A.C. 7:26 (additions shown in boldface **thus**; deletions shown in brackets [thus]).

#### 7:26-1.4 Definitions

- ...  
"Authorized facility" means a hazardous waste facility which:
- 1.-5. (No change.)
  6. Is an industrial waste management facility receiving hazardous waste pursuant to N.J.A.C. 7:14A-4.2(a)5[.]; or
  7. Is a waste reuse facility exempted under N.J.A.C. 7:26-9.1(c); or
  8. Is an academic research facility, a governmental research facility or an industrial research facility which is exempted pursuant to N.J.A.C. 7:26-9.1(c)17 or N.J.A.C. 7:26-12.1(b)12 and 13 and is performing research, experiments or treatability studies.

- ...  
"Research" or "experimentation" means any of the following:
1. Epidemiological and ecological studies;
  2. Studies of advanced techniques for the detection, assessment and evaluation of the effects on human health of hazardous substances;
  3. Studies of methods to assess the risks of human health presented by hazardous substances;
  4. Studies of methods and technologies to detect hazardous substances in the environment and basic biological, chemical and physical methods to reduce the amount and toxicity of hazardous substances;
  5. Studies of alternative or innovative treatment technologies including proprietary or patented methods which permanently alter the composition of hazardous wastes through chemical, biological or physical means so as to reduce the toxicity, mobility or volume (or any combination thereof) of the hazardous wastes treated; and
  6. Studies concerning the adequacy of design and/or engineering requirements, for example, liner compatibility.

...  
"Treatability study" means an analysis in which a relatively small amount of hazardous waste is subjected to a known treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment (if any) is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of the treatment process for a specific waste or wastes; or
5. The characteristic and volume of residuals from a particular treatment process.

...

7:26-7.4 Hazardous waste generator responsibilities  
(a) General requirements for generators not exempted pursuant to N.J.A.C. 7:26-8 are as follows:

- 1.-3. (No change.)
4. A generator [must] **shall** provide the following information on the manifest form:
  - i.-ix. (No change.)
  - x. **When shipping samples of hazardous waste to a research or testing facility which is exempted under N.J.A.C. 7:26-9.1(c)17 or N.J.A.C. 7:26-12.1(b)13, the generator shall enter the State Research Facility Identification number, obtained from the Department as required by N.J.A.C. 7:26-12.1(b)13i(3), in Section G of the Uniform Hazardous Waste Manifest.**
- 5.-12. (No change.)
- (b)-(j) (No change.)

#### 7:26-9.1 Scope and applicability

- (a)-(b) (No change.)
- (c) The standards and requirements of this subchapter do not apply to:
  - 1.-16. (No change.)

17. **The owner or operator of a research facility at an academic institution accredited by the Middle States Association of Colleges and Schools, or a governmental or industrial research facility, receiving samples of hazardous waste for research, experimentation or treatability studies, provided the following requirements are met:**

- i. **The owner or operator complies with N.J.A.C. 7:26-12.1(b)13i(1)-(4) prior to commencing the research, experimentation or treatability study;**
- ii. **Waste samples are stored and managed in compliance with the requirements of N.J.A.C. 7:26-7.2(e) and N.J.A.C. 7:26-9.4(d);**
- iii. **Waste samples accepted for research purposes are accompanied by a properly completed manifest and all manifests are processed and distributed in accordance with N.J.A.C. 7:26-7.6(b);**
- iv. **All residues resulting from research, experimentation or treatability studies which are hazardous wastes are managed in accordance with N.J.A.C. 7:26;**
- v. **Waste samples are stored for no more than 90 days before being used in research, experimentation or treatability studies;**
- vi. **The research, experimentation or treatability study activity complies with all applicable New Jersey Water Pollution Control Act regulations (N.J.A.C. 7:14A and 7:1E) and Air Pollution Control regulations (N.J.A.C. 7:27), and all necessary permits have been obtained from the Department prior to commencing the research;**
- vii. **A facility annual report is filed, in accordance with N.J.A.C. 7:26-9.4(j); and**
- viii. **The owner or operator complies with any other conditions (for example, limitations on the amounts or types of waste that may be accepted) that the Department determines are necessary to protect human health and the environment.**

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

#### 7:26-12.1 Scope and applicability

- (a) (No change.)
- (b) The following persons are not required to obtain a permit pursuant to this subchapter to conduct the following activities or construct or operate the following hazardous waste facilities:

1.-12. (No change.)

13. **The owner or operator of a research facility at an academic institution accredited by the Middle States Association of Colleges and Schools, a governmental or industrial research facility, accepting samples of hazardous waste for research, experimentation or treatability studies, provided the following requirements are met;**

- i. **Prior to commencing research, experimentation or treatability studies, the facility owner or operator shall:**
  - (1) Provide the Department with a written description of the nature of the research to be conducted;
  - (2) Obtain written permission to conduct the research from the Department;
  - (3) Obtain a Research Facility Identification number from the Department;
  - (4) Obtain an EPA identification number; and

(5) Comply with the requirements of N.J.A.C. 7:26-9.1(c)17ii-viii.  
(c)-(g) (No change.)

## (a)

**DIVISION OF HAZARDOUS WASTE MANAGEMENT  
Research, Development and Demonstration Permits  
Proposed Amendment: N.J.A.C. 7:26-12.9**

Authority: N.J.S.A. 13:1E-6 and 13:1B-3.  
DEP Docket Number: 003-88-02.  
Proposal Number: PRN 1988-122.

Submit comments by April 6, 1988 to:

Marlen Dooley  
New Jersey Department of Environmental Protection  
Office of Regulatory Affairs  
CN 402  
Trenton, N.J. 08625

The agency proposal follows:

**Summary**

The New Jersey Department of Environmental Protection ("Department") is proposing an amendment to New Jersey's hazardous waste management rules, N.J.A.C. 7:26. The proposed amendment at N.J.A.C. 7:26-12.9 reflects a Federal regulation promulgated by the United States Environmental Protection Agency ("EPA"). The Federal regulation, at 40 CFR 270.65, appeared in the July 15, 1985 Federal Register at 50 FR 28742.

The proposed amendment provides for the issuance of research, development and demonstration permits ("RD and D") for any hazardous waste treatment facility for purposes of testing new, innovative, and experimental treatment technologies. With a few exceptions, the proposed amendment will allow for a waiver or modification of the permit application and permit issuance requirements. It will authorize the Department to formulate permit terms and conditions for RD and D permit activities necessary to protect human health and the environment. The proposed amendment will allow the Department to select and evaluate the appropriate technical standards for any RD and D activity permit. Permits shall include terms and conditions that the Department deems necessary to protect human health and the environment including requirements related to financial responsibility, monitoring, operation, construction, closure, remedial action and testing. RD and D permits will be issued for a period of up to one year. The permit may be renewed, no more than three times, at the discretion of the Department. Each renewal shall be for a period of up to one year, provided, however, that the maximum length of time that a hazardous waste treatment facility can operate under the RD and D program is three years from the date of initial permit issuance. The Department may order an immediate termination of operations where necessary to protect human health and environment; where the permittee does not comply with the conditions of the permit; where the permittee has misrepresented information or failed to fully disclose relevant facts during application or permit issuance process; where there is a change in ownership or operational control; or where any reasons for disqualification set forth in N.J.A.C. 7:26-16.8 or 16.9 exists.

**Social Impact**

The proposed amendment would accelerate and encourage the development of new and innovative technologies. New technologies for the treatment of hazardous waste may be developed which prove more effective and efficient than present waste handling technologies.

**Economic Impact**

The proposed amendment would have a positive economic impact. Certain hazardous waste facility permit application requirements under N.J.A.C. 7:26-12.1 would be waived or modified for such RD and D activities which may result in savings to a facility. In addition, this rule may create an incentive for facilities to perform RD and D activities thereby leading to development of a hazardous waste treatment technology which is less costly and more efficient than existing technologies.

**Environmental Impact**

The proposed amendment would have a positive environmental impact. The amendment would facilitate research for new hazardous waste treatment technology. The resulting technologies may provide for more environmentally effective handling methods for the management of hazard-

ous waste. Since many of the existing environmental safeguards will be imposed and RD and D activities will be scrupulously monitored, there should be no adverse environmental impact.

**Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, the Department has determined that this proposed amendment would not impose additional reporting, recordkeeping or other compliance requirements on small businesses. Rather, this amendment will provide a positive alternative for small businesses seeking hazardous waste facility permits for research, development and demonstration activities. The amendment modifies certain of the permit requirements, thereby reducing associated costs, while at the same time ensuring continued safeguards to protect the environment, public health, and public safety.

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

7:26-12.9 Short term permits

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

(c) **The Department may issue a research, development and demonstration ("RD and D") permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which separate permit standards for such innovative and experimental activity have not been promulgated under N.J.A.C. 7:26-12. In addition to the requirement of (c)1 below, any such permit shall include such terms and conditions as will assure protection of human health and environment.**

1. Such permits shall contain the following provisions:

- i. **Provision for the construction of such hazardous waste facilities (after permit issuance) as necessary, and for operation of the facility for not longer than one year unless renewed as provided in (c)6 below;**
- ii. **Provision for the receipt and treatment by such hazardous waste facilities of only those types and quantities of hazardous waste specified in the permit which the Department deems necessary for purposes of determining the effectiveness and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment; and**
- iii. **Such requirements as the Department deems necessary to protect human health and the environment including, but not limited to:**

(1) **Monitoring;**

(2) **Operation;**

(3) **Financial responsibility;**

(4) **Closure;**

(5) **Remedial action;**

(6) **Testing; and/or**

(7) **Submission of information to the Department with respect to the operation of such hazardous waste facility.**

2. **To expedite RD and D permit eligibility determinations and to minimize delays in the processing of applications, the permit applicant may, in addition, submit a letter to the Department which briefly describes the RD and D proposal. The letter should provide the following:**

i. **The purpose of the research;**

ii. **An explanation of why the proposed activity is experimental and innovative including reference to other similar or approved processes or technologies for treating hazardous or non-hazardous waste and an indication of the differences between them and the activities for which the permit is sought; and**

iii. **A detailed description of the research.**

3. **Information submitted by the permit applicant to the Department may be claimed as confidential in accordance with N.J.A.C. 7:26-17.**

4. **The Department may, consistent with the protection of human health and the environment, modify or waive the permit requirements under N.J.A.C. 7:26-12 except that there shall be no modification or waiver of requirements regarding financial responsibility (including insurance) as per N.J.A.C. 7:26-9 or of procedures regarding public participation as per N.J.A.C. 7:26-12.**

5. **The following are causes for which the Department may order an immediate termination of all operations at the facility:**

i. **A determination that the permitted activity endangers human health or the environment;**

ii. **Noncompliance with any condition of the permit;**

iii. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

iv. A change in ownership or operational control of a permitted hazardous waste facility; or

v. Any of the reasons for disqualification set forth in N.J.A.C. 7:26-16.8 or 16.9.

6. An RD and D permit may be initially issued for a period not to exceed one year. No less than 60 days prior to expiration of any initial permit issued under this section, a permittee may request the Department to renew said permit for a period not to exceed one year. An RD and D permit may be renewed no more than three times for a maximum duration of one year for each renewal; provided, however, that the maximum length of time a hazardous waste treatment facility will be allowed to operate under an RD and D permit is three years from the date of issuance of the initial RD and D permit.

## HEALTH

### (a)

#### COMMUNITY HEALTH SERVICES

#### Youth Camp Safety Act Standards

#### Proposed Readoption with Amendments: N.J.A.C. 8:25

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner of Health.

Authority: N.J.S.A. 26:12-1 et seq., specifically, N.J.S.A. 26:12-5.  
Proposal Number: PRN 1988-93.

Submit comments by April 6, 1988 to:

Anthony T. Monaco  
Acting Chief, Environmental Services  
120 South Stockton Street  
CN 364  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

Pursuant to Executive Order 66 (1978), N.J.A.C. 8:25 expires on May 20, 1988. The Division of Community Health Services has reviewed the rules and determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

The Youth Camp rules address the general operation of the camps, covering the areas of definition of terms, general provisions, health, safety, waterfront safety and sanitation.

Subchapter one contains the definitions used in the rules; subchapter two addresses modifications and waivers; site plans; staff; care of children; records and reporting; insurance; and a general requirement regarding safety, sanitation and fire hazards. Subchapter three covers health records and supervision, physical examinations, and nutrition and meal service. Subchapter four contains general safety requirements, and requirements regarding dangerous substances, fire-fighting equipment, fire safety, and vehicles and drivers. Subchapter five contains requirements for swimming areas, waterfront staff, swimming procedures, water craft and water skiing. Subchapter six contains general sanitation requirements and requirements in the areas of heating; lighting, ventilation and screening, sewage and solid waste disposal; toilets, lavatories and showers; food service and milk and water supply; insect, rodent and weed control; swimming and bathing; farm and domestic animals; maintenance and certification fees.

The Youth Camp Safety Act Standards were originally adopted on January 9, 1974. The purpose of these rules is to promote, protect, and safeguard the health and well-being of the youth of the state who are attending day and resident camps, by providing for establishment of standards for the safe operation of such camps, thereby providing assurance to parents and interested citizens that youth camps meet minimum safety standards.

The proposed readoption and amendment represents the product of experience since implementation of the Youth Camp Safety Program in 1974. The only proposed amendment will eliminate the need for a parent or guardian to give advanced consent for emergency medical treatment for each camper. For consent to be valid, the patient or the patient's legal

guardian has to be advised of the nature of the injury or illness; the prognosis; the recommended treatment; alternatives to that treatment, including nontreatment; and the risks and benefits of those alternatives. Clearly then, consent given before an injury or illness occurs cannot meet the elements of informed consent and cannot and should not be considered valid. Therefore, elimination of this provision as contained in the Youth Camp Safety Act Standards at N.J.A.C. 8:25-3.2 is warranted.

#### Social Impact

The protection of children attending summer youth camps is a growing concern. In recent years, the demand for child day care has increased as a result of two income families. The number of youth camps licensed and inspected by the State health department has increased over the years to the present number of 500 licensed camps. The types of activities and services provided by youth camps have increased from the traditional swimming, archery, and field sports to include rope courses, motor cross, and specialized sports camps. The changes in trends for more youth camps and expanded services reinforce the necessity of minimum safety standards.

#### Economic Impact

The economic impact of these rules is extremely varied and not easily quantifiable. Actual costs for conducting camps depend upon the type of camp conducted (sport, diabetic, boy scouts, etc. . . .). The cost varies according to the size of the camp, the number of staff required to maintain the camp and the type and number of activities offered at each camp.

Administrative costs associated with enforcing the provisions of these rules also vary but primarily concern inspection activities. For example, approximately 1748 inspection hours were spent during the 1987 summer months between June and September, while during the remainder of the year one full-time supervisor was assigned to the program.

The Department however, foresees no change in the financial impact of having the present rules readopted. The proposed amendment to the rules will not place an economic impact on the camping industry. Deleting the parent consent statement for emergency medical treatment from the camper health history forms would be an administrative decision.

#### Regulatory Flexibility Statement

All private youth camps that accommodate five or more children under 18 years of age, for a period of two days or more, fall under the provisions of the Youth Camp Safety Standards. Approximately 30 percent of the licensed youth camps have enrollment of less than 50 children. Some of the youth camps may be considered small businesses, as defined in N.J.S.A. 52:14B-17. The impact of complying with existing state standards depends on the types of activities offered by the camp. Staffing requirements are dependent on the number of hazardous activities offered by the smaller camps. For example, a camp program that offers aquatics, archery, horseback riding, and riflery would need an adult activity specialist with a current certification from a recognized organization in the specialized field. This activity specialist could also function as a camp counselor to fulfill camper supervision requirements. Record keeping and camp policies and procedures are required of all camps to insure proper safeguards are addressed. Emergency procedures, daily health surveillance, lost camper procedures, fire drills, disciplinary policies, health history forms, and other required forms must be established by each camp. These issues must be addressed by all camps, regardless of size, to provide adequate safeguards for the children which the camp has accepted responsibility. It would be inappropriate to exempt any of the youth for camps which may be considered small businesses under N.J.S.A. 52:14B-16 et seq. due to the overriding concern for public health and safety.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:25.

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

8:25-3.2 Physical examinations

(a) (No change.)

[(b) A signed statement shall be required of each parent or guardian, in advance, giving permission to the physician selected by the camp director to hospitalize, secure proper treatment for, and to order injection, anesthesia or surgery for each camper.]

[(c)] (b) Required health history records shall be on file in the camp for review by the staff of the Department.

## (a)

**PUBLIC HEALTH COUNCIL****Public Recreational Bathing  
Chapter IX, State Sanitary Code****Proposed Amendments: 8:26-1.2, 1.3, 2.10, 3.15,  
3.17, 4.3, 4.4, 5.1, 5.2, 5.3, 5.7, 5.10, 5.11, 6.4, 7.9,  
8.9, 8.10**

Authorized By: Public Health Council, Paul Jackson, Acting  
Chairperson.

Authority: N.J.S.A. 26:1A-7.

Proposal Number: PRN 1988-113.

A **public hearing** concerning this proposal will be held on:

March 30, 1988 at 10:00 A.M.  
Richard J. Hughes Justice Complex  
25 Market Street  
5th Floor, West Wing Training Room  
Trenton, New Jersey 08625

Submit comments by April 6, 1988 to:

Anthony T. Monaco, Chief  
Environmental Services  
120 South Stockton Street  
CN 364  
Trenton, New Jersey 08625

Individuals interested in making presentations at the Public Hearing should advise the Chief, Environmental Services, in writing, by March 24, 1988, to facilitate scheduling.

The agency proposal follows:

**Summary**

Chapter IX of the State Sanitary Code entitled "Public Recreational Bathing" was adopted by the Public Health Council on November 4, 1986. The Public Health Council felt it was necessary to establish state-wide uniform rules that would govern all types of recreational bathing places, to include swimming pools, hot tubs/spas, and natural waters. The rules cover definitions, approval of facilities, construction, filtration and disinfection, safety requirements, personnel, general sanitation and maintenance, water quality and analysis, and enforcement procedures.

Since the adoption of these rules, the Department of Health has been petitioned by various concerned citizens and industry representatives indicating great hardship and difficulty in complying with these standards. As a result, the Department has reviewed all the issues and concerns raised over the past year and believes that the following proposed changes are necessary.

N.J.A.C. 8:26-1.2 requires that all lake associations and condominiums comply with the provisions of the State Sanitary Code. Lack of epidemiological data prompted the Department to reevaluate this rule as it applies to lake associations and condominiums. At this time, the Department considers it appropriate to amend this rule to exclude private nonprofit lake associations and condominiums from compliance with the rule, except from reporting and posting. This change was initiated in response to issues of opposition raised by private nonprofit lake associations and condominiums regarding increased liability and financial hardship encountered with implementation of the current standards this past summer. Additional arguments were presented questioning the right to promulgate rules of this type, governing the operation of private nonprofit organizations.

N.J.A.C. 8:26-5.1(d) requires at least one lifeguard shall be on duty for 60 or less swimmers, or 2,000 square feet of surface area in use. The intent of this standard was to ensure a minimum number of lifeguards for all swimming pools. Additional lifeguards would depend on the size and configuration of the swimming pool, amount of surface area for shallow and deep water areas, emergencies, and lifeguard's ability to see bathers. Misconceptions of operators and public health officials concerning the minimum number of lifeguards required for swimming pools is a primary reason for amending this rule. This change would insure at least one lifeguard for public bathing places and that the need for additional lifeguards be defined in the aquatics supervision plan of each establishment. Additionally, hotel and motel swimming pools having a swimming area of less than 2,000 square feet may employ a competent person at least 16 years old, who is certified by the American Red Cross in basic water safety, or equivalent program. This change was prompted

by the lifeguard shortage in New Jersey and the limited usage of swimming pools in the hotel/motel industry.

N.J.A.C. 8:26-5.3(b)3 prohibits diving in five feet of water or less. The original intent of this rule was to prevent inexperienced swimmers from diving into shallow water. However, the competitive swimming coaches petitioned the Department to reevaluate this position since swimmers are trained and supervised in forward head first entry in water less than five feet. Racing dives into shallow water have been the predominate means of starting a race over the past 30 to 40 years. Also, many pools cannot facilitate structural modifications without reconstruction. Therefore, the Department is considering amending this section to allow competitive swimming events to be held in four feet of water, which is consistent with NCAA standards. The Department is not proposing any changes to this rule at this time but invites public comments on this issue to aid in the review of the competitive diving depth requirement.

N.J.A.C. 8:26-8.10 requires reporting of deaths and serious accidents to the local health official. The proposed amendment will require saves to be reported to local health departments. This data will provide the Department valuable information which will be utilized to measure the effectiveness of the current rules and to identify risks.

N.J.A.C. 8:26-2.10 has been added to inform the public of the level of supervision provided. Private nonprofit lake associations and condominiums will be required to post signs to inform the public that they are not required to comply with the State rules. If lifesaving personnel or equipment are not provided, signs shall be posted which state "Swim at your own risk." Additionally, hotels and motels which elect to staff the waterfront with a supervisor certified in basic water safety must post a sign alerting the public to the level of supervision provided.

A number of editorial and clarification changes have also been made to the existing rules.

**Social Impact**

The proposed amendments, once adopted, would eliminate, except for reporting and posting, the requirements imposed upon private nonprofit lake and condominium swimming facilities. Compliance with existing rules would be based upon the private nonprofit association's decision to voluntarily comply with State standards or guidelines established by the industry. Local health departments would be affected by this change in that their enforcement responsibilities would be reduced.

Amendments to the rules will allow for an exemption for the hotel and motel industry so that the training requirements for lifesaving personnel at poolside are reduced. The basic water safety course emphasizes personal safety. Personnel are taught how to prevent accidents and basic rescue techniques from the side of a swimming pool. For example, emphasis is placed on extending an object such as a towel or pole, or to throw a flotation device to a person in distress. This change may increase the supply of people interested in aquatics supervision because of less stringent training requirements. As staff develop on the job skills and knowledge, their interest in aquatics safety may increase their interest in the lifeguarding programs offered by the American Red Cross, YMCA, or Boy Scouts of America. Posting of signs will inform the public of the level of supervision available at the site.

**Economic Impact**

The proposed amendments will reduce costs to owners and operators of swimming facilities at private nonprofit lake associations and condominiums. Safety equipment, staffing and water quality measurements would be left to the discretion of the owners of the private associations. Also, licensing fees normally collected by local health departments to offset expenses of administering a recreational bathing regulatory program for lake associations and condominiums would not be required. The demands placed upon local health departments to inspect each lake association and condominium twice during each bathing season would be eliminated. Thus, each municipality would reduce expenses related to routine surveillance activities.

The proposed amendments will be beneficial to the owners of the hotel and motel industry. Reducing the training and supervision requirement of lifesaving personnel at poolside will reduce the cost associated with hiring staff. This may increase personnel available for aquatics safety at other public bathing facilities which will result in better compliance with State standards.

**Regulatory Flexibility Statement**

The rules apply to all recreational bathing places in New Jersey. Some of these may be considered small businesses, as defined in N.J.S.A. 52:14B-16 et seq. Amendments to the rules will allow exemptions for hotels and motels, many of which are small businesses. These exemptions

may reduce costs, as training requirements for lifesaving personnel at pools are reduced. Any other exemptions would be inappropriate, due to the need to preserve public health and safety.

The amendments require that all public and private bathing places, with the exception of individual home owners, report all deaths, serious injuries, and life saves to the local health department. Reporting of lives saved is an additional reporting requirement and will be utilized to measure effectiveness of the adopted rules.

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

## SUBCHAPTER 1. PURPOSE, SCOPE, AND DEFINITIONS

### 8:26-1.2 Scope

(a) These [regulations] **rules** shall govern all recreational bathing places in the State of New Jersey with the exception of a private bathing place as defined in N.J.A.C. 8:26-1.3[.] ; **however, all recreational bathing places, including private bathing places, except for individual and family units, shall comply with requirements in N.J.A.C. 8:26-8.10, reporting of deaths, injuries and saves, and N.J.A.C. 8:26-2.10, posting of bathing places.** The provisions of the State Sanitary Code have the force and effect of law. The provisions are enforceable by the State Department of Health, local departments of health, local police authorities, local sheriff's departments and other enforcement agencies.

(b) (No change.)

### 8:26-1.3 Definitions

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

...  
 "Private bathing place" [means a body of water, natural or modified by man used for swimming, diving, and recreational bathing by an individual, family, or living unit member(s) and their guests which shall not serve any type of cooperative housing or joint tenancy of three or more living units.] **means a body of water, natural or modified, owned and/or operated by a private nonprofit lake association, condominium or by an individual, family, or living unit member(s) and their guest(s).**  
 ...

"Save" **means any incident that requires assistance to a person in the water who is injured or in distress.**

"Swimming pool" means a watertight structure of concrete, masonry, or other approved materials, located either indoors or outdoors, used for bathing or swimming and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. A swimming pool shall mean a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee, and includes, but is not limited to, pools operated by or serving camps, clubs, churches, cities, counties, day care centers, group home facilities for six or more clients, health spas, institutions, parks, state, county and municipal agencies, schools, [subdivisions, or the cooperative living type projects of three or more living units, such as] apartments, boarding houses, [condominiums] hotels, mobile home parks, motels, recreational vehicle parks, [townhouses], and trailer parks.  
 ...

### 8:26-2.10 Posting of signs

(a) **Private bathing places shall conspicuously post a sign(s) stating: "State regulations do not require this bathing place to have lifesaving personnel or equipment. Swim at your own risk."**

(b) **Swimming pools less than 2,000 square feet located at hotels and motels which elect to use the alternative means of waterfront safety supervision as indicated in N.J.A.C. 8:26-5.1(d) shall conspicuously post a sign(s) stating: "State regulations do not require this bathing place to have advanced lifesaving personnel. Swim at your own risk."**

### 8:26-3.15 Recirculation system

(a) (No change.)

(b) A pump and motor shall be provided for circulation of the pool water. Performance of all pumps shall meet or exceed the

conditions of flow required for filtering and cleaning (if applicable) the filters against the "total dynamic head" developed by the complete system.

1.-3. (No change.)

4. All motors shall have thermal or current overload protection, either built in, or in the line starter, to provide locked [motor] **rotor** and running protection.

5. (No change.)

(c)-(g) (No change.)

### 8:26-3.17 Water slides

(a) Water slides may be permitted with special approval of the [local] health authority, provided the construction and supervision at the slide conforms to the requirements of the United States Consumer Products Safety Commission standard for swimming pool slides as published in the Federal Register, December 18, 1978, Vol. 43, No. 243.

(b) (No change.)

### 8:26-4.3 Decks: construction and design

(a) Decks shall be in conformance with the requirements for swimming pool decks and found at N.J.A.C. 8:26-3.10, and as follows:

1. (No change.)

[2. A four foot wide minimum continuous unobstructed deck, which may include the coping, shall be provided around 50 percent or more of the hot tub or spa.]

[3.]2. Decks shall be edged, radiused or otherwise relieved so as not to present exposed sharp corners.

### 8:26-4.4 Heater and temperature requirements

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

(c) An audible alarm **or an equivalent device** to warn users and management; and an automatic safety **device** to shut off heater when the temperature exceeds 104 degrees Fahrenheit (40 degrees C) shall be provided.

(d) (No change.)

### 8:26-5.1 Swimming pool supervision

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

(d) [At least one lifeguard shall be on duty for 60 or less swimmers or 2,000 square feet of surface area in use at all times when the pool is in use. Additional lifeguards shall be required depending on bather load, size and configuration of the swimming pool, amount of surface area for shallow and deep water areas, emergencies, and lifeguard's ability to see bathers.] **At least one lifeguard shall be on duty for 60 or less swimmers in the water whenever the pool is in use. Additional lifeguards shall be required depending on bather load, size and configuration of the swimming pool, amount of surface area for shallow and deep water areas, emergencies, and lifeguard's ability to see bathers. The only exception to this rule is pools located at commercial hotels and/or motels having a swimming area of less than 2000 square feet, which may employ, in lieu of lifeguard, a competent person at least 16 years old who is certified by the American Red Cross in Basic Water Safety or equivalent program.**

1. (No change.)

(e)-(i) (No change.)

### 8:26-5.2 Emergency equipment for swimming pools

(a) Swimming pools shall be provided with the following equipment, which shall be properly stored and readily accessible:

1.-3. (No change.)

4. [A full spine board, complete with ties and/or straps, that meet the design requirements of the American Red Cross or Emergency Medical Services.] **A full spine board complete with ties and/or straps shall be available at all times when a certified lifeguard is on duty. The full spine board shall meet the specifications of the Emergency Medical Services.**

5. Every swimming pool capable of accommodating 500 patrons or more shall have readily accessible a room or area designated and equipped for emergency care. A telephone, **citizen band radio, signaling devices**, or other approved means of communication shall be provided as close as possible to the lifeguard station for emergency use. Emergency numbers for the nearest rescue squad, physician,

**HEALTH**

**PROPOSALS**

ambulance, police department, hospital, clinic, or other appropriate entity shall be posted in a weather resistant display, adjacent to the telephone.

- 8:26-5.3 **Bather rules for swimming pools, wading pools, hot tubs, and spas**  
 (a) **Bather rules covering admission, bathing, and conduct of patrons shall be conspicuously posted and shall include the following:**  
 1. Any person showing evidence of **any communicable** skin disease, sore or inflamed eyes, cold, nasal or ear discharge or any communicable disease shall be refused admission.  
 2.-8. (No change.)  
 (b) (No change.)

- 8:26-5.7 **Bathing beaches**  
 (a) Swimming areas shall be maintained in a clean and safe condition, free from rocks, holes, and hidden dangers. [Any known hazard in the vicinity shall be properly safeguarded and posted.] **Any weeds or rocks which may create a bathing hazard, and cannot be reasonably removed, shall be marked or identified.**  
 (b) Each bathing beach shall be designated by means of water buoys. A neutral zone of [200] **100** feet between the bathing area and watercraft activities, such as motorboats and sailboats, shall be maintained. Each bathing beach shall establish its own policy to allow for a buffer zone based upon the size constraints of its bathing beach for human-powered, slow moving watercraft, such as rowboats and pedal-boats.  
 (c)-(d) (No change.)

- 8:26-5.10 **Diving stands and boards for bathing beaches**  
 (a) Diving stands and boards **for bathing beaches** shall conform to the bather rules as specified in N.J.A.C. 8:26-5.3 governing swimming pools.  
 (b) Fixed platforms and floats **for bathing beaches** may be permitted if constructed with a visible one foot (30.5 centimeters) air space below the platform or float. There shall be as little underwater construction as is consistent with strength and all braces and struts shall be designed to prevent entanglement or trapping of the bathers.  
 1.-2. (No change.)
- 8:26-5.11 **Waterfront restrictions for bathing beaches**  
 (a) Waterfront restrictions pertaining to swimming, boating, and safe limits for bathing, **for bathing beaches** shall be posted and include the following:
- 8:26-6.4 **Water closets and lavatories**  
 (a)-(b) (No change.)  
 (c) Fixtures shall conform to the following requirements:  
 [4. Sanitary napkin dispensers shall be installed in toilet areas for use by females.]  
 [5.]**4.** Soap dispensers for providing either liquid or powdered soap shall be provided at each lavatory. The dispenser must be of all metal or plastic type with no glass permitted in these units.  
 [6.]**5.** Only unbreakable mirrors shall be provided.
- 8:26-7.9 **Chemical water quality standards for swimming pools and wading pools**  
 (a) Free chlorine, combined chlorine, [free] bromine and pH values shall be continuously maintained within the following ranges:

	Minimum	Ideal	[Maximum]	Indoor pools	Maximum Outdoor pools
Free chlorine residual parts per million (ppm)	1.0	1.0-1.5	[2.5]	<b>2.0</b>	<b>3.0</b>
Combined chlorine (ppm)	None	None	[0.2†]	<b>0.2†</b>	<b>0.2†</b>
Bromine (ppm)	2.0	2.0-4.0	[4.0]	<b>4.0</b>	<b>4.0</b>
pH	7.2	7.4-7.6	[7.8]	<b>7.8</b>	<b>7.8</b>

†Remedial action shall be taken if combined chlorine exceeds 0.2 as it will result in reduced chlorine efficacy.

- (b)-(c) (No change.)
- 8:26-8.9 **Recordkeeping**  
 (a) Accurate and complete records on the following items shall be kept on the premises and be available upon request of the authorized agent or the health authority. Such records shall be kept for a minimum period of one year.  
 1.-7. (No change.)  
**8. Records on the number of saves which shall include the name and address of the person, the date, and a description of the occurrence.**

8:26-8.10 **Deaths and/or serious injuries**  
 All deaths, head, neck, spinal cord injuries, and any injury which renders a person unconscious shall be reported to the health authority within 24 hours of occurrence. **All saves shall be reported in writing to the health authority by November 1 of each year.** The local health authority shall report such injuries **and saves** to the State Health Department in January of each year [for the injuries of the previous year].

**APPENDIX**

The following organizations are currently recognized by the New

Jersey State Department of Health to certify the personnel and/or program required in N.J.A.C. 8:26-5.  
 First Aid Certification (No change.)  
 CPR Certification (No change.)  
 Lifesaving/Lifeguarding Certification (No change.)  
 Certified Pool Operators Certification (No change.)

**24 UNIT FIRST AID KIT CONTENTS**

- 2 Units—1 inch Adhesive Compress
- 2 Units—2 inch Bandage Compress
- 2 Units—3 inch Bandage Compress
- 2 Units—4 inch Bandage Compress
- 1 Unit—3 inches by 3 inches Plain Gauze Pads
- 2 Units—Gauze Roller Bandage
- 1 Unit—Eye Dressing Packet
- 4 Units—Plain Absorbent Gauze—1/2 square yard
- 3 Units—[Plain Absorbent Gauze—24 inches by 72 inches]  
**Plain Absorbent Gauze**
- 4 Units—Triangular Bandages
- 1 Unit—[Tourniquet—Scissors—Tweezers] **Adhesive Tape**

## DIVISION OF HEALTH PLANNING AND RESOURCE DEVELOPMENT

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

Submit comments by April 6, 1988 to:  
John A. Calabria, Chief  
New Jersey Department of Health  
Health Systems Review  
Room 604, CN 360  
Trenton, New Jersey 08625

### (a)

#### Certificate of Need: Cardiac Diagnostic Facilities Complex Electrophysiology Studies

#### Proposed Amendments: N.J.A.C. 8:33E-1.1 and 1.2

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

Proposal Number: PRN 1988-91.

The agency proposal follows:

#### Summary

N.J.A.C. 8:33E-1 applies to the provision of invasive cardiac diagnostic services in settings where cardiac surgery is not also offered. A companion subchapter, identified at N.J.A.C. 8:33E-2, establishes rules for the provision of cardiac services in cardiac surgery centers, which, by definition, offer both invasive cardiac diagnostic and surgical services.

The current rules require periodic updating, based on changes in clinical practice and Statewide utilization of existing cardiac service resources. The proposed amendments were originally included in an earlier re-adoption of these rules but were withdrawn at the request of the Statewide Health Coordinating Council for further study. Following further discussion of the concepts involved in the performance of complex electrophysiology studies (EPS), proposed standards and criteria for complex EPS procedures have been recommended for approval by the Statewide Health Coordinating Council (SHCC).

The proposed EPS amendments were published initially in the July 20, 1987 issue of the New Jersey Register (19 N.J.R. 1282) with a 60 day public comment period which ended on September 19, 1987. In addition, the Department of Health agreed to present these proposed EPS amendments before its Cardiac Services Committee prior to requesting final Health Care Administration Board action on these proposed rule amendments. While no public comments were received during the comment period, the Cardiac Services Committee has recommended several further amendments to the EPS amendments which were initially published, thereby necessitating the withdrawal of the original proposal and a second publication and comment period.

This proposal includes the retention of Department of Health policy, standards and criteria, as reflected in the existing rule, with the following proposed changes regarding the provision of "complex" electrophysiology studies (EPS):

1. Revised definition of electrophysiology study at N.J.A.C. 8:33E-1.1(a)ii to indicate that the complex variety, as defined, must be performed at cardiac surgery centers. Those EPS procedures not defined as the complex variety may be performed at any hospital-based invasive cardiac diagnostic facility that is able to satisfy the minimum utilization, training and staffing criteria and standards for invasive cardiac diagnostic services contained in this subchapter.

2. Addition of a new section at N.J.A.C. 8:33E-1.2(g), previously reserved for this purpose, which states that complex electrophysiology procedures must be performed in a hospital-based facility where cardiac surgery services are immediately available on site.

#### Social Impact

The New Jersey Cardiac Services Task Force, in its January 15, 1987 report, stated that there is "particular merit in restricting the availability of EPS services to a limited number of medical centers at this time". The Task Force based its conclusion on the fact that complex EPS is a relatively new field with indications for these complex procedures still being defined and EPS techniques still under development. In the opinion of the Task Force, limitation of complex EPS performance to those institutions and groups which may contribute to our understanding of the indications, technique, and efficacy of complex EPS would be beneficial. It was on this basis that the Task Force recommended that

complex EPS be performed in a hospital setting in which cardiac surgery is available.

The Commissioner's Cardiac Services Committee (CCSC) has subsequently recommended to the Commissioner of Health that the definition of complex EPS, as previously defined by the Cardiac Services Task Force, should be retained and that complex EPS should be confined to cardiac surgery centers for both quality and efficiency considerations. The basis for this recommendation rests with the fact that relatively few patients require these types of studies and that the latest EPS trends indicate increasing reliance on surgical intervention (for example, anti-tachycardia device implants, ablation techniques). Restriction of complex EPS to cardiac surgery centers will, therefore, reduce the need to transfer EPS patients unnecessarily from nonsurgical to surgical sites, reduce duplicative EPS, and confine EPS performance to the optimal cardiac surgical setting, where the full range of treatment modalities and cardiac disciplines are available for these patients. The CCSC is convinced that multi-disciplinary interaction of the appropriate cardiac specialties (including cardiothoracic surgery) would ensure optimal quality complex EPS services and that the current distribution of cardiac surgery centers is sufficient to meet present and future demands for these services in New Jersey.

During 1986, only three of the State's invasive cardiac diagnostic facilities performed electrophysiology studies, and these were simple as opposed to complex EPS. The Statewide EPS total of 1091 procedures in 1986 represents 4.8 percent of the total number of invasive cardiac diagnostic procedures performed during that year at the State's 23 adult cardiac diagnostic services. Of the 1091 EPS performed statewide, a total of 1069 EPS (including both simple and complex), or 98 percent, were performed in eight of the State's nine adult cardiac surgery centers, with the remaining 22 EPS procedures performed in three of the State's 13 adult invasive cardiac diagnostic facilities. As these 1986 figures indicate, virtually all EPS, regardless of their complexity, are performed within the State's cardiac surgery centers. Furthermore, while the number of EPS procedures performed in the State has increased 150 percent since 1983 (437 total EPS procedures in 1983), additional cardiac diagnostic laboratory capacity has taken place at all of the State's cardiac surgery centers including the dedication of EPS laboratories at Newark Beth Israel Medical Center and Deborah Heart and Lung Center and the recent approval of such a laboratory at Cooper Hospital/University Medical Center. In effect, there is sufficient capacity at the existing cardiac surgery centers providing complex EPS services to meet present and future demands for these services.

These proposed amendments will, therefore, differentiate between simple and complex EPS procedures, and permit the performance of simple EPS procedures at all invasive cardiac diagnostic facilities that are in compliance with the minimum standards and criteria contained in this subchapter. These proposed amendments also restrict the performance of "complex" EPS procedures to cardiac surgery centers which offer these patients a full range of medical and surgical therapeutic interventions.

#### Economic Impact

The New Jersey Cardiac Services Task Force report indicated that total costs for cardiac services, particularly with respect to physician fees, are higher in New Jersey than in surrounding states. The provision of cardiac care services is becoming increasingly competitive, emphasizing the need to promote efficiencies in the delivery of these services. These proposed rule amendments clearly differentiate between simple and complex EPS procedures in order to promote high quality EPS procedures and efficient volume levels. Since the cost of providing cardiac services is largely determined by spreading fixed costs over the number of cases performed, a cardiac service providing insufficient patient volumes represents a less than efficient use of a costly resource.

In the absence of these rules, the growth of new complex EPS services would be unrestricted. To allow this to occur would be to encourage a reduction in the utilization of existing complex EPS providers, offending quality of care considerations, and promoting significant cost inefficiencies in the provision of complex EPS services Statewide.

#### Regulatory Flexibility Statement

Since only large hospitals, having, by nature, well over 100 employees, would be capable of qualifying for a certificate of need for an invasive cardiac diagnostic service, no recordkeeping, reporting or other compliance requirements are placed upon small businesses by the proposed rules. A regulatory flexibility analysis is, therefore, not required.

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

## 8:33E-1.1 Scope

(a) The cardiac diagnostic facility specializes in the detection and diagnosis of cardiac disorders. Unlike the cardiac surgery center in which both diagnostic and therapeutic services are colocated, the cardiac diagnostic facility does not provide cardiac surgery but rather on the basis of diagnostic studies refers patients, where appropriate, to facilities offering cardiac surgery and other advanced cardiac diagnostic and treatment modalities, such as percutaneous transluminal coronary angioplasty (PTCA) and **complex** electrophysiology studies (EPS).

1. For the purposes of this subchapter the following definitions shall apply:

i. "Percutaneous transluminal coronary angioplasty" (PTCA) means the passage of a balloon-tipped catheter (thin tube) to the site of narrowing in a[n] **coronary** artery and the inflation of the balloon to reduce the obstruction.

ii. "**Complex** [E]lectrophysiology study" (EPS) [means the use of standard cardiac catheterization technique to place electrode catheters at different sites in the heart. Variations in heart rhythm (arrhythmia) are then introduced and the effects of different therapeutic agents are examined.] **means the more complex variety of electrophysiology procedure (such as ventricular or atrial tachystimulation, catheter mapping, ablation techniques, antitachycardia device implants and surgical procedures) and not the His bundle recording procedures or sinus node recovery time procedures.**

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

## 8:33E-1.2 Utilization of invasive cardiac diagnostic facilities

(a)-(f) (No change.)

(g) [(Reserved.)] **The following shall apply to invasive cardiac diagnostic facilities providing or seeking to provide complex electrophysiology studies (EPS):**

**1. Complex electrophysiology studies must be performed in a hospital-based facility where cardiac surgery services are immediately available on site.**

**(a)****Certificate of Need: Cardiac Surgery Centers  
Complex Electrophysiology Studies****Proposed Amendments: N.J.A.C. 8:33E-2.2, 2.3, and  
2.4**

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

Proposal Number: PRN 1988-92.

The agency proposal follows:

**Summary**

Cardiac surgical center rules apply to the provision of open heart cardiac surgical services in settings that also include the provision of invasive and non-invasive cardiac diagnostic and therapeutic services. A companion subchapter, identified at N.J.A.C. 8:33E-1, establishes rules for the provision of invasive cardiac diagnostic services where cardiac surgery is not offered.

The current rules require periodic updating, based on changes in clinical practice and Statewide utilization of existing cardiac service resources. The proposed amendments were originally included in an earlier re-adoption of these rules but were withdrawn, at the request of the Statewide Health Coordinating Council, for further study of the issues surrounding the provision of simple and complex electrophysiology studies. Following further discussion of the concepts involved in the performance of complex electrophysiology studies, proposed standards and criteria for complex EPS procedures have been recommended for approval by the Statewide Health Coordinating Council.

The proposed EPS amendments were published initially in the July 20, 1987 issue of the New Jersey Register (19 N.J.R. 1283) with a 60 day public comment period which concluded on September 19, 1987. In addition, the Department of Health agreed to present the published EPS amendments before its Cardiac Services Committee prior to requesting final Health Care Administration Board action on these proposed rule amendments. While no public comments were received during the comment period, the Cardiac Services Committee has recommended several

further changes to the EPS amendments which were initially published, thereby necessitating the withdrawal of the initial EPS amendments and a second publication and comment period.

This proposal includes the retention of Department of Health policy, standards and criteria, as reflected in the existing rule, with the following proposed changes regarding the provision of complex electrophysiology studies (EPS):

1. Revised definition of electrophysiology study to indicate that the complex variety, as defined, must be performed at cardiac surgery centers. Those EPS procedures not defined as the complex variety may be performed at any hospital-based invasive cardiac diagnostic facility that is in compliance with the minimum standards and criteria contained at N.J.A.C. 8:33E-1.

2. Revision of the catheterization equivalent (CE) for a repeat complex electrophysiology study from 1.5 (as recommended by the original New Jersey Cardiac Services Task Force) to 2.0 CEs (as recommended by the Commissioner's Cardiac Services Committee) to reflect a more precise average procedure time for these studies.

3. Addition of a new subsection at N.J.A.C. 8:33E-2.3(e), previously reserved for this purpose, for the establishment of minimum utilization standards for the performance of complex electrophysiology procedures (EPS). This addition also confines the provision of complex electrophysiology studies to hospital-based facilities where cardiac surgery services are immediately available on site.

4. Addition of a new subsection at N.J.A.C. 8:33E-2.4(f), previously reserved for this purpose, for the establishment of minimum professional credentials and staffing for the performance of complex electrophysiology studies (EPS).

**Social Impact**

The New Jersey Cardiac Services Task Force, in its January 15, 1987 report, stated that there is "particular merit in restricting the availability of EPS services to a limited number of medical centers at this time". The Task Force based its conclusion on the fact that complex EPS is a relatively new field with indications for complex EPS still being defined and complex EPS techniques still under development. In the opinion of the Task Force, limitation of complex EPS performance to those institutions and groups which may contribute to our understanding of the indications, technique, and efficacy of complex EPS would be beneficial. It was on this basis that the Task Force recommended that complex EPS be performed in a hospital setting in which cardiac surgery is available.

The Commissioner's Cardiac Services Committee (CCSC) has subsequently reviewed the EPS proposals and has agreed with the recommendations of the New Jersey Cardiac Services Task Force that complex EPS (including the tachystimulation variety) should only be performed in cardiac surgery centers. The basis of this recommendation rests with the fact that relatively few patients statewide require these types of studies and that the latest EPS trends indicate increasing reliance on surgical intervention (for example, antitachycardia device implants, ablation techniques). Restriction of complex EPS to cardiac surgery centers will, therefore, reduce the need to transfer EPS patients unnecessarily from non-surgical to surgical sites, reduce duplicative EPS, and confine these EPS to the optimal cardiac surgical setting, where the full-range of treatment modalities and cardiac disciplines are available for these patients.

During 1986, only four of the State's cardiac surgery centers performed complex electrophysiology studies. The majority of these procedures are performed at a single site, Newark Beth Israel Medical Center, which performed 535 of the Statewide total of 1091 simple and complex EPS procedures performed in 1986. Of the 1091 EPS performed statewide, a total of 1069 EPS (including both simple and complex), or 98 percent, were performed in cardiac surgery centers, with the remaining 22 EPS were performed in invasive cardiac diagnostic facilities. As these 1986 figures indicate, virtually all EPS, regardless of their complexity, are performed in the State's cardiac surgery centers. Furthermore, while the number of EPS procedures performed in the State has increased 150 percent since 1983 (437 total EPS procedures in 1983), additional cardiac diagnostic laboratory expansion has taken place at all of the State's adult cardiac surgery centers, including the dedication of EPS laboratories at Newark Beth Israel and Deborah Heart and Lung Center, and the recent approval of such a laboratory at Cooper Hospital/University Medical Center.

These proposed amendments will, therefore, provide standards and criteria for complex EPS procedures that do not currently exist in the cardiac rules and will also provide a means of assessing the capacity of potential new complex EPS providers to perform these procedures effectively and efficiently.

**Economic Impact**

The New Jersey Cardiac Services Task Force report indicated that total costs for cardiac services, particularly with respect to physician fees, are higher in New Jersey than in surrounding states. The provision of cardiac care services is becoming increasingly competitive, emphasizing the need to promote efficiencies in the delivery of these services. These proposed rule amendments establish minimum utilization, staffing and professional credential requirements that are designed to promote high quality complex EPS procedures and efficient volume levels for these procedures. Since the cost of providing cardiac services is largely determined by spreading fixed costs over the number of cases performed, a cardiac service providing insufficient patient volumes represents a less than efficient use of a costly resource.

In the absence of these rules, the growth of new complex EPS services would be unrestricted. To allow this to occur would be to encourage a reduction in the utilization of existing complex EPS providers, offending quality of care considerations, and promoting significant cost inefficiencies in the provision of complex EPS services Statewide.

**Regulatory Flexibility Statement**

Since only large hospitals, having, by nature, well over 100 employees, would be capable of qualifying for a certificate of need for a cardiac surgery center, no recordkeeping, reporting or other compliance requirements are placed upon small businesses by the proposed rules. A regulatory flexibility analysis is, therefore, not required.

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

## 8:33E-2.2 Definitions

(a) For the purposes of this subchapter the following definitions shall apply:

... "Percutaneous transluminal coronary angioplasty" (PTCA) means the passage of a balloon-tipped catheter (thin tube) to the site of narrowing in a[n] coronary artery and the inflation of the balloon to reduce the obstruction.

"Complex [E]lectrophysiology study" (EPS) [means the use of standard cardiac catheterization techniques to place electrode catheters at different sites in the heart. Variations in heart rhythm (arrhythmia) are then introduced and the effects of different therapeutic agents are examined.] **means the more complex variety of electrophysiology study (such as ventricular and atrial tachystimulation, catheter mapping, ablation techniques, device implants and surgical procedures) and not the His bundle recording procedures or sinus node recovery time procedures.**

## 8:33E-2.3 Utilization of cardiac surgical centers

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

(c) The following shall apply to adult cardiac diagnostic services located within the cardiac surgery center:

1. (No change.)

2. Surgical centers seeking to expand existing invasive cardiac diagnostic laboratory services must indicate conformance with all standards and criteria contained in this subchapter and document a minimum volume of 1,000 cardiac catheterization procedures or 1,000 cardiac catheterization equivalents (CEs) in the existing laboratory (or in each existing laboratory). A CE is considered to equal the average time required to perform a cardiac catheterization procedure. A percutaneous transluminal coronary angioplasty procedure will be considered as 2.5 CEs. An initial **complex** electrophysiology study will be 3.0 CEs and a repeat **complex** electrophysiology study will be [1.5] **2.0** CEs.

(d) (No change.)

(e) [(Reserved.)] **The following shall apply to adult cardiac surgery centers providing or seeking to provide complex electrophysiology studies (EPS):**

**1. An applicant for a certificate of need as a regional adult cardiac surgery center that also seeks to provide complex EPS or an existing cardiac surgery center seeking to initiate complex electrophysiology services must provide written documentation that the center will perform a minimum of 50 initial complex electrophysiology studies per year.**

**These new complex electrophysiology services must achieve this minimum utilization level within three years of service implementation.**

**2. A regional cardiac surgery center shall continue to perform a minimum of 50 initial complex EPS annually in order to assure acceptable institutional quality. Existing cardiac surgery centers providing complex EPS must comply with this utilization standard within one year of the effective date of this subchapter and maintain this standard on an annual basis thereafter.**

**3. Complex electrophysiology studies must be performed in a hospital-based facility where cardiac surgery services are immediately available on site.**

**4. Each complex EPS service should establish a minimum number of complex EPS for each physician with electrophysiology laboratory privileges. The Commissioner's Cardiac Services Committee recommends that each physician seeking to continue to perform complex EPS should participate in a minimum of 50 complex EPS per year as the primary operator, with at least 25 as initial studies.**

## 8:33E-2.4 Cardiac surgery center personnel

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

(f) [(Reserved.)] **The following shall apply to invasive cardiac diagnostic services located in cardiac surgery centers that seek to perform complex electrophysiology studies (EPS):**

**1. Each invasive cardiac diagnostic service must be minimally staffed by the following personnel during a complex electrophysiology study (EPS):**

i. **The physician directing the procedure must be a board certified cardiologist trained in routine cardiac catheterization who has obtained at least one additional year of specialized training in complex EPS and cardiac arrhythmias, including participation in 100 complex EPS procedures.**

ii. **An assisting physician must be present during complex EPS procedures.**

iii. **A registered nurse trained and experienced in advanced life support, cardiac drugs, and cardiac catheterization/EPS shall be present during the procedure.**

iv. **A technician trained and experienced in cardiac catheterization/EPS shall be present during the procedure.**

**(a)****HEALTH FACILITIES EVALUATION AND LICENSING****Long Term Care Licensing Standards****Proposed Repeal: N.J.A.C. 8:39****Proposed New Rules: N.J.A.C. 8:39**

Authorized by Molly Joel Coye, M.D., Commissioner,  
Department of Health, and the Health Care Administration  
Board.

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

Proposal Number: PRN 1988-114.

Submit comments by April 6, 1988 to:

Neil Weisfeld, Director  
Licensure Reform Project  
New Jersey State Department of Health  
CN 367  
Trenton, NJ 08625-0367

The agency proposal follows:

**Summary**

Under the authority of N.J.S.A. 26:2H-1 et seq., and specifically 26:2H-5, the Department of Health proposes new rules N.J.A.C. 8:39 to replace the existing manual of licensing standards for long-term care facilities, commonly known as nursing homes, which was adopted in 1983. This comprehensive revision was developed through a series of regulatory innovations by the Department's Licensure Reform Project which was initiated in July 1985 as part of the gubernatorial initiative to improve regulation of nursing homes.

The central idea of licensure reform is to involve the regulated community in the development of licensing standards to assure the validity of these standards. Standards are considered valid if they have a positive

effect on quality of patient care. Innovative mechanisms for involving the nursing home field included establishment of reaction groups of nursing home administrators, nursing directors, and others to review draft standards developed by an interdisciplinary team within the Department of Health.

Another more systematic mechanism of obtaining input from the field was a written opinion survey used to evaluate each proposed standard for its importance to patient care. A series of ten different forms of a survey instrument was sent to each licensed nursing home in the State, listing the draft standards as revised by the reaction groups. Respondents evaluated each proposed standard listed on their form on a five-point scale of importance to patient care. A 73 percent response rate, including more than 2,300 usable responses, was obtained.

After the survey results were tabulated and analyzed, a Nursing Home Advisory Group, consisting of selected reaction group participants as well as Department personnel, reviewed the results and made further refinements in the standards. Generally, the survey respondents rated the standards high on the scale of importance. Where different categories of respondents, such as administrators and nurses or large facilities and small facilities, disagreed on a standard, the Advisory Group attempted to rewrite the standard to accommodate the different viewpoints. Approximately 23 percent of the proposed standards included in the survey were revised or deleted because they failed to obtain high aggregate ratings in the survey.

A major innovation of licensure reform is the use in the proposed new rules of advisory standards in each area such as administration, physical environment, and nurse staffing. While mandatory standards fulfill the usual licensure role of prescribing minimally acceptable levels of performance, advisory standards constitute standards of superior achievement or excellence. Advisory standards were an integral part of the written opinion survey and the deliberations of the Advisory Group. The advisory standards are intended to:

Encourage facilities and their staffs to do more than merely meet minimal standards in providing care to patients;

Provide consumers with a more helpful report of each facility's strengths and weaknesses, so that they can use survey reports more effectively in evaluating their own or a family member's nursing home;

Make annual inspection surveys conducted by the Department of Health a more positive experience for facilities, so that the surveys do not have an unnecessarily deleterious effect on the morale of staff;

Direct attention to optimal achievements, rather than focusing exclusively on facilities' deficiencies.

Conceivably, advisory standards could be used in the future as a basis for incentive reimbursement. Through the Medicaid program, reimbursement premiums perhaps could be offered to facilities that meet advisory as well as mandatory standards, and therefore are found to provide very high quality care.

For several reasons, advisory standards may be particularly useful in the nursing home field, whether or not they prove useful for other types of facilities, such as hospitals. These reasons include:

(a) As noted above, there is a potential opportunity for incentive reimbursement for nursing homes that meet advisory standards.

(b) Consumers, including families, play a large role in placing patients in nursing homes. They need valid and reliable information in order to choose a facility wisely.

(c) Nursing homes are residences. The quality of nursing home care does not depend largely on the use of complex technologies, which may be more difficult for consumers or regulators to evaluate.

(d) Nursing home staffs are increasingly subject to vigorous inspections that result in public reports of deficiencies. Advisory standards will help provide a more balanced view of a nursing home's performance, avoid unnecessarily alarming families who read about deficiencies, and give positive feedback to staff members who strive to exceed the minimal standards.

In this Summary, the term "standards" is used to include both mandatory rules and advisory standards.

Finally, efforts were made to phrase the proposed standards in plain English, and to organize the rules in such a way that they will be as usable as possible.

The proposed standards are integrated. Advisory standards complement mandatory standards, which are not intended to stand alone. Staffing standards complement other requirements, which can be met under the proposed staffing levels. As a whole, the standards are intended to assure an adequate level of quality of nursing home care.

In diverse ways the proposed new rules are simpler than the existing standards. For example, the proposed rules do not contain detailed job

descriptions of particular types of personnel, or lengthy definition sections, or terminology that divides medical record entries into different categories such as clinical and progress notes which may be difficult to understand.

The proposed new rules also relieve facilities of certain documentation requirements, such as the need to develop discharge plans for all patients, even those who are not expected to be discharged home or to another setting of care, as required under existing N.J.A.C. 8:39-19.

Substantively, the proposed new rules also contain the following elements:

**Staffing:** Although it would be desirable for specific staffing levels, such as those for nursing, social work, patient activities and dietary staff, to be left to the discretion of the facility staff rather than prescribed in regulations, the current regulatory and reimbursement system that includes Medicaid reimbursement precludes this possibility. Generally, higher staffing levels are now proposed. These higher levels reflect the changing pattern of nursing home admissions and stays. The aging New Jersey population, the expanded use of alternatives to nursing home placement for less sick people, more rapid discharges from hospitals, and other factors combine to elevate the health care needs of New Jersey nursing home patients.

**Nurse staffing:** The proposed standards at N.J.A.C. 8:39-25.2 would increase and otherwise alter current staffing levels for nursing, which includes registered nurses (RNs), licensed practical nurses (LPNs), and nurse aides. A level of 2.5 hours per patient day is proposed, plus a supplementary list of specified daily hours for patients receiving tracheotomy care, respirator care, head trauma and related care, intravenous therapy, wound care, oxygen therapy, or nasogastric or related care services. Under the existing rules, daily nursing hours are set at 2.75 for "skilled nursing" patients, 2.5 hours for "intermediate care-A" patients, and 1.25 hours for "intermediate care-B" patients. Proposed N.J.A.C. 8:39-25.2(f) requires that at least 20 percent of the required hours of care be filled by RNs or LPNs, replacing the current requirement that the ratio of RN hours to aide hours not exceed 1:5 with LPNs given 25 percent credit toward RN hours. These changes reflect the increasing health care needs of nursing home patients and developing shortages of RNs.

**Social work staffing:** Proposed N.J.A.C. 8:39-39.4 sets forth a minimum ratio of one social worker for every 120 patients replacing the current requirement of 1:240 plus 8 hours of consultation by a social worker. This increase, recommended by a committee of the Institute of Medicine of the National Academy of Sciences and other experts, is designed to assure that patients' social needs, which are correlated with nursing home care outcomes, are more effectively met. The proposed new rule focuses on patient care staff rather than consultants.

**Patient activities staffing:** Proposed N.J.A.C. 8:39-7.4 establishes a minimum ratio of one staff member for every 53 patients (or 45 minutes of staff time per patient per week) increasing the existing ratio of 1:60. This change reflects patient needs and in particular the increasing need for one-on-one service to certain patients such as those who are confused and disoriented. The patient activities area is regarded as a particularly important area that addresses the personal needs of patients and is designed to give meaning to patients' lives.

**Dietary staffing:** Proposed N.J.A.C. 8:39-17.4(a) establishes a minimum patient-to-dietitian ratio of 1:693, which is 15 minutes of dietitian time per patient per month, to replace the existing requirement of eight hours per month per facility. Increasing numbers of patients are on therapeutic diets, and the current requirement simply appears insufficient for most facilities. This insufficiency appears especially glaring in light of the dietitian's overall responsibility for all dietary services, including assessments and frequent reassessments of all patients.

**Quality assurance:** Proposed N.J.A.C. 8:39-33 and 8:39-34 cast the Department into the forefront of agencies requiring comprehensive quality assurance (QA) in all nursing homes. QA consists of a system of methods to monitor the quality of patient care in the facility by identifying problems, estimating the magnitude of those problems, developing recommendations to address those problems, and tracking developments to determine whether followup actions are needed. A QA program that covers each area of health care services is required under the proposed standards.

With respect to QA, each facility would comply with the proposed mandatory standards by first establishing a separate QA plan designed specifically for the facility in terms of medical, nursing, patient activities, pharmaceutical, social work, dietary, and other services; and then following the plan by collecting data, identifying problems, determining the magnitude of such problems, recommending action, and conducting fol-

lowup monitoring to determine whether further action is needed. Types of data that ordinarily would be collected in a QA program are specified in N.J.A.C. 8:39-34.3. Because QA is a new requirement and a dynamic field, the Department intends to review QA standards vigorously during the first year of implementation of the standards.

**Patient rights:** A more comprehensive statement of specified patient rights is set forth at proposed N.J.A.C. 8:39-4. The proposal adds the right of patients to organize a Resident Council to serve as a forum for expressing their interests in N.J.A.C. 8:39-4.1(a)28.

**Administrator coverage:** Due to the importance of direct management in nursing homes, the proposed standards include a mandatory provision, N.J.A.C. 8:39-9.1(d), requiring the administrator of any facility with 60 or more beds to work full-time in the facility.

**Physical environment:** Proposed N.J.A.C. 8:39-31 and 8:39-32 establish specific standards for the physical environment, delineating the furnishings that must be kept in each patient room and setting other facility-wide requirements, such as control of glare from windows in the dining or multi-purpose room. Proposed N.J.A.C. 8:39-19 and 8:39-20 contain infection control standards, which now require appointment of an infection control officer charged with the responsibility of making recommendations based on surveillance and data analysis. As part of physical plant standards, proposed N.J.A.C. 8:39-41 and 8:39-42 summarize applicable life safety requirements, as set by other authorities and inspected during licensure surveys, so that users of this chapter will have a complete understanding of the requirements covered in survey reports.

Proposed N.J.A.C. 8:39-2, Licensing Procedure, retains the substance of the text of the existing rules.

All standards proposed here carry the recommendation of the Nursing Home Advisory Group mentioned in this summary, with these exceptions:

The Department modified N.J.A.C. 8:39-9.2(e)4 to include imminent dangers to a patient's life or health in the list of events that must be reported to the Department immediately.

The Department added a subsection, N.J.A.C. 8:39-25.2(h), which would require facilities to have nurse aides who have been certified through the Department's nurse aide certification program. Certification would be required only for the number of nurse aides needed to fulfill the minimum nurse aide hours per patient. The Advisory Group had recommended this as an advisory standard, but the Department has been on record as favoring mandatory certification under its recently revised certification program.

The Department added an advisory standard in N.J.A.C. 8:39-26.3(d), calling for at least two weeks' training for all nurse aides. This standard conforms with increased national attention to the perceived need for nurse aide training.

#### Social Impact

The proposed standards should have a maximum positive effect on consumer choice, which is a vital component of the market for nursing home services. The simplified format and wording of the standards, the use of advisory standards as a complement to mandatory standards, and the comprehensiveness of the proposed standards should aid nursing home staff, nursing home applicants, patients, and patients' families in selecting, monitoring, and evaluating facilities.

The quality assurance standards would aid in the early identification and prevention of problems facing nursing homes and patients. This should lead to greater confidence that major problems will not be allowed to develop without being addressed through remedial action.

Higher nurse staffing levels are expected to create employment opportunities for individuals who are not yet highly trained workforce participants but who could, with training, function effectively and productively as nurse aides.

Higher social work and patient activities staffing levels clearly would enhance patients' social opportunities.

Added emphasis on communication in the proposed standards should enable facility staff members, in conjunction with patients and families, to assure that nursing home care is enhanced through teamwork. It should further assure that nursing home placement is not an experience in isolation for older, infirm New Jerseyans.

#### Economic Impact

The written opinion survey of nursing homes that was conducted to validate the proposed standards included a cost component. Administrators were asked to evaluate the economic impact of complying with proposed standards involving changes or increases in staffing. A total of 316 licensed nursing homes was surveyed. There were responses from 231 administrators. The results of their responses include the following:

The 91 respondents who evaluated patient activities staff requirements indicated that the patient activities staff would increase by an average 2.5 percent to a cost of \$77,916 per facility, which would mean a total increase of \$591,000 for the 316 facilities.

The 86 respondents who evaluated social work staff requirements indicated that the social work staff would increase an average of 51.6 percent to \$48,467 per facility, representing a net increase of \$5,211,000 for 316 facilities.

The 85 respondents who evaluated the dietary staff estimated an average two percent decrease or \$21,641 per facility, which would represent no net increase for adoption of the proposed dietary staffing standards.

The total costs are estimated through extrapolation, assuming that the respondent facilities are generally representative of all facilities in the State. In fact, facilities responding to the social work and dietary questions included slightly higher than average numbers of rural and not-for-profit facilities. Because rural facilities may have lower staffing costs, and not-for-profit facilities may provide generous staffing levels, these effects generally should cancel each other out. For patient activities, responding facilities were generally representative of the State's nursing homes in terms of both ownership and location. Consequently, extrapolation appears justified in estimating costs for social work, dietary, and patient activities staffing standards.

The greatest economic impact would result from adoption of the proposed nurse staffing standard. Because data existed to make statewide estimates of the cost of complying with the proposed nurse staffing standards without relying on facility self-reporting, the Licensure Reform Project performed an independent assessment of the nurse staffing cost. For 226 facilities for which data were available, the Project compared 1986 year-end staffing reports for each facility with the facility's projected obligations under proposed staffing standards. The proposed standards, included in the analysis, would require each facility to provide 2.5 staff hours per patient day, plus a listing of specified additional hours for patients with any or any combination of seven particular nursing-intensive conditions, with at least 20 percent of the total staffing requirement met by RNs and/or LPNs. In the absence of more specific data which have been collected and are currently being analyzed, a figure of an average of two additional hours for each patient in a skilled nursing facility was used to estimate the number of additional hours needed for patients with any of the seven particular conditions. The figure of two hours represents a liberal assumption, because it indicates that the average SNF patient has at least two of the seven conditions.

The results of this analysis are:

(1) To meet the requirement including additional hours for patients with the particular conditions, the total estimated cost is \$6,821,000 for 226 facilities. Assuming, liberally, that these 226 facilities are representative of all 316 facilities in the State, the total estimated statewide cost is \$9,537,000.

Only 34 percent, or 70, of the 226 facilities failed at the end of 1986 to meet the proposed standard. Only two facilities failed to meet the required RN/LPN component of the standard. Nurse aide costs were estimated, liberally, at \$7.00 per hour per aide statewide.

(2) To meet the specific requirement of 2.5 hours per patient day, without adding more hours for patients with specified conditions, the total estimated cost is \$2,650,000 for 226 facilities.

Assuming that these 226 facilities are representative of all 316 facilities in the State, the total estimated statewide cost is \$3,705,000.

Only 15 percent, or 35, of the 226 facilities failed at the end of 1986 to meet the proposed standard. No facility failed to meet the required RN/LPN component of the 2.5-hour proposal. Again, nurse aide costs were estimated, liberally, at \$7.00 per hour per aide statewide.

Of the 226 facilities, only four, or 1.8 percent, failed to meet existing standards.

Based on the needs of the 316 licensed facilities at the time of the survey analysis, the total staffing increase costs for patient activities, social work, and nursing care are estimated at \$15,339,000.

However, these estimates do not include any cost reduction for facilities that exceeded the proposed nurse staffing standards in 1986. For example, 63 percent of the 226 facilities exceed the 2.5 hour requirement by more than 20 percent. This would represent a substantial reduction in the overall cost estimate.

The estimates are also liberal in that the current requirements, which the year-end reports reflect, give no credit for hours of non-clinical services provided by nurse educators, nursing supervisors, and other nurse managers. Virtually all these hours would be credited under the proposed standards.

Of the estimated cost increases, a share would be borne by the State through the Medicaid program administered by the Department of Human Services. Approximately 57 percent of all patients in New Jersey nursing homes are Medicaid recipients, for whom all staffing expenditures would be reimbursed by Medicaid. Half of all Medicaid expenditures are provided by the federal government, and half by the State program.

While the estimates set forth so far in this statement compare current actual staffing costs with proposed minimum requirements, the combined Federal-State Medicaid program provides reimbursement at only the level of minimum staffing requirements. In other words, if the minimum specifies 275 hours of nurse staffing time per day for a particular 120-bed facility, and if the facility actually provides 330 hours per day, Medicaid reimburses the facility for only 275 hours. This shifts to non-Medicaid (known as "private-pay") patients the burden of paying for above-minimum staffing levels.

Because most facilities already staff at higher than required levels, the proposed standards will impose a fiscal impact on the Medicaid program that is greater than the economic impact described so far in this state-

ment. Assuming the current distribution of SNF, ICF-A, and ICF-B patients, and assuming nurse aide costs of \$7.00 per hour, and assuming that the average SNF patient has conditions requiring an additional 1.9 hours per day of staff time based on the schedule of seven conditions, the State Medicaid program share of expenditure increases would be approximately \$12.9 million per year.

The fiscal impact on the State Medicaid program of proposed staffing increases in nursing, social work, patient activities, and dietary is summarized in Table 1.

The estimated dietary staffing increase presented in the table reflects the liberal assumptions of pay scales of \$25.00 per hour, \$200.00 per day, and \$52,000.00 per year. The estimate consists of the State share, or one-half of the difference between the cost of staffing all facilities at a 1:693 ratio and the cost of staffing each facility for eight hours per month only. Survey data indicate that most facilities actually staff their dietary service at a far higher rate than eight hours per month, but again, that is the level of Medicaid reimbursement.

Table 1. Projected Fiscal Impact on State Medicaid Expenditures of Mandated Staffing Increases

Nursing Net Increase, in Dollars	Social Work Net Increase, in Dollars	Patient Activities Increase, in Dollars	Dietary Increase, in Dollars	Total Net Increase, in Dollars	Total Net Increase, in Dollars
\$12,900,000	\$1,100,000	\$300,000	\$500,000	\$14,800,000	3.3%

In response to concerns raised by the Division of Medical Assistance in the Department of Human Services about the fiscal impact of the nursing standard, the Department of Health's Health Facilities Rate Setting Program conducted an independent analysis that confirmed the original projections.

More specifically, the Department of Human Services raised a concern that requirements for licensed nursing would increase for ICF-B patients. The Rate Setting Program's independent analysis found that "this increase was accounted for in the DOH computations". In addition, this analysis found that "the DHS computations did not consider the full credit for LPNs (as opposed to the former 25% credit) and the [consequent] reduced costs for SNF patients".

On the basis of newly available data on patients with the seven nursing conditions, the Licensure Reform Project conducted a further analysis of the proposed nursing requirement. Assuming that the seven nursing conditions are distributed evenly across all patients, both Medicaid and non-Medicaid, and assuming that Medicaid patients account for 60 percent of the State's long-term care beds, the Project found that the State's share of the nursing costs for these patients would be \$4.2 million, which is \$3.1 million less than the original projection.

Although the \$12.9 million estimate for nursing is high, the Department of Health continues to use it. One reason to use a high estimate is that nursing home patients in general are becoming "sicker", that is, they are presenting ever increasing intensity of care needs.

To reiterate, the Medicaid fiscal impact is disproportionate to the total statewide economic impact, because Medicaid provides reimbursement at only the mandated staffing levels and many facilities are staffed at higher than mandated levels. Increased reimbursement would protect patients in facilities that are staffed at only the mandated levels. The increased staffing standards would compel one-third of New Jersey's nursing homes to hire more staff.

Due to the fiscal impact of the proposed staffing standards, and competition among worthy programs for public revenues, the Department of Human Services has advised the Department of Health that the state Medicaid program would be unable to support the proposed staffing standards during the current or next fiscal year. Accordingly, subchapter 43 would delay implementation of the key nursing, social work, patient activities, and dietary staffing standards until July 1, 1989, when fiscal year 1990 will start. During the interim, the Department of Health would be mandated by the subchapter to determine, through primary research, whether these staffing standards, and especially the nurse staffing standard, are feasible and would assure high quality care. The Department of Health would be mandated further to seek Department of Human Services cooperation in this investigation. The Department of Health will propose adoption of these standards, or alternative standards which it finds through research to be superior, in time for implementation at the start of FY 90.

Until July 1, 1989, current staffing levels would remain in effect.

**Regulatory Flexibility Statement**

The proposed standards would affect some small businesses as defined in the Regulatory Flexibility Act, P.L. 1986, c.169. Among 316 nursing homes in the State, approximately 144 have 100 or fewer beds. Facilities with fewer than 100 beds are more likely than larger facilities to employ fewer than 100 people.

Most requirements in the proposed new rules must be met by all nursing homes, regardless of size, in order to protect the health of patients. In several respects, the proposal reduces current recordkeeping requirements for all facilities. For example, instead of preparing discharge plans for all patients, facilities meeting the proposed standards would have to conduct discharge planning only for patients whom it considers likely candidates for discharge to less intensive settings of care.

In addition, exemptions are proposed for facilities with 60 beds or fewer, which generally employ fewer than 100 people. Under the proposed standards, such small facilities need not provide in their physical environment: a well-lighted parking area; exit doors with sounding devices at the nurses' station or visual monitoring; a cushioned chair for each patient; or connection of emergency equipment to a generator. Nor do such small facilities need to provide as part of their rehabilitative services: speech-language pathology and audiology services; a physical therapy evaluation within 48 hours of the physician order; or physical therapy equipment including parallel bars and stairs.

The great bulk of costs of compliance with the proposed new rules is already borne by the nursing care facilities and will not increase because most proposed requirements already exist in current regulations. However, for a 60-bed facility which now employs nursing, social work, patient activities, and dietary staff at the minimal level prescribed in current rules and which has an average mix of skilled nursing facility and intermediate care facility patients, costs would rise by approximately \$8,800 annually to meet the proposed staffing requirements in these four disciplines. Costs would also rise by approximately an additional \$5,100 for every patient with certain conditions requiring a high intensity of care, although small facilities have few patients with such conditions. For Medicaid recipients, these cost increases would be reimbursed.

The increased staffing levels reflect the expanding health care needs of New Jersey nursing home patients and were developed through a licensure reform process in which these small facilities participated. For example, all facilities in the State were included in the comprehensive written survey to assess draft standards and were represented in the Advisory Group which approved all standards now proposed.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:39.

Full text of the proposed new rules follows.

CHAPTER 39  
MANUAL OF STANDARDS FOR LONG-TERM CARE

## Subchapter Contents:

1. General Provisions
2. Licensure Procedure
3. Compliance with Mandatory Rules and Advisory Standards
4. Patient Rights
- 5, 6. Access to Care
- 7, 8. Patient Activities
- 9, 10. Administration
- 11, 12. Patient Assessment and Care Plan
- 13, 14. Communication
- 15, 16. Dental Services
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- 19, 20. Infection Control and Sanitation
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- 23, 24. Medical Staff
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- 31, 32. Physical Environment
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- 35, 36. Medical Records
- 37, 38. Rehabilitation Services
- 39, 40. Social Work Services
- 41, 42. Physical Plant
43. Implementation of Staffing Requirements

## SUBCHAPTER 1. GENERAL PROVISIONS

## 8:39-1.1 Scope and purpose

This chapter contains rules and standards intended to assure the high quality of care delivered in long-term care facilities, commonly known as nursing homes, throughout New Jersey. Components of quality of care addressed by these rules and standards include access to care, continuity of care, comprehensiveness of care, coordination of services, humaneness of treatment, conservatism in intervention, safety of the environment, professionalism of caregivers, and participation in useful studies.

These rules and standards apply to each licensed long-term care facility. They are intended for use in State surveys of the facilities and any ensuing enforcement actions. They are also designed to be useful to consumers and providers as a mechanism for privately assessing the quality of care provided in any long-term care facility.

## 8:39-1.2 Definitions

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

"Bed" or "licensed bed" means, with reference to a patient, the item of furniture assigned to no more than one patient for sleeping, resting, relaxing, or otherwise used for the patient's personal comfort or convenience, and with reference to a facility, one of the total number of beds for which each licensed long-term care facility is approved for patient care by the Commissioner of the New Jersey Department of Health.

"Facility" means a facility or distinct part of a facility licensed by the New Jersey State Department of Health to provide health care under medical supervision and continuous nursing care for 24 or more consecutive hours to two or more patients who are not related to the members of the governing authority by marriage, blood, or adoption; who do not require the degree of care and treatment which a hospital provides; and who, because of their physical or mental condition, require continuous nursing care and services above the level of room and board.

"Patient" means a person who is under medical care and treatment in the facility and who is assigned a bed in the facility.

"Each service" refers to all personnel assigned managerial responsibility for the provision within the facility of medical, nursing, patient activities, pharmaceutical, social work, dietary, or, if specified, rehabilitative (including physical therapy), dental, or housekeeping (or environmental) services to patients.

## SUBCHAPTER 2. LICENSURE PROCEDURE

## 8:39-2.1 Certificate of Need

(a) According to the Health Care Facilities Planning Act, P.L. 1971, c.136 and 138, N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, or licensed to operate except upon application for and receipt of a Certificate of Need issued by the Commissioner.

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

Review and Comment Program  
Division of Health Planning and Resources Development  
New Jersey State Department of Health  
CN 360  
Trenton, NJ 08625-0360

(c) The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with the Health Care Facilities Planning Act, P.L. 1971, c.136 and 138, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

## 8:39-2.2 Application for licensure

(a) Following acquisition of a Certificate of Need, any person, organization, or corporation desiring to operate a facility shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Licensing, Certification and Standards  
Division of Health Facilities Evaluation  
New Jersey State Department of Health  
CN 367  
Trenton, NJ 08625-0367

(b) The Department shall charge a nonrefundable fee of \$500.00 plus \$3.00 per bed for the filing of an application for licensure of a long-term care facility. The Department shall also charge a nonrefundable fee of \$500.00 plus \$3.00 per bed for the annual renewal of the license.

(c) Any person, organization, or corporation considering application for license to operate a facility shall make an appointment for a preliminary conference at the Department with the Licensing, Certification and Standards Program.

(d) Any applicant denied a license to operate a facility shall have the right to a fair hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

## 8:39-2.3 Newly constructed or expanded facilities

(a) The application for a license pursuant to N.J.A.C. 8:39-2.2 for the operation of a new facility shall include written approval of final construction of the physical plant by:

Health Facilities Construction Service  
Division of Health Facilities Evaluation  
New Jersey State Department of Health  
CN 360  
Trenton, NJ 08625-0360

(b) A final on-site inspection of the construction of the physical plant shall be made by representatives of the Health Care Facilities Construction Service and the Health Facilities Inspection Program, to verify that the building has been constructed in accordance with the final architectural plans approved by the Department.

(c) Any health care facility with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Service of the Department for review and approval prior to the initiation of any work.

## 8:39-2.4 Surveys and temporary license

(a) When the written application for licensure pursuant to N.J.A.C. 8:39-2.2 is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility meets the standards set forth in this chapter.

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1. The Health Facilities Inspection Program of the Department shall notify the facility in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to occupancy.

(b) A temporary license shall be issued to the operator of a facility when the following conditions are met:

1. An office conference for review of the conditions for licensure and operation has taken place between the Licensing, Certification and Standards Program and representatives of the facility, who have been advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with the Health Care Facilities Planning Act, P.L. 1971 c.136 and 138, N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules pursuant thereto;

2. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

3. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system; and

4. Survey(s) by representatives of the Department indicate that the facility meets the mandatory standards set forth in this chapter.

(c) No health care facility shall accept patients until the facility has written approval and/or license issued by the Licensing, Certification and Standards Program of the Department.

(d) The facility shall accept only that number of patients for which it is approved and/or licensed.

(e) Survey visits shall be made to a facility at any time by authorized staff of the Department. Such visits shall include, but are not limited to, the review of all facility documents and patient records and conferences with patients.

(f) A temporary license shall be issued to the operator of a facility for a period of six months and shall be renewed as determined by the Department.

1. The temporary license shall be conspicuously posted in the facility.

2. The temporary license is not assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

**8:39-2.5 Full license**

(a) A full license shall be issued to the operator on expiration of the temporary license, if the surveys by the Department have determined that the health care facility is operated as required by the Health Care Facilities Planning Act, P.L. 1971, c.136 and 138, N.J.S.A. 26:2H-1 et seq., and amendments thereto, and by the rules pursuant thereto.

(b) A license shall be granted for a period of one year or less as determined by the Department in accordance with (a) above.

(c) The license shall be conspicuously posted in the facility.

(d) The license is not assignable or transferable and it shall be immediately void if the facility ceases to operate or if its ownership changes.

(e) The license, unless sooner suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the licensure date.

1. The facility shall receive a request for renewal fee as provided in N.J.A.C. 8:39-2.2(b) 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

2. The license may not be renewed if local regulations or any other requirements are not met.

**8:39-2.6 Surrender of license**

The facility shall obtain any required Certificate of Need and shall directly notify each patient, the patient's physician, and any guarantors of payment concerned at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of licensure. In such cases, the license shall be returned to the Licensing, Certification and Standards Program

of the Department within seven calendar days from voluntary surrender, order of revocation, expiration, or suspension of license, whichever is applicable.

**8:39-2.7 Waiver**

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of the Health Care Facilities Planning Act, P.L. 1971, c.136 and 138, N.J.S.A. 26:2H-1 et seq. and amendments thereto, and the standards in this chapter, waive sections of this chapter if, in his or her opinion, such waiver would not endanger the life, safety, or health of the patient or public.

(b) A facility seeking a waiver of the standards in this chapter shall apply in writing to the Director of the Licensing, Certification and Standards Program of the Department.

(c) A written application for waiver shall include the following:

1. The nature of the waiver requested;

2. The specific standards for which a waiver is requested;

3. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon full compliance;

4. An alternative proposal which would ensure patient safety; and

5. Documentation to support the application for waiver.

(d) The Department reserves the right to request additional information before processing an application for waiver.

**8:39-2.8 Action against licensee**

(a) Violations of this subchapter may result in action by the New Jersey State Department of Health to impose a fine, cease admissions to a facility, remove patients from a facility, revoke a license, and/or impose other lawful remedies.

(b) If the Department determines that operational or safety deficiencies exist, it may require that all admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(c) The Commissioner may order the immediate removal of patients from a facility whenever he or she determines imminent danger to any person's health or safety.

(d) This section shall apply to all facilities.

(e) Any licensee made subject to action by the Department under terms of this section shall have the right to a fair hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1-1 et seq.

**SUBCHAPTER 3. COMPLIANCE WITH MANDATORY RULES AND ADVISORY STANDARDS****8:39-3.1 Mandatory rules**

(a) Mandatory rules contain minimum and essential requirements of care provided by a facility.

(b) Failure to comply with any mandatory rule specified in this chapter shall constitute a deficiency for which the New Jersey State Department of Health may take any or all of the following measures or any other lawful remedy:

1. Action to impose a fine;

2. Cessation of all admissions;

3. Removal of patients from the facility when any person's health or safety so requires; and

4. Revocation of the license held by the facility's operator.

**8:39-3.2 Advisory standards**

(a) Advisory standards contain benchmarks of excellence or superior attainment in providing care of high quality.

(b) Facilities are strongly encouraged to use advisory standards in striving to provide the highest quality of care possible.

(c) Failure to comply with any or all advisory standards shall not constitute a deficiency or result directly or indirectly in any fine, cessation of admissions, removal of patients, or revocation of a license, imposed pursuant to action by the New Jersey State Department of Health.

(d) Compliance with advisory standards shall not be used as an indication of whether the facility is in compliance with mandatory

rules or whether a facility should be made subject to a penalty or other action to protect patients.

#### 8:39-3.3 Reporting compliance with advisory standards

(a) The New Jersey State Department of Health, Division of Health Facilities Evaluation and Licensing, shall develop a method to report facilities' individual compliance with advisory standards specified in this chapter.

(b) Reports of individual facilities' compliance with advisory standards shall be made available by the New Jersey State Department of Health to the general public for inspection beginning no earlier than six months after the adoption of this chapter and only after the Commissioner of the Department of Health orders, in writing, that such reports be issued. Prior to such issuance, such reports shall be made available only to Department of Health personnel and consultants for official purposes and, for each report, to the specific facility that the individual report covers.

### SUBCHAPTER 4. MANDATORY PATIENT RIGHTS

#### 8:39-4.1 Patient rights

(a) Each patient shall be entitled to the following rights:

1. To retain the services of a physician the patient chooses, at the patient's own expense or through a health care plan.

2. To have a physician explain to the patient, in language that the patient understands, his or her complete medical condition, the recommended treatment, and the expected results of the treatment. If this information would be detrimental to the patient's health, the explanation must be provided to his or her next of kin or guardian and documented in the patient's medical record.

3. To participate, to the fullest extent that the patient is able, in planning his or her own medical treatment and care.

4. To refuse medication and treatment after the patient has been informed, in language that the patient understands, of the possible consequences of this decision. The patient may also refuse to participate in experimental research, including the investigations of new drugs and medical devices. The patient will be included in experimental research only when he or she gives informed, written consent to such participation.

5. To be free from physical and mental abuse.

6. To be free from chemical and physical restraints, unless they are authorized by a physician for a limited period of time to protect the patient or others from injury. Under no circumstances will the patient be confined in a locked room or restrained for punishment, for the convenience of the nursing home staff, or with the use of excessive drug dosages.

7. To manage his or her own finances or to have that responsibility delegated to a family member, an assigned guardian, the nursing home administrator, or some other individual with a limited power of attorney. The patient's authorization must be in writing, and must be witnessed in writing by someone who is not affiliated with the nursing home.

8. To receive a written statement describing the services provided by the nursing home and the related charges. This statement must also include the nursing home's policies for payment of fees, deposits, and refunds. The patient must receive this statement prior to or at the time of admission, and afterward whenever there are any changes.

9. To receive a quarterly written account of all the patient's funds and itemized property that are deposited with the facility for the patient's use and safekeeping. This record must also show the amount of property in the account at the beginning and end of the accounting period, as well as a list of all deposits and withdrawals, substantiated by receipts given to the patient or his or her guardian.

10. To have daily access during specified hours to the money and property that the patient has deposited with the nursing home. The patient's guardian also has the same right of access.

11. To live in safe, decent, and clean conditions in a nursing home that does not admit more residents than it can safely accommodate while providing adequate nursing care.

12. To be treated with courtesy, consideration, and respect for the patient's dignity and individuality. The nursing home may not move the patient to a different bed or room in the facility if the relocation

is arbitrary and capricious, or detrimental to the patient's best interests.

13. To wear his or her own clothes, unless this would be unsafe or impractical. All clothes provided by the nursing home must fit properly.

14. To keep and use his or her personal property, unless this would be unsafe, impractical, or an infringement on the rights of other residents. The nursing home must take precautions to ensure that the patient's personal possessions are secure from theft, loss, and misplacement.

15. To have physical privacy. The patient must be allowed, for example, to maintain the privacy of his or her body during medical treatment and personal hygiene activities, such as bathing and using the toilet, unless the patient needs assistance for his or her own safety.

16. To have reasonable opportunities for private and intimate physical and social interaction with other people, including arrangements for privacy when the patient's spouse visits. If the patient and his or her spouse are both residents of the same nursing home, they must be given the opportunity to share a room, unless this is medically inadvisable, as documented in their records by a physician.

17. To confidential treatment of information about the patient. Information in the patient's records shall not be released to anyone outside the nursing home without the patient's approval, unless the patient transfers to another health care facility, or unless the release of the information is required by law, a third-party payment contract, or the New Jersey State Department of Health.

18. To receive and send mail in unopened envelopes, unless the patient requests otherwise. The patient also has a right to request and receive assistance in reading and writing correspondence.

19. To have private access to a telephone and to have a private telephone in his or her living quarters at the patient's own expense.

20. To stay out of bed as long as the patient desires and to be wakened for routine daily care no more than two hours before breakfast is served, unless a physician recommends otherwise and specifies the reasons in the patient's medical record.

21. To receive assistance in awakening, getting dressed, and participating in the facility's activities, unless a physician specifies reasons in the patient's medical record.

22. To meet with any visitors of the patient's choice between 8 a.m. and 8 p.m. daily. If the patient is critically ill, he or she may receive visits at any time from next of kin or a guardian, unless a physician documents that this would be harmful to the patient's health.

23. To take part in nursing home activities, and to meet with and participate in the activities of any social, religious, and community groups, as long as these activities don't disrupt the lives of other patients.

24. To leave the nursing home during the day with the approval of a physician and with the patient's whereabouts noted on a sign-out record. Arrangements may also be made with the nursing home for an absence overnight or longer.

25. To refuse to perform services for the nursing home.

26. To request visits at any time by representatives of the religion of the patient's choice and, upon the patient's request, to attend outside religious services at his or her own expense. No religious beliefs or practices may be imposed on any patient.

27. To participate in meals, recreation, and social activities without being subjected to discrimination based on age, race, religion, sex, nationality, or disability. The patient's participation may be restricted or prohibited only upon the written recommendation of his or her physician, and only with the patient's consent.

28. To organize and participate in a Resident Council that presents residents' concerns to the administrator of the facility.

29. To discharge himself or herself from the nursing home by presenting a release signed by the patient. If the patient is an adjudicated mental incompetent, the release must be signed by his or her next of kin or guardian.

30. To be transferred or discharged only for one or more of the following reasons and the reason for the transfer or discharge must be recorded in the patient's medical record:

i. In an emergency, with notification of the patient's physician and next of kin or guardian.

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ii. For medical reasons or to protect the patient's welfare or the welfare of others.

iii. For nonpayment of fees, in situations not prohibited by law.  
31. To receive written notice at least 30 days in advance when the nursing home requests the patient's transfer or discharge, except in an emergency. Written notice must also be provided to the patient's next of kin or guardian 30 days in advance.

32. To be given a written statement of all patient rights as well as any additional regulations established by the nursing home involving patient rights and responsibilities. The nursing home shall require each patient or his or her guardian to sign a copy of this document. In addition, a copy must be posted in a conspicuous, public place in the nursing home. Copies must also be given to the patient's next of kin and distributed to staff members. The nursing home is responsible for developing and implementing policies to protect patient rights.

33. To retain and exercise all the constitutional, civil, and legal rights to which the patient is entitled by law. The nursing home must encourage and help each patient to exercise these rights.

34. To voice complaints without being threatened or punished. Each patient is entitled to complain and present his or her grievances to the nursing home administrator and staff, to government agencies, and to anyone else without fear of interference, discharge, or reprisal. The nursing home is required to provide each patient and his or her next of kin or guardian with the names, addresses, and telephone numbers of the government agencies to which a patient can complain and ask questions, including the New Jersey State Department of Health and the Office of the Ombudsman for the Institutionalized Elderly. These names, addresses, and telephone numbers must also be posted in a conspicuous place near every public telephone and on all public bulletin boards in the nursing home.

(b) Each patient, patient's next of kin, and patient's guardian shall be informed of the patient rights enumerated in this subchapter, and each shall be explained to him or her. None of these rights shall be abridged or violated by the facility or any of its staff.

**SUBCHAPTER 5. MANDATORY ACCESS TO CARE****8:39-5.1 Mandatory admission policies and procedures**

(a) The facility shall make available to indigent individuals at least five percent of its beds or, if the facility is licensed for 100 or more beds, at least 10 percent of its beds. For purposes of this paragraph, an individual is "indigent" if he or she is an applicant for admission or a current resident of the facility, and if he or she would otherwise meet the eligibility requirements of Medicaid reimbursement or county or municipal financial assistance for nursing home care.

(b) The facility shall not deny a patient immediate readmission to the facility at the conclusion of a period of temporary discharge, if payment or reimbursement for the patient's care includes a period of temporary discharge. For purposes of this rule, a period of temporary discharge begins with a transfer to a hospital or other health facility and lasts 10 or fewer days.

(c) The facility, if it is a Medicaid provider whose Medicaid occupancy level is less than the statewide occupancy level, shall comply with N.J.S.A. 10:5-12.2 by not denying admission to a qualified Medicaid applicant when a bed becomes available.

(d) Whenever the facility denies admission to an applicant for admission, the facility, within 14 days of the denial, shall provide written notice to the applicant or person applying on the applicant's behalf of the denial and the reason for denial.

(e) The facility shall not deny admission to any applicant for admission (other than a person currently committed to an institution in accordance with law) based on health care needs if the applicant's health care needs are commensurate with the services provided by a licensed long-term care facility as specified in this chapter unless:

1. The facility currently treats a high proportion of patients whose diagnosed health problems clearly require more intensive care than is ordinarily provided to most long-term care patients.

2. The facility could provide health care to the applicant at an acceptable level of quality of care only by reducing the quality of care that is currently provided to other patients.

**8:39-5.2 Mandatory policies and procedures for access to care**

(a) There shall be no discrimination against any patient or group of patients based on method of payment.

(b) The facility shall meet all currently applicable conditions attached to any Certificate of Need that has been granted to it.

(c) If a facility has reason to believe, based on a patient's behavior, that the patient poses a danger to himself or herself or others, and that the facility is not capable of providing proper care to the patient, then an evaluation shall be performed by two independent physicians and a social worker to determine whether the patient is appropriately placed in that facility; locate a new placement if necessary; and initiate civil commitment procedures if no other placement can be made.

(d) The facility shall maintain a current written record of all financial arrangements with the patient, next of kin, or guardian, with copies furnished to the patient at least quarterly.

**SUBCHAPTER 6. ADVISORY ACCESS TO CARE****8:39-6.1 Advisory admission policies and procedures**

(a) The date of application should be included for each listing on any admission waiting list. When a vacancy occurs, the facility should contact the applicant with the earliest date of application and should document the contact. Such contacts should include an offer of admission, subject to the applicant's acceptance of the facility's lawful conditions of admission, if the facility is a medically appropriate setting of care for the patient.

(b) A record of each pre-admission application interview, including the disposition and stated reason if admission is denied, should be kept for one year.

(c) Before admission, the patient's physician, the facility's social worker, the facility's admissions officer (if different from the social worker), and a registered professional nurse should discuss the appropriateness of the placement.

(d) An admission waiting list should exist and should be implemented.

**SUBCHAPTER 7. MANDATORY PATIENT ACTIVITIES****8:39-7.1 Mandatory structural organization for patient activities**

The director of patient activities shall supervise all other patient activities staff and coordinate all patient activity programs.

**8:39-7.2 Mandatory policies and procedures for patient activities**

An individualized patient activities plan shall be developed and implemented to fit the patient's level of functioning, needs, and personal interests.

**8:39-7.3 Mandatory staff qualification for patient activities**

(a) The facility shall have a director of patient activities who holds at least one of the following two qualifications:

1. A baccalaureate degree from an accredited college or university with a major area of concentration in recreation, creative arts therapy, therapeutic recreation, art, art education, psychology, sociology, or occupational therapy;

2. A high school diploma and three years of experience in patient activities in a health care facility and satisfactory completion of an activities education program approved by the New Jersey State Department of Health.

**8:39-7.4 Mandatory staffing amounts and availability for patient activities**

(a) Operative July 1, 1989, at least 45 minutes of patient activities staff time per patient per week shall be devoted to patient activities. (This is an average. It is equal to one full-time equivalent patient activities staff member for every 53 patients.)

(b) Prior to July 1, 1989, patient activities staffing shall be provided pursuant to N.J.A.C. 8:39-43.3(b).

**8:39-7.5 Mandatory patient activities services**

(a) Patient activities staff shall provide a diversity of programs to maintain patients' sense of usefulness and self-respect. Included shall be activities in each of the following categories:

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1. Social (for example, parties, club meetings, picnics, and other special events);
  2. Physical (for example, exercise, sports, dancing, and swimming);
  3. Creative (for example, crafts, poetry, drama, music therapy, art therapy, and gardening);
  4. Educational and cultural (for example, discussion groups, guest speaker programs, concerts and other forms of live entertainment, and international meals);
  5. Spiritual, such as religious services;
  6. Awareness, including cognitive and sensory individual and group stimulation for confused and disoriented patients; and
  7. Community-integrating (for example; visits by community volunteers, visits by nursery school classes, exchange visits with other health care facilities, participation in senior citizen organization meetings or support group sessions, and participation in adopt-a-grandparent programs).
- (b) Patient activity programs shall take place in individual, small group, and large group settings.
- (c) Patient activities shall be scheduled for seven days each week. Religious services shall be considered patient activities for purposes of complying with this requirement.
- (d) Patients shall participate in the activities program regardless of their financial status.
- (e) At least weekly, a listing of all scheduled activities shall be posted in a conspicuous place in the facility.

8:39-7.6 Mandatory space and environment for patient activities  
 The facility shall have an activities room that is equipped with arts and crafts supplies, games, and reading materials.

**SUBCHAPTER 8. ADVISORY PATIENT ACTIVITIES**

- 8:39-8.1 Advisory policies and procedures for patient activities  
 (a) Patient activities staff should be included in routine patient care conferences.  
 (b) Participation in activities should be encouraged, and levels of patient involvement should be monitored and discussed by the patient activities staff.  
 (c) Each patient's responses to patient activities programs should be periodically assessed.
- 8:39-8.2 Advisory staff qualifications for patient activities  
 (a) The director of patient activities should possess a baccalaureate degree from an accredited college or university with a major area of concentration in therapeutic recreation or creative arts therapy.  
 (b) The director of patient activities should hold current certification from the National Certification Council for Activity Professionals.
- 8:39-8.3 Advisory staffing amounts and availability for patient activities  
 (a) At least 55 minutes of patient activities staff time per patient per week should be devoted to patient activities. (This is an average. It is equal to one full-time equivalent staff member for every 44 patients.)  
 (b) The facility should maintain an active volunteer program that includes scheduled visits held on at least a weekly basis.
- 8:39-8.4 Advisory patient services for patient activities  
 (a) Patient activity programs should be conducted during at least two evenings per week.  
 (b) Transportation should be provided for field trips for selected patients who choose to participate unless their participation would not be feasible.  
 (c) Organized outdoor recreation should be provided.  
 (d) There should be a pet therapy program for interested patients with safeguards to prevent interference in the lives of other patients, and the program should comply with guidelines for pet facilitated therapy issued by the New Jersey State Department of Health.  
 (e) A menu committee composed of patients should participate in meal planning.  
 (f) The facility should have an organized program for visits to patients by school or pre-school children.

(g) Patient activities programs should be developed and modified partly on the basis of input from patients.

**SUBCHAPTER 9. MANDATORY ADMINISTRATION**

- 8:39-9.1 Mandatory structural organization  
 (a) The facility shall inform the New Jersey State Department of Health of the ownership and management of the facility and its location, and proof of ownership shall be available at the facility.  
 1. In the case of group or corporate management of a facility, the facility shall specify:  
     i. Name and address of the firm or corporation; and,  
     ii. Names and addresses of all directors and of the firm or corporation.  
 2. Any proposed change in ownership shall conform with N.J.A.C. 8:33.  
 (b) The facility shall not be owned or operated by any person convicted of a crime relating adversely to the person's capability of owning or operating the facility.  
 (c) In a facility with more than 240 beds, in addition to the licensed administrator, there shall be a full-time administrative supervisor who is assigned the evening shift and reports directly to the licensed administrator.  
 (d) The administrator shall serve full-time in an administrative capacity within the facility in facilities with more than 240 beds. The administrator shall work full-time in the facility, although not necessarily in an administrative capacity, in facilities with between 60 and 240 beds. The administrator shall be administratively responsible for all aspects of the facility.
- 8:39-9.2 Mandatory policies and procedures for administration  
 (a) The facility shall maintain a written record of all financial arrangements with the patient, next of kin, and/or guardian. Copies of the record shall be accessible to the patient or guardian.  
 (b) The facility shall provide the patient with 30 days prior written notice of charges, expenses, or other financial liabilities that are in addition to the agreed per diem rate. The patient's prior written approval for additional charges shall not be required in the event of a health emergency that requires the patient to receive immediate special services or supplies.  
 (c) The administrator shall provide to the owner and/or governing body of the facility a copy of the licensing survey report and any additional survey-related data sent by the New Jersey State Department of Health to the administrator of the facility.  
 (d) An annual financial report or a Medicaid cost report shall be submitted to the New Jersey State Department of Health.  
 (e) The facility shall notify the New Jersey State Department of Health immediately by telephone (609) 588-7725, or (609) 392-2020 after office hours, followed within 72 hours by written confirmation of any of the following:  
     1. Interruption for three or more hours of physical plant services.  
     2. Termination of employment of the administrator or the director of nursing, and the name and qualifications of the proposed replacement.  
     3. All alleged or suspected crimes related to patients, which same have also been reported at the time of occurrence to the police department. In addition, the State Office of the Ombudsman for the Institutionalized Elderly shall be notified of any suspected patient abuse of exploitation of patients aged 60 or older, pursuant to P.L. 1983 c.43, N.J.S.A. 52:27G-7.1, and the Department of Health shall be notified for patients under the age of 60.  
     4. All fires, disasters, deaths, and imminent dangers to a patient's life or health resulting from accidents or incidents in the facility.  
 (f) When a vacancy exists in the position of administrator for 48 hours or more, the facility shall arrange for licensed administrative supervision on a consultant basis. A new licensed administrator shall be appointed within 30 days of the appointment of the consultant.  
 (g) The facility shall make all policy and procedure manuals available to patients, families, and guardians during normal business hours or by prior arrangement.  
 (h) The facility shall make available, on demand, during normal business hours and visiting hours, the results of the most recent

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annual licensure survey conducted by the New Jersey Department of Health.

**8:39-9.3 Mandatory staff qualifications**

(a) The facility shall be directed by an individual who holds a current New Jersey license as a nursing home administrator.

(b) A nursing home administrator whose license is either suspended or revoked, pursuant to N.J.S.A. 25:2H-27 and 26:2H-28 (Chapter 356, P.L. 1968) shall not be appointed or retained in the facility in any administrative, managerial, supervisory, or similar position.

(c) All personnel who require licensure or authorization in order to provide patient care shall be licensed or authorized under applicable laws and regulations of the State of New Jersey. The licenses or authorizations shall be verified by the facility.

(d) The facility shall check one or more references of each new employee to confirm suitability for employment in a health care setting.

**8:39-9.4 Staffing amounts and availability**

The administrator or an alternative designated in writing by the administrator shall be on the premises at all times to direct operations.

**SUBCHAPTER 10. ADVISORY ADMINISTRATION****8:39-10.1 Advisory policies and procedures for administration**

(a) Results of the most recent licensure survey conducted by the New Jersey State Department of Health should be available for inspection by any visitor during all visiting hours. A notice announcing the availability of those results during all visiting hours should be conspicuously posted in diverse areas of the facility.

(b) The owner and/or governing authority should establish and implement a written plan for evaluating the performance of the administrator on an annual basis in accordance with explicit criteria.

(c) Funds deposited with a facility for a particular patient's use and safekeeping should be held in an interest-bearing account, with interest accruing to the patient.

(d) Each of at least five service directors should participate in facility planning through preparation of annual budgets and annual reports, and should participate in annual budget conferences among all service directors and the administrators.

(e) No patient should be discharged between 5:00 p.m. and 8:00 a.m., except in an emergency or with the consent of the patient or family.

(f) Policies for transfer should include method of transportation, transfer forms, and copies of medical records to accompany or follow the patient, procedures for security of the patient and his or her personal effects, and timeliness of transfer. These policies should be followed.

**8:39-10.2 Advisory staff qualifications**

(a) The facility should have on duty at all times an individual certified in and competent to perform cardiopulmonary resuscitation (CPR).

(b) Credentials of all administrators, physicians, nurses, social workers, dietitians, pharmacists, patient activities personnel, and rehabilitation therapists on staff in the facility should be verified in writing.

(c) All staff members should be clean and attired in a manner that corresponds with their function.

(d) Each staff member should wear an easily readable name tag.

**8:39-10.3 Advisory staff education and training**

(a) The facility should encourage personnel involved in activities related to patient care to attend at least one education program each year by such means as fee reimbursement, compensatory time off, distribution of notices of continuing education programs, and maintenance of records of continuing education services attended.

(b) The facility should conduct a tuition aid program directed toward the career development and upward mobility of staff.

(c) The facility should be a teaching nursing home, that is, the site of an internship, externship, or residency training program for health

professionals, as part of the curriculum of an accredited or state-approved school or training program.

(d) The facility should maintain a collection of textbooks and/or recent periodicals on long-term care, geriatric care, nursing, and other disciplines that is accessible to staff.

**SUBCHAPTER 11. MANDATORY PATIENT ASSESSMENT AND CARE PLANS****8:39-11.1 Mandatory structural organization for patient care assessment and**

A registered professional nurse (RN) shall assess the nursing needs of each patient, prepare a nursing diagnosis, and approve, in writing, the patient's care plan. A licensed nurse (RN or licensed practical nurse) shall prepare a nursing care plan.

**8:39-11.2 Mandatory policies and procedures for patient assessment**

(a) A physician shall provide orders for each patient's care beginning on the day of admission.

(b) Each patient shall be examined by a physician within five days before, or 48 hours after, admission.

(c) An initial assessment and care plan shall be developed on the day of admission and include at least personal hygiene, immediate dietary needs, medications, and ambulation.

(d) The complete assessment and care plan shall be based on oral or written communication and assessments provided by nursing, dietary, patient activities, and social work staff; and when ordered by the physician, assessments shall also be provided by other health professionals. The care plan shall include specific, measurable goals, based on the patient's care needs and means of achieving each goal.

(e) The complete care plan shall be established and implementation shall begin within 14 days, and shall include, at least, rehabilitative/restorative measures, preventive intervention, and training and teaching of self-care.

(f) The assessment and care plan shall reflect the patient's medical history, the medical diagnosis, results of laboratory tests, a previous discharge summary if the patient has come from another facility, and patient information regarding smoking, substance abuse, allergies, behavioral problems, mental state, and rehabilitation potential.

(g) If a patient is discharged to a hospital and returns to the facility within 30 days of discharge, reassessment shall be conducted in those areas where the patient's needs have changed substantially. A complete reassessment shall be performed if the patient was discharged for more than 30 days.

(h) There shall be a scheduled comprehensive reassessment in each service involved in the initial assessment, plus other areas which the physician or interdisciplinary team indicates are necessary. Reassessments shall be performed according to time frames established in the previous care plan.

(i) A reassessment shall be performed in response to all substantial changes in the patient's condition, such as fractures, onset of debilitating chronic diseases, loss of a loved one, or recovery from depression.

(j) The facility shall have a written transfer agreement with one or more hospitals for emergency care and inpatient and outpatient services.

**8:39-11.3 Mandatory patient services for discharge and transfer**

(a) Discharge plans, for those patients considered to be likely candidates for discharge into the community or a less intensive care setting, shall be developed by the interdisciplinary team prior to discharge and shall reflect communication with the patient and the patient's family.

(b) The facility shall arrange for transfer of patients to other health care facilities, and to health care services provided outside the long-term care facility, in accordance with the physician's orders.

**SUBCHAPTER 12. ADVISORY PATIENT ASSESSMENT AND CARE PLAN****8:39-12.1 Structural organization**

A registered professional nurse should prepare each patient's nursing care plan.

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(a) The assessment and reassessment processes for each patient should include written or oral communication among members of an interdisciplinary team that includes, at least, nursing, medical, pharmacy, social work, patient activities, dietary, and physical or occupational therapy staff.

(b) The patient care plan should be developed at a conference held by an interdisciplinary team that includes staff under each service providing care to the patient, as well as a nurse aide and a registered professional nurse or licensed practical nurse.

(c) The facility should develop and implement guidelines for evaluating the reassessment process with respect to: frequency, comprehensiveness, accuracy, implementation, and interdisciplinary approach.

(d) Social work and patient activities assessments of each patient should avoid value judgments about the patient and should avoid value-laden descriptors of the patient.

(e) The patient activities assessment should include at least a history of the patient's lifestyle and a description of the patient's interests and the personal needs underlying those interests.

(f) The social work assessment of each patient should include:

1. An initial comprehensive social history incorporating significant events in the patient's life;
2. Circumstances of placement in the facility;
3. Evaluation of adjustment in relation to physical and mental functioning;
4. Coping patterns;
5. Changes in social situation;
6. Analysis of the family dynamics and family support; and
7. Identification of patient and family needs and social work intervention to address those needs.

(g) The intervals between reassessments of a particular patient should not exceed six months in any service which is providing care to the patient.

**8:39-12.3 Advisory patient services for outpatients**

The facility should provide and/or arrange for someone to accompany each patient during scheduled visits to outpatient services.

**SUBCHAPTER 13. MANDATORY COMMUNICATION****8:39-13.1 Mandatory communication policies and procedures**

(a) Each service shall maintain a current manual of policies and procedures for providing services.

(b) Each facility shall establish and implement a system for evaluating employees, including special procedures for evaluating new employees, as needed, and at least annually in written form.

(c) The administrative staff shall retain a written current manual of policies and procedures for the facility as a whole and for each individual service.

(d) The facility shall notify any family promptly of an emergency affecting the health or safety of a patient.

**8:39-13.2 Mandatory patient communication services**

(a) Patients and their families shall be supplied with the opportunity to participate in the development and implementation of the care plan, and their involvement shall be documented in the patient's medical record.

(b) Before or on the day of admission, patients and families shall be informed in writing about services provided by the facility, charges imposed for services at the facility, the availability of financial assistance, the rights and responsibilities of patients and families, and the role of each service on the health care team; and they shall be given a tour of patient care units in the facility.

**8:39-13.3 Mandatory staff communication qualifications**

(a) Staff shall always communicate with patients and families in a respectful way.

(b) The facility shall ensure that all staff including staff members not fluent in English are able to communicate effectively with patients and families.

**8:39-13.4 Mandatory staff education and training for communication**

(a) Each service shall conduct an orientation program for new employees of that service unless the orientation program is conducted by the administrator.

1. For purposes of complying with this requirement, "new employees" shall be defined to include all permanent and temporary patient care personnel, nurses retained through an outside agency, and persons providing services by contract.

2. The orientation program shall begin on the first day of employment.

3. The orientation program for all staff shall include orientation to the facility and the service in which the individual will be employed, at least a partial tour of the facility, a review of policies and procedures, identification of individuals to be contacted under specified circumstances, and procedures to be followed in case of emergency.

(b) Each service shall provide education or training for all employees in the service at least four times per year and in response to patient care problems, implementation of new procedures, technological developments, changes in regulatory standards, and staff member suggestions.

(c) At least one education training program each year shall be held for all employees on each of the following topics:

1. Procedures to follow in case of emergency;
2. Infection control; and
3. Patient rights.

(e) The facility shall maintain attendance lists for all education or training programs conducted in, or sponsored by, the facility.

**SUBCHAPTER 14. ADVISORY COMMUNICATION****8:39-14.1 Advisory communication structural organization**

(a) Each service should maintain a current table of organization.

(b) Each service should maintain a current set of job descriptions.

(c) The entire facility should maintain a current table of organization.

**8:39-14.2 Advisory policies and procedures for communication**

Each service should conduct periodic meetings as needed.

**8:39-14.3 Patient services**

(a) The quality assurance program should review needs and make recommendations to improve interdisciplinary communication.

(b) The facility should have one or more wellness programs open to the community, such as programs to reduce or prevent smoking, alcohol and drug abuse, elder abuse, obesity, or hypertension.

(c) Periodic discussions should be held among staff, patients, and families to discuss any problems, encourage the patient to reach his or her potential, examine the goals and expectations of different individuals, describe how questions and complaints can be presented, and review the concept of interdisciplinary care.

(d) Provision should be made for patients to retain membership, join, and/or participate in community activities. These should include organizations, community projects, holiday observances, or charitable events.

**8:39-14.4 Advisory staff education and training for communication**

(a) Prior to assuming full responsibility in his or her position, each new employee should demonstrate competence in the performance of tasks related to that position, including presentation of related educational and professional credentials.

(b) Annual education, such as training programs, orientation sessions, and floor meetings, should be held among staff in each service, including housekeeping or environmental services, to discuss ways to encourage patients to make decisions affecting their lives.

(c) The facility should establish and implement a written plan for all education and training of staff.

(d) Education and training of staff should include a program in cardiopulmonary resuscitation (CPR) which should be reviewed annually.

(e) Each service should establish and implement education or training programs for members of other services on diverse topics.

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(f) At least one education or training session per year should be held on the subject of interacting with patients in a respectful, rather than condescending, manner.

(g) Orientation of all new staff members should include education or training in patient rights.

**SUBCHAPTER 15. MANDATORY DENTAL SERVICES****8:39-15.1 Mandatory policies and procedures for dental services**

(a) Each patient's medical record shall include:

1. The results of a dental assessment performed within six months before or after admission; and

2. A description of dental care provided.

(b) Each patient's assessment and care plan shall include oral health.

(c) All patient dentures shall be labelled.

**8:39-15.2 Mandatory patient dental services**

(a) The facility shall provide or arrange for emergency dental care to relieve pain and infection.

(b) The facility shall assist interested patients in making arrangements to receive dental examinations, routine prophylaxis, and care.

(c) The facility shall ensure that arrangements are made to transport patients for routine and emergency dental care.

**SUBCHAPTER 16. ADVISORY DENTAL SERVICES****8:39-16.1 Advisory patient dental services**

(a) The facility should provide in-house dental services, including treatment and prophylactic care.

(b) The facility should follow established protocols for providing all patients with regularly scheduled routine prophylactic dental services and treatments when indicated, delivered by a dentist or a dental hygienist, except for patients whose medical records contain an explanation of why such services would not benefit the patient.

(c) All patients should receive an annual examination for oral cancer and other oral diseases.

**SUBCHAPTER 17. MANDATORY DIETARY SERVICES****8:39-17.1 Mandatory structural organization for dietary services**

(a) The dietitian shall be responsible for the direction, provision and quality of the dietary services.

(b) Menus shall be planned and scheduled by the food service director or the dietitian, and shall be approved by the dietitian at least 14 days in advance.

(c) The dietitian shall perform the dietary assessment and reassessment, which shall include examination of and communication with the patient if the patient's condition permits.

(d) Services that are provided by a food service company shall be covered by a written contract.

**8:39-17.2 Mandatory policies and procedures for dietary services**

(a) The facility shall make available a current dietary manual which shall have been approved by the medical director and the dietitian.

1. The facility shall serve diets which are consistent with the dietary manual.

(b) Food shall be prepared by cutting, chopping, grinding, or blending, to meet the needs of each patient.

(c) The facility shall post current menus with portion sizes in the food preparation area.

1. The facility shall keep menus for 30 days with any changes accurately recorded.

(d) At least 10 percent of the day's total calories shall be routinely provided by protein.

(e) The facility shall designate responsibility for observation and documentation of meals refused or missed by a patient.

(f) A dietitian shall adhere to an established system of nutritional assessment, which shall include examination of and communication with the patient if the patient's condition permits.

(g) Tube feedings shall consist of a nutritionally complete formula given in sufficient quantity to assure adequate nutrition.

(h) All meals shall be attractive when presented to patients.

(i) Meals shall be scheduled in such a way that no more than 14 hours elapse between an evening meal and breakfast the next morning and that the first meal shall not be served before 7:00 a.m. unless requested by the patient.

(j) All food service facilities shall operate with safe food handling practices in accordance with Chapter XII of the New Jersey Sanitary Code.

**8:39-17.3 Mandatory staff qualifications for dietary services**

(a) The dietitian shall possess a bachelor's degree from an accredited college or university with a major area of concentration in a nutrition-related field of study, and one year of full-time professional experience or graduate-level training in nutrition.

(b) There shall be a full-time food service director or manager who has met the requirements of a dietitian or has graduated from a New Jersey State-approved course in food service management.

**8:39-17.4 Mandatory staffing amounts and availability for dietary services**

(a) Operative July 1, 1989, the dietitian shall spend an average of at least 15 minutes per patient each month providing dietary services in the facility. (This is an average. It is equal to one full-time equivalent dietitian for every 693 patients.)

1. Prior to July 1, 1989 dietary services staffing shall be provided pursuant to N.J.A.C. 8:39-43.3(b).

(b) Dietary service personnel shall be present for a period of at least 12 hours each day.

**8:39-17.5 Mandatory patient dietary services**

(a) Each patient shall receive a diet which:

1. Corresponds to the physician's order, the dietitian's instructions, and patient's food preferences;

2. Is served in the proper consistency and at the proper temperature; and

3. Provides nutrients and calories based upon current recommended dietary allowances of the National Academy of Sciences, adjusted for the patient's age, sex, weight, physical activity, physiological function, and therapeutic needs.

(b) The facility shall provide between-meal and bedtime nourishment, and beverages shall be available at all times for each patient unless contraindicated by a physician as documented in the patient's medical record.

(c) The facility shall offer substitute foods and beverages to all patients who refuse the food served at meal times. Such substitutes shall be of equivalent nutritional value.

(d) No patient shall have to wait for assistance in eating for more than 15 minutes following delivery of a tray to the patient.

(e) The facility shall select foods and beverages, which include fresh and seasonal foods, and shall prepare menus with regard to the nutritional and therapeutic needs, cultural backgrounds, food habits, and personal preference of patients.

**SUBCHAPTER 18. ADVISORY DIETARY SERVICES****8:39-18.1 Advisory structural organization for dietary services**

(a) A registered dietitian should perform the patient dietary assessment.

(b) A registered dietitian should participate in the interdisciplinary conference to develop the patient care plan.

**8:39-18.2 Advisory staff qualifications for dietary services**

(a) The director of dietary services should be registered by the Commission on Dietetic Registration of the American Dietetic Association (R.D.).

(b) The food service director should have completed a New Jersey State-approved course in Sanitation.

**8:39-18.3 Advisory staffing amounts and availability for dietary services**

(a) Personnel in addition to nurses should regularly assist patients in eating at mealtimes.

(b) The dietitian should spend an average of at least 20 minutes per patient each month providing dietary services in the facility. (This

is an average. It is equal to one full-time equivalent dietitian for every 520 patients.)

8:39-18.4 Advisory patient dietary services

(a) There should be dietary observances for national and/or religious holidays.

(b) Fresh fruits and vegetables should be served in season on a daily basis.

(c) The facility should operate a dining room for patients with special needs who would not receive sufficient supervision in the main dining room.

(d) Patients should have access to a refrigerator or snack bar.

(e) Patients should be consulted on at least a quarterly basis about their food preferences.

(f) The facility should sponsor a guest meal program.

8:39-18.5 Supplies and equipment

The facility should provide nondisposable dishes and cutlery at all meals.

SUBCHAPTER 19. MANDATORY INFECTION CONTROL AND SANITATION

8:39-19.1 Mandatory organization for infection control and sanitation

(a) The facility shall have an infection prevention and control program conducted by an infection control committee which shall include representatives from at least administrative, nursing, medical, dietary, housekeeping or environmental services, and pharmacy staffs.

(b) Responsibility for infection surveillance shall be assigned to an employee with education and/or experience in infection control or epidemiology or shall be provided by contract. The individual who is assigned such responsibility shall be designated the infection control officer.

(c) The infection control committee shall approve and implement written policies and procedures for collection, storage, handling, and disposal of medical waste, which is defined to be any waste containing the following:

1. Liquid and solid culture media generated in the microbiological laboratory;

2. Needles, syringes, and sharps;

3. All pathology specimens, including tissues, organs, and body parts;

4. Bulk blood, blood products, and body fluids ("bulk" is defined as 20 CCs or more);

5. All waste generated from rare or unusual cases involving communicable diseases, where the New Jersey State Department of Health supplies the facility with a list, in advance, of which cases are deemed rare or unusual.

(d) If the facility's medical waste is processed by another facility, there shall be a written agreement between the facilities that stipulates the responsibilities of each facility to ensure proper and safe handling. This agreement shall be implemented.

(e) If medical waste is processed outside the facility, there shall be a written contract to ensure that processing complies with any applicable State Department of Health and State Department of Environmental Protection regulations.

8:39-19.2 Mandatory employee health policies and procedures for infection control and sanitation

(a) Each new employee shall receive, upon employment, a Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions shall be employees with documented negative Mantoux skin test results (0-9 mm. of induration) within the previous year, and employees with a documented positive Mantoux skin test result (10 or more mm. of induration) who have received appropriate medical treatment for tuberculosis.

1. If the Mantoux tuberculin skin test is negative, the test shall be repeated one to three weeks later. If the second tuberculin skin test is negative, subsequent tests shall be performed at the discretion of the facility.

2. If the first or second Mantoux skin test is positive, a chest x-ray shall be performed, and, if necessary, followed by chemoprophylaxis or therapy.

3. All Mantoux test results, including transverse diameter of induration in mm., follow-up test results and treatments, if any, shall be recorded in the employee's medical record.

(b) Employees who have signs or symptoms of a communicable disease shall not be permitted to perform functions that expose patients to risk of transmission of the disease.

(c) If a communicable disease prevents the employee from working for a period of more than three days, a physician's statement approving the employee's return shall be required prior to the employee's return to work.

(d) The facility shall develop and implement procedures for the care of employees who become ill while at work or who have a work-related accident.

8:39-19.3 Mandatory waste removal policies and procedures

(a) Blood, blood products, and body fluids other than urine that are collected in bulk (20 CCs or more) in patient care areas shall be disposed of directly into a flushing rim sink. This standard applies to the contents of suction canisters.

(b) All waste generated from rare or unusual cases involving highly communicable diseases shall be autoclaved or incinerated, where the New Jersey State Department of Health previously shall have determined which cases are deemed rare or unusual and shall have notified the facility.

(c) Medical waste that is not incinerated or disposed of as outlined in (a) or (b) above shall be sterilized by steam sterilization, or by a method approved by the New Jersey State Department of Health. Maintenance, repair, and biological monitoring of steam sterilizers used for medical waste shall be carried out in accordance with Department of Health autoclave standards for hospitals.

(d) Medical waste sterilized in a steam autoclave shall be sterilized using at least the following minimum exposure times and temperatures:

Temperatures	Spore-Kill Time
240	60 minutes
245	36 minutes
250	30 minutes
257	16 minutes
270	4 minutes

(e) Medical wastes shall be stored in a room where unauthorized persons do not have access to or contact with the waste.

(f) All reusable containers used for storage of medical waste shall be sanitized.

(g) The infection control committee shall develop and implement written policies and procedures for collection, storage, handling, and disposal of all solid waste that is not medical waste.

(h) All waste that is non-medical solid waste, including vacuainers, shall be disposed of in a sanitary landfill approved by the Department of Environmental Protection. Disposal shall be as frequent as necessary to avoid creating a nuisance.

8:39-19.4 Mandatory general policies and procedures for infection control and sanitation

(a) The facility shall comply with Federal Centers for Disease Control category 1 guidelines for initiating and implementing infection control and isolation procedures.

(b) The facility shall comply with Federal Centers for Disease Control guidelines for prevention of catheter-associated urinary tract infections, intravenous therapy-related infections, and nosocomial pneumonia.

(c) The infection control officer shall provide continuous collection and analysis of data, including determination of nosocomial infections, epidemics, clusters of infections, infections due to unusual pathogens, and any occurrence of nosocomial infection that exceeds the usual baseline levels.

(d) The infection control officer shall make recommendations for corrective actions based on surveillance and data analysis.

(e) The facility shall have a system for investigating, evaluating, and reporting the occurrence of all reportable infections and diseases

as specified in Chapter II of the State Sanitary Code (N.J.A.C. 8:57-1.1 to 8:57-1.12).

(f) The facility shall maintain listings of all patients and personnel who have reportable infections, diseases, or conditions.

(g) High-level disinfection techniques approved by the New Jersey State Department of Health shall be used for all reusable respiratory therapy equipment and instruments that touch mucous membranes.

(h) Disinfection procedures for items that come in contact with bed pans, sinks, and toilets shall conform with established protocols for cleaning and disinfection.

(i) All patients shall be provided with an opportunity to wash their hands before each meal and shall be encouraged to do so. Staff shall wash their hands before each meal and before assisting patients in eating.

(j) Personnel who have had contact with patient excretions, secretions, or blood, whether directly or indirectly, in activities such as performing a physical examination, providing catheter care, and emptying bedpans, shall wash their hands with soap and warm water for between 10 and 30 seconds immediately after such contact.

(k) Effective and safe controls shall be used to minimize and eliminate the presence of rodents, flies, roaches, and other vermin in the facility. The premises shall be kept in such condition as to prevent the breeding, harborage, or feeding of vermin. All openings to the outer air shall be effectively protected against the entrance of insects.

#### 8:39-19.5 Mandatory staff qualifications: health history and examinations

The facility shall require all employees to complete a health history and to receive an examination performed by a physician within two weeks prior to the first day of employment. The facility shall establish criteria for determining the completeness of physical examinations for employees.

#### 8:39-19.6 Mandatory staffing amounts and availability for infection control

The facility shall assign one or more individuals with responsibility for initiating isolation procedures.

#### 8:39-19.7 Mandatory space and environment for water supply

(a) The water supply used for drinking or culinary purposes shall be adequate in quantity, of a safe sanitary quality, and from a water system which shall be constructed, protected, operated, and maintained in conformance with the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. and N.J.A.C. 7:10 et seq. and local laws, ordinances, and regulations. Copies of the Safe Drinking Water Act can be obtained from the Department of Environmental Protection, Bureau of Potable Water, CN 209, Trenton, New Jersey 08625.

(b) If required by the Department of Environmental Protection, the facility shall adhere to the water sampling schedule and the chemical and biological monitoring requirements of the water supply system set by the New Jersey State Department of Environmental Protection, and records shall be maintained.

(c) There shall be no cross connections between city and well water supplies. When the facility uses well water for every day purposes, a double check valve shall be permitted if the facility has approval for such use from the water company and the New Jersey State Department of Environmental Protection.

(d) Equipment requiring water drainage, such as ice machines, shall be properly drained to a sanitary connection.

(e) Hot (90 to 110 degrees Fahrenheit) and cold running water shall be provided.

#### 8:39-19.8 Mandatory space and environment for sanitation and waste management

(a) Solid waste shall be stored in clean, solidly constructed containers with tight-fitting lids for the storage of solid wastes.

(b) Storage areas for solid waste containers shall be kept clean. Waste shall be collected from all storage areas regularly to prevent nuisances such as odors, flies, or rodents.

(c) Solid wastes not incinerated shall be disposed of in a sanitary landfill approved by the New Jersey State Department of En-

vironmental Protection with sufficient frequency to avoid creating a nuisance.

(d) There shall be no back siphonage conditions present.

(e) All food service facilities shall be maintained in conformance with Chapter XII of the New Jersey State Sanitary Code.

(f) If the facility has an incinerator, it shall operate with the necessary permits from the New Jersey State Department of Environmental Protection and shall not create a nuisance to the facility or the community.

(g) No medical waste shall be transported in such a way as to create a contamination hazard.

(h) Non-medical solid waste shall be stored within the containers provided for it outside the facility or in a separate room that is maintained in a clean and sanitary condition. Waste shall be collected from the storage room regularly to prevent nuisances such as odors, flies, or rodents, and so that the waste shall not overflow or accumulate beyond the capacity of the storage containers.

(i) Garbage compactors shall be located on an impervious pad that is graded to a drain. The drain shall be connected to the sanitary sewage disposal system.

(j) Plastic bags shall be used for solid waste removal from patient care units and supporting departments. Bags used for all solid waste removal either shall be three mils in thickness or shall have a dry load capacity of at least 40 pounds and a liquid load capacity of at least 40 pounds.

#### 8:39-19.9 Mandatory supplies and equipment for infection control and sanitation

(a) The sewage disposal system shall be maintained in good repair and operated in compliance with state and local laws, ordinances, and regulations.

(b) Water piping carrying non-potable water shall be clearly labeled.

(c) Commercial sterile supplies shall be used in accordance with manufacturers' recommendations, and before expiration dates, and packages shall be inspected to ensure integrity.

(d) Bed pan washers shall be in good working order and properly maintained.

(e) Toilet tissue and proper waste receptacles shall be provided.

(f) Suitable hand cleanser and sanitary towels or approved hand-drying machines shall be provided.

(g) Equipment and supplies used for sterilization, disinfection, and decontamination purposes shall be maintained according to manufacturers' specifications.

#### 8:39-19.10 Mandatory staff education and training for infection control and sanitation

All staff members shall be informed about the facility's infection control procedures, including personal hygiene requirements.

### SUBCHAPTER 20. ADVISORY INFECTION CONTROL AND SANITATION

#### 8:39-20.1 Advisory policies and procedures for infection control

(a) Each employee who has been tested for tuberculosis as described in N.J.A.C. 8:39-19.2 should be retested on an annual basis according to the procedures described in that section.

(b) Yearly influenza immunization should be offered to employees at no charge.

(c) Employees should undergo periodic or annual health screening.

(d) The facility should maintain records documenting contagious diseases contracted by employees during employment.

(e) Each patient should receive, upon admission to the facility, a Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions should be patients with documented negative Mantoux skin test results (0 to 9 mm. of induration) within the previous year, and patients with a documented positive Mantoux skin test result (10 or more mm. of induration) who have received appropriate medical treatment for tuberculosis.

1. If the Mantoux tuberculin skin test is negative, the test should be repeated one to three weeks later. If the second tuberculin skin test is negative, subsequent tests should be performed at the discretion of the facility.

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2. If the first or second Mantoux tuberculin skin test is positive, a chest x-ray should be performed and, if necessary, followed by chemoprophylaxis or therapy.

3. All Mantoux test results, including transverse diameter of induration in mm., as well as follow-up tests and treatment, if any, should be recorded in the patient's medical record.

**8:39-20.2 Advisory staff education and training for infection control**

At least two education or training programs on infection control should be held every year so that all staff members are fully informed about infection control requirements that apply to them.

**8:39-20.3 Advisory infection control quality assurance**

The infection control officer should perform at least monthly checks of handwashing practices throughout the facility.

**8:39-20.4 Space and environment**

Storage containers for solid waste should be kept covered.

**SUBCHAPTER 21. MANDATORY LAUNDRY AND HOUSEKEEPING SERVICES**

**8:39-21.1 Mandatory laundry policies and procedures**

(a) Soiled laundry shall be stored in a ventilated, vermin-proof, and vermin-free area, separate from other supplies, and shall be stored, sorted, rinsed, and laundered only in areas specifically designated for those purposes.

(b) All soiled laundry from patient rooms and other service units shall be stored, transported, collected, and delivered in a covered laundry bag or cart. Laundry carts shall be in good repair, kept clean, and identified for use with either clean or soiled laundry.

(c) Soiled laundry from isolation, septic surgical cases, and other critical areas of the facility shall be bagged separately and processed according to established protocols.

(d) Clean laundry shall be protected from contamination during processing, storage, and transportation within the facility.

(e) Soiled and clean laundry shall be kept separate. An established protocol shall be followed to reduce the number of bacteria in the fabrics. Equipment surfaces that come into contact with laundry shall be sanitized.

**8:39-21.2 Mandatory housekeeping policies and procedures**

(a) The facility shall have a written schedule that determines the frequency of cleaning and maintaining all equipment, structures, areas, and systems.

(b) Mattresses, mattress pads and coverings, pillows, bedsprings, and other furnishings shall be properly maintained and kept clean. They shall be thoroughly cleaned and disinfected on a regular schedule and whenever a new patient is using them.

(c) Scatter rugs shall be not permitted and floors shall be coated with slip-resistant floor finish.

**8:39-21.3 Mandatory staff qualifications for laundry and housekeeping**

(a) Facilities that contract with a commercial laundry or housekeeping service shall use quality assurance measures to ensure that the laundry-related requirements of these regulations are met.

(b) Each member of the housekeeping staff shall wear clean clothes and shall use good personal hygiene.

**8:39-21.4 Mandatory space and environment for laundry facilities**

(a) If a laundry chute system is used, it shall be maintained in good repair and cleaned, and there is no build-up of visible soil.

(b) If the facility has an in-house laundry, it shall provide a receiving, holding, and sorting area with hand-washing facilities. The walls, floors, and ceilings of the area shall be clean and in good repair. The flow of ventilating air shall be from clean to soiled areas, and ventilation shall be adequate to prevent heat and odor build-up.

(c) All equipment and environmental surfaces shall be clean to sight and touch.

**8:39-21.5 Mandatory supplies and equipment for laundry and housekeeping**

(a) The facility shall have a supply of sheets, pillow cases, draw-

sheets, towels, and washcloths that is at least three times the number of patients.

(b) The facility shall have a supply of blankets that is at least two times the number of patients.

(c) Fabric pH shall be maintained at 7.0 or below after souring when built detergents are used.

(d) There shall be a list of all cleaning and disinfecting agents used in the facility.

1. The facility's list of all cleaning and disinfecting agents used shall be maintained with an accompanying list of corresponding antidotes.

(e) All cleaning and disinfecting agents shall be correctly labeled as to the product and its use, including agents that have been re-packaged from a bulk source.

(f) Housekeeping and cleaning supplies shall be selected, measured, and used correctly and in accordance with manufacturers' instructions.

(g) When not in use, cleaning and disinfecting agents shall be stored separate from other supplies and shall be inaccessible to patients.

(h) All toilets and bathrooms shall be kept clean to sight and touch, in good repair, and free of odors that reflect poor housekeeping practices.

**8:39-21.6 Quality assurance**

If the facility has an in-house laundry service, the service shall be evaluated as part of the quality assurance program. This evaluation shall include sour testing to ensure neutralization of alkaline residues from built detergents on at least a monthly basis.

**SUBCHAPTER 22. ADVISORY LAUNDRY AND HOUSEKEEPING SERVICES**

**8:39-22.1 Advisory housekeeping space and environment**

Surfaces throughout the facility should be polished and free of smudges and dust.

**SUBCHAPTER 23. MANDATORY MEDICAL SERVICES**

**8:39-23.1 Mandatory structural organization for medical services**

(a) The facility shall have a medical director who is currently licensed to practice medicine by the New Jersey State Board of Medical Examiners.

1. The medical director shall coordinate medical care and direct the administrative aspects of medical care in the facility.

2. The medical director shall approve all medical care policies and procedures. These policies and procedures shall be followed.

3. The medical director shall participate in the facility's quality assurance program through meetings, interviews, and/or preparation or review of reports.

4. The medical director shall be an active participant on the facility's infection control committee, pharmacy and therapeutics committee, and a committee that is responsible for developing policies and procedures for patient care.

(b) A physician shall visit each patient at least every 30 days unless the medical record contains an explicit justification for not doing so.

**8:39-23.2 Mandatory policies and procedures for medical services**

(a) The medical director shall ensure that for each patient there is a designated primary and an alternate physician who can be contacted when necessary.

(b) Each physician order shall be properly entered into the patient's medical record and shall be executed by the nursing, dietary, social work, activities, rehabilitation or pharmacy service. If a physician's order is not executed, the record shall contain an explanation, and the physician shall be notified within 24 hours or as specified by the physician.

(c) Each patient's medical director or attending physician shall review the patient's medical record on a scheduled basis to ensure that care plans and medical orders are properly followed.

(d) The medical director shall review all incident reports.

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(e) The medical director, or physicians designated by the medical director, shall respond quickly and effectively to medical emergencies which are not handled by another attending physician.

**SUBCHAPTER 24. ADVISORY MEDICAL SERVICES****8:39-24.1 Advisory structural organization for medical services**

(a) A nurse practitioner or nurse gerontologist should be on the staff to take histories, to perform physical examinations, and to provide consultation to other staff members.

(b) If the facility has one or more renal dialysis patients, arrangements should be made for periodic visits by a qualified nephrologist.

**8:39-24.2 Advisory medical staff qualifications**

The medical director should be board-certified in a primary care specialty, such as family medicine or general internal medicine.

**8:39-24.3 Advisory patient medical services**

(a) The facility should arrange for physician visits in the facility on a scheduled appointment basis in an office provided for that purpose and with a nurse present.

(b) A physician should visit each patient at least once every 30 days.

(c) The facility should maintain a list of consultant physicians who are available for referrals made by the attending physician.

(d) Current physician fee schedules for medical staff members should be maintained and made available to patients and families.

**SUBCHAPTER 25. MANDATORY NURSE STAFFING****8:39-25.1 Mandatory policies and procedures for nurse staffing**

(a) There shall be a full-time director of nursing or nursing administrator who is a registered professional nurse licensed in the State of New Jersey, who has at least two years of supervisory experience in providing care to long-term care patients, and who supervises all nursing personnel.

(b) When the director of nursing is not present, there shall be a registered professional nurse or a licensed practical nurse on duty who shall be designated in writing as an alternate to the director of nursing, temporarily responsible for supervising all nursing personnel.

**8:39-25.2 Mandatory nurse staffing amounts and availability**

(a) The facility shall provide nursing services and licensed nursing personnel at all times.

(b) Operative July 1, 1989, registered professional nurses, licensed practical nurses, and nurse aides shall spend the following amounts of time on professional duties (excluding the administrative time of the director of nursing, and in facilities with more than 150 beds):

- Total number of patients multiplied by 2.5 hours/day; plus
- Total number of patients receiving each service listed below, multiplied by the corresponding number of hours per day:

Tracheostomy	1.25 hours/day
Use of respirator	1.25 hours/day
Head trauma stimulation/ advanced neuromuscular/ orthopedic care	1.50 hours/day
Intravenous therapy	1.50 hours/day
Wound care	0.75 hour/day
Oxygen therapy	0.75 hour/day
Nasogastric tube feedings and/or gastrostomy	1.00 hour/day

3. Prior to July 1, 1989, nurse staffing shall be provided pursuant to N.J.A.C. 8:39-43.3(a).

(c) In facilities with 150 licensed beds or more, there shall be an assistant director of nursing who is a registered professional nurse.

(d) There shall be visual observation by a member of the nursing staff of each patient at least once per hour.

(e) A registered professional nurse shall be on duty at all times in facilities with more than 150 licensed beds and in facilities with specialized units that have been approved as such by the New Jersey State Department of Health.

(f) At least 20 percent of the hours of care required by (b) above shall be provided by individuals who are either registered professional nurses or licensed practical nurses.

(g) Medications shall be administered by authorized personnel in accordance with State and Federal laws and regulations.

(h) The nurse aide component of the facility's total hourly nurse staffing requirement, as specified in (b) above, shall be met by nurse aides who have obtained certification in a nurse aide certification program approved by the New Jersey State Department of Health.

**8:39-25.3 Mandatory nursing staff qualifications**

(a) There shall be at least one registered professional nurse on duty in the facility during all day shifts.

(b) There shall be at least one registered professional nurse on duty or on call during all evening and night shifts.

**8:39-25.4 Mandatory nursing staff education and training**

A program shall be established and implemented for individualized orientation of nurse aides, including patient care problem simulations, training and demonstrations in basic nursing skills, and an internship of two to five days, depending on experience.

**SUBCHAPTER 26. ADVISORY NURSE STAFFING****8:39-26.1 Advisory structural organization for nurse staffing**

(a) Facilities with more than 200 licensed beds should employ at least one full-time equivalent staff educator.

(b) Facilities with between 100 and 200 licensed beds should employ at least a half-time staff educator.

(c) Facilities with fewer than 100 licensed beds should employ a staff educator at least one-fifth time.

**8:39-26.2 Advisory policies and procedures for nurse staffing**

(a) The facility should establish and implement a system for assigning nursing personnel to patients on the basis of a classification system involving patient acuity.

(b) The facility should use a primary nurse aide system under which each patient, except for those patients meeting specified written criteria for exceptions, is assigned a specific nurse aide. These assignments should be permanent or rotated no more frequently than once per week.

**8:39-26.3 Advisory nurse staffing amounts and availability**

(a) A registered professional nurse should be on duty at all times in facilities with fewer than 150 licensed beds.

(b) The facility should provide direct nursing services pursuant to N.J.A.C. 8:39-25.2(b) of this chapter and should be increased by at least ten percent.

(c) At least 50 minutes per patient per day of patient care should be provided by licensed nurses, that is, registered professional nurses and licensed practical nurses. (This is an average. It is equal to one full-time equivalent nurse for every ten patients.)

(d) All nurse aides working in the facility should have completed a relevant training and orientation program of at least two weeks' full-time duration prior to their deployment in the facility.

(e) Each patient care unit in the facility should meet the nurse staffing requirements mandated in N.J.A.C. 8:39-25.2(b) of this chapter.

**SUBCHAPTER 27. MANDATORY PATIENT CARE****8:39-27.1 Mandatory restraint policies and procedures**

(a) Physical restraints shall not injure or discomfort the patient, and opportunity for motion and exercise shall be provided for at least ten minutes during each two-hour period that the restraint is in use.

(b) The family shall be notified when a physician initiates an order that the patient will be physically restrained.

(c) Restraints shall not be used for punishment or for the convenience of the facility or staff.

**8:39-27.2 Mandatory post-mortem policies and procedures**

(a) Deceased patients shall be removed in a timely fashion from rooms where other patients are staying.

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(b) Deceased patients shall receive post-mortem care, including cleaning and shrouding in conformance with each patient's religious practices. Prostheses shall accompany the body out of the facility.

(c) The next of kin or guardian shall be notified at the time of a patient's death. The deceased shall not be discharged from the facility until pronounced dead with the death documented in the patient's medical record.

(d) The body of a deceased patient who, at the time of death, had a communicable disease such as tuberculosis, as defined in N.J.A.C. 8:57-1.2, or AIDS shall be tagged accordingly before being released from the facility.

**8:39-27.3 Mandatory policies and procedures for patient care**

(a) All patient care policies shall be written and developed by a patient care committee and shall be available to physicians, staff, patients, their relatives or guardians, and the public.

(b) Patients under 18 years of age shall only be admitted to an area within the facility that has been approved for such occupancy by the New Jersey State Department of Health.

(c) Elderly, incompetent nursing home patients shall have the right to refuse life-sustaining medical treatment under certain circumstances as determined by surrogate decision makers acting according to judicial guidelines following an investigation by the Office of the Ombudsman for the Institutionalized Elderly. A lawful failure to force-feed, feed intravenously, feed through a nasogastric or gastroscopy tube, administer medication, attach to an artificial respirator, or medically treat any patient, out of respect for his or her right to die with dignity, shall not violate any requirement of this chapter notwithstanding any other provision herein.

(d) Patients shall be weighed accurately every month. Whenever there is a gain or loss of five or more pounds, a note shall be entered into the medical record stating whether the care plan should be modified.

(e) Nonambulatory patients shall be repositioned at least once every two hours.

(f) The facility shall take preventive measures against the development of decubitus ulcers, including assessing the patient's skin daily and minimizing friction and pressure against clothing and bed linens.

(g) Decubitus ulcers shall be identified, documented, and treated by:

1. Following physician orders;
2. Frequent repositioning in good body alignment;
3. Hand-washing to prevent transmission of infection; and
4. Proper cushioning techniques.

(h) The facility shall conduct a bladder and bowel retraining program for selected patients on a 24-hour basis with results documented.

(i) Precautions shall be taken to prevent complications resulting from the use of nasogastric or gastrostomy tube feedings.

**8:39-27.4 Mandatory staffing amounts and availability for patient care**

For each meal, the facility shall assign staff on the basis of patient needs to help patients who require assistance in eating.

**8:39-27.5 Mandatory patient services for personal care**

(a) Effective and safe measures shall be taken to ensure that patients do not harbor parasitic insects.

(b) Effective and safe measures shall be taken to ensure that patients are not malodorous.

(c) Any dehydrated patient shall be accurately evaluated and effectively treated.

(d) Oral hygiene care of the patient shall be performed by staff or the patient on a daily basis.

(e) The patient's hair and nails shall be groomed.

(f) Each patient shall be kept clean and dry.

(g) Each patient shall receive at least one bath (tub or shower) per week unless contraindicated, and all baths shall be documented.

(h) Each patient's bed shall be made daily. Clean linen shall be provided for each patient at least once a week or whenever linens are soiled or wet.

(i) Each patient shall have access to fresh drinking water or juice at all times unless contraindicated.

(j) Non-bedfast patients shall be provided with the means for leaving and returning to their beds and rooms each morning and afternoon.

(k) Patients shall be assisted in performing either passive or active range-of-motion exercises every day, unless their level of physical activity makes this unnecessary.

(l) Toileting needs of all patients shall be met.

(m) Measures to prevent contractures shall be used, and contractures shall be identified, documented, and managed by rehabilitative nursing and physical therapy.

(n) Indwelling catheters shall not be used for the convenience of staff.

**8:39-27.6 Mandatory general patient services**

(a) The facility shall post and maintain visiting hours from 8:00 a.m. to 8:00 p.m. daily.

1. If the patient is critically ill, he or she shall be allowed visits from next of kin and/or sponsor and/or guardian at any time, unless there is a medical contraindication documented by a physician and noted in the patient's medical record.

2. Members of the clergy shall be contacted by the facility and shall be admitted at any time at the request of the patient or, unless overruled by the patient, at the request of the patient's next of kin or guardian.

3. Access to privacy shall be afforded for visits with family, friends, clergy, social workers, and counsel, as well as for professional or business purposes.

(b) Patients shall be afforded the opportunity to eat in a group setting unless contraindicated with the reasons noted in the patient's medical record. The need for feeding assistance shall not constitute an acceptable contraindication.

(c) The facility shall enable eligible patients to vote in public elections.

(d) Clothing, including undergarments and footwear, shall be seasonal, well-fitting, clean, comfortable, and personally assigned to each patient, and shall reflect personal preference.

(e) Patients shall be encouraged and helped to select the clothing they will wear each day.

(f) Transportation of the deceased within and from the facility shall be conducted in a dignified manner.

(g) Personal effects and financial accounts of deceased patients shall be safeguarded.

**8:39-27.7 Mandatory space and environment for access to privacy**

Each patient shall have access to privacy for some period every day.

**8:39-27.8 Mandatory supplies and equipment for patient care**

(a) Prostheses, including eyeglasses, dentures, and hearing aids shall be functional, available, and individualized, unless the patient specifically rejects their use.

(b) All drinking water containers shall be washed daily and sanitized weekly. Containers that cannot be sanitized shall be discarded.

(c) Self-help feeding devices shall be available to patients who can benefit from their use.

(d) The facility shall maintain at least one bag-valve-mask resuscitator.

(e) Bath thermometers or other temperature controls shall be used to monitor the temperatures of each bath.

(f) Locked restraints, double restraints on the same body part, sheet restraints, four-point restraints, and confinement in a locked or barricaded room shall not be permitted.

**SUBCHAPTER 28. ADVISORY PATIENT CARE****8:39-28.1 Advisory policies and procedures for patient care**

(a) All nursing staff members should wear uniforms.

(b) The facility should conduct scheduled interdisciplinary staff discussions, and discussions with patients and families, about the right of patients to die with dignity.

(c) The facility should maintain a bath book.

## 8:39-28.2 Advisory patient care services

(a) There should be patient programs provided on at least a quarterly basis, open to families, for the maintenance of physical and mental well-being, the prevention of deterioration, and the teaching of self-care.

(b) Patients should be afforded privacy for conjugal visits.

## SUBCHAPTER 29. MANDATORY PHARMACY

## 8:39-29.1 Mandatory pharmacy structural organization

(a) A licensed pharmacist shall serve as director of pharmaceutical services or as consultant pharmacist.

(b) The facility shall have a multidisciplinary pharmacy and therapeutics committee, appointed by and reporting to the administrator and consisting of, at least: the medical director; the administrator; a representative of the nursing staff; and the director of pharmaceutical services. If pharmaceutical services are provided by contract, the consultant pharmacist, if one is appointed, and either the provider pharmacist or a representative of the pharmacy shall serve on the committee.

1. The committee shall hold scheduled meetings at least quarterly and shall maintain minutes that include the dates of meetings, attendance, activities, findings, and recommendations.

(c) If the facility keeps emergency injectable controlled substances, a current Drug Enforcement Administration and Controlled Dangerous Substance license for that location shall be available.

## 8:39-29.2 Mandatory drug administration policies and procedures

(a) The pharmacy and therapeutics committee shall establish and enforce procedures for documenting drug administrations in accordance with law.

(b) Medications shall be released to patients at discharge only upon written authorization of the prescriber.

(c) Patients shall be accurately identified as the intended recipients before any drug is administered.

(d) Self-administration of drugs shall be permitted only as specified by the recommendations of the pharmacy and therapeutics committee.

(e) Medications shall be accurately administered by properly authorized individuals to the right patient in the right amount through the right route at the right time.

## 8:39-29.3 Mandatory pharmacy reporting policies and procedures

(a) The director of pharmaceutical services or consultant pharmacist shall enter monthly notes or comments in the medical record of every patient receiving medication, on a pharmacist consultation sheet, or another portion of the medical record.

(b) Drug product defects and drug withholding occurrences shall be reported in accordance with the ASHP-USP-FDA (American Society of Hospital Pharmacists, United States Pharmacopoeia, Food and Drug Administration) Drug Product Defect Reporting System.

(c) Drug allergies shall be documented in the patient's medical record and on its outside front cover.

(d) Drugs that are not specifically limited as to duration or use or number of doses shall be controlled by automatic stop orders. The patient's attending physician shall be notified of the automatic stop order prior to the last dose so that he or she may decide whether to continue use of the drug.

(e) If medication is withheld, the reason for withholding the medication shall be documented in the patient's medical record.

(f) Medication errors and adverse drug reactions shall be reported immediately to the director of nursing or the alternate to the director of nursing, and a description of the error or adverse drug reaction shall be entered into the medical record before the end of the employee shift.

## 8:39-29.4 Mandatory pharmacy control policies and procedures

(a) The label of each patient's individual medication container shall be permanently affixed and contain the patient's full name, physician's name, prescription number, name and strength of drug, lot number, date of issue, expiration date, manufacturer's name if generic, and cautionary and/or accessory labels. If a generic

substitute is used, the drug shall be labeled according to the Drug Utilization Review Council Formulary, N.J.S.A. 24:6E-1 et seq.

(b) If the facility uses and contracts with a provider pharmacy, only over-the-counter medications shall be kept as stock. Stock over-the-counter medications shall be approved by the pharmacy and therapeutics committee and labeled to include drug name, drug strength, manufacturer's name, lot number, expiration date, recommended dosage, and applicable cautionary and/or accessory labels.

(c) The director of pharmaceutical services or consultant pharmacist shall make monthly inspections of all areas in the facility where medications are dispensed, administered, or stored, shall document any problems and shall propose solutions to these problems.

(d) The contents of emergency kits shall be approved by the pharmacy and therapeutics committee. Emergency kits shall be stored at each nursing unit, checked after each use, and checked at least monthly by the director of pharmaceutical services or the consultant pharmacist. Emergency kits shall not be accessible to patients but shall be accessible to staff.

(e) All medications repackaged by the pharmacy shall be labeled with an expiration date.

(f) The pharmacy and therapeutics committee shall establish and enforce procedures for removal of discontinued, unused, expired, recalled, deteriorated, and unlabelled drugs and intravenous solutions and for removal of containers of medications with worn, illegible, damaged, incomplete, or missing labels.

(g) All medications shall be stored in accordance with manufacturers' requirements.

(h) The pharmacist consultant or director of pharmaceutical services and a registered professional nurse shall witness all drug destruction in the facility.

(i) The pharmacy and therapeutics committee shall establish and enforce procedures for the inventory of controlled substances in accordance with law.

(j) The facility shall implement written methods and procedures for obtaining prescribed medications and biologicals from a pharmacy licensed by the New Jersey State Board of Pharmacy. The telephone number of pharmacy procedures for obtaining drugs shall be posted at each nursing unit.

## 8:39-29.5 Mandatory pharmacy staff qualifications

If the facility maintains a pharmacy in-house, the pharmacy shall be licensed by the New Jersey State Board of Pharmacy, and shall possess a current Drug Enforcement Administration registration and a Controlled Dangerous Substance registration from the New Jersey State Department of Health.

## 8:39-29.6 Mandatory patient pharmacy services

The facility shall provide pharmaceutical services, either directly or by contract with a provider pharmacy, 24 hours a day, seven days a week.

## 8:39-29.7 Mandatory pharmacy supplies and equipment

(a) Medication containers shall be handled properly to prevent damage, injury, and harm.

(b) Needles and syringes shall be stored, used, and disposed of in accordance with New Jersey State law, and a record shall be maintained of the purchase, storage, and disposal of needles and syringes.

(c) Controlled substances shall be stored, and records shall be maintained, in accordance with the Controlled Dangerous Substances Act and all other Federal and State laws and regulations concerning procurement, storage, dispensation, administration, and disposition. Controlled substances shall be stored separately from all other substances except in a unit dose drug distribution system.

(d) All medications shall be kept in locked storage areas, and medications shall be refrigerated, if required, in conformance with U.S.P. (United States Pharmacopoeia) requirements.

(e) Pharmaceutical reference materials and other information sources about drugs, including investigational drugs, if used, shall be approved by the pharmacy and therapeutics committee. These reference materials, along with antidote information, and the telephone number of the regional poison control center, shall be available in the pharmacy and/or each nursing unit.

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The pharmacy and therapeutics committee shall review medication errors and adverse drug reactions.

**SUBCHAPTER 30. ADVISORY PHARMACY****8:39-30.1 Advisory pharmacy structural organization**

If the facility does not maintain an in-house pharmacy, the facility should appoint a consultant pharmacist who is not also the director of pharmaceutical services or pharmacist provider.

**8:39-30.2 Advisory pharmacy staff qualifications**

The consultant pharmacist or director of pharmaceutical services should hold current certification by the Joint Board of Certification of Consultant Pharmacists.

**8:39-30.3 Advisory pharmacy staffing amounts and availability**

The facility should operate a pharmaceutical program that makes clinical consultation services available to the medical staff, schedules periodic drug regimen evaluations, and provides mandatory educational seminars for medical and nursing staffs to update skills and practices relative to drug therapy.

**8:39-30.4 Advisory pharmacy supplies and equipment**

- (a) The facility should use a unit dose drug distribution system.
- (b) The facility should have at least one emergency cart with contents approved by the pharmacy and therapeutics committee, that is available for medical emergencies but inaccessible to patients.

**SUBCHAPTER 31. MANDATORY PHYSICAL ENVIRONMENT****8:39-31.1 Mandatory space and physical environment: all facilities**

- (a) All exit doors to the facility shall be kept externally locked from 8:00 P.M. until 6:30 A.M.
- (b) All patients shall have, in their rooms:
  1. A bed and a mattress of the correct size to fit the bed;
  2. A bedside table with drawer;
  3. A separate closet area and shelves for personal needs;
  4. A privacy curtain around the bed;
  5. An unobstructed doorway;
  6. Window coverings that are properly mounted and maintained;
  7. Night lights; and
  8. Call bells immediately accessible to the patient in bed or an individual at bedside.
- (c) Bathrooms shall be shared only by patients of the same sex, except for cohabitants.
- (d) Glare from windows and reflections on floors and tables in the multi-purpose or dining room shall be controlled.
- (e) If the facility is not air-conditioned, the facility shall provide means to ensure air circulation in all areas used by patients.
- (f) All supplies and equipment in the facility shall be of such quality as not to break or tear easily.

**8:39-31.2 Mandatory space and physical environment: facilities with more than 60 beds**

- (a) Each facility with more than 60 beds shall provide, and facilities with 60 beds or fewer may provide but shall not be required to provide:
  1. Well-lighted parking areas.
  2. Sounding devices at the nurses' stations or visual monitoring for all exit doors.
  3. A cushioned chair for each patient in his or her room for use by the patient or patient's visitors.
  4. An individual light for each patient in a room.
  5. Connection of emergency equipment, including refrigerators for biological products, to a generator.

**8:39-31.3 Mandatory supplies and equipment**

- (a) All patients shall have, in their rooms:
  1. Sheets, blankets, a pillow, and additional pillow if required or desired;
  2. Supplies for oral needs, including a denture cup, if needed, and a clean toothbrush; and

3. A basin, comb, soap dish, and bedpan and/or urinal unless clearly unnecessary, stored at bedside.

- (b) All patient rooms shall have a waste receptacle.
- (c) A walker or a tripod cane shall be available to each patient who requires mechanical assistance to walk.
- (d) A wheelchair shall be available to each patient who is not fully ambulatory.
- (e) All supplies in the facility shall be in working order. All equipment in the facility shall be in good repair.
- (f) All supplies and equipment in the facility shall be:
  1. Up-to-date;
  2. Free of hazards;
  3. In conformance with applicable Federal standards;
  4. Properly stored and maintained in accordance with manufacturers' instructions; and
  5. Readily available when needed.
- (g) Buildings and grounds shall be maintained in a clean and safe condition.

**SUBCHAPTER 32. ADVISORY PHYSICAL ENVIRONMENT****8:39-32.1 Advisory smoking policies and procedures**

There shall be no smoking by staff members in public areas of the facility or patient rooms.

**8:39-32.2 Advisory physical environment for patient services**

Areas should be color coded or accented for purposes of identification, function, or safety.

**8:39-32.3 Advisory space environment for all facilities**

- (a) All patient rooms should have aesthetically attractive wall hangings.
- (b) No more than four patients should be assigned to the same bathroom.
- (c) The multi-purpose or dining room should receive sunlight.
- (d) The facility should have attractive grounds, including shaded seating, gardens, and trees.
- (e) Contrasting colors should be used between table tops and floors, walls and floors, walls and doors, bathroom doors and other doors, and stairways and treads.
- (f) Sound-absorbing materials should be used throughout the facility (for example, rough texture, pile, acoustic tile, soft drapery).
- (g) Task lighting should be used. The general lighting should create a pleasant environment.
- (h) A multi-purpose room other than the dining room should be available for group activities.
- (i) There should be live plants and flowers tended in the facility.
- (j) A discrete and protected area of the facility should be dedicated to free ambulation by confused and disoriented patients.

**8:39-32.4 Advisory space and environment for facilities with 60 or fewer beds**

- (a) Facilities with 60 or fewer beds should provide the following:
  1. A well-lighted parking area;
  2. Exit doors that have sounding devices at the nurses' station or are monitored visually;
  3. A cushioned chair for each patient or his or her visitors;
  4. An individual light for each patient; and
  5. Connection of emergency equipment to a generator.

**8:39-32.5 Advisory supplies and equipment**

- (a) All patients' rooms should have:
  1. A footstool; and
  2. Hand-washing facilities.
- (b) All patients should have, in their rooms:
  1. Disposable personal items such as bedpans, basins, and water pitchers;
  2. A bedspread; and
  3. A lap robe.

## SUBCHAPTER 33. MANDATORY QUALITY ASSURANCE

## 8:39-33.1 Mandatory quality assurance structural organization

(a) Quality assurance procedures shall be developed and implemented through a written plan which specifies time frames.

(b) Responsibility for the quality assurance program shall be assumed by one or more designated individuals reporting directly to the administrator.

(c) Summary findings of the quality assurance program shall be submitted in writing to the administrator, and the administrator shall take action which includes staff education or training on the basis of the program's findings.

(d) The quality assurance program shall review at least inventory control, maintenance inspections and reports, procedures for reporting incidents and hazards, and procedures for emergency response to incidents and hazards.

(e) Quality assurance findings shall be presented to the administrator with recommendations for corrective actions to address problems.

## 8:39-33.2 Mandatory quality assurance policies and procedures

(a) The quality assurance program shall identify problems in the care and services provided to the patients and shall include the audit of medical records.

(b) The quality assurance program shall monitor the performance of each service.

## 8:39-33.3 Mandatory quality assurance patient services

The quality assurance program shall include the gathering of patient care information from patients and visitors.

## 8:39-33.4 Mandatory quality assurance staff education and training

The quality assurance program shall evaluate staff education programs.

## SUBCHAPTER 34. ADVISORY QUALITY ASSURANCE

## 8:39-34.1 Advisory quality assurance policies and procedures

(a) The quality assurance program should monitor the performance of administrative services.

(b) All of the quality assurance program's findings should be presented to the administrator with recommendations for corrective actions to address problems.

(c) The quality assurance program should monitor trends in infections.

(d) The quality assurance program should use a patient classification system to monitor outcomes.

(e) Part of the quality assurance program should include an ongoing study of patient falls to determine why they occur and what preventive measures should be taken.

## 8:39-34.2 Advisory quality assurance staff qualifications

The quality assurance programs should monitor trends in staff turnover.

## 8:39-34.3 Advisory quality assurance patient services

(a) The quality assurance program should maintain a suggestion box.

(b) The quality assurance program should monitor trends in the following:

1. The prevalence of decubitus ulcers and skin breakdowns;
2. Psychotropic drug use;
3. Transfers to hospitals;
4. Medication errors;
5. Catheterization rates and catheterization care;
6. Weight loss and fluid intake;
7. Infection rates in catheterized patients;
8. Patient depression;
9. Restoration of function following specific types of events, such as hip fractures;
10. Use of restraints; and
11. Other possible indicators of level of quality care not listed in this subchapter.

(c) The quality assurance program should include periodic surveys of patients to ascertain patients' satisfaction, suggestions, knowledge

of their health conditions and treatments, and/or knowledge of facility policies and staff members' roles.

## SUBCHAPTER 35. MANDATORY MEDICAL RECORDS

## 8:39-35.1 Mandatory structural organization for medical records

At least 14 days before a facility plans to cease operations, it shall notify the New Jersey State Department of Health in writing of the location and method of retrieval of medical records.

## 8:39-35.2 Mandatory policies and procedures for medical records

(a) Each active medical record shall be kept at the nurses' station for the patient's unit.

(b) The facility shall maintain for staff use a current list of abbreviations commonly used in the facility's medical records.

(c) Medical records shall be organized with a uniform format across all records.

(d) A medical record shall be initiated for each patient upon admission and include at least the following information when such information becomes available:

1. Legible identifying data, such as patient's name, date of birth, sex, address, and next of kin, and person to notify in an emergency;

2. Name, address, and telephone number of the patient's physician, an alternate physician, and dentist;

3. Complete transfer information from the sending facility, including results of diagnostic, laboratory, and other medical and surgical procedures;

4. A history and results of a physical examination, including height and weight, performed by the physician on admission, and results of the most recent previous examination;

5. An assessment and plan of care made by each discipline involved in the patient's care;

6. Clinical notes for the past three months' incorporating written, signed and dated notations by each member of the health care team who provided services to the patient, including a description of signs and symptoms, treatments and/or drugs given, the patient's reaction, and any changes in physical or emotional condition entered into the record when the service was provided;

7. All physician's orders for the last three months;

8. Telephone orders, each of which shall be countersigned by a physician within seven days, except for orders for non-prescription drugs or treatments, which shall be signed at the physician's next visit to the patient;

9. Records of all medications and other treatments which have been provided during the last three months;

10. Consultation reports for the last six months;

11. Records of all laboratory, radiologic, and other diagnostic tests for the last six months;

12. Records of all admissions, discharges, and transfers to and from the facility that occurred in the last three months;

13. Signed consent and release forms;

14. A discharge plan for those patients identified by the facility as likely candidates for discharge into the community or a less intensive care setting; and

15. A discharge note written on the day of discharge for patients discharged to the community, a less intensive care setting, another nursing home or hospital, which includes at least the diagnosis, prognosis, and psychosocial and physical condition of the patient.

(e) Each entry into the patient's medical record shall be dated and signed in ink with name and title.

(f) The record shall be protected against loss, destruction, or unauthorized use. Medical records shall be retained for the duration required by N.J.S.A. 26:8-5.

(g) If part of a care plan is not implemented, the record shall explain why.

## SUBCHAPTER 36. ADVISORY MEDICAL RECORDS

## 8:39-36.1 Advisory policies and procedures for medical records

(a) Medical records of all patients should be characterized by attention to continuity of care as reflected by precise descriptions of the patient's status, tracking of the patient's status through time, and follow-up remarks on specific events.

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(b) The name by which the patient wishes to be called should be entered on the cover or first page of the medical record.

(c) Medical records of all patients admitted within the past year should be updated by nursing staff at least once per shift during the patient's first five days in the facility; at the end of five days the records should be updated once per week for the next four weeks. After the patient's first five weeks in a facility, the medical records of all patients should be updated at intervals based on the seriousness of each patient's condition.

(d) There should be a comprehensive discharge summary with statistical and narrative information from each service within 30 days of discharge unless the patient is readmitted during that 30 day period.

(e) Telephone orders should be countersigned by a physician within 48 hours, except for orders for non-prescription drugs or treatments, which should be countersigned within seven days.

**8:39-36.2 Advisory staff education and training for medical records**

The facility should maintain for staff use a current list of all abbreviations used in medical records.

**SUBCHAPTER 37. MANDATORY REHABILITATION****8:39-37.1 Mandatory policies and procedures for rehabilitation**

(a) Physician orders for speech therapy, physical therapy, occupational therapy, and audiology services shall include specific modalities and the frequency of treatment, and shall be entered into the patient's medical record.

(b) Physician orders for medically appropriate speech therapy, physical therapy, and audiology services shall be properly followed, and the results of these services shall be entered into the patient's medical record.

**8:39-37.2 Mandatory rehabilitation staff qualifications**

(a) Speech-language pathology and audiology services shall be provided by individuals who meet the prerequisite qualifications for a Certificate of Clinical Competence by the American Speech-Language-Hearing Association, in all facilities with more than 60 beds.

(b) Physical therapy shall be provided by one or more licensed physical therapists.

**8:39-37.3 Mandatory rehabilitation staffing amounts and availability**

Physical therapy evaluation shall take place within 48 hours of the original physician order, excluding weekends in all facilities with more than 60 beds.

**8:39-37.4 Supplies and equipment**

Physical therapy equipment available to the patients shall include at least parallel bars and stairs in all facilities with more than 60 beds.

**SUBCHAPTER 38. ADVISORY REHABILITATION****8:39-38.1 Advisory rehabilitation staff qualifications**

(a) Speech-language pathology and audiology services should be provided by individuals who hold a Certificate of Clinical Competence issued by the American Speech-Language-Hearing Association.

(b) Occupational therapy should be provided by a registered occupational therapist.

(c) If the facility has 60 or fewer beds, it, nevertheless, should provide:

1. Speech-language pathology and audiology services by one or more individuals who meet the prerequisite qualifications for a Certificate of Clinical Competence issued by the American Speech-Language-Hearing Association;

2. Physical therapy evaluation within 48 hours of the original physician order, excluding weekends; and

3. Physical therapy equipment including at least parallel bars and stairs.

**8:39-38.2 Advisory rehabilitation space and environment**

The facility should have an examination and treatment room for physical therapy.

**8:39-38.3 Advisory rehabilitation supplies and equipment**

In addition to parallel bars and stairs, physical therapy equipment available to patients should include a hydroculator, pool, whirlpool for hydrotherapy, paraffin, and ultrasound.

**SUBCHAPTER 39. MANDATORY SOCIAL WORK****8:39-39.1 Mandatory social work structural organization**

(a) Social work services shall be provided by one or more social workers who possess a bachelor's degree or a master's degree in social work, psychology, sociology, or counseling from an accredited university or education program. If the social worker has a bachelor's degree in psychology, sociology, or counseling, and no master's degree, then one year of social work experience in a geriatric setting also shall be required.

**8:39-39.2 Mandatory social work policies and procedures**

(a) A social worker shall interview the patient and family within 14 days before or after admission to the facility to identify any social work needs or problems, and to take a social history that includes family, education, and occupational background, adjustment and level of functioning, interests, support systems, and observations.

(b) A social worker shall develop and implement specific criteria to identify patients who are likely candidates for discharge into the community or a less intensive care setting and to coordinate discharge planning.

(c) A social worker shall facilitate communication between staff and non-English speaking patients.

(d) A social worker shall offer information and help to each patient and family on obtaining financial assistance and on the meaning and consequences of signing or refusing to sign administrative forms and releases.

**8:39-39.3 Mandatory social work staff qualifications**

A social worker shall provide counseling for patients and families.

**8:39-39.4 Mandatory social work staffing amounts and availability**

(a) Operative July 1, 1989, the facility shall provide an average of at least 20 minutes of social work services per week for each patient. (This is an average. It is equal to one full-time equivalent social worker for every 120 patients.)

1. Prior to July 1, 1989, social work staffing shall be provided pursuant to N.J.A.C. 8:39-43.3(b).

(b) A social worker shall coordinate the facility's outreach services to the families of patients.

(c) A social worker shall assist staff in coping with the personal needs and demands of particular patients.

**8:39-39.5 Mandatory patient social work services**

(a) A social worker shall coordinate services for patients discharged for home care.

(b) A social worker shall perform advocacy services on behalf of the patients to ensure that concrete needs are met, such as clothing, laundry, and the patient's personal needs allowance if one is maintained.

(c) A social worker shall help patients and families identify and gain access to community services, using resource materials and a knowledge of the patients' needs and abilities.

**8:39-39.6 Mandatory space and environment for social work**

The facility shall provide visual and auditory privacy for patient or family social service interviews, and for confidential telephone calls by social workers.

**SUBCHAPTER 40. ADVISORY SOCIAL WORK****8:39-40.1 Advisory staff qualifications for social work**

(a) A social worker should have a master's degree in social work from an accredited university or education program. He or she should provide consultant services at least eight hours per month, or be on the facility's staff.

(b) The facility should encourage the social worker to participate in community agency associations and other professional organizations.

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## 8:39-40.2 Advisory staff amounts and availability for social work

(a) A social worker should meet with the patient on the day of admission.

(b) A social worker should conduct support groups for families.

(c) A social worker should conduct group counseling sessions for patients and families.

(d) A social worker should participate in pre-admission planning with patients and families prior to their admission to the nursing home.

(e) There should be a social worker present in the facility seven days per week and available for interaction with patients and families during facility visiting hours.

## 8:39-40.3 Advisory patient social work services

(a) The facility should provide clinical social work or psychological services to patients and families.

(b) The social worker should encourage and monitor a regular visiting pattern by families and provide outreach services to families where the visiting pattern has changed.

(c) The facility should promote patients' sense of personal control in acquiring clothing, for example, through the establishment of a clothing concession in the facility, the arrangement of shopping excursions, and/or the use of catalogue shopping by patients.

## 8:39-40.4 Advisory space and environment for social work

Social workers should be provided with a private office equipped with a telephone or, in facilities with 60 licensed beds or fewer, with access to a private office equipped with a telephone.

## 8:39-40.5 Advisory social work staff education and training

(a) A social worker should orient nurse aides to the social needs of new patients before the patient's arrival in the facility.

(b) A social worker should assist staff with problems and issues related to aging and illness.

## SUBCHAPTER 41. MANDATORY PHYSICAL PLANT

## 8:39-41.1 Mandatory requirements for physical plant

(a) The facility shall comply with the following:

1. The regulations contained in the current edition of the Uniform Construction Code, N.J.A.C. 5:23-1 through 5, as mandated by the New Jersey Department of Health;

2. The applicable edition of the Bureau of Community Affairs Basic National Building Code and current supplements as adopted by the Department of Community Affairs and mandated by the New Jersey State Department of Health;

3. The current edition of the Bureau of Community Affairs Basic Energy Conservation Code, N.J.A.C. 5:23-3.18, as adopted by the Department of Community Affairs;

4. The 1983/1984 edition of Guidelines for Construction and Equipment for Hospital and Medical Facilities, DHHS Publication No. (HRS-M-HF) 84-1;

5. The 1985 edition of the National Fire Protection Association "Life Safety Code," N.F.P.A. 101, Chapters 12 and 13 and as referenced in that document where Chapter 12 refers to new construction and Chapter 13 refers to existing construction;

6. The current edition of the Fire Protection Subcode, N.J.A.C. 5:23-3.17;

7. The 1981 edition of the National Fire Protection Association "Air Conditioning and Ventilating Systems," N.F.P.A.-90A;

8. The 1983 edition of the National Standard Plumbing Code, N.J.A.C. 5:23-3.16;

9. The 1987 edition of the National Electrical Code, N.F.P.A. No. 70, N.J.A.C. 5:23-3.16; and

10. The current edition approved by the State Department of Health of the Commercial/Industrial Energy Subcode Compliance Manual.

(b) Questions regarding (a) above may be directed to the Supervising Architect at Health Facilities Construction Services at (609) 292-8760 or to:

New Jersey State Department of Health  
Health Facilities Construction Services  
CN-360  
Trenton, NJ 08625-0360

## 8:39-41.2 Mandatory general maintenance

(a) Personnel engaged in general maintenance activities shall receive orientation upon employment and, at least once a year, education or training in principles of asepsis, cross-infection control, and safe practices.

(b) A current, written preventive maintenance program shall be implemented. Records of inspections and repairs shall be maintained for at least one year.

(c) Written instructions for operating and maintaining equipment shall be systematically retained and followed.

(d) The facility shall be kept in good repair and maintained without harm or jeopardy to patients.

(e) There shall be a maintenance contract on elevators that includes routine maintenance inspections.

(f) Electrical emergency generators shall be checked weekly, tested under load monthly, and serviced annually.

(g) Temperature and humidity shall be in accordance with requirements specified in the edition of Guidelines for Construction and Equipment for Hospital and Medical Facilities issued by the U.S. Department of Health and Human Services, Health Resources Administration that apply, depending on the time the building was constructed.

(h) There shall be a comprehensive, written preventive maintenance program for the electrical system that is documented and followed.

## 8:39-41.3 Mandatory fire and emergency preparedness

(a) Employees shall be trained in procedures to be followed in a master fire plan and instructed in the use of fire fighting equipment and patient evacuation of the buildings as part of their initial orientation and at least annually thereafter.

(b) Fire drills shall be conducted a total of 12 times per year, with at least one drill on each shift and one drill on a weekend. At least one drill shall be conducted in conjunction with the local fire department. An actual alarm shall be considered a drill if it is documented.

(c) Fire regulations and procedures shall be posted in each unit and/or department.

1. A written evacuation diagram that includes evacuation procedures and locations of fire exits, alarm boxes, and fire extinguishers shall be posted conspicuously on a wall in each patient care unit and/or department throughout the facility.

(d) Exits, stairways, doors, and corridors shall be kept free of obstructions.

(e) There shall be a procedure for investigating and reporting fires. All fires shall be reported to the New Jersey State Department of Health immediately by phone and followed up in writing within 72 hours. In addition, a written report of the investigation by the fire department containing all pertinent information shall be forwarded to the Department of Health as soon as it becomes available.

(f) Portable fire extinguishers shall be provided in accordance with N.F.P.A. Standard 10. Fire extinguishers shall be inspected at least annually and recharged, repaired, and hydrotested as required by manufacturers' instructions, and labeled with the date of the last inspection.

(g) There shall be a comprehensive, current, written preventive maintenance program for fire detectors, alarm systems, and fire suppression and protection systems. This program shall be documented and followed.

1. Fire detectors and alarm systems shall be inspected and tested at least twice a year by an individual or individuals who are approved and certified by a licensed fire subcode official. Written reports of the last two inspections shall be available for review.

2. Fire suppression and protection systems shall be tested no less than twice a year by an approved and certified testing agency. A written report of the inspection shall be kept on file.

(h) Smoking regulations shall be developed, implemented, and enforced in accordance with N.J.S.A. 26:3D-1 et seq. Designated smoking areas shall be prominently marked.

1. There shall be no smoking by staff in the presence of patients unless the patients are smoking as well.

(i) The facility shall have a written comprehensive emergency evacuation plan. This plan shall:

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1. Identify potential hazards that could necessitate an evacuation, including natural disasters, national disasters, industrial and nuclear accidents, and labor work stoppage;

2. Identify the facility and an alternative facility to which patients would be relocated;

3. Include the estimated number of patients, staff, and staff family members who would require relocation;

4. List the supplies, equipment, records, and medications that would be transported as part of an evacuation; and

5. Identify essential personnel who would be required to remain on duty during the period of relocation.

(j) There shall be a written plan for receiving patients who are being relocated from another facility due to a disaster. This plan shall include at least an estimate of the number and type of patients the facility would accommodate and how staffing would be handled at different occupancy levels.

(k) Copies of the current plans for receiving and evacuating patients in the event of a disaster shall be sent to municipal and county emergency management officials and to the designated receiving facilities.

(l) The administrator shall serve as, or appoint, a disaster planner for the facility.

1. The disaster planner shall meet with county and municipal emergency management coordinators at least once each year to review and update the written comprehensive evacuation plan; or if county or municipal officials are unavailable for this purpose, the facility shall notify the state Office of Emergency Management.

2. While developing the facility's evacuation plan, the disaster planner shall coordinate with the facility or facilities designated to receive relocated patients.

(m) Any staff member who is designated as the acting administrator shall be knowledgeable about and authorized to implement the facility's plans in the event of an emergency.

(n) All staff shall be oriented to the facility's current plans for receiving and evacuating patients in the event of a disaster, including their individual duties.

(o) The facility shall ensure that patients receive nursing care throughout the period of evacuation and return to the original facility.

1. The facility shall ensure that evacuated patients who are not discharged are returned to the facility after the emergency is over.

(p) The facility shall maintain at least a three-day supply of food and have access to an alternative supply of water in case of an emergency.

(q) The facility shall conduct at least one evacuation drill each year, either simulated or using selected patients. State, county, and municipal emergency management officials shall be invited to attend the drill at least 48 hours in advance.

(r) The facility shall have an emergency power generator with enough fuel to maintain power for at least three days.

**8:39-41.4 Mandatory life safety**

(a) Corridors and horizontal exits shall be in compliance with the following requirements:

1. The capacity of horizontal exits shall be in accordance with N.F.P.A. 101 (12-2.3.2);

2. Wherever exit travel is over stairs, exiting capacity shall be in accordance with N.F.P.A. 101 (12-2.3.2);

3. The clear width of all horizontal exit doors shall be in accordance with N.F.P.A. 101 (12-2.2.4);

4. All required aisles and corridors shall be unobstructed and have a clear width in accordance with N.F.P.A. 101 (12-2.3.3) or N.F.P.A. 101 (13-2.3.3);

5. Every corridor shall provide access to approved means of egress from the building in compliance with N.F.P.A. 101 (12-2.5.5) or N.F.P.A. 101 (13-2.5.5);

6. There shall be no corridor dead ends exceeding the length specified in regulation 8-10.2 in Bureau of Community Affairs (BOCA) Basic National Building Code and current supplements (1987 edition);

7. All the facility's sleeping rooms shall have a door leading to a corridor that provides access to an exit in accordance with N.F.P.A. 101 (12-2.5.1) or N.F.P.A. 101 (13-2.5.1);

8. The travel distances from the door of any room to an exit and the travel distance from any point in any room to an exit shall not exceed the distances specified in N.F.P.A. 101 (12-2.6.2) or N.F.P.A. 101 (13-2.6.2);

9. There shall be at least two exits, remote from each other, provided for each floor or fire section, with at least one of the exits leading directly outside the building or to an interior stairway leading directly outside the building; and

10. Every aisle, passageway, corridor discharge exit, exit location, and access shall have a readily available egress leading to the exit.

(b) Doors shall be in compliance with the following requirements:

1. The width of exit doorways and all doors between patient care rooms and required exits shall be in accordance with N.F.P.A. 101 (12-2.3.4) or N.F.P.A. 101 (13-2.3.4);

2. Patient room doors shall be constructed of materials and be of a thickness in accordance with N.F.P.A. 101 (12-3.6.3) or N.F.P.A. 101 (13-3.6.3);

3. Every door in a fire protection, horizontal exit, and smoke-stop partition shall be capable of being opened and closed manually. If such a door is held open, it shall be held open only by electromagnetic devices that are connected into the fire alarm system in accordance with N.F.P.A. 101 (12-2.11.5) or N.F.P.A. 101 (13-2.11.5);

4. All doors to stairway enclosures or to walls separating hazardous areas shall be kept closed and not be equipped with hold-open devices, as specified in N.F.P.A. 101 (5-2.1.8);

5. All stairway doors shall be kept closed and have an appropriate sign indicating that this is a fire exit and shall be kept closed, as specified in N.F.P.A. 101 (5-10.4.2.2); and

6. All hazardous area doors, vertical openings, and assemblies shall be Class B (rated for one and a half hours), in accordance with N.F.P.A. 101 (12-3.1) or N.F.P.A. 101 (13-3).

(c) Windows shall be in compliance with the following requirements:

1. The size, material, and framing material of all glazed openings shall be in accordance with N.F.P.A. 101 (13-2.6.3) or N.F.P.A. 101 (13-3.6.3); and

2. Every patient's bedroom, unless it has a door leading directly outside the building, shall have at least one outside window, which can be opened from the inside without the use of tools, in accordance with N.F.P.A. 101 (12-3.8.1) or N.F.P.A. 101 (13-3.8.1).

(d) Stairs shall be in compliance with the following requirements:

1. All stairs serving as required means of egress shall be of construction in accordance with N.F.P.A. 101 (5-2); and

2. Every stair and smoke tower shall be Class B construction (rated for one and a half hours), in accordance with N.F.P.A. 101 (5-2).

(e) Exit identifications shall be in compliance with the following requirements:

1. Exitways shall be clearly marked and adequately illuminated at angles, intersections, landings of stairs, and exit doors at all times, as specified in N.F.P.A. 101 (12-2.8.1) or N.F.P.A. 101 (13-2.8.1); and

2. All exits shall be clearly identified and lighted exit signs shall be kept lighted at all times, as specified in N.F.P.A. 101 (12-2.8) or N.F.P.A. 101 (13-2.8).

(f) Buildings shall be in compliance with the following fire resistance requirements:

1. Buildings of one-story construction shall be one-hour protected noncombustible construction, two-hour fire resistive construction, one-hour protected ordinary construction, one-hour protected wood frame construction, heavy timber construction, or unprotected noncombustible construction, as specified in N.F.P.A. 101 (12-1.6);

2. Buildings two stories or more in height shall be of at least two-hour fire resistive construction, as specified in N.F.P.A. 101 (12-1.6); and

3. Corridor enclosures between patient rooms and treatment areas shall be separated by construction with a fire resistance rating in accordance with N.F.P.A. 101 (12-3.6.1) or N.F.P.A. 101 (13-3.6.1).

(g) Buildings shall be in compliance with the following smoke barriers and fire separation requirements:

1. All floors used for sleeping rooms for more than 30 patients, and any floors greater than 22,500 square feet in size regardless of the number of patients, shall be divided into at least two sections by a smoke barrier unless provided with a horizontal exit, as specified in N.F.P.A. 101 (12-3.7) or N.F.P.A. 101 (13-3.7);

2. Ample space shall be provided on each side of a smoke barrier for the total number of patients on both sides, as specified in N.F.P.A. 101 (12-3.7) or N.F.P.A. 101 (13-3.7);

3. Corridors without smoke barriers or horizontal exits shall not exceed the lengths specified in N.F.P.A. 101 (12-3.7) or N.F.P.A. 101 (13-3.7);

4. Exterior walls and all openings in exterior walls separating the facility from a non-complying building shall have a fire rating in accordance with N.F.P.A. 101 (12-1.1.4.1) or N.F.P.A. 101 (13-1.1.4.1);

5. All smoke barriers shall have at least a fire rating specified in N.F.P.A. 101 (12-3.7.3) or N.F.P.A. 101 (13-3.7.3);

6. Smoke barriers shall be continuous from wall to wall and floor to floor or roof deck above, as specified in N.F.P.A. 101 (6-3); and

7. All linen and trash chutes shall be sealed by fire resistive construction with at least the fire rating specified in N.F.P.A. 101 (12-3.1.1) or N.F.P.A. 101 (13-3.1.1).

(h) Buildings shall be in compliance with the following fire protection requirements:

1. An automatic sprinkler system shall be provided where required in U.C.C. guidelines and N.F.P.A. 101, Chapters 13 and 13A;

2. If there is an automatic sprinkler system, it shall be electrically connected to the fire alarm system, as specified in N.F.P.A. 101, Chapters 13 and 13A;

3. If there is an automatic sprinkler system, the main sprinkler control valve shall be electrically supervised, as specified in N.F.P.A. 101, Chapters 13 and 13A; and

4. Every hazardous area shall have automatic fire protection and/or be separated by construction with at least a one-hour rating, as specified in N.F.P.A. 101 (12-3.2.1) or N.F.P.A. 101 (13-3.2.1).

(i) Buildings shall be in compliance with the following emergency power and lighting requirements:

1. The facility shall have at least a primary source of power and an emergency generator;

2. An outlet that is connected to an emergency power supply shall be available wherever life-sustaining equipment is in operation; and

3. Emergency lighting with an independent power source shall be required and shall be automatic.

(j) All finishes shall be in compliance with the following requirements:

1. All interior finishes shall be of a Class A or Class B nature, in accordance with N.F.P.A. 101 (12-3.3.1) or N.F.P.A. (13-3.3.1);

2. All floor covering in patient rooms and corridors shall have a flame spread rating in accordance with N.F.P.A. 101 (6-5);

3. All draperies, curtains, and waste baskets shall be maintained flame retardant; and

4. All decorations shall be flame retardant. Open flames used for decoration or religious ceremonies shall not be left unsupervised.

(k) The following fire prevention measures shall be taken by the facility:

1. Cooking equipment shall be properly installed and maintained;

2. Portable heating comfort devices shall be permitted if they are provided by the facility and operated in accordance with hospital policies regarding their use, purchase, maintenance, and inventory. Staff and patient-owned devices shall not be permitted;

3. Extension cords shall not be permitted unless they are provided by the maintenance or engineering department of the facility, inspected regularly, and inventoried by the maintenance and engineering department. Extension cords shall be for temporary use only in patient care areas; and

4. Products of combustion devices shall be vented to the outside.

## SUBCHAPTER 42. ADVISORY PHYSICAL PLANT

### 8:39-42.1 Advisory general maintenance

(a) Routine interdisciplinary inspections or rounds should be conducted on all units and areas for maintenance problems. Results of these rounds should be reported to an interdisciplinary committee composed of representatives of each service.

(b) Maintenance services should be under the supervision of an employee with at least one of the following:

1. Five years of experience in maintaining a physical plant;

2. A baccalaureate degree in engineering from an accredited college or university and two years of experience in maintaining a physical plant; or

3. Professional licensure in New Jersey as an engineer with one year of experience in maintaining a physical plant.

### 8:39-42.2 Advisory fire and emergency preparedness

(a) The facility should maintain at least a seven-day supply of food in case of emergency.

(b) The facility should conduct at least two evacuation drills each year, either simulated or using selected patients, at least one of which is conducted on a weekend or during an evening or night work shift. Results of the drills should be summarized in a written report, which is shared with the county and municipal emergency management coordinators.

(c) A municipal, county, or State emergency management official should conduct an education or training program in the facility on disaster planning and emergency preparedness at least once a year.

(d) The facility should have an emergency power generator with enough fuel to maintain power for at least seven days.

(e) The facility should establish a written heat emergency action plan which specifies procedures to be followed in the event that the indoor air temperature is 85 degrees Fahrenheit or higher for a continuous period of four hours or longer. These procedures should include the immediate notification of the New Jersey State Department of Health. The facility should submit such a plan to the Department of Health for approval at least once per year.

(f) Fire drills should be conducted annually on each weekend shift.

### 8:39-42.3 Advisory life safety

(a) Exit doorways and all doors between patient rooms and the required exits should be 46 to 48 inches wide.

(b) All hazardous area doors and assemblies should be Class A (rated for two hours).

(c) All vertical shafts should have Class A construction.

(d) Extension cords and portable heaters should not be permitted in the facility.

(e) The facility should maintain records of flame retardancy of all furniture. There should be a policy on the flame retardancy of newly acquired furniture.

## SUBCHAPTER 43. IMPLEMENTATION OF STAFFING REQUIREMENTS

### 8:39-43.1 Delay of implementation of staffing requirements

N.J.A.C. 8:39-7.4(a), 17.4(a), 25.2(b)1, and (b)2., and 39.4(a), mandatory staffing amounts for patient activities, dietary, nursing, and social work, shall become operative July 1, 1989 unless the Commissioner of Health determines through a written finding on the basis of research conducted or sponsored by the Department of Health that these staffing amounts are infeasible or would not assure high quality care.

### 8:39-43.2 Research on staffing amounts

Prior to July 1, 1989, the Department shall conduct or sponsor empirical research to demonstrate whether the staffing amounts prescribed in N.J.A.C. 8:39-7.4, 17.4(a), 39.4(a), and, in particular, 25.2(b) are feasible and would assure high quality care as reflected in patient-specific outcomes of care. The Department of Health shall seek the cooperation of the Department of Human Services in such research.

**PROPOSALS**

Interested Persons see **Inside Front Cover**

**CORRECTIONS**

8:39-43.3 Interim mandatory staffing amounts

(a) Prior to July 1, 1989, the facility shall provide nurse staffing in at least the following amounts:

1. There shall be nursing and ancillary nursing personnel on each nursing unit to provide at least 2.75 hours of direct nursing care for each skilled nursing patient, 2.5 hours for each ICF-A patient, and 1.25 hours for each ICF-B patient, during a 24-hour period. Direct nursing care shall be limited to nursing duties.

2. There shall be at least one registered professional nurse on the day shift seven days a week.

3. Computation of direct nursing care time shall not include the hours of the director of nursing services, except in facilities with 45 or fewer beds.

4. No member of the nursing staff shall be counted in the staffing pattern of more than one nursing unit per shift.

5. Of the total nursing personnel, the ratio of registered professional nurse hours to ancillary nursing hours shall not be less than one to five, with 25 percent credit for licensed practical nurse hours. Professional and licensed nursing personnel shall be distributed on each shift.

6. There shall be at least two nursing personnel awake and on duty at all times.

(b) Prior to July 1, 1989, the facility shall provide patient activities, dietary, and social work staffing in at least the following amounts:

1. Forty minutes of patient activities staff time devoted to patient activities per patient per week. (This is an average. It is equal to one full-time equivalent patient activities staff member for every 60 patients.)

2. Eight hours of dietary services by a dietitian each month.

3. Ten minutes of social work services per patient per week. (This is an average. It is equal to one full-time equivalent social worker for every 240 patients.) If the social worker has a bachelor's degree in psychology, sociology, or counseling and no master's degree, then social work consultation shall be provided to the facility for at least eight hours per month by a social worker who has a master's degree in social work from an accredited university.

**CORRECTIONS**

**THE COMMISSIONER**

The following proposals are authorized by William H. Fauver, Commissioner, Department of Corrections.

Submit comments by April 6, 1988 to:  
Elaine W. Ballai, Esq.  
Special Assistant for Legal Affairs  
Department of Corrections  
CN 863  
Trenton, New Jersey 08625

**(a)**

**Administration, Organization and Management  
General Provisions**

**Proposed New Rules: N.J.A.C. 10A:1-2.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1988-85.

The agency proposal follows:

**Summary**

The proposed new rules succinctly describe the rulemaking and rule exemption authority the Commissioner may exercise as the Chief Executive Officer of the Department of Corrections. The proposed new rules also provide guidelines for determining the effective dates of rule adoptions and rule exemptions, the procedure for requesting exemptions from rules, the scope of Chapters 1 through 30 and a glossary of general terms that are frequently used in Title 10A.

**Social Impact**

The proposed new rules will have no significant social impact because the rules codify the long standing administrative practice of responsible

rulemaking and rule exemption after a comprehensive review of relevant factors which indicate the necessity for such action.

**Economic Impact**

The proposed new rules will not have an economic impact because no additional costs are necessary to implement or maintain these rules.

**Regulatory Flexibility Statement**

The proposed new rules impact on inmates and the Department of Corrections. Since small businesses are not affected by this proposal, a regulatory flexibility analysis is not required.

Full text of the proposed new rules follows.

**SUBCHAPTER 2. GENERAL PROVISIONS**

**10A:1-2.1 Scope**

(a) Unless otherwise stated, N.J.A.C. 10A:1 through N.J.A.C. 10A:30 shall be applicable to State correctional facilities under the jurisdiction of the Department of Corrections.

(b) Unless otherwise stated, N.J.A.C. 10A:31 through N.J.A.C. 10A:34 shall be applicable to municipal and county correctional facilities within the State of New Jersey.

**10A:1-2.2 Definitions**

The following words and terms, when used in N.J.A.C. 10A:1 through N.J.A.C. 10A:30, shall have the following meanings, unless the context clearly indicates otherwise.

"Assistant Commissioner" means the chief executive officer of a Division within the Department of Corrections.

"Commissioner" means the Commissioner of the New Jersey Department of Corrections.

"Contraband" means any item, article or material found in the possession of or under the control of an inmate which is not authorized for retention or receipt.

"Custody status" means the degree of supervision that is required for an inmate to enter or leave a correctional facility.

"Department" means the New Jersey Department of Corrections.

"Deputy Commissioner" means Deputy Commissioner of the New Jersey Department of Corrections.

"Deputy Director" means the executive officer next in rank to the Assistant Commissioner (Chief Executive Officer) of a Division within the Department of Corrections.

"Division of Adult Institutions" means an administrative unit of the Department that is responsible for the administration of adult correctional facilities.

"Division of Juvenile Services" means an administrative unit of the Department that is responsible for the administration of juvenile correctional facilities.

"Indeterminate sentence" means a sentence of imprisonment which contains no fixed terms of duration (see N.J.S.A. 30:4-148).

"Institutional Classification Committee (I.C.C.)" means the group of staff members within a correctional facility that is responsible for monitoring an inmate's progress and assigning the inmate to appropriate programs or activities.

"Inter-institutional Classification Committee (I.I.C.C.)" means the representatives, from different correctional facilities, that are responsible for determining the correctional facility to which an inmate is assigned and approving requests for transfer from one correctional facility to another.

"Prison Complex" means state correctional facilities designated to house inmates serving prison sentences.

"Prison sentence" means a definite term of imprisonment having fixed minimum and maximum time limits.

"Prohibited act" means conduct in violation of rules and regulations, which will result in imposition of sanctions.

"Superintendent" means the chief executive officer of any State Correctional facility within the New Jersey Department of Corrections.

"Youth Complex" means State correctional facilities designated to house young adult offenders with indeterminate sentences as set forth in N.J.S.A. 30:4-146.

**CORRECTIONS**

**PROPOSALS**

**10A:1-2.3 Chief Executive Officer**

Pursuant to N.J.S.A. 30:1B-1 et seq., the Chief Executive Officer of the Department of Corrections is the Commissioner of Corrections.

**10A:1-2.4 Rule making and exemption authority**

(a) The Commissioner, pursuant to N.J.S.A. 30:1B-1 et seq., is authorized to formulate, adopt, issue and promulgate rules and regulations for the administration of institutions and noninstitutional operational units within the Department of Corrections.

(b) The Commissioner is authorized to determine all matters of policy and regulate the administration of institutions and noninstitutional operational units and modify policies and regulations so that all operational units can function effectively within the Department of Corrections.

(c) The Commissioner may exempt an institution or a noninstitutional operational unit from adherence to a rule or certain requirements of a rule in instances when strict compliance with a rule or all of its requirements would result in undue hardship to the overall management of an institution or a noninstitutional operational unit.

**10A:1-2.5 Expiration of rule exemptions**

(a) All rule exemptions shall expire two years from the date of approval by the Commissioner.

(b) A rule exemption may be terminated prior to its expiration date when:

1. The special circumstances making the rule exemption necessary no longer exist; or
2. The Commissioner no longer approves the rule exemption.

(c) A rule exemption may be extended beyond its expiration date when:

1. The Superintendent or Unit Head reapply for the rule exemption; and
2. The approval of the Commissioner is given for an extension of the rule exemption.

(d) An institution or noninstitutional operational unit shall return to compliance with the New Jersey Administrative Code when rule exemptions terminate or expire.

**10A:1-2.6 Effective dates of adopted and exempted rules**

(a) Unless otherwise noted in the New Jersey Register, an adopted rule is effective on the date of its publication in the New Jersey Register.

(b) The effective date of a rule exemption shall be the date of the Commissioner's signature in Section 7 on FORM 911-II REQUEST FOR RULE EXEMPTION.

**10A:1-2.7 Procedure for requesting rule exemptions**

(a) Requests for rule exemptions may be submitted by staff members or committees to the Superintendent for review.

(b) Requests for rule exemptions may be submitted by inmates or inmate groups to the Institutional Classification Committee (I.C.C.) for review. The I.C.C. shall review and submit inmate requests for rule exemptions to the Superintendent along with recommendations for approval or disapproval.

(c) Requests for rule exemptions may be submitted by staff members, individually or as a group, to the administrative head of a noninstitutional operational unit for review.

(d) The Superintendent or the head of a noninstitutional operational unit shall review and determine whether to submit requests for rule exemptions to the appropriate Assistant Commissioner and the Commissioner for consideration.

(e) If the Superintendent or the head of a noninstitutional operational unit approves a request for a rule exemption, he or she shall complete, in duplicate, Sections 1 through 6 of FORM 911-II REQUEST FOR RULE EXEMPTION, sign and date Section 7 and submit FORM 911-II to the Special Assistant for Legal Affairs, Office of the Deputy Commissioner for legal review.

(f) The Special Assistant for Legal Affairs shall review FORM 911-II REQUEST FOR RULE EXEMPTION and submit FORM 911-II to the appropriate Assistant Commissioner along with recommendations for approval or disapproval.

(g) The Assistant Commissioner shall review FORM 911-II REQUEST FOR RULE EXEMPTION and determine whether to ap-

prove or disapprove the request. If the Assistant Commissioner approves the request, he or she shall sign and date Section 7 of FORM 911-II and shall submit it to the Commissioner for review. If the Assistant Commissioner disapproves the request, he or she shall sign and date Section 8 of Form 911-II and return it to the Superintendent or the head of a noninstitutional operational unit.

(h) The Commissioner shall review FORM 911-II REQUEST FOR RULE EXEMPTION, submitted by an Assistant Commissioner, and determine whether to authorize a rule exemption. The Commissioner shall approve or disapprove a rule exemption by signing and dating the appropriate section on Form 911-II and returning it to the Assistant Commissioner.

(i) The Assistant Commissioner shall be responsible for notifying the Superintendent or head of a noninstitutional operational unit of the Commissioner's approval or disapproval of requests for rule exemptions.

**(a)**

**Administration, Organization and Management  
Personal Property of Inmates**

**Proposed New Rules: N.J.A.C. 10A:1-11**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1988-109.

The agency proposal follows:

**Summary**

The proposed new rules provide guidelines which govern an inmate's possession of permissible personal property and the disposal of non-permissible personal property upon admission to a correctional facility; upon transfer to another correctional facility; upon release to parole supervision; or upon release at the expiration of an inmate's sentence.

**Social Impact**

The proposed new rules will have no significant social impact because they simply codify existing standards into rules.

**Economic Impact**

The proposed new rules will have no significant economic impact because additional funding is not necessary to implement or maintain the proposed new rules.

**Regulatory Flexibility Statement**

The proposed new rules impact on inmates and the Department of Corrections and do not affect small businesses as defined in the Regulatory Flexibility Act.

Full text of the proposed new rules follows.

**SUBCHAPTERS 3—10 (RESERVED)**

**SUBCHAPTER 11. PERSONAL PROPERTY OF INMATES**

**10A:1-11.1 Inmate's responsibility for personal property**

While incarcerated within a correctional facility, the inmate shall be responsible for his or her own personal property and shall keep personal property at his or her own risk.

**10A:1-11.2 Permissible personal property**

(a) Each correctional facility shall develop a written list of permissible personal property items and the number of permissible personal property items which may be retained in the possession of the inmate.

(b) The listing and any regulations concerning inmate personal property shall be published in the Inmate Handbook (see N.J.A.C. 10A:8-3 INMATE HANDBOOK).

(c) New or revised lists or regulations not included in the current Inmate Handbook shall be posted in inmate housing units and incorporated into the next revision of the Inmate Handbook.

(d) The listing of permitted personal property shall be reviewed, signed and dated annually by the Superintendent or his or her designee and forwarded to the office of the appropriate Assistant Commissioner for his or her review and approval.

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**CORRECTIONS**

(e) The Assistant Commissioner may approve or disapprove the possession of any item and/or limit the number of items that may be possessed by inmates in correctional facilities within the Division for which the Assistant Commissioner is responsible.

(f) The Office of the Assistant Commissioner shall be notified, in writing, during the course of the year of any additions to or deletions from the list of permissible personal property.

(g) Each correctional facility within the Division of Adult Institution shall send the name and telephone number of the facility's property officer to the Office of the Assistant Commissioner.

(h) The Office of the Assistant Commissioner, Division of Adult Institutions, shall disseminate, to each correctional institution within the Division, the permissible personal property lists of all adult correctional facilities and any available county jail permissible property lists.

**10A:1-11.3 Non-permissible personal property**

(a) The correctional facility shall notify an inmate, in writing, whenever the inmate possesses any property which is non-permissible personal property.

(b) The correctional facility shall inventory and package the non-permissible personal property and shall:

1. Mail the non-permissible property to the inmate's home at the inmate's expense; or

2. Make the non-permissible property available for removal from the correctional facility by a designated family member(s) or friend(s) of the inmate.

(c) If the non-permissible property is to be removed by a family member or friend(s), the inmate shall arrange for the removal of the non-permissible personal property within 30 days after receiving the written notification from the correctional facility.

(d) If the inmate's non-permissible personal property is not removed from the correctional facility within 30 days after the written notification, the inmate shall receive a second written notification stating that:

1. The property will be held for a maximum of 30 additional days;

2. The property will be disposed of if it is not removed by a specified date; and

3. The correctional facility shall not be liable for personal property that is held longer than 60 days.

(e) Copies of written notices to the inmate about his or her personal property shall become a permanent part of the inmate's classification folder (see N.J.A.C. 10A:1-11.9).

**10A:1-11.4 Storage of non-permissible personal property**

(a) Correctional facilities shall not store inmate non-permissible personal property for more than 60 days except in instances as stated in (b) below.

(b) When an inmate does not have visitors, immediate family members or a home address, the inmate may request written approval of the superintendent to store non-permissible personal property for a period longer than 60 days.

(c) If the superintendent approves the inmate's request, made pursuant to (b) above, the personal property shall be stored at the inmate's risk, until an alternate plan can be made for storage.

**10A:1-11.5 Marking inmate personal property**

Each correctional facility shall establish a means of marking inmate personal property for identification purposes.

**10A:1-11.6 Inventory of inmate personal property**

(a) Each correctional facility shall develop and maintain an accurate inventory form which itemizes all personal property in the inmate's possession upon admission, while incarcerated, and upon transfer.

(b) If possible, the inmate's personal property shall be inventoried in his or her presence.

(c) The completed inventory form and any subsequent updates to the inventory form shall be signed by both the inventory officer and the inmate.

(d) The signed inventory form shall be maintained on file (see N.J.A.C. 10A:1-11.9) and a copy shall be given to the inmate.

**10A:1-11.7 Correctional facility's responsibility for personal property when inmate is transferred**

(a) Except for transfers to the St. Francis Hospital Unit or other hospital units, all inter-institutional and county jail transfers shall be considered permanent for the purpose of inmate personal property disposition.

(b) When an inmate is transferred from one institution to another, it shall be the responsibility of the sending correctional facility to send with the inmate only the personal property which is permitted by the receiving correctional facility.

(c) Non-permissible personal property shall not be sent by the sending institution to the receiving correctional facility for storage. Non-permissible personal property shall be inventoried, packaged and mailed to the inmate's home at the sending correctional facility expense or the non-permissible personal property shall be made available for removal by designated family members or friends of the inmate.

(d) An inmate being transferred to another correctional facility who does not have visitors, immediate family members or a home address, may request written approval of the sending correctional facility superintendent to store the inmate's non-permissible personal property.

(e) If the sending correctional facility superintendent approves the inmate's request, the superintendent shall give the inmate a written notification stating that:

1. The personal property will be stored at the inmate's risk;

2. The personal property will be held for a maximum of 60 additional days;

3. The personal property will be disposed of if it is not removed by a specified date; and

4. The correctional facility shall not be liable for personal property that is held longer than 60 days.

(f) In every case that personal property is mailed to the inmate's home, a receipt shall be obtained from the post office or railway express representative and filed in the inmate's classification folder (see N.J.A.C. 10A:1-11.9).

**10A:1-11.8 Responsibility for personal property when inmate is released**

(a) When an inmate is released on parole or at the expiration of his or her maximum sentence, the inmate shall:

1. Take the personal property with him or her when leaving the correctional facility; or

2. Arrange for the personal property to be sent, at his or her expense, to the inmate's home; or

3. Arrange for a family member(s) or friend(s) to remove the personal property from the correctional facility within 30 days after the inmate's release.

(b) When the inmate's personal property is to remain at the correctional facility, a mailing address shall be obtained from the inmate before his or her release. If the inmate's personal property is not picked up within 30 days, the correctional facility shall forward written notification to the ex-inmate stating that:

1. The property will be held for a maximum of 30 additional days;

2. The property will be disposed of if not removed by a specified date; and

3. The correctional facility shall not be liable for personal property that is held longer than 60 days.

(c) Copies of written notices to the inmate about his or her personal property shall become a permanent part of the inmate's classification folder (see N.J.A.C. 10A:1-11.9).

**10A:1-11.9 Records**

(a) Copies or originals of the following shall become a permanent part of the inmate's classification folder:

1. Any written notices to the inmate about personal property;

2. Any receipts received or obtained for mailing personal property; and

3. Signed personal property inventory form(s).

**10A:1-11.10 Written procedures**

Each correctional facility shall develop written policy and procedures consistent with this subchapter.

**(a)**

**Inmate Discipline  
Scope; Training School at Skillman  
Proposed Amendment: N.J.A.C. 10A:4-1.2  
Proposed Repeal: N.J.A.C. 10A:4-13**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1988-90.

The agency proposal follows:

**Summary**

The proposed amendment modifies N.J.A.C. 10A:4-1.2(a) in order that the scope of the disciplinary process outlined in N.J.A.C. 10A:4-2 through N.J.A.C. 10A:4-12 of N.J.A.C. 10A:4, INMATE DISCIPLINE, will be expanded so that these rules will be applicable to the Boys' Unit of the Training School for Boys at Skillman.

The Department of Corrections adopted new rules N.J.A.C. 10A:4, INMATE DISCIPLINE, in the July 21, 1986 issue of the New Jersey Register at 18 N.J.R. 1465(a). N.J.A.C. 10A:4-13, RESIDENT DISCIPLINE PROGRAM FOR THE TRAINING SCHOOL FOR BOYS AT SKILLMAN, was adopted as part of these new rules. The Training School for Boys at Skillman will, upon adoption of the proposed amendment of N.J.A.C. 10A:4-1.2(a), implement the disciplinary process outlined in N.J.A.C. 10A:4-2 through N.J.A.C. 10A:4-12 of INMATE DISCIPLINE. Since the disciplinary process outlined in N.J.A.C. 10A:4-13 will no longer be applicable at the Training School for Boys at Skillman upon adoption of the proposed amendment, the Department of Corrections proposes that these rules be repealed.

**Social Impact**

The proposed amendment will enable the Department of Corrections to improve the administration of the Inmate Discipline Program at the Training School for Boys at Skillman.

**Economic Impact**

The proposed amendment will have no significant economic impact because sufficient staff and resources are available to implement and maintain the inmate disciplinary process proposed in the amendment.

**Regulatory Flexibility Statement**

The proposed amendment impacts upon inmates and the Department of Corrections. The proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses and a regulatory flexibility analysis is not required.

**Full text** of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10A:4-13.

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

10A:4-1.2 Scope

(a) Subchapter 2 through subchapter 12 shall be applicable to the Division of Adult Institutions, the Training School for Juveniles at Jamesburg, the Girls' Unit **and the Boys' Unit** of the Training School for Boys at Skillman and the Juvenile Medium Security [Unit] **Facility** unless otherwise indicated.

(b) (No change.)

**(b)**

**Inmate Discipline  
Appeal to the Office of Administrative Law  
Proposed Repeal: N.J.A.C. 10A:4-11.9 and 10A:4-12**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1988-89.

The agency proposal follows:

**Summary**

The December 31, 1987 expiration of N.J.S.A. 52:14F-8a, the enabling legislation which permitted an inmate who received a sanction of 365 days or more loss of commutation time to request a hearing by the Office of Administrative Law, has passed without readoption.

The Department of Corrections adopted new rules N.J.A.C. 10A:4, INMATE DISCIPLINE, in the July 21, 1986 issue of the New Jersey Register at 18 N.J.R. 1465(a). N.J.A.C. 10A:4-11.9 and N.J.A.C. 10A:4-12, APPEAL TO OFFICE OF ADMINISTRATIVE LAW, were adopted as part of the Inmate Discipline rules. The Department of Corrections proposes that N.J.A.C. 10A:4-11.9 and N.J.A.C. 10A:4-12 be repealed since the underlying enabling legislation of these rules has expired.

**Social Impact**

The proposed repeal of these rules will eliminate the option that was available to inmates, who received sanctions of loss of commutation time for more than 365 days, to appeal the decision of the Disciplinary Hearing Officer/Adjustment Committee and the Superintendent to the Office of Administrative Law. Inmates with sanctions of this type will be able to appeal these decisions to the Appellate Division of the New Jersey Court or the Federal District Court.

**Economic Impact**

The proposed repeal will not have an economic impact because no costs will result from the repeal of the rules.

**Regulatory Flexibility Statement**

The proposed repeal impacts on inmates and the Department of Corrections. The rules to be repealed do not impose reporting, recordkeeping or compliance requirements on small businesses, so a regulatory flexibility analysis is not required.

**Full text** of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 10A:4-11.9 and 10A:4-12.

**(c)**

**Mail, Visits and Telephone  
Telephone Calls between Incarcerated Family  
Members**

**Proposed Amendment: N.J.A.C. 10A:18-8.7**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1988-98.

The agency proposal follows:

**Summary**

The proposed amendment to N.J.A.C. 10A:18-8.7(a) clarifies the intent of the rule permitting telephone calls between incarcerated family members. The intent of N.J.A.C. 10A:18-8.7(a)4 is that telephone calls shall be permitted between incarcerated siblings.

**Social Impact**

The proposed amendment will have no significant social impact other than clarifying that incarcerated siblings may telephone each other.

**Economic Impact**

The proposed amendment will have no significant economic impact because additional funding is not necessary to implement or maintain the amendment.

**Regulatory Flexibility Statement**

The proposed amendment impacts on inmates and the Department of Corrections and does not affect small businesses as defined in the Regulatory Flexibility Act.

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

10A:18-8.7 Telephone calls between incarcerated family members

(a) Telephone calls shall be permitted between incarcerated family members. Family members are defined as:

1.-3. (No change.)

4. [Brother and sister] **Siblings**.

(b) (No change.)

## INSURANCE

### DIVISION OF THE REAL ESTATE COMMISSION

The following proposals are authorized by the New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.

Submit comments by April 6, 1988 to:

Robert J. Melillo  
Special Assistant to the Director  
New Jersey Real Estate Commission  
201 East State Street, CN 325  
Trenton, New Jersey 08625

#### (a)

#### Advertising Rules

#### Proposed Amendment: N.J.A.C. 11:5-1.15

Authority: N.J.S.A. 45:15-6.

Proposal Number: PRN 1988-101.

The agency proposal follows:

#### Summary

This matter was opened on February 18, 1987 when petitions were filed with the New Jersey Real Estate Commission ("Commission") by Coldwell Banker Residential Real Estate, Inc. ("Coldwell Banker") a licensed New Jersey real estate broker, requesting a declaratory ruling and/or an amendment of N.J.A.C. 11:5-1.15 and a hearing on an alleged violation of N.J.A.C. 11:5-1.15(c). Specifically, the petitioner requested either a declaratory ruling that certain sections of the advertising rule, N.J.A.C. 11:5-1.15 were not applicable to advertising by Coldwell Banker that is "non-specific media advertising". In the alternative, Coldwell Banker requested that the rule be amended to exempt such advertising. At the Commission's regular meeting on March 3, 1987, the Commission voted to grant Coldwell Banker's request for a declaratory ruling proceeding with respect to N.J.A.C. 11:5-1.15(a), (b), (c), (j), (k) and (m) and to consolidate this proceeding with a preproposal public hearing concerning the petition for regulatory amendments and a hearing on the alleged violation of N.J.A.C. 11:5-1.15(c). (See 19 N.J.R. 570(d) and 664(a).) Coldwell Banker subsequently withdrew its petitions with respect to subsection (m) of the rule. Thereafter, the petitioner and the Commission entered into a settlement agreement on the petitions, a portion of which provides that the Commission would make the rule amendment proposal encompassed by this notice. The terms of that settlement also provided that Coldwell Banker would withdraw its petitions for declaratory rulings and/or rule amendments with regard to subsections (a), (b), (c) and (k).

The intent of the advertising rule, N.J.A.C. 11:5-1.15, is to protect the public from deceptive and misleading advertising practices of any licensed real estate broker doing business in this State. Subsection (c) of the rule requires real estate licensees to include specific language in their advertising which adequately informs the public that the licensee is engaged in the real estate brokerage business. The Real Estate Commission determined that, as reflected in the memorandum of the settlement reached between the Commission and the petitioner of this matter, advertisements by licensees which contain the term "real estate services" comply with this requirement. The Commission further determined that, so long as licensees comply with N.J.S.A. 45:15-12 by conspicuously displaying the words "Licensed Real Estate Broker" on the exterior of their office premises, they need not also include additional wording as prescribed by subsection (c) in any other signs on their office premises which contain the name under which they are licensed to operate.

The proposed amendment will restate the two statements which are contained in the current paragraph (j)1 as separate paragraphs (j)1 and (j)2 so as to clarify the rule and emphasize the importance of each statement.

The proposed amendment also revises the definition of a small "spot" classified advertisement, which is one of the two exceptions now contained in the rule to the requirement that advertisements of franchisors and franchisees include a legend as specified in new paragraph (j)2. New subparagraphs (j)2iii and iv establish business cards and advertising placed or distributed by offices which are wholly owned by the franchisor as additional exceptions to the legend requirement.

#### Social Impact

The proposed amendment will have a favorable effect on the public and real estate licensees. The proposed amendment will reduce the con-

fusion which resulted from the current rule's requirement that even wholly owned offices indicate in their advertising that franchised offices are independently owned and operated. It also recognizes that the typical real estate classified advertisement now utilized is larger than the current "8 line" definition.

#### Economic Impact

The proposed amendment will have a favorable impact on the real estate brokerage business and the public. Each licensee will be able to project realistic advertising costs based on a clear understanding of the advertising rule. The proposed amendment will result in a financial saving for real estate businesses which advertise in compliance with the rule because the number of disputes concerning misleading or deceptive advertisements will decrease, thereby avoiding additional legal expenses to resolve disputes. Also, advertising costs will be reduced since the exceptions to the rule requiring the inclusion of the legend are being expanded.

#### Regulatory Flexibility Statement

The proposed amendment will apply to all licensed real estate brokerage businesses in New Jersey. In order to comply with the requirements of this proposed amendment, broker licensees may have to reprint some of their advertisement material which is distributed to the public. The Commission deems, however, that if the proposed amendment places any inconvenience on small real estate brokerage enterprises, the disadvantage is outweighed by the public benefit that the amendment provides.

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

#### 11:5-1.15 Advertising rules

##### (a)-(i) (No change.)

(j) Any use of an insignia, emblem, logo, trade name or other form of identification in any advertising or public utterance, either by a single licensee or any group of licensees, which suggests or otherwise implies common ownership or common management among such licensees, shall be prohibited except in the case of branch offices controlled by a single broker or licensee and duly licensed as branch offices pursuant to the provisions of N.J.S.A. 45:15-1 et seq. Nothing herein provided is intended to preclude or inhibit the use, advertising or display of any insignia, emblem, logo or trade name of any bona fide trade association by any licensee provided that such licensee is a member of such trade association[s].

1. Any franchised licensee using in any advertising the trade name of the franchisor shall include in such advertising in a manner reasonably calculated to attract the attention of the public the franchised licensee's operating name under which the individual, firm or corporation is licensed to do business.

2. Any licensee including the franchisor using the trade name of a franchisor in any advertising shall also include in a manner reasonably calculated to attract the attention of the public the following legend or a substantially similar legend: "each office is independently owned and operated"[:], except in the following categories of advertising:

i. "For sale" signs located on the premises of specific properties for sale[.];

ii. Small "spot" classified advertising by a [single franchised] licensee in newspapers, magazines or other publications **advertising** [of] specific properties [for sale]. A [small "spot" classified [advertising] advertisement is defined as [eight lines] **an advertisement which is no more than one column wide and 20 lines long and which describes no more than two properties**: a line is defined as a standard newspaper classified advertising line of the newspaper, magazine or other publication in which the advertisement is published[.];

[Note: Full compliance with this part of this subsection may, but does not necessarily, result in full compliance with the opening paragraph of this subsection.]

##### iii. Business cards; and

iv. **Advertising placed or distributed by offices which are wholly owned by the franchisor, which contains the office address and contains language which identifies the office as being wholly owned by the franchisor.**

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

(k)-(m) (No change.)

**(a)****Approved Schools; Requirements****Proposed Amendment: N.J.A.C. 11:5-1.28**

Authority: N.J.S.A. 45:15-10.1 and 45:15-6.

Proposal Number: PRN 1988-100.

The agency proposal follows:

**Summary**

The Real Estate Commission (Commission) proposes an amendment to N.J.A.C. 11:5-1.28 to effectuate changes in the criteria which apply to applicants seeking certification as approved real estate education instructors. The proposed amendment also addresses the current requirement to have an approved instructor in the classroom at all times, even when a particular session is being conducted by a guest lecturer. This proposal is a companion to a recent proposal by the Commission to amend N.J.A.C. 11:5-1.27(g) so as to substantially revise the syllabus for the 90 hour broker's pre-licensure course which is required by law to be completed by almost all broker candidates (see 19 N.J.R. 1051(a)). The Commission is desirous, through this proposed amendment, of assuring that the persons who will be teaching the new material in the revised brokers course are themselves familiar with that information and competent to teach it.

As currently worded, N.J.A.C. 11:5-1.28(k) establishes standards upon which an applicant may qualify as an approved real estate education instructor. This rule fails, however, to explicitly state that the Commission has the authority to consider an applicant's age, general character, and the absence of any history of criminal convictions when assessing the applicant's qualifications for designation as an approved instructor. The proposed amendment clearly provides that in order to qualify as an approved instructor, each applicant shall be at least 18 years of age and have a background of good moral character, including the absence of any conviction for certain crimes, as specified in N.J.S.A. 45:15-12.1. Furthermore, the proposed amendment in N.J.S.A. 11:5-1.28(k)li imposes the requirement that a person seeking to be an approved instructor on the basis of their membership on the faculty of a college or university must be a member of the faculty of an accredited institution of higher learning and possess the competency necessary to effectively perform the functions of a real estate instructor. Under subsection (k) as it presently exists, the fact that a member of a faculty has qualified as an instructor or professor in subjects dealing with or related to real estate forms a sufficient basis to obtain the status of an approved instructor. The proposed amendment, however, imposes an obligation upon the applicant to convince the Commission, rather than his or her employing college or university, that the applicant possesses the necessary competency to effectively act as a real estate instructor.

The proposed amendment in N.J.A.C. 11:5-1.28(k)lii reduces from five to three years the period of time during which an actively practicing attorney must have been engaged in the practice of law in order to qualify as an approved instructor. The proposed amendment indicates that only actively practicing attorneys of the State of New Jersey fall within this criteria. Also, the period of time during which the attorney has practiced must be the three years immediately preceding his or her application for approval as an instructor. Furthermore, the attorney's law practice must have included substantial experience in real estate. Currently, there is no reference in this subsection to the quantity or nature of the experience an attorney is required to have in order to qualify.

The proposed amendment in N.J.A.C. 11:5-1.28(k)liii provides that a person may qualify for approval as a real estate instructor if they hold a bachelor's degree with a major in real estate from an accredited college or university. The degree must have been issued within three years of the submission of the application for approval as an instructor. The word "degree" appears without qualification in the present rule. Therefore, some applicants have mistakenly concluded that an associate's or two year degree in any subject would be sufficient to fulfill the education criteria.

The proposed amendment in N.J.A.C. 11:5-1.28(k)liv provides that an applicant for approval as a real estate instructor who holds a bachelor's degree with a major unrelated to real estate, and who possesses a minimum of 225 classroom hours or 15 credit hours in real estate or related subjects from an accredited college or university, will qualify as an approved instructor. Such an applicant must also have at least two years of teaching experience. The proposed amendment reflects an increase in the number of classroom hours from 200 to 225 to assure that the applicant has a thorough knowledge of real estate related topics. In

addition, the proposed amendment maintains consistency with the requirements regarding credit hours, since one credit hour is generally the equivalent of 15 classroom hours.

The proposed amendment in N.J.A.C. 11:5-1.28(k)lv removes the requirement that a licensed New Jersey real estate broker have a minimum of five years experience in the areas of study he or she proposes to teach in order to qualify as a real estate instructor, and instead imposes a requirement that such a licensee shall have had five years of experience as a New Jersey licensee in order to qualify as an approved instructor. This revision is proposed on the basis of the Commission's conclusion that a combination of five years of experience as a New Jersey licensee, the applicant's successful completion of a real estate broker's education course and his or her passage of the New Jersey broker's examination by the applicant are indicative of the fact that the applicant has obtained sufficient knowledge in the real estate field to qualify as an approved real estate instructor.

In addition, the proposed amendment establishes N.J.A.C. 11:5-1.28(k)lvi, which generally makes it compulsory for an instructor to possess the competency to effectively teach real estate subjects.

Several new paragraphs are also proposed to ensure that, upon certification by the Commission, all real estate instructors in the State of New Jersey are competent to teach the real estate related courses. For example, N.J.A.C. 11:5-1.28(k)2 requires a real estate instructor applicant to attend an instructional seminar conducted by the Commission and pass an instructor qualification examination prior to being certified. These courses and examinations will be offered by the Commission at least twice each year. N.J.A.C. 11:5-1.28(k)3 requires all currently certified instructors to attend an instructional seminar and pass an instructor qualification examination within six months of the effective date of this rule amendment. Any currently approved instructor who does not attend the seminar and fails to pass the examination shall lose their approved status until such time as the individual has attended the seminar and passed the examination. N.J.A.C. 11:5-1.28(k)4 indicates that the Commission has the discretion to require all approved real estate instructors who have qualified for certification to thereafter periodically attend informational seminars in order to familiarize the instructors with recent developments in the real estate field.

Finally, the proposed amendment includes new subsection (1), which establishes the consequences of failing to teach a minimum of one complete salesperson or one complete broker course during any two year period. A complete course means a minimum of 75 percent of a single program of instruction.

**Social Impact**

The proposed amendment will have a favorable social impact on approved real estate schools in this State. The criteria by which individuals may receive approval as real estate instructors by the New Jersey Real Estate Commission have been strengthened to ensure that the overall quality of real estate education at real estate schools is upgraded. Further, the proposal, to require that approved instructors who have remained inactive for two or more consecutive years be reevaluated by the Commission, will lessen the risk of a course being conducted by individuals who have failed to keep abreast of the latest trends and developments in the real estate field. By improving the quality of real estate education in New Jersey, the students will benefit by being better prepared to engage as professionals in the real estate field. In addition, the public will benefit because more knowledgeable and better prepared individuals will enter the real estate field as licensees.

**Economic Impact**

The proposed amendment will have a substantial economic impact on the real estate business because it will assure that the instructors of real estate licensure courses are fully competent to teach such courses, thus producing better educated licensees. However, it is not anticipated that adoption of this proposed amendment will substantially increase the costs of offering prelicensure courses. With regard to the proposed amendment to subsection (j), the economic impact will be substantial because the operators of approved real estate schools will no longer have to pay two instructors to cover one classroom session whenever a guest instructor conducts a particular class. Consequently, the frequency of having specialists in particular fields conduct real estate education classes on such topics should increase, which, again, will result in an improvement in the overall quality of real estate education.

It is expected that this potential saving to approved schools will at least partially offset any increase in their operating costs which they may incur as a result of their having to, in some cases, retain better qualified persons

to teach courses who may, in turn, demand higher salaries than do current instructors.

**Regulatory Flexibility Statement**

The proposed amendment will affect all applicants seeking the approval of the Real Estate Commission to teach real estate courses, and currently approved New Jersey real estate instructors. The real estate educational system in New Jersey consists of 540 currently approved real estate instructors, 91 real estate schools and 375 alternative classroom locations. A large majority of these schools are small businesses, as the Regulatory Flexibility Act, P.L. 1986, c.169, defines that term.

As previously stated, the amendment will upgrade the qualifications of instructors authorized to teach real estate courses within this State. This upgrade is essential to assure competency in complex areas such as BOCA, ECRA, and other environmental and social concerns of the real estate business. Lesser qualifications for instructors at schools which are small businesses would defeat the purpose of this upgrade and are, therefore, not provided in these rules.

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

11:5-1.28 Approved schools; requirements

(a)-(i) (No change.)

(j) The maximum teaching load per teacher or instructor shall not exceed the ratio of one teacher or instructor to 60 students per class. Each course of instruction herein provided shall be under the supervision of an instructor qualified as provided for herein. A **qualified instructor** [who] shall be present in the classroom at all sessions. Additional instructors or guest speakers may be utilized for instruction with respect to given subjects provided that not more than [twenty-five] **25** percent of the prescribed respective instruction is done by persons other than the instructor in whom overall responsibility is vested.

(k) Each [staff member] **applicant for approval as a real estate instructor shall[:]** be at least 18 years of age with a background of good moral character, including the absence of any conviction for the certain crimes, or other like offense or offenses, referred to in N.J.S.A. 45:15-12.1.

1. To qualify for approval by the Commission as a real estate instructor, an applicant must fulfill one or more of the following criteria:

i. [In the case of a] **Be a member of the faculty of an accredited college or university, [have qualified as an instructor or professor in subjects dealing with, or related to real estate and such other required subjects as are to be taught] and have taught at least one, two credit course in real estate or related subjects; [or]**

[2.]ii. Have actively practiced as [an] a **licensed attorney at law of the State of New Jersey** for a minimum of [five] **three** years [in the areas of study he proposed to teach] **immediately preceding his or her application for approval as a real estate instructor with substantial experience in real estate; [or]**

[3.]iii. Hold a **bachelor's degree issued within three years of application** as evidence of having majored in real estate from an accredited college or university; [or]

[4.]iv. Hold a **bachelor's degree from an accredited college or university [with at least two years of teaching experience] and possess a minimum of [200] 225 classroom hours or 15 credit hours from an accredited college or university in real estate or related subjects and hold a teaching certificate issued by this or any other state [in the areas of study he proposes to teach]; [or]**

[5.]v. Be a licensed real estate broker in the State of New Jersey with a minimum of five years experience [in the areas of study he proposes to teach] **as a New Jersey licensee immediately preceding application; [.] or**

vi. **Otherwise possess the competency to effectively teach real estate subjects.**

NOTE: The above requirements shall not apply to any guest speaker as heretofore provided. Individuals qualifying [within requirements (k)1 to 5] **as set forth above** shall file a Form "E", together with evidence of past experience in the area of study proposed to be taught.

2. **Prior to any individual being certified by the New Jersey Real Estate Commission as an approved real estate instructor, the applicant**

**must attend an instructional seminar conducted under the auspices of the Commission. Such seminars shall be offered as frequently as the Commission shall deem necessary, but in no event less than twice each year.**

3. All individuals certified as approved real estate instructors on (the effective date of this rule amendment) must, within six months thereof, attend an instructional seminar conducted under the auspices of the Commission. In the event that such persons do not attend such a seminar, their status as approved real estate instructors shall be revoked by the Commission and they shall be ineligible for reinstatement as such until they have attended such a seminar.

4. The Commission may require all approved real estate instructors who have qualified for certification as such pursuant to (k)3 or 4 above to periodically attend informational seminars which the Commission in its discretion determines are necessary in order to familiarize such instructors with recent developments in the real estate field, including, but not limited to, changes in licensing or examination procedures and statutory or rule amendments. The failure of an approved instructor to attend such informational seminars may subject that person to sanctions, including, but not limited to, the suspension or revocation of their certification as an approved real estate instructor.

(l) In the event that an approved instructor fails to teach a minimum of one complete salesperson or one complete broker course during any two year period, his or her approval shall automatically terminate and he or she shall be required to re-apply for approval. As used herein, "complete course" means a minimum of 75 percent of a single program of instruction.

Redesignate existing (l)-(v) as (m)-(w) (No change in text.)

**LAW AND PUBLIC SAFETY**

**(a)**

**DIVISION ON CIVIL RIGHTS**

**Confidentiality of Certain Complainants' Identities  
Proposed Amendments: N.J.A.C. 13:4-3.4, 3.5 and 8.2**

Authorized By: Pamela S. Poff, Director, Division on Civil Rights.

Authority: N.J.S.A. 10:5-1 et seq., specifically 10:5-8g.  
Proposal Number: PRN 1988-115.

Submit comments by April 6, 1988 to:

Pamela S. Poff, Director  
Division on Civil Rights  
Room 400  
1100 Raymond Boulevard  
Newark, NJ 07102

The agency proposal follows:

**Summary**

The proposed amendments to the Division on Civil Rights' Rules of Practice and Procedure are designed to protect the confidentiality of complainants' identities in cases where disclosure of this information may reasonably be expected to interfere with the Division's ability to enforce the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 et seq. The proposed amendments accomplish this by creating procedures by which the Director, upon determining that public disclosure of the parties' identities may reasonably be expected to interfere with a pending investigation, may order that documents containing the identity of the parties, including the verified complaint, be impounded by the Division. Documents not containing the identifying information, but which are otherwise identical to those impounded, would replace the originals in the Division's file. These substituted documents would be available for public dissemination.

The proposed amendments are needed in order to ensure that certain complainants entitled to protection under the LAD are not discouraged from pursuing an action with the Division due to fear that facts giving rise to the complaint may be made public. For example, persons with AIDS, who are protected under the LAD's prohibition against handicap discrimination, have in some instances asked that the Division not release

their names, particularly to the press, because they have been concerned that public disclosure of this information will cause them to be subjected to additional discrimination and harassment. Individuals who have been subjected to unlawful sexual harassment, and who pursue an action before the Division, have raised similar concerns about confidentiality. Where release of a complainant's name may result in harassment, it is reasonable for the Division to conclude that there is sufficient likelihood that the complainant may be coerced into withdrawing a complaint in order to avoid further publicity. In such instances, it is clear that public disclosure of the identities of complainants seriously impairs the Division's ability to satisfy its mandate to enforce the LAD. The proposed amendments would remedy this problem by protecting the confidentiality of complainants' identities in a limited number of cases where public disclosure may make investigation and resolution of cases impossible.

Verified complaints and other documents required by law to be created or maintained by the Division are public records, which generally may be obtained by any member of the public pursuant to the Right To Know Law, N.J.S.A. 47:1A-1, et seq. However, the Right To Know Law provides that records may be withheld during the pendency of an ongoing investigation where it can be shown that disclosure would interfere with the progress of the investigation, and hence be "inimical to the public interest" (see N.J.S.A. 47:1A-3). Since any disclosure which can reasonably be expected to interfere with a Division investigation, made pursuant to the provisions of the LAD, is clearly inimical to the public interest, the proposed amendments are consistent with the Right To Know Law.

The amendments provide for procedures designed to protect the confidentiality of complainants' identities both at the time a verified complaint is filed, and at points subsequent to filing. The procedures in both cases are similar, and are triggered only upon the Director's determination that disclosure of complainant's and/or respondent's identity may interfere with enforcement of the LAD.

Proposed N.J.A.C. 13:4-3.5(b) applies to the filing of verified complaints. The rule provides that, upon the Director's determination and order, the Division shall produce an original verified complaint, containing the full names and addresses of all parties, and a second complaint form, which shall contain only the initials of the parties, but no addresses or other identifying information. The original verified complaint shall then be impounded by the Division, and copies of both are to be served on respondent. The Division shall make copies of all subsequently filed documents in such cases, and shall redact all information which identifies the parties. The original documents shall also be impounded by the Division.

Proposed N.J.A.C. 13:4-3.5(c) protects the confidentiality of complainants' identities subsequent to the filing of a verified complaint. Under this rule, the Director may order that file documents (including the verified complaint) that are part of an ongoing investigation may be impounded by the Division. Copies of the verified complaint and all other documents originally containing the names of the complainant(s) and respondent(s) shall be produced by the Division, and the names and addresses of the parties on said copies shall be redacted. The proposed amendment also provides that all subsequently filed documents in such cases shall be impounded, and copies shall be made by the Division pursuant to the procedure outlined above.

Proposed N.J.A.C. 13:4-8.2(d) states that documents contained in the impounded file shall not be deemed public records for purposes of the New Jersey Right To Know Law. This proposed amendment further provides that the file containing documents in which identifying information has been deleted shall be the file which is subject to public disclosure under the Right To Know Law.

Proposed N.J.A.C. 13:4-3.5(d) authorizes the Director to issue such protective orders as he or she deems necessary to prevent the disclosure of a complainant's or respondent's identity. Finally, proposed N.J.A.C. 13:4-8.2(e) requires that, upon the Director's determination that the LAD has been violated, the Director's Final Order shall be released without redacting respondent's name. Complainant's name and address shall be redacted in cases in which documents have been impounded pursuant to these amendments, unless good cause is shown why complainant's name and address should be released.

#### Social Impact

The proposed amendments are expected to have a positive social impact since they will help ensure that individuals entitled to protection under the Law Against Discrimination are not made the targets of undue harassment and discrimination which may dissuade them from pursuing claims before the Division. By taking steps to protect the confidentiality of complainants' identities in certain cases, the Division will be better

equipped to combat unlawful discrimination against the people in this State in the areas of employment, housing, and public accommodation.

Further, the proposed amendments are not expected to have any significant impact on citizens' ability to obtain information from either the Division or from the press. Copies of impounded documents, available to members of the public under these amendments, will be identical to the impounded originals, save for the deletion of the identity of the parties. For example, a substituted verified complaint will contain all information concerning the basis of the allegation of discrimination and factual circumstances giving rise to the complaint. Only information relating to the identity of the parties involved will be deleted. The Division feels strongly that the potential harm in divulging the identities of the parties far outweighs any value one may attach to establishing the complainant's identity.

#### Economic Impact

The proposed amendments are not expected to have any significant economic impact since the rules simply reflect procedures which protect the identity of complainants.

#### Regulatory Flexibility Statement

The proposed amendments do not require a small business regulatory flexibility analysis since the rules do not specifically apply or impact on small businesses as contemplated by the Regulatory Flexibility Act.

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

#### 13:4-3.4 Form of complaints

(a) A complaint shall be filed upon a printed form approved by the Director.

(b) The complaint shall be entitled in the Department of Law and Public Safety, Division on Civil Rights, and shall set forth in the caption the names of the complainants and respondents, **except as provided in N.J.A.C. 13:4-3.5(b) and (c).**

#### 13:4-3.5 Contents of complaint

(a) **Except as provided in (b) and (c) below,** [T]he complaint shall set forth in separate numbered paragraphs the following:

1.-8. (No change.)

(b) **If the Director determines upon the filing of a Verified Complaint that public dissemination of complainant's and/or respondent's identity may reasonably be expected to interfere with the Division on Civil Rights' ability to enforce the Law Against Discrimination, the Director may order that the following procedures be implemented:**

1. **Upon the filing of the Verified Complaint, a second complaint form, containing only the initials of the complainant and respondent instead of the full names of the parties, and not containing addresses or other identifying facts, shall be produced by the Division. The original Verified Complaint which contains the full names and addresses of all parties, if known, shall be permanently impounded by the Division along with the answer of respondent, unless the Director determines that good cause exists to release such documents to the public.**

2. **All subsequent documents pertaining to cases wherein the original Verified Complaint has been impounded, shall utilize the caption containing only the initials of complainant and respondent, subject to the exception stated in N.J.A.C. 13:4-8.2(e) pertaining to Final Orders of the Director finding that respondent(s) has (have) engaged in unlawful discrimination. Copies of all other documents originally containing the names of complainant(s) and/or respondent(s) shall be made for the duplicate case file and said copies shall have all identifying information regarding complainant(s) and/or respondent(s) redacted.**

3. **When a second complaint not containing the full name and address of the complainant(s) and/or respondent(s) is filed with the Division pursuant to this subsection, both the impounded complaint and the second complaint shall be served upon respondent.**

(c) **Subsequent to the filing of the Verified Complaint or at any time during the pendency of the complaint before the Division, if the Director determines that public dissemination of complainant's and/or respondent's identity may reasonably be expected to interfere with the investigation or prosecution of the complaint, the Director may order that the following procedures be implemented:**

1. **The original Verified Complaint and all other documents containing the names of complainant(s) and/or respondent(s) shall be per-**

manently impounded by the Division unless the Director determines that good cause exists to release such documents to the public; and

2. Duplicates of the Verified Complaint and all other documents originally containing the names of complainant(s) and/or respondent(s) shall be made for the case file and said duplicates shall have the names, addresses and other information identifying complainant(s) and/or respondent(s) redacted.

3. All subsequently filed documents shall follow the procedure stated in (c)1 and 2 above, subject to the exception stated in N.J.A.C. 13:4-8.2(e) pertaining to Final Orders of the Director finding that respondent(s) has (have) engaged in unlawful discrimination.

(d) The Director may, at any point during the pendency of the case before the Division, issue such protective orders as the Director deems necessary to prevent the disclosure of a complainant's or a respondent's identity, subject to the exception stated in N.J.A.C. 13:4-8.2(e) pertaining to Final Orders of the Director finding that respondent(s) has (have) engaged in unlawful discrimination.

(e) The procedures stated in this section for protecting the identities of complainants and/or respondents do not create rights of confidentiality and do not preclude the Division from releasing such information when it has not been determined that to do so would interfere with the investigation or prosecution of the Complaint.

13:4-8.2 Discovery of the Division files

(a) Subject to the exceptions stated in (d) and (e) below, [A]fter a Finding of Probable Cause has been issued by the Director, after transmittal to OAL pursuant to N.J.S.A. 10:5-13, after any final determination has been issued, or after any other agency closure, a party may, upon written request and notice to all other parties, receive discovery of the following information in the Division's file:

1.-3. (No change.)

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

(d) In all cases in which the original Verified Complaint and/or Answer to the Verified Complaint has (have) been impounded, the file containing the documents in which identifying information of the parties has been deleted shall be the file which is subject to disclosure under the New Jersey Right to Know Law, N.J.S.A. 47:1A-1 et seq., and (a) above. The documents contained in the impounded file shall not be deemed public records under the New Jersey Right to Know Law, N.J.S.A. 47:1A-2.

(e) Upon a final determination by the Director that respondent(s) has (have) violated the Law Against Discrimination, the Director's Final Order shall be released upon request without redacting respondent's name. However, complainant's name and address shall continue to be redacted in all cases in which the original pleadings have been impounded unless good cause is shown why complainant's name and address should be released.

(a)

## BOARD OF MARRIAGE COUNSELOR EXAMINERS

### Temporary Permit Holders

#### Proposed Amendment: N.J.A.C. 13:34-3.6

Authorized By: Board of Marriage Counselor Examiners,

Edward Haldeman, Ed.D., Chairman.

Authority: N.J.S.A. 45:8B-13.

Proposal Number: PRN 1988-104.

Submit comments by April 6, 1988 to:

Jeannette Balber, Executive Director  
Board of Marriage Counselor Examiners, Room 512  
1100 Raymond Boulevard  
Newark, New Jersey 07102

The agency proposal follows.

#### Summary

The Board of Marriage Counselor Examiners is proposing to amend N.J.A.C. 13:34-3.6 to eliminate the restriction that the holder of a temporary permit must practice on the premises of an approved and qualified supervisor. The holder of a temporary license continues to be required to provide counseling services under the direct supervision of a licensed

practicing marriage counselor or a person designated by the board as an eligible supervisor pursuant to N.J.S.A. 45:8B-6.

#### Social Impact

The proposed amendment to N.J.A.C. 13:34-3.6 will have a salutary social impact in that it will enable individuals who are qualified to receive temporary permits to provide the consumer with additional locations to receive counseling. The consumer can nevertheless be assured that the temporary licensee will continue to be required to practice under the direct supervision of a licensed practicing marriage counselor or a person designated by the board as an eligible supervisor.

#### Economic Impact

It is not anticipated that this proposed amendment will have any economic impact, although a possible economic benefit may inure to individuals who are qualified to receive temporary permits due to the availability of additional locations to provide counseling.

#### Regulatory Flexibility Statement

There will be no cost of compliance to small businesses; there are no reporting or recordkeeping requirements related to this proposed amendment.

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

13:34-3.6 Temporary permit requiring supervision

Pursuant to N.J.S.A. 45:8B-6(e) and N.J.S.A. 45:8B-18(b), prior to the Board's approval of a three-year temporary permit the applicant must show that he has had a minimum of two years of full-time counseling experience and meets the educational requirement for licensure. [The temporary permit is only valid for use on the premises of an approved and qualified supervisor.]

(b)

## DIVISION OF CONSUMER AFFAIRS

### Sale of Animals

#### Proposed Repeals: N.J.A.C. 13:45A-12.1 and 12.2

#### Proposed New Rules: N.J.A.C. 13:45A-12.1, 12.2 and 12.3

Authorized By: James J. Barry, Jr., Director, Division of Consumer Affairs.

Authority: N.J.S.A. 56:8-4.

Proposal Number: PRN 1988-112.

Submit comments by April 6, 1988 to:

James J. Barry, Jr., Director  
Division of Consumer Affairs  
1100 Raymond Boulevard, Room 504  
Newark, New Jersey 07102

The agency proposal follows:

#### Summary

On November 20, 1975, the Division of Consumer Affairs (Division) first adopted rules regulating the sale of animals within the State of New Jersey. Since that time the Division has become aware, through public complaints, of the need for newer and more complete guidelines. The Division now proposes to repeal the existing rules and propose new ones. The Division originally published a proposal to repeal and replace the existing rules in the New Jersey Register on May 18, 1987, at 19 N.J.R. 853(a). During the comment period that followed, 39 written comments were received and over 300 transcript pages of testimony were compiled at two public hearings. The first public hearing was held in Trenton on June 3, 1987 and the second took place in Newark on June 17, 1987. Adoption of the May 18 proposal was postponed in view of the volume and tenor of public comments received. Since the conclusion of the public comment period on June 17, 1987, the comments received have been thoroughly reviewed and analyzed and a number of changes from the original proposal have been made. These changes are designed to clarify the rules as well as to properly respond to the public comments.

The major change from the existing rules effected by the proposed new rules is that pet dealers will be required to have every dog and cat examined by a licensed New Jersey veterinarian prior to the animal's sale. Additionally, where the initial examination takes place more than 14 days

prior to purchase, pet dealers are required to have the animal reexamined within 72 hours of delivery to the consumer unless the consumer waives the reexamination in writing.

The length of time during which a consumer may obtain a certification from a veterinarian declaring the dog or cat as "unfit for purchase" because of a non-congenital cause or condition remains at the existing 14 days. A new provision has been added which protects the consumer whose dog or cat has been declared "unfit for purchase" because of a congenital or hereditary cause or condition which becomes apparent within six months from the date of purchase. The definition of "unfit for purchase" has been broadened and now specifically includes the death of a dog or cat within the initial 14-day period. The length of time a consumer has to deliver the veterinarian certification of "unfit for purchase" has been increased from the present three days to five. Once a consumer's animal has been certified as "unfit for purchase", the consumer may continue to elect one of three options. The consumer may return the animal and receive a refund of the purchase price including sales tax, return the animal for an exchange animal plus veterinary fees, or retain the animal and attempt to cure it. In the event the last option is chosen, the consumer is entitled to receive the cost of veterinary fees incurred prior to certification as well as future veterinary fees incurred in attempting to cure the animal, but the recovery of medical costs is limited to the purchase price including sales tax of the animal. The pet dealer is required to confirm the consumer's election in writing upon receipt of a veterinarian certification.

Pet dealers are expressly prohibited from any activities which may imply that they are qualified to practice veterinary medicine. They may inoculate or vaccinate animals but only under the order of a veterinarian licensed to practice within the State of New Jersey.

Pet dealers are required to quarantine all dogs and cats diagnosed as suffering from a contagious or infectious disease until a licensed New Jersey veterinarian determines such animal to be free from the contagion or infection. The new rules also set forth the minimum standards and requirements for the establishment of quarantine areas.

The existing rules have been changed to clarify any possible confusion to the public by defining the terms "pet shop" and "kennel". In addition, the use of the word "kennel" by businesses which have not been either licensed as a kennel or which do not fall within the definition contained in N.J.A.C. 13:45A-12.1 has been expressly restricted.

Substantive, as well as technical, corrections have been made to clarify the rules, making them easier to understand and enforce. Listed below are some of the substantive changes made from the original proposal. (Additions to the May 18, 1987 proposal are indicated in boldface thus; deletions in brackets [thus].)

#### I. N.J.A.C. 13:45A-12.2(a)4

To directly or indirectly refer, promote, suggest, recommend or advise that a consumer consult with, use, seek or obtain the services of [any particular] a licensed veterinarian **unless the consumer is provided with the names of not less than three licensed veterinarians of whom only one may be the veterinarian retained by the pet dealer for its purposes.**

REASON: This provision was changed to allow pet dealers to make referrals under strict conditions. It was determined that many consumers are first time pet purchasers and the absolute prohibition on referrals would only harm the consumer's ability to find a competent veterinarian.

#### II. N.J.A.C. 13:45A-12.3(a)1

A pet dealer shall have each animal examined by a veterinarian licensed to practice in the State of New Jersey [within three days of receipt] **prior to the sale of the animal . . .**

REASON: This change was made in response to industry comment that three days was an unreasonably short period of time and more time was needed. According to the pet dealers, the three day requirement would have called for more frequent visits by veterinarians and, as a result, would have meant more expense. Therefore, in order to reduce the burden on the industry, the three day requirement was removed.

#### III. N.J.A.C. 13:45A-12.3(a)2

**A pet dealer shall label and identify each cage as to the:**

- i. **Supplier's name and address;**
- ii. **Breeder's name and address;**
- iii. **Sex and breed of animal;**
- iv. **Date and place of birth of each animal; and**
- v. **Name and address of the attending licensed New Jersey veterinarian and the date of the initial examination.**

REASON: While the comments were being reviewed, the Division determined that it would be better for the consumer to have this information before the sale rather than afterwards, as in the present rule.

#### IV. N.J.A.C. 13:45A-12.3(a)[2]3

A pet dealer shall [keep caged in a quarantined area of the premises] **be required to quarantine any animal diagnosed as suffering from a contagious or infectious disease, illness or condition until such time as a licensed New Jersey veterinarian determines that such animal is free from contagion or infection. All animals requiring quarantining shall be placed in a quarantine area separated from the general animal population. The quarantine area shall:**

- i. **Be a separate physically defined space of cages removed from the holding area of the general animal population;**
- ii. **Not be used for any other purpose other than the segregation of sick animals because of the presence or suspected presence of a contagious or infectious disease; and**
- iii. **Have an exhaust fan which creates air movement from the quarantine area to an area outside the premises of the pet dealer. Such removal of exhaust air from the quarantine area may be accomplished by the use of existing heating and air conditioning ducts provided no exhaust air is permitted to enter or mix with fresh air for use by the general animal population.**

4. A pet dealer required to quarantine any animal under (a)3 above shall ensure that individuals who enter the quarantine area:

- i. **Wear separate protective clothing on their bodies, hands, and feet while handling any quarantined animal. All such protective clothing shall not be removed from the quarantine area except for cleaning purposes. Under no circumstances shall the protective clothing be worn in the holding area for the general animal population; and**
- ii. **Wash their hands after handling quarantined animals and prior to the handling of any member of the general animal population.**

REASON: These changes and additions were made in response to comments received at the public hearing held in Newark on June 17, 1987. During the hearing, it was pointed out that the proposed rules lacked sufficient guidelines for quarantining sick animals. It was further suggested that the proposed rules develop some minimum standards and requirements for the establishment of quarantine areas within the pet industry.

#### V. N.J.A.C. 13:45A-12.3(a)[3]5

A pet dealer [and/or his agents] shall be permitted to inoculate and vaccinate animals prior to purchase [but such person] **only on the order of a veterinarian licensed to practice in the State of New Jersey. A pet dealer, however, shall be prohibited from . . .**

REASON: Comments received from the New Jersey State Board of Veterinary Medical Examiners and the Department of Agriculture stated that the rule as proposed was in direct violation of N.J.A.C. 2:6-1.5(b), which requires all biologicals to be administered only by or on the order of a licensed New Jersey veterinarian. The paragraph has been changed to conform with the mandate of N.J.A.C. 2:6-1.5(b).

VI. The most frequent industry comment concerned N.J.A.C. 13:45A-12.3(a)7. This paragraph, as originally proposed, permitted the consumer to return for a refund or exchange any animal which had been certified as unfit for purchase because of a congenital cause or condition within one year from the date of purchase. This paragraph also allowed the consumer the option of retaining the animal and receiving a reimbursement for veterinary fees incurred prior to certification as well as future fees incurred in attempting to cure the animal. In the event the consumer chose to retain the animal, the pet dealer's liability for veterinary fees would not exceed the purchase price including sales tax of the animal. No such cap existed for the other options of return or exchange. Thus, pet dealers were exposed to virtually unlimited liability for veterinary fees in these situations.

In response to these comments, the paragraph has been changed by the reduction of the time period from one year to six months and the addition of a liability cap for veterinary fees at the end of each subparagraph ((a)7i.-iv.). A further limitation was placed on the potential liability by adding the requirement that the congenital or hereditary cause or condition severely affect the health of the animal. The word "hereditary" was added to the paragraph to clarify the intent of the original proposal. Also, in (a)7iv, the refund available to a consumer in the event the animal died within 14 days of its delivery was raised from 75 percent to 100 percent.

#### Social Impact

The existing N.J.A.C. 13:45A-12 is concerned primarily with protecting the consumer who has purchased a sick dog or cat. The proposed new rules additionally seek to insure that the dog or cat has not been seriously ill or impaired before the consumer makes the purchase.

The repropoed new rules will help prevent the delivery of sick animals to New Jersey consumers. The proposed new rules require pet dealers to have all animals examined prior to sale. In addition, where this examination took place more than 14 days prior to purchase, the proposed new rules require a reexamination of the animal within 72 hours of delivery to the consumer. The reexamination requirement may be waived by the consumer but only in writing and after full disclosure. The sale of sick animals should also be largely prevented by a new requirement that dogs and cats with infectious or contagious diseases be quarantined until cured.

The use of the term "kennel" by pet shop owners has the capacity to cause confusion among New Jersey consumers who are likely to be misled into believing that they are dealing with something other than a retail "pet shop". The proposed new rules which define the word "kennel" and limit its use should largely remove this confusion.

The proposed new rules should benefit the consumer since they provide the consumer with a written record of the animal's health and should provide the pet dealer a greater incentive to sell healthy animals. The rules also grant relief to a consumer whose animal is declared unfit for purchase within six months of purchase due to a congenital or hereditary cause or condition which severely affects the health of the animal.

#### Economic Impact

The proposed new rules require that timely veterinary examination(s) be conducted by arrangement of the pet dealer. The expense to the pet dealer should be offset by the assurance that the animal in question is reasonably healthy prior to sale. In the long term, pet dealers should benefit economically by presumably less frequent instances of post-sale veterinary treatments for which the dealer is financially liable.

The proposed new rules require that the pet dealer prepare and present to the consumer a proposed statement of rights, permissible waiver and options available in the event of "unfitness" of the animal. The consumer and the pet dealer both will benefit from the removal of potential ambiguities in the sales transaction. Fuller disclosure of the economic rights and responsibilities of both parties will benefit dealers as well as consumers.

#### Regulatory Flexibility Statement

The pet dealer industry in New Jersey is comprised of approximately 400 pet shops and kennels which would be subject to the proposed new rules. The majority of these pet shops and kennels qualify as small businesses for the purposes of the Regulatory Flexibility Act. While the proposed new rules have the potential for creating an adverse economic impact on the pet dealer industry, any such impact is outweighed by the necessity of protecting the health, safety, and welfare of the citizens of New Jersey. The Division believes establishing these rules will ensure the sale of only healthy animals in the State thereby eliminating the health hazard posed to the rest of society by sick cats and dogs. Overall, the cost of compliance is low. The potential for adverse economic impact has been minimized through ceilings placed on the pet dealer's liability. The ceiling is fixed at the purchase price of the animal including sales tax.

The proposed new rules will establish two new compliance and recordkeeping requirements. Under N.J.A.C. 13:45A-12.3(a)4 and 7, pet dealers are required to use the new "veterinary examination waiver form" and the "unfit for purchase form", respectively. The cost of compliance with these new requirements is minimal. Neither form is required for all sales. The waiver form is only required where the animal to be purchased was last examined by a New Jersey veterinarian more than 14 days prior to its sale. The election form is only required where the consumer elects to exercise an option based upon the animal being certified as "unfit for purchase" by a licensed New Jersey veterinarian. In both instances, no professional services are required for the pet dealer to comply with the proposed new rules. Even though the relative cost of compliance is minimal, the cost is outweighed by the economic benefit to all pet dealers in eliminating any ambiguities in the pre-sale and post-sale consumer transactions. By using these two new forms, pet dealers will be able to eliminate the costs of post-sale disputes regarding an animal's health at the time of sale.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 13:45A-12.1 and 12.2.

Full text of the proposed new rules follows:

## SUBCHAPTER 12. SALE OF ANIMALS

### 13:45A-12.1 Definitions

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

"Animal" means a dog or cat.

"Consumer" means any natural person purchasing a dog or cat from a pet dealer.

"Division" means the Division of Consumer Affairs, Department of Law and Public Safety.

"Kennel" means the business of boarding dogs or cats or breeding dogs or cats for sale.

"Person" means any person as defined by N.J.S.A. 56:8-1(d).

"Pet dealer" means any person engaged in the ordinary course of business in the sale of animals for profit to the public.

"Pet shop" means the business of selling, offering for sale or exposing for sale dogs or cats.

"Quarantine" means to hold in segregation from the general animal population any dog or cat because of the presence or suspected presence of a contagious or infectious disease.

"Unfit for purchase" means any disease, deformity, injury, physical condition, illness or defect which is congenital or hereditary and severely affects the health of the animal, or which was manifest, capable of diagnosis or likely to have been contracted on or before the sale and delivery of the animal to the consumer. The death of an animal within 14 days of its delivery to the consumer, except death by accident or as a result of injuries sustained during that period shall mean such animal was unfit for purchase.

### 13:45A-12.2 General provisions

(a) Without limiting the prosecution of any other practices which may be unlawful under N.J.S.A. 56:8-1 et seq., the following acts, practices or omissions shall be deceptive practices in the conduct of the business of a pet dealer:

1. To sell an animal within the State of New Jersey without an animal history and health certificate and without providing the consumer with a completed animal history and health certificate. The animal history and health certificate shall be signed by the pet dealer, his agent or employee, and shall contain the following information:

- i. The animal's breed, sex, age, color, and birth date;
- ii. The name and address of the person from whom the pet dealer purchased the animal;
- iii. The breeder's name and address, and the litter number of the animal;
- iv. The name and registration number of the animal's sire and dam;

- v. The date the pet dealer took possession of the animal;
- vi. The date the animal was shipped to the pet dealer, where such date is known by the dealer;

vii. The date or dates on which the animal was examined by a veterinarian licensed to practice in the State of New Jersey, the name and address of such veterinarian, the findings made and the treatment, if any, taken or given to the animal;

viii. A statement of all vaccinations and inoculations administered to the animal, including the identity and quantity of the vaccine or inoculum administered, the name and address of the person or licensed veterinarian administering the same, and the date of administering the vaccinations and inoculations; and

- ix. A 10-point bold-face type warning in the following form:

#### WARNING

The animal which you have purchased (check one)  has  has not been previously vaccinated or inoculated. Vaccination or inoculation neither guarantees good health nor assures absolute immunity against disease. Examination by a veterinarian is essential at the earliest possible date to enable your veterinarian to insure the good health of your pet.

2. To fail to maintain a copy of the animal history and health certificate signed by the consumer for a period of one year following the date of sale and/or to fail to permit inspection thereof by an

authorized representative of the Division upon two days' notice (exclusive of Saturday and Sunday).

3. To include in the animal history and health certificate any false or misleading statement.

4. To directly or indirectly refer, promote, suggest, recommend or advise that a consumer consult with, use, seek or obtain the services of a licensed veterinarian unless the consumer is provided with the names of not less than three licensed veterinarians of whom only one may be the veterinarian retained by the pet dealer for its purposes.

5. To describe or promote the operation of the business as a "kennel" unless the business operation falls within the definition contained in N.J.A.C. 13:45A-12.1 or the operation of the business as a "kennel" has been authorized by the issuance of a license pursuant to N.J.S.A. 4:19-15.8. In the absence of meeting such criteria, a pet dealer shall be considered to be engaged in the operation of a "pet shop" and shall, where the name for the business operation includes the word "kennel," indicate the following disclaimer in proximate location to the name for the business operation in all promotional or advertising activities:

"This business only engages in the operation of a pet shop."

6. To use or employ a name for the business operation which suggests or implies that such business operation is engaged in or is associated with any organization which registers or certifies the pedigree or lineage of animals and/or to represent, expressly or by implication, approval by or affiliation with such organization, unless the following disclaimer, as appropriate, appears in proximate location to the name for the business operation:

"This business only engages in the operation of a pet shop."

"This business only engages in the operation of a kennel."

7. To state, promise or represent, directly or indirectly, that an animal is registered or capable of being registered with an animal pedigree registry organization, followed by a failure either to effect such registration or provide the consumer with the documents necessary therefor within 90 days following the date of sale of such animal. In the event that a pet dealer fails to effect registration or to provide the necessary documents within 90 days following the date of sale, the consumer shall, upon written notice to the pet dealer, be entitled to choose one of the following options:

i. To return the animal and to receive a refund of the purchase price plus sales tax; or

ii. To retain the animal and to receive a partial refund of 75 percent of the purchase price plus sales tax.

8. A pet dealer's failure to comply with the consumer's election pursuant to (a)7 above within 10 days of written notice thereof shall be deemed a separate deceptive practice for purposes of this section.

9. To fail to display conspicuously on the business premises a sign not smaller than 22 inches by 18 inches which clearly states to the public in letters no less than one inch high the following:

#### KNOW YOUR RIGHTS

The sale of dogs and cats is subject to a regulation of the New Jersey Division of Consumer Affairs. Read your animal history and health certificate, the Statement of New Jersey Law Governing the Sale of Dogs and Cats and your Contract. In the event of a complaint you may contact: Division of Consumer Affairs, 1100 Raymond Boulevard, Newark, New Jersey 07102, (201) 648-3622.

(b) It shall be a deceptive practice within the meaning of this section for a pet dealer to secure or attempt to secure a waiver of any of the provisions contained in (a) above.

#### 13:45A-12.3 Required practices related to the health of animals and fitness for sale and purchase

(a) Without limiting the prosecution of any other practices which may be unlawful under N.J.S.A. 56:8-1 et seq., it shall be a deceptive practice for a pet dealer to sell animals within the State of New Jersey without complying with the following minimum standards relating to the health of animals and fitness for sale and purchase:

1. A pet dealer shall have each animal examined by a veterinarian licensed to practice in the State of New Jersey prior to the sale of the animal. The name and address of the examining veterinarian,

together with the findings made and treatment (if any) ordered as a result of the examination, shall be noted on each animal's history and health certificate as required by N.J.A.C. 13:45A-12.2(a)1vii.

2. A pet dealer shall label and identify each cage as to the:

i. Supplier's name and address;

ii. Breeder's name and address;

iii. Sex and breed of animal;

iv. Date and place of birth of each animal; and

v. Name and address of the attending licensed New Jersey veterinarian and the date of initial examination.

3. A pet dealer shall be required to quarantine any animal diagnosed as suffering from a contagious or infectious disease, illness or condition until such time as a licensed New Jersey veterinarian determines that such animal is free from contagion or infection. All animals requiring quarantining shall be placed in a quarantine area separated from the general animal population. The quarantine area shall:

i. Be a separate physically defined space of cages removed from the holding area of the general animal population;

ii. Not to be used for any other purpose other than the segregation of sick animals because of the presence or suspected presence of a contagious or infectious disease; and

iii. Have an exhaust fan which creates air movement from the quarantine area to an area outside the premises of the pet dealer. Such removal of exhaust air from the quarantine area may be accomplished by the use of existing heating and air conditioning ducts provided no exhaust air is permitted to enter or mix with fresh air for use by the general animal population.

4. A pet dealer required to quarantine any animal under (a)3 above shall ensure that individuals who enter the quarantine area:

i. Wear separate protective clothing on their bodies, hands, and feet while handling any quarantined animal. All such protective clothing shall not be removed from the quarantine area except for cleaning purposes. Under no circumstances shall the protective clothing be worn in the holding area for the general animal population; and

ii. Wash their hands after handling quarantine animals and prior to the handling of any member of the general animal population.

5. A pet dealer shall be permitted to inoculate and vaccinate animals prior to purchase only on the order of a veterinarian licensed to practice in the State of New Jersey. A pet dealer, however, shall be prohibited from representing, directly or indirectly, that he is qualified to engage in or is engaging in, directly or indirectly, the following activities: diagnosing, prognosing, treating, administering, prescribing, operating on, manipulating or applying any apparatus or appliance for disease, pain, deformity, defect, injury, wound or physical condition of animals after purchase for the prevention of, or to test for, the presence of any disease in such animals. These prohibitions include but are not limited to the giving of inoculations or vaccinations after purchase, the diagnosing, prescribing and dispensing of medication to animals and the prescribing of any diet or dietary supplement as treatment for any disease, pain, deformity, defect, injury, wound or physical condition.

6. A pet dealer shall have any animal which has been examined more than 14 days prior to purchase reexamined by a licensed New Jersey veterinarian for the purpose of disclosing its condition at the time of purchase. Such examination shall take place within 72 hours of delivery of the animal to the consumer unless the consumer waives this right to reexamination in writing. The written waiver shall be in the following form and a copy shall be given to the consumer prior to the signing of any contract or agreement to purchase the animal:

#### KNOW YOUR RIGHTS

To ensure that healthy animals are sold in this State, New Jersey law requires that a dog or cat be examined by a licensed New Jersey veterinarian prior to its sale by a pet dealer and within 72 hours of the delivery of the dog or cat to a consumer who has purchased the animal where the initial examination took place more than 14 days prior to the date of purchase. A pet dealer need not have the animal reexamined if you, the consumer, decide that you do not want such a reexamination performed.

If you do not want a reexamination performed, please indicate your decision below.

**WAIVER OF REEXAMINATION RIGHT**

I understand that I have the right to have my animal reexamined within 72 hours of its delivery to me. I do not want to have such a reexamination performed.

Consumer's Name (Print)	Consumer's Signature
	Date
Pet Dealer's or Agent's Name (Indicate Title or Position) (Print)	Pet Dealer's or Agent's Signature
	Date

7. If at any time within 14 days following the sale and delivery of an animal to a consumer, a licensed veterinarian certifies such animal to be unfit for purchase due to a non-congenital cause or condition or within six months certifies an animal to be unfit for purchase due to a congenital or hereditary cause or condition, a consumer shall have the right to elect one of the following options:

i. The right to return the animal and receive a refund of the purchase price, including sales tax, plus reimbursement of the veterinary fees incurred prior to the consumer's receipt of the veterinary certification. The pet dealer's liability for veterinary fees under this option shall not exceed a dollar amount equal to the purchase price, including sales tax, of the animal;

ii. The right to retain the animal and to receive reimbursement for veterinary fees incurred prior to the consumer's receipt of the veterinary certification, plus the future cost of veterinary fees to be incurred in curing or attempting to cure the animal. The pet dealer's liability under this option shall not exceed a dollar amount equal to the purchase price, including sales tax, of the animal;

iii. The right to return the animal and to receive in exchange an animal of the consumer's choice, of equivalent value, plus reimbursement of veterinary fees incurred prior to the consumer's receipt of the veterinary certification. The pet dealer's liability for veterinary fees under this option shall not exceed a dollar amount equal to the purchase price, including sales tax, of the animal;

iv. In the event of the animal's death within 14 days of its delivery to the consumer, except where death occurs by accident or injury sustained during that period, the right to receive a full refund of the purchase price plus sales tax for the animal, or in exchange an animal of the consumer's choice of equivalent value, plus reimbursement of veterinary fees incurred prior to the death of the animal. The pet dealer's liability for veterinary fees under this option shall not exceed a dollar amount equal to the purchase price, including sales tax, of the animal.

8. The pet dealer shall accept receipt of a veterinary certification of unfitness which has been delivered by the consumer within five days following the consumer's receipt thereof, such certification to contain the following information:

- i. The name of the owner;
- ii. The date or dates of examination;
- iii. The breed, color, sex and age of the animal;
- iv. A statement of the veterinarian's findings;
- v. A statement that the veterinarian certifies the animal to be "unfit for purchase";
- vi. An itemized statement of veterinary fees incurred as of the date of the certification;
- vii. Where the animal is curable, the estimated fee to cure the animal;
- viii. Where the animal has died, a statement setting forth the probable cause of death; and
- ix. The name and address of the certifying veterinarian and the date of the certification.

9. When a consumer presents a veterinary certification of unfitness to the pet dealer, the pet dealer shall confirm the consumer's election in writing. The election shall be in the following form and a copy shall be given to the consumer upon signing:

**UNFITNESS OF ANIMAL—ELECTION OF OPTION**

I understand that, upon delivery of my veterinarian's certification of unfitness, I have the right to elect one of the following options. I am aware of those options and I understand each of them. I have chosen the following option:

1. Return of my animal and receipt of a refund of the purchase price, including sales tax for the animal, plus reimbursement of the veterinary fees incurred prior to the date I received my veterinarian's certification of unfitness. The reimbursement for veterinarian's fees shall not exceed a dollar amount equal to the purchase price including sales tax of my animal.

2. Retention of my animal and reimbursement for the veterinary fees incurred prior to the date I received my veterinarian's certification of unfitness, plus the future cost to be incurred in curing or attempting to cure my animal. The total reimbursement for veterinarian's fees shall not exceed a dollar amount equal to the purchase price including sales tax for my animal.

3. Return of my animal and receipt of an animal of my choice of equivalent value in exchange plus reimbursement of veterinary fees incurred prior to the date I received my veterinarian's certification of unfitness. The reimbursement for veterinarian's fees shall not exceed a dollar amount equal to the purchase price including sales tax of my animal.

4. **DEATH OF ANIMAL ONLY.** (check one)  Receipt of a full refund of the purchase price, including sales tax for the animal, or in exchange an animal of my choice of equivalent value plus reimbursement of the veterinary fees incurred prior to the death of the animal. The reimbursement for veterinarian's fees shall not exceed a dollar amount equal to the purchase price including sales tax of my animal.

Consumer's Name (Print)	Consumer's Signature
	Date
Pet Dealer's or Agent's Name (Indicate Title or Position) (Print)	Pet Dealer's or Agent's Signature
	Date

10. A pet dealer shall comply with the consumer's election as required by (a)7i through iv above not later than 10 days following receipt of a veterinary certification. In the event that a pet dealer wishes to contest a consumer's election, he shall notify the consumer and the Director of the Division of Consumer Affairs in writing within five days following the receipt of the veterinarian's certification, and he may require the consumer to produce the animal for examination by a veterinarian of the dealer's choice at a mutually convenient time and place. The Director shall, upon receipt of such notice, provide a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, to determine why the option elected by the consumer should not be allowed.

11. A pet dealer shall give the following written notice to a consumer prior to the delivery of the animal. Such notice, signed by both the pet dealer and the consumer, shall be embodied in a separate document and shall state the following in 10 point boldface type:

**KNOW YOUR RIGHTS—A STATEMENT OF NEW JERSEY LAW GOVERNING THE SALE OF DOGS AND CATS**

The sale of dogs and cats is subject to a regulation of the New Jersey Division of Consumer Affairs. In the event that a licensed veterinarian certifies your animal to be unfit

for purchase within 14 days following receipt of your animal or within six months in the case of a congenital or hereditary cause or condition, you may:

- i. Return your animal and receive a refund of the purchase price including sales tax; or
- ii. Keep your animal and attempt to cure it; or
- iii. Return your animal and receive an animal of your choice of equivalent value.

Further, in the event of your animal's death within this 14-day period, except where death occurs by accident or as a result of injuries sustained after delivery, you may choose to receive either a full refund of the purchase price plus sales tax or an animal of your choice of equivalent value. In addition, veterinary fees limited to the purchase price, including sales tax, of the animal must be paid by the pet dealer.

In order to exercise these rights, you must present to the pet dealer a written veterinary certification that the animal is unfit for purchase and an itemized bill of all veterinary fees incurred prior to your receipt of the certification. Both of these items must be presented no later than five days after you have received the certification of unfitness. In the event that the pet dealer wishes to contest the certification or the bill, he may request a hearing at the Division of Consumer Affairs. If the pet dealer does not contest the matter, he must make the refund or reimbursement not later than ten days after receiving the veterinary certification.

Although your dog or cat is required to be examined by a licensed New Jersey veterinarian prior to sale, symptoms of certain conditions may not appear until after sale. If your dog or cat appears ill, you should have it examined by a licensed veterinarian of your choice at the earliest possible time.

If the pet dealer has promised to register your animal or to provide the necessary papers and fails to do so within 90 days following the date of sale, you are entitled to return the animal and receive a full refund of the purchase price plus sales tax or to keep the animal and receive a refund of 75 percent of the purchase price plus sales tax.

12. It shall be a deceptive practice within the meaning of this section for a pet dealer to secure or attempt to secure a waiver of any of the provisions of this section except as specifically authorized under (a)6 above.

## NEW JERSEY RACING COMMISSION

Proposals N.J.A.C. 13:70-6.55, 13:70-14A.9 and 13:71-11.9 are authorized by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Submit comments by April 6, 1988 to:  
Charles K. Bradley, Deputy Director  
New Jersey Racing Commission  
Justice Complex  
CN 088  
Trenton, New Jersey 08625

(a)

### Thoroughbred Racing Respiratory Bleeders

#### Proposed Repeal: N.J.A.C. 13:70-6.55

Authority: N.J.S.A. 5:5-30.  
Proposal Number: PRN 1988-106.

The agency proposal follows:

#### Summary

The New Jersey Racing Commission is proposing to repeal N.J.A.C. 13:70-6.55 as the provision of this rule also appears at N.J.A.C. 13:70-14A.9(d).

#### Social Impact

The social impact would be positive in clarifying that the rules regarding medication are in the Medication and Testing Procedures subchapter (N.J.A.C. 13:70-14A) as opposed to the Entries and Subscriptions subchapter (N.J.A.C. 13:70-6).

#### Economic Impact

There will be no economic impact as a result of this proposed repeal since it deletes a repetitious rule.

#### Regulatory Flexibility Statement

This proposed repeal has been reviewed with regard to the Regulatory Flexibility Act. The repeal of this rule will have no effect on small businesses as it is a duplicate rule.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 13:70-6.55.

(b)

### Thoroughbred Racing Administering Medication to Respiratory Bleeders Proposed Amendment: N.J.A.C. 13:70-14A.9

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1988-102.

The agency proposal follows:

#### Summary

The proposed amendment reduces the amount of time a horse cannot compete from 90 days to 30 days for a second time bleeder. The proposed amendment also allows a horse that is a respiratory bleeder an additional opportunity to participate before being barred from racing in the State of New Jersey, and further allows a horse that is a third time bleeder to be suspended from racing for three months rather than being barred from racing.

#### Social Impact

The social impact of the proposed amendment will be a positive benefit for the owners and trainers of horses that are respiratory bleeders. The proposed amendment will allow horses to compete an additional time in the event that they have a bleeding problem, and, with the medication that is available now to help control bleeding, the horses would not have to be suspended from racing as long as they were previously.

#### Economic Impact

The proposed amendment should provide a small economic benefit to the industry and to the public in that it will make the availability of more horses to be carded on racing programs. The owners and trainers of respiratory bleeders will be able to receive more starts out of horses since the time horses must be laid up will be shortened considerably and, additionally, the proposed amendment will allow for horses to be given an additional time to compete in New Jersey prior to being barred from racing.

#### Regulatory Flexibility Statement

The majority of owners of the horses affected by this proposed amendment come within the Regulatory Flexibility Act's definition of a small business. The proposed amendment is directed toward maintaining the integrity of racing in New Jersey, while taking into consideration the advancements made toward the treatment of the horses that have respiratory bleeding problems. To achieve the regulatory responsibilities of the Racing Commission in protecting the public and the participants, it is necessary to establish standards for the treatment of horses that have a respiratory bleeding problem, and the rules which govern the treatment of respiratory bleeders are being amended to the benefit of the owners of respiratory bleeders.

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

13:70-14A.9 Administering medication to respiratory bleeders

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

(d) A horse placed on the veterinarian's list for bleeding must remain on the list for 14 calendar days; [and] a second time bleeder must remain on the respiratory list for [three months] **30 days; and a third time bleeder must remain on the respiratory list for three**

**PROPOSALS**

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**LAW AND PUBLIC SAFETY**

months. A bleeder in the above categories is automatically released from the veterinarian's list after these dates; however, a horse which evidences respiratory bleeding a [third] fourth time is barred from further racing in New Jersey.

**(a)**

**Harness Racing  
Respiratory Bleeders  
Proposed Repeal: N.J.A.C. 13:71-11.9**

Authority: N.J.S.A. 5:5-30.  
Proposal Number: PRN 1988-105.  
The agency proposal follows:

**Summary**

The New Jersey Racing Commission is proposing to repeal N.J.A.C. 13:71-11.9 as the provision of this rule also appears at N.J.A.C. 13:71-23.8(d).

**Social Impact**

The social impact would be positive in clarifying that the rules regarding medication are in the Medication and Testing Procedures subchapter (N.J.A.C. 13:71-23) as opposed to the Entries and Subscriptions subchapter (N.J.A.C. 13:71-11).

**Economic Impact**

There will be no economic impact as a result of this proposed repeal since it deletes a repetitious rule.

**Regulatory Flexibility Statement**

This proposed repeal has been reviewed with regard to the Regulatory Flexibility Act. The repeal of this rule will have no effect on small businesses as it is a duplicate rule.

Full text of the proposed repeal can be found at N.J.A.C. 13:71-11.9.

**(b)**

**DIVISION OF CRIMINAL JUSTICE  
Hazardous Waste Management Information Awards  
Proposed New Rules: N.J.A.C. 13:80-1**

Authorized By: W. Cary Edwards, Attorney General of New Jersey.

Authority: N.J.S.A. 13:1E-67b.  
Proposal Number: PRN 1988-103.

Submit comments by April 6, 1988 to:  
Nicholas R. Vasile  
Deputy Attorney General  
Division of Criminal Justice  
CN085  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

N.J.S.A. 13:1E-67a provides that any person who supplies any information which proximately results in the arrest and conviction of any other person for the illegal treatment, storage or disposal of hazardous waste shall be awarded one-half of any penalty collected as a result thereof. N.J.S.A. 13:1E-67b directs the Attorney General to adopt such rules and regulations as are necessary to implement the provisions of N.J.S.A. 13:1E-67a. In compliance with the above legislative mandate, the purpose of the proposed new rules is to provide uniform award guidelines for implementation of N.J.S.A. 13:1E-67a.

**Social Impact**

The Legislature has declared that the improper treatment, storage or disposal of hazardous waste results in substantial impairment of the environment and the public health. The Legislature has also determined that insuring the proper treatment, storage and disposal of hazardous waste is a public purpose in the best interests of all citizens of this State. Promulgation of an award program will provide an incentive for the

public to report perceived violations in this area and, as a consequence thereof, will enhance the efforts of law enforcement authorities in the detection, apprehension and conviction of persons involved in the illegal treatment, storage or disposal of hazardous waste. It is also anticipated that heightened public awareness and scrutiny of the treatment, storage and disposal of hazardous waste as a result of this award program will serve as a deterrent to potential violators of the law in this regard.

**Economic Impact**

These proposed new rules create a monetary incentive for the public to report perceived improper treatment, storage and disposal of hazardous waste. Pursuant to the provisions of the law authorizing this proposal, one-half of all penalties collected as a result of the arrest and conviction of persons for such illegal conduct would become subject to distribution through this award program.

**Regulatory Flexibility Statement**

These proposed new rules have no direct bearing upon small businesses; therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rules follows:

**CHAPTERS 78 AND 79  
(RESERVED)**

**CHAPTER 80  
HAZARDOUS WASTE MANAGEMENT INFORMATION  
AWARDS**

**SUBCHAPTER 1. GUIDELINES FOR THE  
IMPLEMENTATION OF THE  
HAZARDOUS WASTE MANAGEMENT  
AWARDS PROGRAM**

**13:80-1.1 Purpose**

The purpose of this subchapter is to prescribe rules, pursuant to N.J.S.A. 13:1E-67b, in order to implement the provisions of N.J.S.A. 13:1E-67a, which provides as follows:

Any person who supplies any information which proximately results in the arrest and conviction of any other person for the illegal treatment, storage or disposal of hazardous waste shall be awarded one-half of any penalty collected as a result thereof.

**13:80-1.2 Definitions**

For the purpose of this subchapter, the terms set forth in N.J.S.A. 13:1E-67a are defined as follows:

"Information which proximately results" means information which directly causes an arrest and conviction or information which in an ordinary natural sequence produces an arrest and conviction, but for purposes of award eligibility, in no case shall this term include information obtained exclusively as a result of compulsory legal process.

"Penalty" means any fine imposed pursuant to any criminal conviction for the illegal treatment, storage or disposal of hazardous waste.

"Person" means any natural person and, where relevant, any corporation, partnership or unincorporated association, but, for purposes of award eligibility, in no case shall this term include any public employee or organization whose duty it is to insure compliance with, investigate or enforce the law and regulations.

**13:80-1.3 Responsibility and authority**

The Division of Criminal Justice is delegated the responsibility of receiving and considering information pursuant to the provisions of N.J.S.A. 13:1E-67a. The Division shall be responsible for reviewing applications and determining whether or not any application should be approved and award granted. In the performance of these functions, the Division is authorized to issue guidelines and procedures for the processing of applications under this section. The Division is further authorized to establish committees which will assist in the administration of this awards program.

**13:80-1.4 Application procedure**

(a) An application requires the completion of Information Form DCJ 13:1E-67. This form must be completed and signed by personal appearance of the applicant at the Information and Records Section of the Division of Criminal Justice at the Richard J. Hughes Justice

Complex in Trenton, New Jersey or at a county prosecutor's office. The county prosecutor's office shall forward a copy of each application received to the Division of Criminal Justice within 15 days of the completion of the application.

(b) This application procedure may require, at the discretion of the Environmental Prosecutions Task Force of the Division of Criminal Justice or a county prosecutor, a personal interview of the applicant by Division or prosecutor's office personnel, with regard to the information which the applicant is submitting for consideration. An applicant may also be required to give his verbal statement under oath and sign a written memorialization of his statement. Every applicant shall receive written acknowledgment of the receipt of his application.

(c) In any legal proceeding conducted exclusively by a county prosecutor's office which results in the arrest and conviction of a person for the illegal treatment, storage or disposal of hazardous waste, the prosecutor's office, upon sentencing of the convicted person, shall forward written notification to the Division of any penalties imposed for purposes of processing any pending award application under this subchapter.

(d) In all cases where relevant information is provided by a person without the simultaneous filing of an application pursuant to this section, that person may subsequently file an application for award consideration no later than 10 days from the date which the person provided this information.

#### 13:80-1.5 Processing of applications.

(a) Upon the arrest and conviction of any person for the illegal treatment, storage or disposal of hazardous waste where information has been received by the Division of Criminal Justice pursuant to this subchapter, the Division shall, within 60 days of the date of sentencing for such a conviction, notify the applicant as to its determination of the eligibility of the application for an award pursuant to N.J.S.A. 13:1E-67a. This written notification shall contain the specific reasons for a determination and inform the applicant that:

1. There is insufficient causal relationship between the information provided and the arrest and conviction of the person charged;
2. The information provided proximately resulted in the arrest and conviction of the person charged and the applicant is therefore eligible for an award; or
3. There is a need for further examination of the application necessitating a written response and/or personal appearance of the applicant for further information before a determination as to eligibility can be made.

#### 13:80-1.6 Collection and payment of penalties

(a) The collection and payment of penalties relevant to the implementation of this subchapter shall be conducted pursuant to the provisions of N.J.S.A. 2C:46-4.

(b) In any criminal prosecution for the illegal treatment, storage or disposal of hazardous waste, it shall be the responsibility of the prosecuting agency to inform the court that any penalties imposed are subject to the award program created by N.J.S.A. 13:1E-67a and the request that the court order any penalties imposed to be held in escrow pending resolution of award eligibility pursuant to N.J.S.A. 2A:58-8.

#### 13:80-1.7 Plea bargains

Except when a contrary result is required to prevent manifest injustice, if a person supplies information which proximately results in the arrest of and institution of criminal charges against any other person for the illegal treatment, storage or disposal of hazardous waste, but, in the discretion of the Division or county prosecutor's office, those charges are subsequently dismissed as part of a plea bargain, there shall be no award eligibility pursuant to this subchapter.

#### 13:80-1.8 Claims for and payment of award

(a) Within 20 days of receipt of a notification of award eligibility pursuant to N.J.A.C. 13:80-1.5, the applicant shall make a formal claim for such award by forwarding to the Division a written acknowledgment of the notification and request for the award.

(b) The award shall thereafter be paid to the successful applicant upon collection of the penalty from the person arrested and convicted of illegal treatment, storage or disposal of hazardous waste where the applicant's information proximately resulted in the arrest and conviction obtained.

(c) Payment of an award pursuant to this section is contingent upon the actual collection of penalties imposed from the person arrested and convicted.

#### 13:80-1.9 Multiple applications

(a) Except when a contrary result is required to prevent manifest injustice, in cases where two or more applicants submit identical information which proximately results in the arrest and conviction of a person for the illegal treatment, storage or disposal of hazardous waste, the person who has filed an application first in time shall be considered as eligible for the receipt of an award pursuant to this subchapter.

(b) In cases where two or more applicants submit different information which proximately results in the arrest and conviction of a person for the illegal treatment, storage or disposal of hazardous waste, thereby rendering both applicants eligible for an award pursuant to this section, the Division may apportion the amount of award available among the applicants based upon its consideration of relevant factors, including but not limited to:

1. The timeliness of each application filed;
2. The overall accuracy of information in each application filed; and
3. The extent of cooperation with the prosecution by each applicant in the particular case for which the information has been provided.

(c) Upon such apportionment as set forth in (b) above, the Division shall provide each eligible applicant with a written statement of reasons for its determination.

#### 13:80-1.10 Appeals

All Division decisions regarding award eligibility shall be reviewed and approved by the Director of the Division, upon whose approval the decision shall constitute a final determination for purposes of this section. Any final determination as to award eligibility which is rendered by the Division pursuant to this section shall be reviewable, upon proper application of the person challenging the determination, as a contested case by the Office of Administrative Law according to the procedures set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

## TRANSPORTATION

### TRANSPORTATION OPERATIONS

The following proposals are authorized by Hazel Frank Gluck, Commissioner, Department of Transportation.

Submit comments by April 6, 1988 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

(a)

### **Restricted Parking and Stopping Routes U.S. 40 and N.J. 77 in Salem County Proposed Amendments: N.J.A.C. 16:28A-1.28 and 1.41**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1.

Proposal Number: PRN 1988-88.

The agency proposal follows:

**Summary**

The proposed amendments will establish "no stopping or standing" zones along Route U.S. 40 and Route N.J. 77 in Upper Pittsgrove Township, Salem County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon requests from the local officials concerning the safety of the populace, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no stopping or standing" zones along Routes U.S. 40 and N.J. 77 in Upper Pittsgrove Township, Salem County were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.28 and 1.41, based upon the requests from local officials and the traffic investigations.

**Social Impact**

The proposed amendments will establish "no stopping or standing" zones along Routes U.S. 40 and N.J. 77 in Upper Pittsgrove Township, Salem County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

**Regulatory Flexibility Statement**

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:28A-1.28 Route U.S. 40

(a) The certain parts of State highway Route U.S. 40 described in [(a) of] this subsection are 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. 39:4-139.]

1.-2. (No change.)

3. No stopping or standing in Upper Pittsgrove Township, Salem County:

i.-ii. (No change.)

iii. **Along both sides from a point 800 feet west of the junction of Route N.J. 77 traffic circle, to a point 800 feet east of the Route N.J. 77 traffic circle, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.**

4.-8. (No change.)

(b) (No change.)

16:28A-1.41 Route 77

(a) The certain parts of State highway Route 77 described in [(a) of] this subsection are 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. 39:4-139.]

1.-4. (No change.)

5. No stopping or standing in Upper Pittsgrove Township, Salem County, [along both sides, between a point 300 feet north of and 300 feet south of the intersection of County Road 666 (Monroeville-Swedesboro Road), and between a point 400 feet north of and 200 feet south of the intersection of County Road 611 (Elmer-Shirley Road).] **along both sides:**

i. **Between a point 300 feet north of and 300 feet south of the intersection of County Road 666 (Monroeville-Swedesboro Road).**

ii. **Between a point 400 feet north of and 200 feet south of the intersection of County Road 611 (Elmer-Shirley Road).**

iii. **From a point 800 feet south of the junction of Route U.S. 40 traffic circle to a point 800 feet north of the junction of Route U.S. 40 traffic circle, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.**

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

**(a)****Mid-block Crosswalks****Routes N.J. 37 and N.J. 35 in Ocean County****Proposed New Rules: N.J.A.C. 16:30-10.6 and 10.7**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-34.

Proposal Number: PRN 1988-87.

The agency proposal follows:

**Summary**

The proposed new rules will establish mid-block crosswalks along Routes N.J. 37 and N.J. 35 in the Borough of Seaside Heights, Ocean County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace, and establish a designated area for pedestrians to safely cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device.

Based upon a request from the local officials, in the interest of public safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of mid-block crosswalks along Route N.J. 37 and N.J. 35 was warranted.

The Department therefore proposes new rules N.J.A.C. 16:30-10.6 and 16:30-10.7, based upon the request from local officials and the traffic investigation.

**Social Impact**

The proposed new rules will establish mid-block crosswalks along Routes N.J. 37 and N.J. 35 in the Borough of Seaside Heights, Ocean County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Additionally, these rules establish a designated area for pedestrians to safely cross a roadway at other than an area which is controlled and directed by a police officer or a traffic control device. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the appropriate striping along the roadway. Motorists who violate the rules will be assessed the appropriate fine.

**Regulatory Flexibility Statement**

Since the proposed new rules 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, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:30-10.6 Route 37

(a) The certain parts of State highway Route 37 described in this subsection shall be designated as a mid-block crosswalk.

1. In the Borough of Seaside Heights, Ocean County:

i. Westbound entrance ramp from a point 550 feet west of the junction of Route N.J. 35 northbound and Route N.J. 37 westbound to a point seven feet westerly therefrom.

16:30-10.7 Route 35

(a) The certain parts of State highway Route 35 described in this subsection shall be designated as a mid-block crosswalk.

1. In the Borough of Seaside Heights, Ocean County:

i. Northbound and southbound lanes:

(A) From a point 270 feet south of the junction of Route 35 southbound and Route 37 eastbound to a point eight feet southerly therefrom; and

(B) From a point 350 feet north of the northerly curb line of Hancock Avenue to a point seven feet northerly therefrom.

**TREASURY-GENERAL****(a)****DIVISION OF PENSIONS****Claims and Credit****Disability Applications; Medical Examinations****Proposed New Rule: N.J.A.C. 17:1-4.37**

Authorized By: Douglas R. Forrester, Director, Division of Pensions.

Authority: N.J.S.A. 52:18A-96 et seq.

Proposal Number: PRN 1988-97.

Submit comments by April 6, 1988 to:

Peter J. Gorman, Esq.  
Administrative Practice Officer  
Division of Pensions  
20 West Front Street  
CN 295  
Trenton, New Jersey 08625

**Summary**

The purpose of this proposed new rule is to expedite the handling of applications for ordinary disability retirement. The practice of the Division of Pensions and the boards and commissions of the State retirement systems and pension funds has been that all applicants for disability retirement be examined by a physician under contract with the Division of Pensions to perform disability examinations. This examination is in addition to the report of the personal physician of the applicant and any other medical information relative to the disability supplied by the applicant or requested by the division. For applications for ordinary disability retirement, the total and permanent nature of the applicant's disability is often clearly established by the disease or condition from which the applicant suffers and from the medical information supplied by the applicant. In these situations, an additional examination is not necessary for the Medical Review Board to make a medical recommendation to the board or commission of the retirement system, and for the board or commission to make a determination on the application.

Under the proposed new rule, an application for ordinary disability retirement and the accompanying medical information supplied by the applicant will be submitted to the Medical Review Board. If the board feels that the medical information is sufficient for it to make a recommendation to the board or commission of the retirement system, it will do so without further examination. If it feels that the information is insufficient, the Medical Review Board will advise the Disability Review Section to have the applicant examined by a physician under contract with the division to perform disability examinations, or to obtain additional information which the board feels is necessary to make its recommendation.

The boards or commissions of the retirement systems may also request examinations by physicians under contract with the division, or additional information if they deem it necessary. The boards or commissions are the bodies ultimately responsible for decisions on disability retirement applications, and they must be satisfied that sufficient information is available for their decisions.

**Social Impact**

The proposed new rule will benefit the members of all the State retirement systems by shortening the processing time for most applications for ordinary disability retirement.

**Economic Impact**

No significant economic impact is anticipated. There may be a small reduction in the cost incurred by the division in contracting with physicians to perform disability examinations. There should be no impact on the decision-making process relative to ordinary disability applications.

**Regulatory Flexibility Statement**

The rules of the Division of Pensions affect only public employers and employees. Thus, this proposed new rule will not have any adverse effect upon small businesses or private industry in general, therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rule follows.

17:1-4.37 Ordinary disability applications; medical examinations

(a) Applicants for ordinary disability retirement shall submit with their applications all the medical information they can supply relative

(CITE 20 N.J.R. 510)

to their disability, including reports of their personal physicians and consulting physicians, hospital records, diagnostic test results, and any other medical information which would assist the Medical Review Board and the board or commission of the retirement system in determining eligibility of the applicants for disability retirement. The Disability Review Section shall forward the applications and the accompanying medical information to the Medical Review Board.

(b) If the medical information supplied by the applicant is sufficient for the Medical Review Board to make a medical recommendation, it shall return the case to the Disability Review Section with its recommendation. If the Medical Review Board deems that the medical information supplied by the applicant is not sufficient for it to make a medical recommendation, it shall advise the Disability Review Section to arrange to have the applicant examined by a physician or physicians under contract with the Division of Pensions to perform disability examinations, or to obtain additional information needed to make its medical recommendation.

(c) The board or commission which governs the pension fund or retirement system may request that an applicant be examined or reexamined by a physician or physicians under contract with the Division of Pensions, or that additional information be obtained, if it deems that the medical information available is insufficient to make a decision on the eligibility of the applicant for ordinary disability retirement.

**(b)****Judicial Retirement System****Proposed Readoption: N.J.A.C. 17:10**

Authorized By: Douglas R. Forrester, Secretary, Judicial Retirement System.

Authority: N.J.S.A. 43:6A-29(d).

Proposal Number: PRN 1988-111.

Submit comments by April 6, 1988 to:

Peter J. Gorman, Esq.  
Administrative Practice Officer  
Division of Pensions  
20 West Front St.  
CN 295  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Division of Pensions is constantly reviewing the administrative rules within N.J.A.C. 17:10 concerning the Judicial Retirement System. When the Division becomes aware of a change in the laws or a court decision that possibly could affect the operation of the retirement system, the administrative rules are reviewed and, if changes therein are mandated, steps are taken to propose changes to those rules to conform to the new statute or court decision. Additionally, the rules are periodically reviewed by the Division's staff to ascertain if the current rules are necessary and/or cost efficient. After careful scrutiny of the current rules in N.J.A.C. 17:10, the Division is satisfied that they are necessary and needed for the efficient operation of the Judicial Retirement System. Accordingly, the Division of Pensions in conjunction with the State House Commission, which sits as the Board of Trustees of the Judicial Retirement System, proposes to readopt the current rules within N.J.A.C. 17:10 and to extend through timely readoption the expiration date for such rules under Executive Order No. 66 to May 15, 1993. Without readoption, this chapter will expire on June 6, 1988 pursuant to Executive Order No. 66.

The current rules in N.J.A.C. 17:10 deal with Commission meetings; fiscal year; officers and committees; certifying officers; records; appeal from commission decisions; suspension of pension checks; proof of age; biweekly salaries; survivor benefits; withdrawals; interest; enrollment date; enrollment following deferred retirement; computation of insurance benefits; leave for illness; proof of insurability; creditable salary; approved leaves; suspension; termination or resignation; eligible credit; per diem credit; deductions; minimum adjustments; withdrawals; retirement applications; effective dates of retirement; deferred retirement; death prior to retirement; retirement credit; disability retirement; early retirement; service retirement eligibility; medical examinations; compulsory retirement; waivers; and interfund transfers.

**Social Impact**

The rules governing the administration of the Judicial Retirement System affect and work to the benefit of present and future judges of the various court systems within the State of New Jersey. The taxpaying public is affected by these rules in the sense that public funds are used to fund the system.

**Economic Impact**

While the readoption of the rules in itself will not present any adverse economic impact to the public, the payment of the benefits and claims mandated in the statutes are funded by public employer contributions and thus indirectly by taxpayers. If the administrative rules are not readopted, the benefits and claims mandated by the statutes must still be paid. Without the administrative rules to provide for the efficient operation of the system, financial chaos would occur.

**Regulatory Flexibility Statement**

The rules of the Judicial Retirement System only affect public employees and employers. Thus, this proposed readoption does not impose any reporting, recordkeeping or other compliance requirement upon small businesses. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:10.

**TREASURY-TAXATION****DIVISION OF TAXATION**

The following proposals are authorized by John R. Baldwin, Director, Division of Taxation.

Submit comments by April 6, 1988 to:

Nicholas Catalano  
Chief Tax Counselor  
Division of Taxation  
50 Barrack Street  
CN 269  
Trenton, NJ 08646

**(a)****Business Personal Property Tax  
Proposed Readoption: N.J.A.C. 18:9**

Authority: N.J.S.A. 54:11A-19.

Proposal Number: PRN 1988-83.

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:9, Business Personal Property Tax Rules, expire on August 12, 1988. The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Division proposes to readopt these rules without change. The rules proposed for readoption are promulgated under the authority granted to the Director of the Division of Taxation by P.L. 1966, c.136, Section 19; N.J.S.A. 54:11A-19.

In 1966, the Business Personal Property Tax Act (P.L. 1966, c.136; N.J.S.A. 54:11A-1 et seq.), was enacted as part of the program recommended by the Governor's Committee on Local Property Taxation (Report—December, 1965). This statute was instrumental in placing New Jersey businesses in a position comparable with New York, Pennsylvania and Delaware, where business personal property was not taxable.

This program was designed to provide tax revenues for businesses as a substitute for the varied tax burdens imposed by municipalities in the form of local personal property taxes. Thus, beginning in 1968, the business personal property tax became State administered.

The Business Personal Property Tax Act imposes a tax upon business personal property in use or held for use, with certain exceptions, at the rate of \$6.50 per \$1,000 of original cost (1.3 percent on 50 percent of original cost.)

Subsequent reference to "the law," "the Act," or "the Tax Act" refers to the Business Personal Property Tax Act 1966, P.L. 1966, c.136; N.J.S.A. 54:11A-1 et seq. The Business Personal Property Tax Act is

administered by the Director of the Division of Taxation, hereinafter referred to as the Director, in the Department of the Treasury.

On September 13, 1978, the Division adopted rules which exempt from tax any business personal property that was acquired on or after January 1, 1977.

The Business Personal Property Tax is imposed on any individual, trust, estate, partnership, association, company, joint stock company or corporation which conducts a business in the State of New Jersey. Property subject to tax includes all business personal property purchased or brought into New Jersey before January 1, 1977 and includes all tangible goods and chattel used or held for use in any business not expressly exempt from taxation. The definition of taxpayer also includes a lessor of business personal property. Certain business personal property which is exempt includes inventory and goods in process, certain supplies and materials and small tools, and personal property held for leasing. Exempt property also includes real property and fixtures, certain motor vehicles, certain equipment mounted on vehicles, certified vessels, property of utilities, certain farming equipment, personal property of life insurance and nonprofit corporations exempt from tax, certain aircraft, cemetery property, personal property of an unincorporated financial business, personal property of a limited dividend housing corporation and certain pollution equipment.

The rate of tax is 1.3 percent of taxable value, which taxable value is 50 percent of original cost; in other words \$0.65 per \$100.00.

Tax deduction applies to a veteran's or veteran's widow's business personal property who had not used his or her \$50.00 deduction against real property.

The return to be filed is made on Form BPT-1 which must be filed on or before February 15 on property owned on the preceding October 1. The tax shall be payable in two equal installments; at the time the annual return is required to be filed and the second installment shall be payable on September 15 following such filing date. A two month extension is possible and returns are confidential. Claims for refunds are governed by the same rules as other State tax refunds. The director may assess taxes when taxpayers have omitted taxable business personal property.

Penalty and interest payments are the same as under the State Tax Uniform Procedure Law, as well as protests and appeals and statutory criminal violations regarding fraudulent filing, failure to file and rights of appeal.

A bulk sale notice must be filed with the Division whenever there is a sale of a substantial part or all of a taxpayer's business in other than the ordinary course of business.

**Social Impact**

The Business Personal Property Tax rules were enacted to provide taxpayers and their attorneys and accountants guidance and assistance in the administration of the New Jersey Business Personal Property Tax Act, N.J.S.A. 54:11A-1 et seq. These rules were intended as guidelines to assist taxpayers in their preparation of Form BPT-1.

Banking corporation taxpayers were required to file Business Personal Property Tax Returns with payments on or before February 15, 1976 and on or before February 15 of each year thereafter. Due to Chapter 170, Laws of 1975, there was some impact on the banking corporations and their customers by requiring them to file this return. As a group, the banks were added to the taxpayers of other businesses who were also required to file this return. The same amendment in 1975 notified the entity subject to the tax that the interest and penalties were to be assessed pursuant to the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq. The uniformity of all penalty and interest provisions made it easier for all types of taxpayers because the general interest and penalty provisions of most State taxes administered by this Division had the same penalty and interest requirements. The public benefitted as well as the taxpayer when the phasing out of the business personal property tax began, pursuant to Chapter 397, Laws of 1981, which amended N.J.S.A. 54:11A-3.1. This amendment specifically exempted machinery or equipment brought into the State on or after January 1, 1977, since taxpayers who purchased any machinery or equipment on or after January 1, 1977 knew that such property would not be subject to assessment and taxation. Thus, business and industry is obtaining a business tax benefit, knowing that if they purchase new machinery and equipment, such property could not be subject to business personal property tax and, in many cases, such property is also exempt from sales and use taxes. In addition, much of this property is not subject to real property taxation. New Jersey fosters a business climate that would induce businesses to come into New Jersey and provide jobs.

Owners of businesses pay a business personal property tax which is usually less than other State taxes. The State benefits from the revenues so collected.

#### Economic Impact

The 1981 amendment did result in the collection of less business personal property tax as a part of New Jersey State revenue, but, at the same time, the business community and the people of the State may have made new purchases of business personal property with the amounts saved by not having to pay business personal property tax and, in some instances no sales tax, on said new purchases. The amount of dollars saved cannot be estimated. The Annual Report of the Division of Taxation in the Department of the Treasury for the fiscal year ended June 30, 1982 shows business personal property tax collections of \$58,438,198 whereas the business personal property taxes paid for the fiscal year ended June 30, 1981 was \$64,531,000. The following amounts were collected as business personal property taxes in fiscal year:

1983	\$50,354,406
1984	42,800,145
1985	37,701,832
1986	33,136,984
1987	29,786,820

These revenues are deposited in the General Treasury for State use.

#### Regulatory Flexibility Statement

The rules apply to small businesses, as well as to businesses employing more than 100 people. Any action to exempt small businesses, other than as specified in N.J.S.A. 54:11A-1 et seq., would not be in compliance with applicable statutes; therefore, the provisions of this chapter must be uniformly applied.

Full text of the proposed reoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:9.

(a)

### Sales and Use Tax

#### Proposed Reoption: N.J.A.C. 18:24

Authority: N.J.S.A. 54:32B-24.

Proposal Number: PRN 1988-96.

The agency proposal follows:

#### Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:24, Sales and Use Tax Act rules, expire on August 12, 1988. The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Division of Taxation proposes to readopt these rules without change.

The Sales and Use Tax Act, P.L. 1966, c.30, N.J.S.A. 54:32B-1 et seq., was enacted on April 27, 1966 and became applicable to transactions occurring on and after July 1, 1966. This tax was adopted as a substitute broad based tax when a State income tax bill, expected to pass as a part of a reorganization of the New Jersey tax structure in 1966, failed of passage in the Legislature. The Sales and Use Tax Act was put together in about six weeks, was signed on April 27, and became applicable on July 1, 1966.

The Sales and Use Tax Act (Act), as most of the New Jersey tax acts, is made subject to the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., by N.J.S.A. 54:32B-28. The State Tax Uniform Procedure Law establishes standard procedures for interest and penalties. The law applies to taxpayers under the Sales and Use Tax Act, unless it is in specific conflict with it.

The Act is administered by the Director of the Division of Taxation (Director) in the Department of Treasury.

The rate of tax was set at three percent when the Act became applicable July 1, 1966. P.L. 1970, c.7 increased the rate to five percent, effective March 1, 1970. P.L. 1982, c.227 increased the tax rate to six percent, effective January 3, 1983. This Act contained transitional provisions relating to the increased rate.

There are many exemptions, chief of which are unprepared food, clothing and footwear, production machinery, cigarettes otherwise taxed, casual sales, motor fuels, real estate sales, professional and personal services and utilities. To these exemptions and others contained in section 8.1 et seq. of the law, P.L. 1987, c.268 added an exemption for direct

mail services performed in connection with the distribution of advertising materials to addresses outside New Jersey.

The following summarizes the text of the sales and use tax rules promulgated pursuant to the Act as amended and supplemented:

Subchapter 1 enumerates each of the sales tax certificates by number, etc. and defines certain terms.

Subchapter 2 lists records are required to be kept by the vendor under the Sales and Use Tax Act.

Subchapter 3 deals with room occupancy, particularly related to hotels and apartments, boarding houses, etc.

Subchapter 4 deals with the taxation and exemption of tangible personal property bought or used in manufacturing, processing, assembling and refining industries. Included therein are certain property and services subject to or exempt from tax and a rule on recordkeeping.

Subchapter 5 relates to the building and construction trades. Included are definitions; which materials and supplies used by contractors are subject to sales tax on purchase; equipment rental or use; taxable services; how contractors' and fabricators'/contractors' activities and property are taxed; rules applicable to subcontractors; performance of contracts out-of-state; out-of-state purchases; purchases relating to issuance and acceptance of certificates; penalties for fraudulent issuances of exemption certificates; and recordkeeping.

In Subchapter 6, Clothing and footwear, lists items that are taxable and exempt. Included are athletic goods and equipment, clothing and footwear for sporting activities, fur garments and accessories that are taxable.

Subchapter 7 deals with the sales and use tax on motor vehicles, including definitions; tax payment prerequisite to registration; the computation of tax on purchase; allowance for trade-in value; computation problems, particularly with out-of-state purchase by resident; transfers of motor vehicle title excluded from tax; procedures; forms and certificates; taxable services; casual sales of motor vehicles; method of computation with regard to manufacturers and automobile dealers; renting and leasing of motor vehicles; issuance and acceptance of resale and exemption certificates; retention of records; and taxation of mobile homes.

Subchapter 8 deals with exempt nongovernmental organizations. Requirements are listed as to qualified organizations and exemptions not based on nonprofit status; change in status; application for exemption; information required; and definitions of private shareholder or individual, etc.

Subchapter 9 deals with the exemption for organizations operated for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to animals or children in which case exempt organization numbers are given to qualified organizations. Included are governmental organizations. The rules define exempt purposes; outline organizational and operational tests, and purposes specifically exempt; require that the organization must serve the public interest; and define "charitable", "educational", "scientific", and "testing for public safety". There are special rules for sales of meals and rental of rooms to exempt organizations and a rule regulating organizations carrying on trade or business at N.J.A.C. 18:24-9.11 and 9.12.

Subchapter 10, Issuance and acceptance of exemption certificates, deals with requirements, responsibilities, acceptance in good faith, disclosure of proper exemption basis, retention of certificates for inspection, and penalty for fraudulent issuance or acceptance of resale or exemption certificates.

Subchapter 11 deals with the obligation of the vendor to collect the tax and to make monthly filings of returns with payments and special cases, and the making of quarterly returns and payments.

Subchapter 12 deals with the criteria for determining sales of food or drink that are taxable, which relates to food or drink sold for immediate consumption, or exempt, which includes food or drink sold for later consumption.

Subchapter 13 deals with trash removal services.

Subchapter 14 deals with the taxability of certain hospital sales and services.

Subchapter 15 deals with the taxability of certain linen rentals.

Subchapter 16 deals with the sales of food and drink through coin-operated vending machines which are sold for more than \$0.10 an item.

Subchapter 17 deals with coin-operated vending machine sales of tangible personal property at \$0.10 or less.

Subchapter 18 specifies that motor fuel sales are exempt from tax under the Sales and Use Tax Act.

Subchapter 19 deals with personal property used directly and exclusively in the production for sale of tangible personal property on farms.

Subchapter 20 deals with commercial advertising film negatives, original production video tapes and similar materials.

Subchapter 21 sets forth accounting procedures relating to the collection of sales tax on alcoholic beverages.

Subchapter 22 deals with taxation of sales made by floor covering dealers.

Subchapter 23 deals with treatment of bad debts for all sales tax matters.

Subchapter 24 deals with the sale and installation of gasoline and service station equipment, including work performed on leased real estate and perimeter lights.

Subchapter 25 deals with data processing taxation including electronic data processing.

Subchapter 26 deals with taxation or exemption of solar energy devices or systems.

Subchapter 27 deals with sales tax treatment of transportation charges in the matter of demurrage.

Subchapter 28 sets forth the sales tax treatment of race horses.

Subchapter 29 covers the exemption of soap and paper products from sales tax.

Subchapter 30 is reserved.

Subchapter 31 regulates the sales and use tax exemptions provided qualified businesses in an urban enterprise zone.

#### Social Impact

These rules have provided taxpayers and their attorneys and accountants with guidance and assistance in the administration of the New Jersey Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq. These rules also serve as guidelines to assist taxpayers in their preparation of various sales and use tax returns and forms.

The social impact of a sales tax on the public is universal, since every person purchases, or has purchased property or services that are taxable or exempt. Also, the State realizes revenue from sales and use taxes which are generally applied to State use.

The impact of the Sales and Use Tax Act in New Jersey is comparable to nearby states. The neighboring states of Connecticut, Maryland, Massachusetts, New York, Ohio and Pennsylvania each have sales and use taxes, with fairly similar rates: Connecticut at 7.5 percent, Pennsylvania at 6 percent, the others at 5 percent and New York at 4 percent. Both New York and Ohio authorize counties or municipalities to add from .5 percent to 4 percent, which brings their rates into line. Delaware has no sales and use tax but has a personal income tax with rates running up to 13.5 percent.

The Sales and Use Tax Act is a retail sales tax, which is distinguishable from other types of sales taxes in several ways. First is the distinction made between retail and nonretail sales. Only sales to the ultimate consumer, or retail sales, are meant to be taxed.

The exemption of tangible personal property used in manufacturing and tangible personal property purchased for resale, has minimized multiple taxation of the same item at various points in the production and distribution process.

Liability for retail sales tax falls on the consumer, who cannot shift payment of the tax to anyone else or otherwise be relieved of such liability. The vendor, in turn, acts as an agent of the State in collecting and remitting the tax. Because the consumer is ultimately liable, New Jersey requires that the tax be separately stated on the bill of sale.

The retail sales tax is a destination tax. The point of delivery or transfer of possession from vendor to purchaser determines the rate of tax to be collected. The purchaser may become liable for an additional use tax if the property is later used in a jurisdiction with a higher tax rate than the jurisdiction where the purchase was originally taxed.

The retail sales tax is also a transaction tax, meaning that the tax is generally due at the time of sale without regard to the time or kind of payment. Needless to say, this requirement can cause problems with respect to installment sales. For this reason, the statute grants the Director of the Division of Taxation with discretionary authority to permit collection of the tax in installments when payment is made in this manner. To date, no rule has been promulgated to permit retailers to utilize this method of collection. As a result, the vendor must remit the full amount of the sales tax based on the date of sale, regardless of when payment is actually received.

The retail sales tax is based on the price charged by the seller for the taxable property or service. This can and does result in some confusion about whether the sales price is determined before or after discounts, trade-ins, other state or Federal taxes, postage and handling charges, coupons, transportation charges, etc. In New Jersey, the sales price or

taxable receipt for sales tax purposes excludes consumer taxes, trade discounts and trade-in allowances, but includes the value of a coupon. A separately stated charge to the purchaser for the transportation of property is excluded from the taxable receipt, as is a reasonable and separately stated charge for postage and handling. However, a separately stated charge for transportation to the vendor's place of business is includable in a taxable receipt. Rules such as those adopted in Subchapter 27, help one to understand the tax in application.

The retail sales tax is a broad-based tax imposed on the receipts from every retail sale of tangible personal property in this State, with certain exceptions. Sales tax has also been imposed on receipts from sales of food and nonalcoholic drinks sold in or by restaurants or similar establishments in this State or by caterers; charges for admission to a place of amusement in this State; and rents for the transient occupancy of a room in a hotel or motel in this State.

Certain vendors and purchasers have not been affected by these rules. Exceptions from the retail sales tax include property purchased for resale, and the specified exemptions in the Act, including sales to or by nongovernmental exempt organizations (N.J.S.A. 54:32B-9); sales of food and food products for off-premises consumption (N.J.S.A. 54:32B-8.2); sales of clothing and footwear (N.J.S.A. 54:32B-8.4); sales of utility services (N.J.S.A. 54:32B-8.7); casual sales of property (N.J.S.A. 54:32B-8.6); sales of equipment for use directly and primarily in manufacturing (N.J.S.A. 54:32B-8.13); sales of commercial motor vehicles registered in New Jersey for more than 18,000 pounds (N.J.S.A. 54:32B-8.31); and certain sales of aircraft for use by an air carrier (N.J.S.A. 54:32B-8.35).

In contrast to the possibility of receipts from every sale of property being subject to tax, New Jersey law subjects to tax only certain enumerated services: producing, fabricating, processing, printing or imprinting tangible personal property; installing, maintaining, servicing or repairing tangible personal property; storing tangible personal property; maintaining, servicing or repairing real property; and advertising services. Major exemptions from the sales tax on services include: receipts from the installation of property that after installation results in a capital improvement to real property; sales of services for resale; and professional or personal service transactions that may involve the transfer of property as an inconsequential element for which no separate charge is made.

To complement the sales tax, the statute imposes a compensating use tax. The use tax is levied when a transaction occurs upon which the sales tax would have been imposed in New Jersey had it been possible to collect the sales tax at that time.

The use tax applies to property purchased outside New Jersey for use or consumption by the purchaser in New Jersey. The use tax also applies where property may have been purchased in New Jersey without a sales tax under an exemption certificate and is then used by the purchaser for a purpose other than that upon which the exemption certificate was based. For example, a New Jersey business purchases property for resale and issues to the seller a Resale Certificate (Form ST-3). The items purchased for resale are subsequently converted to a taxable use or consumed by the purchaser.

The use tax in New Jersey also is specifically imposed on the customary sales price of tangible personal property manufactured and used by a business if the same kind of property is regularly sold by that business, and on the use of property in New Jersey upon which certain taxable services were performed. An example is where an automobile is repaired outside of New Jersey and brought into this State for use. Use tax is due on the amount paid for the repair.

Major exemptions from use tax include the use of property in New Jersey by a person who acquired the property while a nonresident; the use of the property or services to property in New Jersey where the property or services are exempt from sales tax; and a credit for sales or use tax paid in another jurisdiction for property or services to the extent the use tax due in New Jersey equals or is less than the tax paid elsewhere.

A two-year period for filing a refund claim is provided by the statute. A refund application may be filed by either the purchaser or the vendor. However, a refund of sales tax will not be granted to a vendor unless the vendor can demonstrate that the tax was previously refunded to the purchaser. A refund may also be applied as a credit against payments due.

A refund will not be granted by the Division where the applicant has previously received and paid an assessment of additional tax and either had a hearing with the Division or failed to avail himself, herself or itself of the right to a hearing.

Redoption of N.J.A.C. 18:24 will ensure continued uniform collection and administration of the State's sales and use taxes.

**Economic Impact**

The Director, Division of Taxation, collects and administers the State's sales and compensating use taxes. Sales and use tax collections for the State's fiscal year 1987 were \$2,822,234,295.00 and for fiscal year 1986 were \$2,529,091,374.00. Every vendor required to collect sales and use taxes is personally liable as a trustee of the State for the tax collected or required to be collected. There is a rebuttable presumption that all sales of tangible personal property not specifically excluded are taxable while only the enumerated services are taxable. Retail sales of goods or services whose exemption cannot readily be determined by their nature are deemed taxable, unless the vendor receives a properly completed exemption form from the customer. For example, a vendor must collect a tax on a sale which may be for resale unless he receives a resale certificate from the purchaser. If a customer has failed to pay the applicable sales tax to the vendor because of improper issuance of an exemption certificate or for certain other reasons, the customer is required to file a return and pay the tax directly to the Director, Division of Taxation.

Registered vendors must file returns and remit receipts of taxes for quarterly periods ending March, June, September and December. These returns and payments are due on April 20, July 20, October 20 and January 20, respectively.

Since April 1975 every vendor having total monthly taxable receipts (including purchases subject to use tax) of \$100.00 or more in any month has been required to make monthly sales and use tax remittances for each month. Returns and remittances are due 20 days after the end of the month covered.

The following amounts were collected as sales and use taxes in fiscal years:

1985	\$2,260,827,342
1984	1,974,445,427
1983	1,582,348,981
1982	1,303,877,865
1981	1,201,213,918

Revenues realized from sales and use tax collections are deposited in the General Treasury for general State use.

**Regulatory Flexibility Statement**

Reporting, recordkeeping and other compliance requirements imposed by the Act and by N.J.A.C. 18:24 include vendors who meet the definition of small business in the Regulatory Flexibility Act.

The Sales and Use Tax Act provides that every person responsible for collection of the sales tax is personally liable as a trustee for the tax collected or required to be collected on the sale of taxable property or services. A "responsible person" is defined to include an officer or employee of a corporation who, in such capacity, is under a duty to act for the corporation in complying with the statute. N.J.S.A. 54:32B-2(w).

There is a rebuttable presumption that all sales of property or of the enumerated services are subject to tax, unless expressly exempted from tax under the law. Sales of goods and services whose exemption cannot be readily determined by their nature are deemed taxable, unless the vendor receives a properly completed exemption certificate from the purchaser.

All vendors of taxable property or services are required by the Act to register with the Division of Taxation for collection of the tax. Registered vendors must file a quarterly sales and use tax return with the Division of Taxation on or before the 20th day of the month following the quarter covered by the return. Where the vendor's tax liability exceeds \$100.00 for the first or second month of a quarterly filing period, he or she must file a monthly remittance statement (Form ST-51) and pay the tax. The return and payment are due on or before the 20th day of the month following the month in which his or her liability exceeded \$100.00. Credit is given on the quarterly return for payments made on a monthly remittance statement.

Filing the returns on a quarterly basis, even if the returns total zero, is extremely important. The Division's audit period for the assessment of additional tax is three years from the filing of a quarterly return, except in the case of fraud or where quarterly returns have not been filed. The period is subject to extension with the taxpayer's written consent for audit purposes.

N.J.A.C. 18:24-2 requires that vendors of taxable property or services maintain specified records, for example, copies of invoices, receipts, or cash register tapes. Other recordkeeping and compliance requirements are established in N.J.A.C. 18:24 in the various subchapters concerning specific types of property and services.

The rules apply to receipts from every non-exempt retail sale of tangible personal property and certain services. Requirements for collection of taxes and recordkeeping must apply uniformly to all vendors covered by the Act, including small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:24.

(a)

**Gross Income Tax  
Setoff of Individual Liability****Proposed Readoption: N.J.A.C. 18:35  
Proposed Repeal: N.J.A.C. 18:35-1.16**

Authority: N.J.S.A. 54A:9-8.1 through 54A:9-8.3, 54A:9-17(a) and 54:50-1.

Proposal Number: PRN 1988-94.

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 18:35-1 and 2 (Gross Income Tax and Setoff of Individual Liability Rules) expire on August 12, 1988. The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Division proposes to readopt these rules without change, except for the repeal of N.J.A.C. 18:35-1.16.

The New Jersey Gross Income Tax Act as amended and supplemented, N.J.S.A. 54A:1-1 et seq. was approved on July 8, 1976 as P.L. 1976, c.46 but was applicable on July 1, 1976. The gross income tax rules, N.J.A.C. 18:35 have been updated and revised periodically. These rules were promulgated to clarify and interpret various provisions of the tax law. The two subchapters contain provisions concerning the "summer payment plan" authorized under N.J.S.A. 18A:29-3; the income of clergymen, declaration of estimated taxes; treatment of capital gains and losses; information returns; the status of government obligations; accelerated returns and payment of employers' withheld taxes; filing of returns and computation of tax credit; the one-time election to exclude capital gain on the sale of a principal residence; the taxation of partnerships; the employee accident or health insurance exclusion; tax credit for excess contributions of unemployment and disability insurance; extension of time to file returns; procedure for setoff, notice of setoff, agency procedures, etc. In order to continue the orderly administration of the New Jersey gross income tax, these rules will continue in effect until five years after the filing of the readoption.

N.J.A.C. 18:35-1.16 deals with the statutory exclusion of interest income on All-Savers Certificates which expired for interest income received on and after January 1, 1983 in accordance with P.L. 1981, c.423. This section is no longer necessary for enforcement purposes and is proposed for repeal.

On July 27, 1981, P.L. 1981, c.239 adopted the setoff provisions of the New Jersey Gross Income Tax Act, N.J.S.A. 54A:9-8.1 through 8.3. This chapter provides that whenever any taxpayer or homeowner is entitled to any refund of taxes for gross income tax purposes or a homestead rebate, and, at the same time the taxpayer or homeowner is indebted to any State agency or institution of State Government or for child support, the Department of the Treasury may apply the refund or rebate, or both, to satisfy the indebtedness. The setoff provisions became applicable on February 1, 1982. New setoff rules, N.J.A.C. 18:35-2.1 through 2.13 were adopted on January 3, 1983. The readoption of the gross income tax rules includes the readoption of the setoff rules (Subchapter 2).

**Social Impact**

The gross income tax rules affect individuals, estates and trusts other than corporations. The readoption of these rules will continue to provide taxpayers with guidance in complying with the New Jersey Gross Income Tax Act. The readoption will also continue the orderly administration and collection of the tax. Taxpayers are also provided with an interpretation of specific provisions of the New Jersey Gross Income Tax Act.

The setoff rules affect all individuals who owe a debt to the State of New Jersey. The readoption of the setoff rules will continue to permit the orderly recovery of indebtedness owed to State agencies.

## PROPOSALS

## Interested Persons see Inside Front Cover

## TREASURY-TAXATION

**Economic Impact**

The readoption of these New Jersey gross income tax rules will continue to provide for the accurate filing of tax returns and the proper payment of tax due on gross income.

New Jersey gross income tax collections for the fiscal year ending June 30, 1982 were \$1,259,648,715.00. New Jersey gross income tax revenues are deposited in the "Property Tax Relief Fund" to be used for the purpose of reducing or offsetting property taxes. The following amounts were collected and deposited in the Property Tax Relief Fund for the State's fiscal year:

1983	\$1,391,557,103
1984	1,732,250,461
1985	1,935,490,953
1986	2,052,592,417
1987	2,607,617,501

The readoption of the setoff rules will ensure a procedure whereby the State continues to collect debts owed to it. The setoff program collected the following amounts in full or partial satisfaction of debts for the calendar year:

1982	\$3,418,339.24
1983	7,324,213.95
1984	7,587,347.62
1985	7,698,416.88
1986	9,785,520.83

**Regulatory Flexibility Act**

The New Jersey gross income tax applies to the New Jersey gross income of every taxpaying entity subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. The reporting, recordkeeping and other compliance requirements in the Act and in N.J.A.C. 18:35 must apply uniformly; any action exempt taxpayers or employers who may be small businesses as defined by the Regulatory Flexibility Act would not be in compliance with applicable statutes.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:35.

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

18:35-1.16 [Exclusion of interest income on All-Savers Certificates] **(Reserved.)**

(The full text of the rule proposed for repeal may be found in the New Jersey Administrative Code.)

**(a)**

**Gross Income Tax  
Requirement of Employee Withholding  
Proposed New Rules: N.J.A.C. 18:35-1.21, 1.22 and  
1.23**

Authority: N.J.S.A. 54A:7-1, 54A:9-1.

Proposal Number: PRN 1988-95.

The agency proposal follows:

**Summary**

The proposed new rules set forth the factors to be used by the Division of Taxation in determining whether an individual is an employee whose wages are subject to withholding, or a self-employed individual who may deduct business expenses against earnings and report net profits, and otherwise defines the term "employee". These factors were enumerated by the New Jersey Tax Court in *Boudrot v. Taxation Div. Director*, 4 N.J. Tax 268 (1982) and were listed in the Governor's veto message issued with respect to Senate Bill 702 on November 9, 1987. Proposed new rule N.J.A.C. 18:35-1.21 defines the term "employee" and provides numerous factors to be utilized in determining whether an individual is an employee. No single factor shall be conclusive as to such determination, rather, each case shall be judged based upon a review of the entire employment relationship. N.J.A.C. 18:35-1.23 specifically precludes those individuals who are "employees" from deducting related business expenses from gross income.

Employers maintaining an office or transacting business within this State are required to deduct and withhold tax from any wages paid to their employees. The amount withheld for each payroll period must be in accordance with withholding instructions. The withholding requirements apply whether the employee is a resident or nonresident of the State. See N.J.A.C. 18:35-1.22.

**Social Impact**

The proposed new rules should result in a better understanding of employer and employee liability for New Jersey gross income tax purposes and thereby increase compliance with the requirements of the Act. Additionally, the new rules should decrease the number of contested cases in this area and consequently, decrease administrative costs and the costs of litigation by providing guidelines for determining who is or is not an "employee".

**Economic Impact**

The new rules will only clarify the manner in which the Division determines the tax status of an individual as either an employee or self-employed. It is unlikely that State revenue will be noticeably affected, although administrative costs may be reduced to some extent by better taxpayer compliance.

**Regulatory Flexibility Statement**

The new rules do not impose any new or additional reporting, recordkeeping or other compliance requirements for small businesses under State tax laws, since the rules merely clarify the definition of employee, who is subject to withholding but who may not deduct business expenses from gross income.

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

18:35-1.21 Employee defined

(a) For the purposes of N.J.A.C. 18:35-1.22, the term "employee" means every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term also includes officers and employees, whether elected or appointed, of the United States, a state, territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) When determining whether an individual is in an employer-employee relationship, relevant factors shall be considered, including the following:

1. The relationship which the parties believe they have created;
2. The extent of control exercisable by the person receiving the benefit of the services over the manner and method of performance. It is not necessary that the employer actually direct or control the manner of performance, but it is sufficient if he has the right to do so;
3. Whether the person rendering the service undertook substantial costs to perform the service;
4. Whether the service required special training or skill, and whether the person receiving the benefit of the services provided such special training;
5. The duration of the relationship between the parties;
6. Whether the person rendering the service had a risk of loss;
7. Whether the person who received the benefit of the services could discharge without cause the person who performed the services;
8. The method of payment, such as by time or by job;
9. Whether the person rendering services regularly performs the same services for other persons and is not protected to any degree from competition;
10. Whether the person for whom services are performed furnishes tools, equipment, support staff and a place to work to the individual rendering the services;
11. Whether the individual rendering the services is eligible for employer provided benefits such as pension, bonuses, paid vacation days and sick pay;
12. Whether the person receiving the benefits of the services rendered carries workmen's compensation insurance on the individual performing the services; and
13. Whether any other governmental agency has determined that the individual performing services is an employee, and the basis for such determination.

(c) No single factor in (b) above shall necessarily be conclusive in determining whether an individual is an employee or self-employed. The final determination as to whether an individual is either an employee or self-employed shall be based upon the review of the circumstances of the entire relationship and the evaluation of any special facts in a particular case.

(d) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee shall be immaterial, including designation as a partner, co-adventurer, agent, independent contractor, or similar designations or descriptions.

(e) All classes or grades of employees shall be included within the relationship of employer and employee, including Superintendents, managers, and other supervisory personnel:

1. An officer of a corporation shall be considered an employee of the corporation, except that an officer of a corporation who as such does not perform any services, or performs only minor services, and who neither receives nor is entitled to receive, directly or indirectly, any remuneration shall not be considered an employee of the corporation.

2. A director of a corporation in his capacity as such shall not be considered an employee of the corporation.

#### 18:35-1.22 Requirement of withholding from employees

(a) Any employer that maintains an office or transacts business within this State, and that makes payment of any wages subject to New Jersey gross income tax to a resident or nonresident individual, shall deduct and withhold tax from such wages paid to each employee (as defined in N.J.A.C. 18:35-1.21) for each payroll period.

(b) The withholding of tax from the employee's wages must be in accordance with the instructions and methods prescribed by the current employer instruction booklet (Form NJ-WT).

#### 18:35-1.23 Employee business expenses not deductible

(a) If an individual is an employee as defined in N.J.A.C. 18:35-1.21, such person shall not deduct from gross income any costs and expenses incurred in connection with such employment.

(b) If an individual is an employee as defined in N.J.A.C. 18:35-1.21, all earnings in connection with employment are deemed to be and shall be reported by the taxpayer as wages, salaries, commissions, bonuses and other remuneration received for services rendered, pursuant to N.J.S.A. 54A:5-1(a). In no case shall an employee report his or her earnings as net profits from business as defined by N.J.S.A. 54A:5-1(b).

## OTHER AGENCIES

### (a)

#### CASINO CONTROL COMMISSION

##### Accounting and Internal Controls; Gaming Equipment

##### Utilization of Slot Tokens which Are Not Redeemable for Cash

##### Proposed Amendments: N.J.A.C. 19:45-1.34, 1.36, 1.37 and 1.44; 19:46-1.5, 1.25, 1.26 and 1.33

Authorized By: Casino Control Commission,  
Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-45, 5:12-63(c), 5:12-69, 5:12-70, 5:12-99 and 5:12-100.

Proposal Number: PRN 1988-107.

Submit comments by April 6, 1988 to:  
Deno Marino, Deputy Director-Operations  
Casino Control Commission  
3131 Princeton Pike, Building No. 5  
CN-208  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed amendments provide for the use of a complimentary slot token which shall not be redeemable for cash but may either be used to activate a slot machine for play or be redeemed for a coupon which is exchangeable for merchandise or other thing of equal value. Such tokens may only be inserted into designated slot machines which have been equipped with a special token acceptor and shall not be permitted to enter the slot machine hopper nor be part of a slot machine payout. These tokens must instead be diverted into a separate drop bucket, tabulated on a separate drop meter and subsequently counted and incorporated into the "drop" figure.

#### Social Impact

Patrons who visit casinos which decide to offer the new slot tokens provided for in these proposed amendments will have less options than presently available. Specifically, these patrons will not have the option of redeeming a coupon for coin that can either be used at another casino or kept for other personal use. Instead they will be required to either use the complimentary tokens for slot play within the casino hotel or redeem them for coupons for merchandise or another thing of value. However, a casino licensee which implements such a program and is aware of the limited options these programs provide, may offer its slot patrons a more generous package to compensate for such limitations. Further, since the proposed amendments provide casino licensees with an alternative slot marketing strategy, it can be expected that there will be an increase in competition among casino hotels in their complimentary slot token distribution programs.

#### Economic Impact

The economic impact is difficult to assess since it cannot be anticipated how many casinos will opt to offer such programs. Furthermore, the complimentary tokens placed into slot machines will be considered as part of the "drop" figure and taxed accordingly. The proposed amendments will, however, restrict the economic choices of patrons who otherwise could redeem complimentary coupons and retain the cash received or use it in other gaming establishments in Atlantic City. The new tokens require patrons to either play the slot machines at the casino offering the complimentary program or redeem them for goods or services offered by that casino. Accordingly, this practice will benefit the casino licensee who offers such a program in that it will prevent a patron from redeeming a coupon and using the value received to patronize other operating casinos.

#### Regulatory Flexibility Statement

Compliance requirements will be imposed upon casino licensees, none of which qualify as a small business under the Regulatory Flexibility Act.

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

#### 19:45-1.34 Slot booths

(a) Each establishment may have on or immediately adjacent to the gaming floor a physical structure known as a slot booth to house the slot cashier and to serve as the central location in the casino for the following:

1. The custody of the slot booth inventory comprising currency, coin, **slot tokens**, forms, documents, and records normally associated with the operation of a slot booth;

2. The exchange by patrons of coin for currency **or slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)1**;

3. The exchange by patrons of currency for coin **or slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)1**;

4. The exchange by patrons of gaming chips or slot tokens **issued pursuant to N.J.A.C. 19:46-1.33(c)1** for currency or coin;

5. The exchange by patrons of coupons for currency, coin[,] or slot tokens in conformity with N.J.A.C. 19:45-1.46(i);

6. **The exchange by patrons of slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 for coupons which are redeemable for goods or services offered by, or on behalf of, the casino licensee in accordance with N.J.A.C. 19:46-1.5(f)2;**

[6.]7. The issuance of Hopper Fills in conformity with N.J.A.C. 19:45-1.41;

[7.]8. The issuance of Payouts in conformity with N.J.A.C. 19:45-1.40; and

## PROPOSALS

## Interested Persons see Inside Front Cover

## OTHER AGENCIES

[8.]9. The exchange with the cashiers' cage of any coin, currency, **slot tokens**, chips, plaques and documentation and the related preparation of a Slot Booth Exchange Slip, which shall be a two-part, serially prenumbered form signed by the cage cashier, slot cashier, and the security department member responsible for transporting the funds. Except for the exchanging of change with changepersons the slot booth shall not be allowed to obtain coin, from other than patrons, through exchange or otherwise, from any source other than the cashiers' cage. Exchanges with the cashiers' cage must be accompanied by the Slot Booth Exchange Slip or by a Fill Slip authorizing the distribution of coins or **slot tokens** to the slot booths.

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

19:45-1.36 Slot machines; coin and **slot token** containers; keys

(a) Each slot machine located in a casino shall have the following coin or **slot token** containers:

1. [The] A container, known as a payout reserve container ("Hopper"), in which coins or **slot tokens** are retained by the slot machine to automatically pay jackpot, **provided, however, that the hopper shall not retain slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2; and**

2. A container, known as a drop bucket, to collect coins or **slot tokens** that are retained by the slot machine and not used to make automatic jackpot payouts. Each drop bucket shall be identified by a number, corresponding to the Casino number of the slot machine, which shall be at least two inches in height, and permanently imprinted, affixed or impressed on the outside of the bucket.

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

(d) Keys to each slot machine or **any device connected thereto**, other than the compartment housing the drop bucket, shall be maintained in a secure place and controlled by the slot department.

1. Whenever it is required that a slot machine or **any device connected thereto** be opened, an entry shall be made on a form to be entitled "Machine Entry Authorization Log." The entry shall include, at a minimum, the date, time, purpose of opening the machine or **device**, and signature of the authorized employee opening the machine or **device**. The Machine Entry Authorization Log shall be maintained in the slot machine.

2. If a computer is connected to slot machines in the casino which automatically records the information required in (d)1 above, it is not necessary to maintain the Machine Entry Authorization Log.

(e) (No change.)

(f) **Each slot machine equipped to accept slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall contain a separate drop bucket to collect and retain all such slot tokens that are inserted into the slot machine. The separate drop bucket shall comply in all respects with the requirements set forth in this section.**

19:45-1.37 Slot machines; identification; signs; meters

(a) Unless otherwise authorized by the Commission, each slot machine in a casino shall have the following identifying features:

1.-5. (No change.)

6. A light on the pedestal above the slot machine that automatically illuminates when the door to the machine or **any device connected to the machine** is opened.

(b) Unless otherwise authorized by the Commission, each slot machine in a casino shall be equipped with the following:

1. A mechanical, electrical or electronic device, to be known as an ["inmeter,"] "**in-meter**" that continuously and automatically counts the number of coins or **slot tokens** placed by patrons into the machine for the purpose of activating play;

2. A mechanical, electrical or electronic device, to be known as a "drop meter", that continuously and automatically counts the number of coins or **slot tokens** dropped into the machine's drop bucket, **provided, however, for machines equipped to accept tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2, a separate "drop meter" shall count the number of such gaming tokens dropped into the separate drop bucket required by N.J.A.C. 19:45-1.36(f) and 19:46-1.25(f);**

3. A mechanical, electrical or electronic device, to be known as a "jackpot meter", that continuously and automatically counts the number of coins or **slot tokens** automatically paid by the machine from the hopper; and

4. A mechanical, electrical or electronic device, to be known as a "win meter", visible from the front of the machine that advises the player the number of coins or **slot tokens** that have been paid to him by the machine upon hitting a winning combination.

(c) Unless otherwise authorized by the Commission each slot machine which does not totally and automatically pay the full amount of a jackpot to a patron shall be equipped with a mechanical, electrical or electronic device to be known as a "manual jackpot meter" that continuously and automatically records a pulse(s) for a predetermined number of coins or **slot tokens** to be paid manually, **provided, however, that the manual payout shall not include slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2.**

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

19:45-1.44 Computer recordation and monitoring of slot machines

(a) (No change.)

(b) The computer permitted by (a) above shall be designed and operated to automatically perform the function relating to slot machine meters in the casino as follows:

1. Record the number and total value of coins or **slot tokens** placed in the slot machine for the purpose of activating play;

2. Record the number and total value of coins or **slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)1** deposited in the drop bucket of the slot machine;

3. **Record the number and total value of slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 deposited in the separate drop bucket of the slot machine required by N.J.A.C. 19:45-1.36(f) and 19:46-1.25(f);**

[3.]4. Record the number and total value of coins or **slot tokens** automatically paid by the slot machine as the result of a jackpot; and

[4.]5. Record the number and total value of coins or **slot tokens** to be paid manually as the result of a jackpot.

(c) (No change.)

19:46-1.5 Nature and exchange of gaming chips, **slot tokens** and plaques

(a) All gaming in a casino shall be conducted with gaming chips or plaques, provided, however, that [gaming] **slot tokens** or coins shall be permitted for use in slot machines.

(b) Gaming chips[, tokens] or plaques shall be issued to a person only at the request of such person and shall not be given as change in any other but a gaming transaction[, provided, however, that gaming tokens may be issued in accordance with N.J.A.C. 19:45-1.46]. **Gaming chips and plaques shall only be issued to casino patrons at the gaming tables and shall only be redeemed at the cashiers' cage; provided, however, that gaming chips may be exchanged by a patron at the slot booths for coin or slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)1 to play the slot machines.**

(c) [Gaming chips and plaques shall only be issued to casino patrons at the gaming tables and shall only be redeemed at the cashiers' cage provided, however, that gaming chips may be exchanged by a patron at the slot booths for coin or tokens to play the slot machines. Gaming tokens shall only be issued at a slot booth or cashiers' cage and by slot change people and shall only be redeemed at a coin redemption booth or cashier's cage.] **Slot tokens shall only be issued to a patron from a slot booth, cashiers' cage, bill changer or by a slot change person. Slot tokens shall only be issued upon the request of a patron; provided, however, complimentary slot tokens may be issued by a casino licensee in accordance with a complimentary distribution program authorized pursuant to N.J.A.C. 19:45-1.46. Slot tokens shall only be redeemed at a coin redemption booth or cashiers' cage.**

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

(f) Each casino shall redeem promptly its own genuine gaming chips[, tokens] and plaques[, ] by cash or by check dated the day of such redemption on an account of the casino licensee as requested by the patron, except when the gaming chips[, tokens] or plaques were obtained or being used unlawfully. **Slot tokens shall be redeemed or exchanged in the following manner:**

1. **Slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)1 shall be redeemed promptly by the issuing casino at the request of the patron for:**

- i. Cash; or
- ii. Check dated the day of such redemption on an account of the casino licensee;

2. Slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall be exchangeable for a coupon which is redeemable for goods or services offered by, or on behalf of, the casino licensee; provided, however, that a casino shall require that the amount of tokens exchangeable be equal to the face value of the coupon, the denomination of which shall be approved by the Commission.

(g) Each casino shall have the right to demand the redemption of its gaming chips, slot tokens or plaques from any person in possession of them and such person shall redeem said chips, slot tokens or plaques upon presentation of an equivalent amount of cash by the casino; provided, however, that slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall be exchanged in accordance with (f)2 above.

(h)-(k) (No change.)

19:46-1.25 Slot machines; coin and slot token containers; keys

(a) Each slot machine located in a casino shall have the following coin or slot token containers:

1. A container, known as a payout reserve container[.] ("hopper"), in which coins or slot tokens are retained by the slot machine to automatically pay jackpots; provided, however, that the hopper shall not retain slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2;

2. A container, known as a drop bucket, to collect coins or slot tokens that are retained by the slot machine and not used to make automatic payouts.

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

(d) Keys to each slot machine or any device connected thereto, other than the compartment housing the drop bucket, shall be maintained in a secure place and controlled by the slot department.

(e) (No change.)

(f) Each slot machine equipped to accept slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2 shall contain a separate drop bucket to collect and retain all such tokens that are inserted into the slot machine. The separate drop bucket shall comply in all respects with the requirements set forth in this section.

19:46-1.26 Slot machines; identification; signs; meters; other devices

(a) Unless otherwise authorized by the [c]Commission, each slot machine in a casino shall have the following identifying features:

1.-5. (No change.)

6. A light on the pedestal above the slot machine that automatically illuminates when the door to the machine or any device connected to the machine is opened.

(b) Unless otherwise authorized by the [c]Commission, each slot machine in a casino shall be equipped with the following:

1. A mechanical, electrical or electronic device, to be known as an "in-meter," that continuously and automatically counts the number of coins or slot tokens placed by patrons into the machine for the purpose of activating play;

2. A mechanical, electrical or electronic device, to be known as a "drop[-]meter," that continuously and automatically counts the number of coins or slot tokens dropped into the machine's drop bucket, provided, however, for machines equipped to accept slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2, a separate "drop meter" shall count the number of such slot tokens dropped into the separate drop bucket required by N.J.A.C. 19:45-1.36(f) and 19:46-1.25(f);

3. A mechanical, electrical or electronic device, to be known as a "[payout] jackpot meter," that continuously and automatically counts the number of coins or slot tokens automatically paid by the machine from the hopper;

4. A mechanical, electrical or electronic device, to be known as a "manual jackpot meter," that continuously and automatically records the number of coins or slot tokens to be paid manually; provided, however, that the manual payout shall not include slot tokens issued pursuant to N.J.A.C. 19:46-1.33(c)2;

5. A mechanical, electrical or electronic device, to be known as a "win meter," visible from the front of the machine that advises the player the number of coins or slot tokens that have been paid to him by the machine upon hitting a winning combination; and

6. An on/off switch located in an accessible place in the interior of the slot machine which will control the current utilized in the operation of the slot machine.

(c)-(g) (No change.)

19:46-1.33 Issuance and use of tokens for gaming in slot machines

(a) A casino licensee may, with the approval of the Casino Control Commission, issue metal tokens designed for gaming use in its slot machines provided that such tokens:

1.-6. (No change.)

7. Are not manufactured from a three-layered material consisting of a copper-nickel alloy clad on both sides of a pure copper core nor from a copper based alloy except if the total zinc, nickel, aluminum, magnesium and other alloying metal exceeds 25 percent of the tokens' weight; nor from a ferromagnetic material[.] ;

8. Comply with the following specifications:

i.-ii. (No change.)

iii. Be no less than 0.060 inch thick[.] ; and

9. For tokens issued pursuant to (c)2 below, contain a statement which indicates that the slot tokens are not redeemable for cash.

(b) (No change.)

(c) Slot tokens approved for issuance by a casino licensee pursuant to this section shall either be:

1. Issued to a patron upon request or in accordance with a complimentary distribution program authorized pursuant to N.J.A.C. 19:45-1.46 and:

i. Capable of insertion into designated slot machines operated by the casino licensee for the purpose of activating play;

ii. Available as a payout from the payout reserve container (hopper) of such slot machines; and

iii. Redeemable by the patron in accordance with N.J.A.C. 19:46-1.5(f)1; or

2. Issued in accordance with a complimentary distribution program authorized pursuant to N.J.A.C. 19:45-1.46 and:

i. Capable of insertion into designated slot machines operated by the casino licensee for the purpose of activating play;

ii. Retained in a separate drop bucket contained in such slot machines in accordance with N.J.A.C. 19:45-1.36(f) and 19:46-1.25(f);

iii. Not available as a payout from the payout reserve container (hopper) of such slot machines; and

iv. Exchangeable only for a coupon in accordance with N.J.A.C. 19:46-1.5(f)2.

## HUMAN SERVICES

### (a)

#### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

##### Administrative Manual

##### Administrative Charges/Service Fees

##### Proposed New Rule: N.J.A.C. 10:49-6.9

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

Authority: N.J.S.A. 30:4D-6; 30:4D-7a, b, c; 30:4D-12; 30:4D-22; 30:4D-24.

Proposal Number: PRN 1987-513.

Submit comments by April 6, 1988 to:

Henry W. Hardy, Esq.

Administrative Practice Officer

Division of Medical Assistance and Health Services

CN 712

Trenton, NJ 08625

The agency proposal follows:

**Summary**

This proposed new rule concerns administrative charges or service fees. The proposal prohibits any Medicaid provider from paying an administrative charge or service fee for the privilege of doing business with another provider.

The new rule also prohibits a Medicaid provider from requiring an administrative charge or service fee for the privilege of doing business with another provider.

The example given in the text of the rule of a prohibited activity is that a long term care facility (LTCF) may not require a pharmacy to pay an administrative charge or service fee to the LTCF for the handling of the LTCF resident's medications and/or related pharmaceutical records.

There is one exception to the prohibition. An administrative charge may be allowed for the collection of a co-payment (on behalf of pharmacies) from PAAD (Pharmaceutical Assistance to the Aged and Disabled) beneficiaries who are residents of LTCFs. Such administrative charges may not exceed 10 percent of the billed amount, or \$2.00, whichever is less.

**Social Impact**

There should be no social impact on Medicaid patients, who will continue to receive Medicaid services, including pharmaceuticals in LTCFs.

The rule will impact on any provider who is paying or receiving an administrative charge and/or service fee. However, the impact would be economic rather than social.

**Economic Impact**

This proposed new rule has no economic impact on Medicaid patients because they are not required to pay towards the cost of covered Medicaid service.

PAAD beneficiaries are required by law to pay a \$2.00 co-payment for each prescription.

There should be no economic impact or administrative costs on the Division.

The economic impact on providers will vary. Some providers will have lower operating costs because they will no longer be required to pay an administrative charge or service fee. Other providers may have to discontinue the practice of assessing an administrative cost or service fee for the privilege of doing business.

**Regulatory Flexibility Statement**

The rule may impact on small businesses. However, because the rule does not impose any additional reporting, recordkeeping or other compliance requirements other than those already required by law, a regulatory flexibility analysis is not required. Medicaid providers are required to keep and maintain such records as are necessary to fully disclose the name of the recipient, the date of the service and the nature of the service rendered to the recipient, and any additional information required by regulation (N.J.S.A. 30:4D-12).

The rule does not impose any capital costs for compliance therewith.

**Full text** of the proposed new rule follows:

**10:49-6.9 Administrative charges/service fees**

(a) A provider shall not pay nor require payment of an administrative charge or service fee for the privilege of doing business with another provider or for services for which reimbursement is included as part of the Medicaid fee.

1. An example of a prohibited activity is that a LTCF may not require a pharmacy to pay an administrative charge or service fee to the facility for the handling of the LTCF resident's medications, drugs and/or related pharmaceutical records.

2. An administrative charge may be paid for the collection of a co-payment on behalf of pharmacies from PAAD beneficiaries who are residents in long-term care facilities. Such administrative charges may not exceed 10 percent of the billed amount, or \$2.00, whichever is less.

**(a)****DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****Hearing Aid Assistance for the Aged and Disabled****Proposed New Rules: N.J.A.C. 10:69**

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

Authority: N.J.S.A. 30:4D-20, 22, 24, 36 through 42; P.L. 1987, c. 298, approved November 4, 1987.

Proposal Number: PRN 1988-116.

Submit comments by April 6, 1988 to:

Henry W. Hardy, Esq.

Administrative Practice Officer

Division of Medical Assistance and Health Services

CN-712

Trenton, NJ 08625

The agency proposal follows:

**Summary**

The proposed new rules set forth criteria for the program known as Hearing Aid Assistance for the Aged and Disabled (HAAAD). The HAAAD program is the result of recent State legislation which amends the Pharmaceutical Assistance for the Aged and Disabled (PAAD) supplement to the New Jersey Medical Assistance and Health Services Act.

The legislation establishing HAAAD (P.L. 1987 c. 298, approved November 4, 1987, N.J.S.A. 30:4D-36 et seq.) provides that a person who meets the age or disability, income and residency requirements of the PAAD program is eligible for hearing aid assistance, if he or she is not otherwise qualified for Medicaid. This means that the income limit for a single individual is \$13,650 and the income limit for married persons is \$16,750. In addition, persons must be age 65 or older, or if they are under age 65 but over 18 years of age they must be receiving Social Security Title II disability benefits in order to qualify for HAAAD. The persons must also be New Jersey residents as defined in the rule (see N.J.A.C. 10:69c-2.1, Definitions).

Persons who wish to apply for HAAAD must file an application with the Bureau of Pharmaceutical Assistance for the Aged and Disabled (PAAD Bureau) within the Division of Medical Assistance and Health Services. If an applicant is already enrolled in the PAAD program, he or she will complete application form HA-1. If an applicant is not enrolled in the PAAD program, he or she will complete application form AP-2. The same eligibility criteria will apply to all applicants.

In addition, a physician's statement attesting to the medical necessity for obtaining a hearing aid and a receipt for the purchase for the hearing aid must accompany the application. Incomplete applications will be returned to the applicant.

The PAAD Bureau will process the application and make a determination of eligibility. For those applicants who are declared eligible, the PAAD Bureau will notify the New Jersey Department of Treasury to issue a check for up to \$100.00 to the eligible person.

The law and proposed new rules also place restrictions on coverage. Persons who have complete coverage under another health insurance policy will not be eligible for HAAAD. If a person has partial coverage under another health insurance policy, the HAAAD program will pay the individual and will seek appropriate recovery from the health insurance company, or health insurance plan.

Persons who are eligible for Medicaid will not be eligible for HAAAD, because hearing aids are a covered service under the Title XIX New Jersey Medicaid Program.

In essence, eligible individuals can receive up to \$100.00 to offset the purchase of a hearing aid in one calendar year.

**Social Impact**

The proposed new rules will impact on those aged and disabled individuals who reside in New Jersey and who might need assistance in purchasing a hearing aid. These individuals must make an application, and present proof of income, proof of purchase of the hearing aid, and verification of medical necessity for the aid.

The rules do not impact directly on providers since they are not reimbursed under HAAAD. There is an indirect impact on physicians who should provide the applicant with written documentation of medical necessity. The documentation would be in the form of a prescription or

letter. Hearing aid dealers should provide the applicant with a receipt for the purchase of the hearing aid.

#### **Economic Impact**

Those persons who qualify for HAAAD will receive a check for up to \$100.00 to offset the purchase of a hearing aid in a calendar year.

There is no economic impact upon providers, because they will not be reimbursed by the Division of Medical Assistance and Health Services for supplying a hearing aid to a person eligible for HAAAD. The hearing aid dealer will be reimbursed by the individual purchasing the aid. Physicians who examine the patient will be reimbursed by the patient. If an audiological examination is necessary, the audiologist will be reimbursed by the patient.

The estimated cost to the Division of Medical Assistance and Health Services is approximately two million dollars per year. The HAAAD program is completely State funded.

#### **Regulatory Flexibility Statement**

The primary impact of the new rules does not apply to small businesses. The PAAD Bureau, within the Division of Medical Assistance and Health Services, is responsible for processing applications and determining eligibility. The New Jersey Department of Treasury is responsible for issuing checks to those persons declared eligible.

The rules might impact directly on small businesses such as physicians, audiologists and hearing aid dealers who would have to provide appropriate documentation to the individuals requesting HAAAD. However, the information required (a prescription for the hearing aid or the receipt for purchase) is the type of information that is generally kept by these businesses or professions. The rules do not impose any additional record keeping requirements. A regulatory flexibility analysis is therefore, not required.

Full text of the proposed new rules follow.

## CHAPTER 69 HEARING AID ASSISTANCE FOR THE AGED AND DISABLED

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 10:69-1.1 Purpose

(a) The purpose of this chapter, Hearing Aid Assistance to the Aged and Disabled (HAAAD), is to provide a payment of up to \$100.00 in a calendar year in which a hearing aid is purchased to offset the cost of the hearing aid for individuals who meet the age or disability, income and residency requirements of the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program.

(b) This chapter has been developed as a statement of policy and procedures and is applicable only to eligibility for the HAAAD Program.

#### 10:69-1.2 Legal authority

The New Jersey Program of Hearing Aid Assistance to the Aged and Disabled (HAAAD) is established by Chapter 198, Laws of 1987, (N.J.S.A. 30:4D-36 et seq.) effective February 4, 1988.

### SUBCHAPTER 2. DEFINITIONS

#### 10:69-2.1 Definitions

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

"Annual income" means all income from whatever source derived, actually received or anticipated.

"Applicant" means an individual who applies for HAAAD, either personally or through an authorized agent.

"Beneficiary" means an individual who has been found eligible for HAAAD benefits.

"Calendar year" means a year beginning January 1 and ending on December 31. "Calendar year" is the base period utilized to determine annual income and HAAAD eligibility.

"Resident" means a person legally domiciled within the State of New Jersey for a period of 30 days immediately preceding the date of application for inclusion in the HAAAD program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile.

### SUBCHAPTER 3. ADMINISTRATIVE ORGANIZATION

#### 10:69-3.1 Department of Human Services

The Department of Human Services is the administrative unit of the State government which has control over the administration of HAAAD. Under the terms of the HAAAD law, the Department is responsible for the general policies governing administration of HAAAD, and for effecting the issuance of rules and procedures in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., for implementing the statutory provisions.

#### 10:69-3.2 Division of Medical Assistance and Health Services

The Division of Medical Assistance and Health Services is the administrative unit of the Department of Human Services responsible for the administration of the HAAAD Program.

#### 10:69-3.3 Bureau of Pharmaceutical Assistance to the Aged and Disabled

The Bureau of Pharmaceutical Assistance to the Aged and Disabled is the unit of the Division of Medical Assistance and Health Services which has the direct responsibility for the processing of eligibility applications and for authorizing payment of HAAAD benefits.

#### 10:69-3.4 Agency controls

(a) The Division Director shall establish operating policies to expedite the processing of applications and to assure the maximum possible compliance with the standards set forth in this chapter.

(b) The Bureau of Medical Care Surveillance of the Office of Program Integrity within the Division of Medical Assistance and Health Services is assigned the responsibility for investigating beneficiaries in matters involving potential fraud and/or abuse.

### SUBCHAPTER 4. APPLICATION PROCESS

#### 10:69-4.1 General provisions

The application process includes all activity relating to a request for eligibility determination. The application process begins with the receipt by the Division of Medical Assistance and Health Services of an eligibility application and continues in effect until there is an official disposition of the request by the Division of Medical Assistance and Health Services.

#### 10:69-4.2 Authorized agent

(a) In those instances where the applicant is incompetent or incapable of filing an eligibility application on his or her own behalf, the Division shall accept any one of the following, listed in the order of priority, as an authorized agent for the purpose of initiating such application:

1. A close relative by blood or marriage, that is, parent, spouse, son, daughter, brother, sister;
2. A representative payee designated by the Social Security Administration;
3. A staff member of a public or private social service agency, of which the person is a client, who has been designated by the agency to so act;
4. A friend.

#### 10:69-4.3 Responsibilities in the application process

(a) The Department of Human Services through the Division of Medical Assistance and Health Services, Bureau of Pharmaceutical Assistance to the Aged and Disabled establishes procedures on the application process consistent with law and supervises the operation with the policy and procedures so established.

(b) The Bureau of Pharmaceutical Assistance to the Aged and Disabled has responsibility in the application process to:

1. Explain the purposes and eligibility requirements of the program and indicate the applicant's rights and responsibilities under its provisions.
2. Process the AP-2 or HA-1 application.
3. Certify to the Treasurer, State of New Jersey, the names of eligible residents and authorize the payment of HAAAD benefits.
4. Microfilm eligibility applications and supporting documents and retain microfilm for audit purposes.

(c) The applicant has the responsibility to do the following:

1. Complete the PAAD eligibility application (AP-2) for those applicants not enrolled in the PAAD Program, or the HAAAD eligibility application (HA-1) for those applicants already enrolled in the PAAD Program. The application shall be legible and accurate. The applicant shall:
  - i. Answer all questions fully;
  - ii. Present all necessary evidentiary documents, including physician's prescription or letter attesting to the medical necessity for obtaining a hearing aid and a receipt for the recent purchase of the hearing aid;
  - iii. Read the certification and authorization statement;
  - iv. Sign or mark the application.
2. Assist the Division of Medical Assistance and Health Services in securing evidence that corroborates the statements when necessary.

(d) The beneficiary has the responsibility to repay the State of New Jersey, upon request, for the cost of benefits incorrectly paid on his or her behalf.

**SUBCHAPTER 5. ELIGIBILITY REQUIREMENTS**

**10:69-5.1 Age and income standards**

(a) To be eligible for HAAAD, the applicant must be 65 years of age or older or must be under 65 and over 18 years of age and receive Social Security Title II disability benefits and have an annual income below \$13,650 if single or \$16,750 combined income if married.

(b) HAAAD eligibility is conferred based upon annual income for the current calendar year.

(c) The HAAAD program shall take necessary action to recover the full amount of payments made on behalf of beneficiaries during an ineligible period, when appropriate.

**10:69-5.2 Citizenship and residence**

(a) A person shall not be required to be a citizen of the United States in order to be eligible for HAAAD.

(b) Any resident of this State shall be eligible for HAAAD. (See 10:69-2.1.)

**10:69-5.3 Recipient of other assistance and hearing aid coverage**

(a) Any person shall be ineligible for HAAAD if he or she is otherwise qualified for assistance for the New Jersey Title XIX (Medicaid) program.

(b) If an otherwise eligible person's hearing aid costs are covered in whole by any other State or federal government program or insurance contract, the person is not eligible for hearing aid assistance under these rules. If an eligible person's hearing aid costs are covered in part by any other State or federal government program or insurance contract, the person may be entitled to receive a reduced hearing aid assistance. HAAAD will pay full client liability up to \$100.00. The program will recover from the third party payor in cases where an applicant has partial coverage and total client out-of-pocket expense is less than \$100.00.

**10:69-5.4 Certification**

The applicant for HAAAD benefits must sign a certification that all the answers to the questions and items on the application form are true and accurate to the best of his or her knowledge.

**10:69-5.5 Authorization**

By signing or marking the certification and authorization statement on the application form, the applicant authorizes assignment of benefits to the State of New Jersey if he or she or his or her spouse has any other plan of assistance or insurance that covers, at least in part, the cost of hearing aids.

**10:69-5.6 Eligibility period**

A person eligible for HAAAD is entitled to receive a payment of up to \$100.00 in a calendar year. Only one benefit may be issued in the period between January 1 and December 31 of any year. No benefits will be granted for hearing aids purchased prior to February 4, 1988.

**10:69-5.7 Recoveries for benefits incorrectly paid**

(a) The Division may take all necessary action to recover the cost of benefits incorrectly paid on behalf of a beneficiary.

1. The term "incorrect payment" includes, but is not limited to:

- i. Payment made on behalf of a beneficiary whose hearing aid costs are wholly covered by another source;
- ii. Payment made on behalf of a beneficiary who is no longer eligible, or has been incorrectly determined to be eligible to receive benefits;
- iii. Payment made as a result of fraud perpetrated by a beneficiary, his or her authorized agent and/or provider.

(b) The Division shall take all reasonable measures to ascertain the legal liability of third parties to pay for hearing aids arising out of injury, disease, or disability, where it is known that a third party is or may be liable to pay all or part of the hearing aid costs for a beneficiary.

**(a)**

**DIVISION OF PUBLIC WELFARE  
General Assistance Manual  
Hospital Payments**

**Proposed Amendment: N.J.A.C. 10:85-5.2**

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

Authority: N.J.S.A. 44:8-111(d).  
Proposal Number: PRN 1988-84.

Submit comments by April 6, 1988 to:  
Marion E. Reitz, Acting Director  
Division of Public Welfare  
CN 716  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Sound administration and realistic fiscal planning for both the payer and payee of public accounts require promptness. Without prompt payment, neither can function efficiently. The proposed amendment, included under authority of N.J.S.A. 44:8-111, inserts an incentive to municipalities for promptness of payment by requiring payment of hospital bills within a time period of six months. Bills which are otherwise payable but go unpaid for long periods are still payable but will not be eligible for State matching. Provision is made for extension of the time period under conditions for good cause.

**Social Impact**

There are, at this time, no known outstanding bills to which this amendment would apply. Accordingly, the proposed amendment is preventive in nature rather than curative. It is not expected to have any immediate impact on General Assistance recipients or municipal welfare departments. The amendment may contribute to sound management in any instance in which delays in payment are contemplated.

**Economic Impact**

While the proposed amendment deals in a financial area, it is not expected to change the amounts of money due or payable to any person or agency. The amendment institutes a penalty for undue delay in the payment of certain bills. Because the penalty exists, it is expected that the municipalities will make whatever efforts are necessary to avoid it. For most municipalities, this will require no additional effort whatever because their promptness is well within the required time period.

**Regulatory Flexibility Statement**

The rule has been reviewed with regard to the Regulatory Flexibility Act, P.L. 1986, c.169, effective December 4, 1986. This rulemaking imposes no compliance requirements on small businesses, therefore, a regulatory flexibility analysis is not required.

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

**10:85-5.2 Inpatient hospital care**

(a)-(e) (No change.)  
(f) Payment for hospitalization: Upon certification of hospitalization, the director of welfare shall approve payment as approved by DPW/BMA which shall cover all items listed in (c) above.  
1.-2. (No change.)

3. Reporting requirements: Each month the municipal director of welfare shall submit Form GA-6 (Report of Assistance Commitments) to the Division of Public Welfare, recording actual payments to hospitals for inpatient care made from the Public Assistance Trust Fund Account. **Starting July 8, 1988, State Aid matching will be available for the payment of inpatient hospital bills for a period not to exceed six months from the date in which the Bureau of Medical Affairs approval is granted. Payments made after six months from the approval date will be denied General Assistance State Aid matching unless an extension for good cause has been granted. Written requests for extension may be directed to DPW.**

i. (No change.)

**(a)**

**DIVISION OF PUBLIC WELFARE  
General Assistance Manual  
Pharmaceutical Assistance to the Aged and  
Disabled (PAAD) Information  
Proposed Amendment: N.J.A.C. 10:85-8.4**

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

Authority: N.J.S.A. 44:8-111(d).

Proposal Number: PRN 1988-117.

Submit comments by April 6, 1988 to:  
Marion E. Reitz, Acting Director  
Division of Public Welfare  
CN 716  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment does not constitute a change in General Assistance (GA) program regulations. Rather, the proposed amendment updates information contained in the GA manual about the Pharmaceutical Assistance to the Aged and Disabled (PAAD) program, administered by the Division of Medical Assistance and Health Services. The GA manual maintains information on other agency programs for purposes of client referral.

The proposed amendment to N.J.A.C. 10:85-8.4 revises language in accordance with the New Jersey Medicaid Law (N.J.S.A. 30:4D-22), authorizing the inclusion of "diabetic testing materials" that can be visually read. The proposed amendment also deletes specific maximum income eligibility figures since they change periodically. The obsolete eligibility information is replaced with an identified source of referral for current information. Several technical corrections of current inaccuracies in text are included in the proposed amendment.

**Social Impact**

Inasmuch as this change is just for informational purposes only, the only discernable social impact of the proposed amendment is that individuals will be provided with accurate information concerning the PAAD program.

**Economic Impact**

The proposed amendment will not change the dollar flow to or from any person or agency. The impact will be administrative in that updated information concerning other agency programs will be maintained for client referral by municipal welfare agencies.

**Regulatory Flexibility Statement**

This proposal has been reviewed with regard to the Regulatory Flexibility Act, P.L. 1986, c.169, effective December 4, 1986. The proposal imposes no compliance requirements on small businesses.

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

10:85-8.4 Referral to State agencies

(a)-(f) (No change.)

(g) Division of Medical Assistance and Health Services: The Division of Medical Assistance and Health Services, which is a division of the New Jersey Department of Human Services, administers the following programs:

1. Pharmaceutical Assistance to the Aged and Disabled (PAAD) program: Under [this] the **Pharmaceutical Assistance to the Aged and Disabled (PAAD)** program, eligible persons [are reimbursed for approved claims covering the cost of] **pay their pharmacists a fixed copayment at the time of purchase of prescription drugs, [including] insulin, insulin syringes and needles, and certain diabetic testing materials.** [Each eligible individual pays a fixed amount (currently \$2.00) for each prescription or each purchase of diabetic supplies.] **Pharmacists are then reimbursed by the PAAD program for the reasonable cost of the prescription drug or pharmacy item which exceeds the copayment amount.**

i. Eligibility requirements: This program restricts eligibility to residents of New Jersey who are 65 years of age or older and to Social Security Disability benefits recipients (eligibility limited to the person actually disabled) whose annual income is less than [\$12,000 (married couple \$15,000)] **specified limits. Current information and leaflets explaining details are available from the Medicaid District Office.**

ii. (No change.)

2. (No change.)

(h)-(j) (No change.)

**STATE**

**(b)**

**DIVISION OF COMMERCIAL RECORDING  
Expedited Services  
Proposed Readoption with Amendments: N.J.A.C.  
15:2-1**

Authorized By: Jane Burgio, Secretary of State.

Authority: P.L. 1982, c.150 and P.L. 1987, c.435, N.J.S.A. 52:16A-11.

Proposal Number: PRN 1988-86.

Submit comments by April 6, 1988 to:  
Charles C. Hager, Esq.  
Assistant Counsel  
Department of State  
CN 300  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 15:2-1, Expedited Services, expired on March 7, 1988. The Department of State has reviewed the rules in this chapter and has determined that they are necessary, reasonable and proper for the purpose for which they were originally promulgated. The subchapter on Expedited Services contains five sections.

Section one describes which services will be provided on an expedited basis.

Section two provides applicable definitions.

Section three outlines exceptions to providing expedited services.

Section four lists fees charged for expedited services.

Section five describes how fees for services may be paid.

In reviewing these rules for readoption, the Department has determined a need for amendments in some areas. The amendments extend the provisions of N.J.A.C. 15:2-1.1 to cover applications to be a Notary Public, to renew commissions as a Notary Public, and to the certification of an official signature which is on file with the Department, including the issuance of apostilles. Additionally, trade name filings have been excepted from the provision of a certified or uncertified copy of any document, and from certification regarding the existence or non-existence of any document. A definition of over the counter services has been added. The title of N.J.A.C. 15:2-1.3 has been amended, and text added, to provide an additional provision for non-compliance with a request for expedited service.

The fees for expedited requests have been adjusted, as authorized by P.L. 1987, c.435. Additionally, in N.J.A.C. 15:2-1.1 and 1.5, the Division of Commercial Recording has been changed to the Department of State.

**Social Impact**

The readoption of this chapter will continue to provide for the expeditious processing of certain specified requests made of the Department of State, for a fee, for those who choose to use this service. The proposed amendments extend the provisions, to cover applications for notary public, certification of signatures and apostilles, expansion of definitions to include over the counter services, such as hand or express mail delivery, telefax or electronic requests, and personal requests at the Expedited Service counter or any other location designated by the Secretary of State.

The public benefits from the expedited service, since it allows businesses to maintain competition.

**Economic Impact**

The fees for the optional services covered by this chapter have been raised, in accordance with statutory provisions (P.L. 1987, c.435). The increase in fees will more closely reflect the cost of processing, thereby placing more of the economic burden upon those members of the public who benefit directly from the expedited service. For those who elect to use it, the service drastically reduces the time between receipt of an information request and the Department's response. The economic impact of the expedited processing upon the individual requesting it may be positive, but the extent of this impact cannot be determined, due to the varied circumstances of each individual.

The fees generated under the current fee schedule are not sufficient to provide adequate services, given the approximately six-fold increase in demand for the services of the Division of Commercial Recording.

**Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, P.L. 1986, c.169, the Department of State has determined that the Commercial Recording Expedited Rules will only impact on those small businesses which choose to use this service. Using this service can greatly foster a business in that it can readily put information on file with the Secretary of State or pull information from the Secretary's files.

To differentiate between large and small businesses in processing would result in unequal treatment and adversely affect the ability of all businesses to compete effectively in the marketplace. Therefore, it is inappropriate to exempt small businesses from the provisions of these rules.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 15:2.

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

15:2-1.1 Services which will be provided on an expedited basis

(a) The [Division of Commercial Recording] **Department of State** shall provide expedited over the counter [corporate] services for the following requests:

1.-2. (No change.)

3. A certified or uncertified copy of a document, **except trade name filing**, filed with the [Division of Commercial Recording] **Department of State**:

4. A certificate as to the existence or nonexistence of any document, **except trade name filings**, on record with the Division of Commercial Recording;

5.-12. (No change.)

**13. An application to be a Notary Public;**

**14. An application to renew one's commission as a Notary Public;**

**15. Certification of an official signature on a document, when the official's signature is on file with the Department of State. This includes the issuances of apostilles.**

(b) (No change.)

15:2-1.2 Definitions

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

[(a)] "Expedited service" means priority same day service effected in a fast and efficient manner.

**"Over the counter services" means:**

**1. Documents delivered to the Commercial Recording Division, Expedited Services counter by hand or by express mail (Federal Express, etc.);**

**2. Subject to the approval of the Secretary of State, documents telefaxed or transmitted electronically to the Commercial Recording Division;**

**3. Information requests made at the Commercial Recording Division Expedited Service counter or any other location designated by the Secretary of State.**

[(b)] "Same Day" means as soon as possible but no later than 8½ business hours from the time the request is received. The business day runs from 8:30 A.M. to 5:00 P.M. on all weekdays other than State holidays.

15:2-1.3 [Exception: computer breakdown] **Exceptions**

(a) Expedited services shall be rendered as soon as possible but may extend beyond the same day if the computer system utilized by the commercial recording division is down, making response impossible.

(b) **Any over the counter service may be rejected by the Secretary of State, unless the submission has a cover sheet issued by the Secretary of State. The Secretary of State may design the cover sheet and the Secretary may from time to time redesign the cover sheet.**

15:2-1.4 Fees for expedited service

(a) Fees for over the counter corporation service shall be as follows:

1. Filing of document:

i. Without certified copy: statutory fee plus \$5.00;

ii. With copy to be certified: statutory filing fee, certification fee of [\$15.00] **\$25.00** plus \$5.00.

2. (No change.)

3. Certificate of standing:

i. Short form standing certificate which includes registered agent and registered office [\$15.00] **\$25.00** plus \$5.00;

ii. (No change.)

4. Status report(s) which includes name availability, the name and address of the registered agent, corporation or limited partnership name, whether corporation charter is still valid, and whether the corporation or limited partnership has filed a fictitious/alternate name. Fees for report(s) requested, at the same time are as follows:

i. One report—[\$2.00] **\$5.00** plus \$5.00;

ii. Two reports—[\$4.00] **\$10.00** plus \$5.00;

iii. Three reports—[\$6.00] **\$15.00** plus \$5.00;

iv. Four reports—[\$8.00] **\$20.00** plus \$10.00;

v. Five reports—[\$10.00] **\$25.00** plus \$10.00;

vi. Six reports—[\$12.00] **\$30.00** plus \$10.00;

vii. Seven reports—[\$14.00] **\$35.00** plus \$15.00;

viii. Eight reports—[\$16.00] **\$40.00** plus \$15.00;

ix. Nine reports—[\$18.00] **\$45.00** plus \$15.00;

x. Ten reports—[\$20.00] **\$50.00** plus \$20.00.

5. Certificate of name availability one to three names: [\$10.00] **\$25.00** plus \$5.00.

6.-7. (No change.)

8. There shall be an additional charge of [\$15.00] **\$25.00** to certify any document.

(b) Fees for over the counter U.C.C. service shall be as follows:

1. Filings of a U.C.C. 1 and a U.C.C. 1 with assignment, U.C.C. 3 or a separate assignment [\$10.00] **\$25.00** plus \$5.00;

2. Search request [\$15.00] **\$25.00** plus \$5.00;

3. Search request and photocopies [\$15.00] **\$25.00** plus \$5.00 plus \$1.00 per page photostated;

4. Request for copy(ies) \$5.00 plus \$1.00 per page photocopied;

5. Filing U.C.C. 1 and search request to reflect filing [\$25.00] **\$50.00** plus \$5.00.

(c) Expedited telephone service shall be provided for:

1. (No change.)

2. The fees for status report(s) requested at the same time are as follows:

i. One report—[\$2.00] **\$5.00** plus \$5.00;

ii. Two reports—[\$4.00] **\$10.00** plus \$5.00;

iii. Three reports—[\$6.00] **\$15.00** plus \$5.00;

iv. Four reports—[\$8.00] **\$20.00** plus \$10.00;

**STATE**

**PROPOSALS**

- v. Five reports—[\$10.00] **\$25.00** plus \$10.00;
- vi. Six reports—[\$12.00] **\$30.00** plus \$10.00;
- vii. Seven reports—[\$14.00] **\$35.00** plus \$15.00;
- viii. Eight reports—[\$16.00] **\$40.00** plus \$15.00;
- ix. Nine reports—[\$18.00] **\$45.00** plus \$15.00;
- x. Ten reports—[\$20.00] **\$50.00** plus \$20.00.

- 15:2-1.5 Method of payment of fees for expedited service
- (a) All fees for expedited service performed by the [Division of Commercial Recording] **Department of State** may be paid as a pre-paid deposit account or charged against a major credit card held by the service user.
- 1.-2. (No change.) \_\_\_\_\_

# RULE ADOPTIONS

## AGRICULTURE

### (a)

#### DIVISION OF REGULATORY SERVICES

#### Jersey Fresh Quality Grading Program Products and Manner of Use

#### Adopted Amendments: N.J.A.C. 2:71-2.4, 2.5 and 2.6

Proposed: December 21, 1987 at 19 N.J.R. 2327(b).

Adopted: February 3, 1988 by Arthur R. Brown, Jr., Secretary,  
Department of Agriculture.

Filed: February 4, 1988 as R.1988 d.97, with technical changes  
not requiring additional public notice or comment (see  
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 4:10-3, 4:10-13 and 4:10-20.

Effective Date: March 7, 1988.

Expiration Date: September 1, 1988.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

Full text of the adoption follows:

2:71-2.4 Agricultural commodities intended to be marketed under the Jersey Fresh Quality Grading Program

(a) Only sweet anise (fennel), apples, asparagus, blueberries, cabbage, green corn, cucumbers, cucumbers (pickling type), eggplants, endive, escarole, iceberg lettuce, nectarines, okra, common green onions, parsley, peaches, sweet peppers, sweet potatoes, white potatoes, raspberries, romaine, summer squash, fall and winter type squash and tomatoes (fresh market), may be identified by the "logo".

(b) (No change.)

2:71-2.5 Commodity grades, packing requirements, packer identification and containers

(a) (No change.)

(b) Commodities shall be graded, packed, identified and contained as follows:

\*1.\* Apples shall be combination U.S. Extra Fancy and U.S. Fancy grade for tray or cell packs and U.S. Fancy grade for apples packed in bags. Color requirements are those for specified U.S. Grades of Apples by variety. Apples of the Red Delicious, Red Rome, Granny Smith and Paul Red varieties may be packed bearing the "logo". Size requirements are as follows: Bags—apples shall be a minimum of two and one-quarter inches and up in diameter. Tray or cell packs—maximum count of 125 apples per container. Tray or cell packs shall be packed fairly tight or be packed for a 40 pound minimum net weight for the above listed varieties. All containers shall be new. Paper pad required over top layer of apples in tray or cell packs. Certified controlled atmosphere storage apples are eligible to be packed bearing the "logo" provided the fruit meets the above requirements.

\*2.\* Asparagus shall be U.S. No. 1 grade with not less than two-thirds of the stalk length green color. Stalks shall be of the following diameter classifications. Small—five-sixteenth inch to less than eight-sixteenth inch in diameter. Medium—eight-sixteenth inch to less than eleven-sixteenths in diameter. Large—eleven-sixteenths inch to less than fourteen-sixteenths in diameter. Stalks shall be well trimmed. All containers shall be new.

\*3.\* Blueberries shall be U.S. No. 1 grade. Size shall meet the requirements of at least Large with a maximum of 129 berries per standard two gill cup. All packaging materials shall be new.

\*4.\* Cabbage, Domestic type, shall be U.S. No. 1 or U.S. No. 1, Green grade, with the heads being of two pound minimum weight to five pound maximum weight. The U.S. No. 1 grade requires that the heads be well trimmed. The U.S. No. 1, Green grade requires that the heads be fairly well trimmed. All containers shall be new.

\*5.\* Green Corn shall be U.S. Fancy, grade with a minimum count of 54 ears per container and when packed in crates the pack shall be tight. All containers shall be new. All green corn shall be hydrocooled. All containers shall be marked "hydrocooled."

\*6.\* Cucumbers shall be U.S. No. 1 grade, or better, with 2 and 3/8 inch maximum diameter and six inch minimum length. All containers shall be at least fairly well filled. All containers shall be new.

\*7.\* Cucumbers (pickling type) shall be U.S. No. 1 grade with two inches maximum diameter and five inches maximum length. All containers shall be at least fairly well filled. All containers shall be new.

\*8.\* Eggplants shall be U.S. No. 1 grade, or better, and reasonably uniform in size. All containers must have at least a fairly tight pack. All containers shall be new.

\*9.\* Endive shall be U.S. No. 1 grade. Plants shall be well trimmed and fairly uniform. All containers shall be new.

\*10.\* Escarole shall be U.S. No. 1 grade. Plants shall be well trimmed and fairly uniform. All containers shall be new.

\*11.\* Fennel (Sweet Anise) shall be U.S. No. 1 grade. Stalks shall be well trimmed. The minimum diameter of each bulb shall be not less than two inches. All containers shall be new.

\*12.\* Iceberg lettuce shall be U.S. No. 1 grade, or better. The pack shall be of 24 or 30 heads per container. The heads shall be fairly uniform in size. The containers shall have a tight pack. All containers shall be new. All lettuce shall be vacuum cooled. The containers shall be marked "vacuum cooled."

\*13.\* Nectarines shall be U.S. Extra No. 1 grade with a two and one-quarter inch minimum diameter. When packed in closed containers, the size shall be indicated by marking the container with the numerical count, the pack arrangement, or the minimum diameter or minimum and maximum diameters in terms of inches and not less than one-eighth fractions of inches. Fruit shall be fairly uniform in size. All nectarines shall be hydrocooled. All containers shall be marked "hydrocooled." All containers shall be new.

\*14.\* Okra shall be U.S. No. 1 grade. All containers shall be new.

\*15.\* Common Green Onions shall be U.S. No. 1 grade. The overall length (roots excepted) of the onions shall be not more than 24 inches nor less than eight inches and the onions shall not be less than one-quarter inch or more than one inch in diameter. All containers shall be new.

\*16.\* Parsley shall be U.S. No. 1 grade. All containers shall be new.

\*17.\* Peaches shall be U.S. Extra No. 1 grade, or better, with a 2 and 1/4 inch minimum diameter. Containers shall be marked to denote variety and minimum size or count. All containers shall be new. All containers shall be at least fairly well filled. All peaches shall be hydrocooled. All containers shall be marked "hydrocooled."

\*18.\* Sweet peppers shall be U.S. No. 1 grade, or better. Minimum size shall be two and one-half inch minimum diameter and two and one-half inch minimum length. Containers shall be packed to a maximum average of no more than 90 peppers per container. Large—Average no more than 75 peppers per container. Extra Large—Average no more than 65 peppers per container. All containers shall be at least fairly well filled. All containers shall be new.

\*19.\* Sweet Potatoes shall be U.S. Extra No. 1 grade. Maximum diameter shall not be more than 3 and 1/4 inches. Maximum weight shall not be more than 18 ounces. Length shall not be less than three or more than nine inches. Minimum diameter shall not be less than 1 and 3/4 inches. All containers shall be at least fairly well filled. All containers shall be new.

\*20.\* White potatoes shall be U.S. No. 1 grade and packed to meet the requirements of Size A or Large. "Size A" means that the minimum diameter shall be not less than 1 and 7/8 inches and that the lot shall contain at least 40 percent of potatoes which are 2 and 1/2 inches in diameter or larger or six ounces in weight or larger. "Large" means that the minimum diameter shall be not less than three inches or the minimum weight shall be not less than 10 ounces and the

maximum diameter shall be not more than 4 and 1/4 inches or the maximum weight shall be not more than sixteen ounces. All potatoes shall be washed. All containers shall be new.

**\*21.\*** Raspberries shall be U.S. No. 1 grade. Berries shall be well colored. Individual cups shall be well filled. All containers shall be new.

**\*22.\*** Romaine shall be U.S. No. 1 grade with eight inches minimum length. Plants shall be well trimmed and well developed. All containers shall be new.

**\*23.\*** Squash, Fall and Winter (acorn and butternut) shall be U.S. No. 1 grade and shall meet the following size specifications: Acorn shall be a minimum of 1 pound and a maximum of 3 pounds in weight. Butternut shall be a minimum of 1 and 1/2 pounds and a maximum of 4 pounds in weight. All containers shall be new.

**\*24.\*** Squash, Summer (yellow and green) shall be U.S. No. 1 grade and shall meet the following size specifications: green type shall be a maximum of nine inches in length and a maximum of 2 and 1/4 inches in diameter; yellow type shall be a maximum of nine inches in length and a maximum of 2 and 1/2 inches in diameter at the bulb. All containers shall be at least fairly well filled. All containers shall be new.

**\*25.\*** Tomatoes (fresh market) shall be U.S. No. 1 grade "Mixed Colors." Containers shall be marked with either "Maximum Large" or "Extra Large" or "Large" in accordance with the following size specifications: "Maximum Large" shall have a 3 and 15/32 inch minimum diameter; "Extra Large" shall have a 2 and 28/32 inch minimum diameter and 3 and 15/32 inch maximum diameter; "Large" shall have a 2 and 17/32 inch minimum diameter and 2 and 28/32 inch maximum diameter. Containers shall also be marked as follows, in accordance with the facts, "Large to Extra Large" or "Extra Large and larger." Containers shall be at least fairly well filled. All containers shall be new.

2:71-2.6 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Fairly tight" means, in the case of eggplants, that the package is sufficiently filled to prevent any appreciable movement of the eggplants and that they are in contact with the lid or cover. In the case of apples, that the apples are of the proper size for molds or cell compartments in which they are packed, and that the molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible. The pad over the top layer of apples shall be not more than three-quarter inch below the top edge of the carton.

"Well developed" means, in the case of romaine, that the plant shows normal growth and shape.

"Well trimmed" means, in the case of asparagus, that at least two-thirds of the butt of the stalk is smoothly trimmed in a plane approximately parallel to the bottom of the container and that the butt is not stringy or frayed. In the case of endive and escarole, that the roots are neatly cut near the point of attachment of the outer leaf stems. In the case of romaine, that the stem is trimmed off close to the point of attachment of the outer leaves. In the case of cabbage, that the head shall not have more than four wrapper leaves. In the case of Sweet Anise (Fennel), that not more than one coarse outer branch is left on each side of the bulb to protect the tender inside portion, and the portion of the root remaining is not more than one-half inch in length. Tops may be either full length or cut back to not less than ten inches except that not more than five of the outer branches may be cut back to less than ten inches if necessary to facilitate proper packing, but not more than three of these may be on the same side of the bulb.

**COMMUNITY AFFAIRS**

**(a)**

**OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY**

**Penalty for Failure to Report Suspected Abuse or Exploitation; Reporting of Penalties; Penalty for Willful Hindrance or Refusal to Comply**

**Adopted Amendment: N.J.A.C. 5:100-2.5**

Proposed: September 21, 1987 at 19 N.J.R. 1686(a).  
 Adopted: February 3, 1988 by Jack R. D'Ambrosio, Jr., Ombudsman.  
 Filed: February 8, 1988 as R.1988 d.101, **without change**.  
 Authority: N.J.S.A. 52:27G-5(d) and P.L. 1987, c.104.  
 Effective Date: March 7, 1988.  
 Expiration Date: May 7, 1989.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows.**

5:100-2.5 Penalties

(a) Any person required to report suspected abuse or exploitation pursuant to P.L. 1983, c.43, N.J.S.A. 52:27G-7.1, who fails to make such report, shall be fined not more than \$5,000. Such penalty shall be collected and enforced by summary proceedings pursuant to "the penalty enforcement law" (N.J.S.A. 2A:58-1, et seq.) as provided in P.L. 1983, c. 43, N.J.S.A. 52:27G-7.1(f). Each violation of the act shall constitute a separate offense. When a person has been penalized under this subsection, a letter making note of the penalty shall immediately be sent by the court to the licensing authority or the professional board, if any, having jurisdiction over the person who has been penalized.

(b) Any person who willfully hinders the lawful actions of the office or willfully refuses to comply with its lawful demands, including the demand of immediate entry into and inspection of a facility or government agency or the demand of immediate access to a patient, resident or client thereof, or who offers any compensation, gratuity, or promise thereof to the office in an effort to affect the outcome of any matter which is being investigated, or is likely to be investigated, shall be subject to a penalty of not more than \$5,000. Such penalty shall be collected and enforced by summary proceedings pursuant to "the penalty enforcement law" (N.J.S.A. 2A:58-1, et seq.) upon complaint of the office or any other person. Each violation of the act shall constitute a separate offense. When a person has been penalized under this subsection, a letter making note of the penalty shall immediately be sent by the court to the licensing authority or the professional board, if any, having jurisdiction over the person who has been penalized.

**ENVIRONMENTAL PROTECTION**

**(b)**

**DIVISION OF WATER RESOURCES**

**Storm Water Management**

**Readoption with Amendments: N.J.A.C. 7:8**

Proposed: December 7, 1987 at 19 N.J.R. 2227(a).  
 Adopted: February 5, 1988 by Richard T. Dewling, Commissioner, Department of Environmental Protection.  
 Filed: February 5, 1988 as R.1988 d.99, **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. 40:55D-93 et seq, in particular 40:55D-98.

## ADOPTIONS

DEP Docket Number: 058-87-11.

Effective Date for Readoption: February 5, 1988.

Effective Date for Amendments: March 7, 1988.

Expiration Date: February 5, 1993.

#### Summary of Public Comments and Agency Responses:

This proposed adoption without amendments was published in the December 7, 1987 New Jersey Register. The public comment period ended on January 6, 1988. Two persons submitted written comments.

COMMENT: References to erosion control should be modified or removed in order to avoid conflict or duplication with the erosion control requirements of the Soil and Sediment Control Act, N.J.S.A. 4:24-39 et seq.

RESPONSE: N.J.S.A. 40:55D-95, commonly referred to as the Stormwater Management Act, requires that storm water management plans and ordinances be designed to reduce soil erosion from any development or construction project. N.J.A.C. 7:8-3.3 provides that storm water management plans shall comply with and not duplicate Soil Conservation District requirements for the control of soil erosion. In order to clarify the rule, language has been added at N.J.A.C. 7:8-1.7(b) to assure compliance with the Soil Erosion and Sediment Control Act and any rules promulgated pursuant thereto.

COMMENT: A specific mechanism should be added to the rule to clarify the coordination between a municipality which prepares a storm water management plan and the appropriate Soil Conservation District.

RESPONSE: The Department agrees with the comment. Accordingly, language has been added at N.J.A.C. 7:8-2.3(b) and N.J.A.C. 7:8-3.3(a) which provides that coordination between the municipality and the appropriate Soil Conservation District shall be verified by written acknowledgement.

COMMENT: Additional provisions should emphasize that approval of a municipal storm water management plan and ordinance does not exempt the municipality or development activity from compliance with the requirements of the Soil Erosion and Sediment Control Act.

RESPONSE: Approval of a storm water management plan and ordinance does not exempt municipalities from compliance with the Soil Erosion and Sediment Control Act. The appropriate Soil Conservation District will have the opportunity to review the plan and the ordinance, identify conflicts with its soil erosion control requirements, and apprise municipalities that they are not exempt from compliance with the Soil Erosion and Sediment Control Act. See language added at N.J.A.C. 7:8-1.7(b).

COMMENT: The Department should provide copies of storm water management plans and ordinances to the Department of Agriculture.

RESPONSE: The Department has amended N.J.A.C. 7:8-2.5 to provide that copies of the plans and ordinances will be sent to the State Soil Conservation Committee of the Department of Agriculture.

COMMENT: One commenter addressed the placement of detention basins in freshwater wetlands areas (see N.J.A.C. 7:8-3.4(a)9). In addition, this commenter submitted comments on a prior rule making concerning this chapter which were previously published upon the adoption of the amendments to this chapter at 19 N.J.R. 2276(a), December 7, 1987. For response to these resubmitted documents, please refer to the December 7, 1987 New Jersey Register.

COMMENT: The Storm Water Management rules should not be construed to limit the construction of detention basins in freshwater wetlands areas until July 1, 1988, the effective date of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. and the Storm Water Management rules should not be applicable to projects which are exempt from the permitting requirements of the Freshwater Wetlands Protection Act.

The Storm Water Management rules should be amended to allow the placement of storm water management facilities in freshwater wetlands areas or buffer zones in order to achieve environmental and economic benefits.

RESPONSE: The Storm Water Management rules do not prohibit the placement of detention basins in freshwater wetlands areas. However, N.J.A.C. 7:8-3.4(a)9, provides that:

Detention basins located in freshwater wetlands may be allowed only in accordance with the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., and any rules adopted pursuant thereto.

See the adoption of this provision, published December 7, 1987, at 19 N.J.R. 2276(a). See also N.J.A.C. 7:8-1.7(a):

Nothing in this chapter shall be construed as limiting the rights of other agencies or entities, such as the Pinelands Commission or the Delaware and Raritan Canal Commission, from imposing stricter standards or other requirements as allowed by statute.

## ENVIRONMENTAL PROTECTION

Inquiries concerning the use of freshwater wetlands may be directed to the Department's Division of Coastal Resources, which will administer the Freshwater Wetlands Protection Act.

COMMENT: The Storm Water Management act, does not provide the Department with the power to control the contents of municipal storm water management plans; rather, the Act furnishes the Department with the power to adopt rules governing the procedures for municipalities to apply for and receive grants for storm water planning.

RESPONSE: The Storm Water Management Act provides for the adoption of comprehensive storm water management rules. See N.J.S.A. 40:55D-93 and 95. In addition to setting forth procedures to be used by municipalities in applying for State grants, the rules contain minimum standards to assist municipalities in preparing plans and ordinances which will comply with the stated objectives of the Act. These minimum standards promote a more consistent approach to stormwater management; however, a municipality may elect to enact more stringent measures. See N.J.S.A. 40:55D-95. This provision states in pertinent part that:

A storm water management plan and a storm water management ordinance or ordinances shall conform to all relevant Federal and State statutes, rules and regulations concerning storm water management or flood control, and shall be designed: a. to reduce flood damage, including damage to life and property; b. to minimize storm water runoff from any new land development where such runoff will increase flood damage; c. to reduce soil erosion from any development or construction project; d. to assure the adequacy of existing and proposed culverts and bridges; e. to induce water recharge into the ground where practical; f. to prevent, to the greatest extent feasible, an increase in nonpoint pollution; and g. to maintain the integrity of stream channels for their biological functions, as well as for drainage. A stormwater management plan shall also include such structural and nonstructural measures and practices as may be necessary to manage storm water. . . .

The above standards are reflected in N.J.A.C. 7:8-2.1. Similarly, N.J.A.C. 7:8-3 sets forth detailed standards by which a plan will be evaluated. See especially, N.J.A.C. 7:8-3.4.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:8.

Full text of the amendments to the readoption follows (additions to the proposal indicated in boldface with asterisks \*thus\*; deletions from the proposal indicated in brackets with asterisks \*[thus]\*).

#### SUBCHAPTER 1. GENERAL PROVISIONS

7:8-1.1 through 7:8-1.6 (No change.)

7:8-1.7 Relationship to other permitting programs

**\*(a)\*** Nothing in this chapter shall be construed as limiting the rights of other agencies or entities, such as the Pinelands Commission, or the Delaware and Raritan Canal Commission, from imposing stricter standards or other requirements as allowed by statute.

**\*(b) If a stormwater management detention basin is also to be used as a soil erosion or sediment control measure under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., that act and any rules promulgated pursuant thereto shall also be applicable.\***

#### SUBCHAPTER 2. PROCEDURES FOR PREPARATION OF PLANS AND ORDINANCES

7:8-2.1 through 7:8-2.2 (No change.)

7:8-2.3 County review process

(a) (No change.)

(b) The agency or association shall approve, conditionally approve, or disapprove said plan and/or ordinance. It shall review its compatibility with applicable municipal, county, regional or State storm water management and flood control plans. It shall consult the appropriate Soil Conservation District and verify **\*through written acknowledgement from the District\*** that the coordination by the municipality and the District has been satisfactorily accomplished, as specified in N.J.A.C. 7:8-3.3. No storm water management plan or ordinance shall be approved which fails to meet the State storm water management standards, established by this chapter. The agency or association shall set forth in writing its reasons for disapproval of any plan or ordinance, or in the case of the issuance of a con-

## ENVIRONMENTAL PROTECTION

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ditional approval, the agency or association shall specify the necessary amendments to the plan or ordinance to the municipality. Once conditions, if any, are met by the municipality the plan and/or ordinance shall be deemed approved.

7:8-2.4 (No change.)

7:8-2.5 Notification to the State

Upon receipt of each completed municipal storm water management plan and ordinance, the designated county agency shall notify the Department of its receipt and keep an up-to-date accounting of its standing in the approval process. The county agency shall submit copies of the approved plans and ordinances to the Department and shall provide access to all other relevant records to Department personnel. **\*The Department shall provide copies of such plans and ordinances to the State Soil Conservation Committee of the Department of Agriculture.\***

7:8-2.6 through 7:8-2.9 (No change.)

## SUBCHAPTER 3. ELEMENTS OF PLAN AND ORDINANCE

7:8-3.1 through 7:8-3.2 (No change.)

7:8-3.3 Plan conformity

Each municipality shall coordinate storm water management plans and ordinances prepared under this chapter with soil and water conservation plans and regulations under the New Jersey Soil Conservation Act of 1937 as amended, N.J.S.A. 4:24-1 et seq., **\*through written correspondence\*** **\*[and]\*** with the appropriate soil conservation districts. Storm water management plans shall refer to **\*,\*** and be in compliance with and not duplicate **\*,\*** Soil Conservation District requirements for control of soil erosion. Additionally, such plans shall be coordinated with any storm water management plans prepared by the county and any other municipality in the basin, and in full compliance with the Water Quality Planning Act, N.J.S.A. 48:11A-1 et seq., and with any areawide plans for water quality relating to the river basins in the municipality. The storm water management plan and the storm water management ordinance or ordinances shall also be consistent with the relevant Federal and State statutes, rules and regulations concerning storm water management, dam safety and flood control, and with the Water Supply Management Act, P.L. 1981, c. 262, and the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq.

7:8-3.4 through 7:8-3.6 (No change.)

## (a)

## NEW JERSEY WATER SUPPLY AUTHORITY

## Use of Water Supply Authority Property

## Adopted Repeal: N.J.A.C. 7:11-1

## Adopted New Rules: N.J.A.C. 7:11-1

Proposed: July 20, 1987 at 19 N.J.R. 1274(a).

Adopted: February 5, 1988 by Richard T. Dewling, Chairman, N.J. Water Supply Authority and Commissioner, Department of Environmental Protection.

Filed: February 5, 1988 as R.1988 d.100, **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. 58:1B-7.

DEP Docket Number: 028-87-06.

Effective Date: March 7, 1988.

Expiration Date: June 6, 1988.

## Summary of Public Comments and Agency Responses:

The New Jersey Water Supply Authority (the "Authority") is adopting N.J.A.C. 7:11-1 to set forth the permissible recreational and non-recreational uses of property and waters under the Authority's jurisdiction.

A public hearing concerning these rules was held on August 5, 1987 to provide interested persons the opportunity to present testimony. One member of the public attended the hearing and made no comment. However, written comments were received during the comment period

from NJDEP, Division of Fish, Game and Wildlife; NJDEP, Division of Parks and Forestry; and the Delaware and Raritan Canal Commission. The comment period closed on August 19, 1987.

N.J.A.C. 7:11-1.1

COMMENT: The proposed rule would appear to apply to all publicly owned lands adjacent to the Authority's property.

RESPONSE: The Authority's rules for use of property are intended to apply only to those properties owned or leased by the Authority where the Authority has primary administrative jurisdiction. Authority-owned property which has been assigned to another agency for recreational development will be subject to the rules of that agency. Likewise, the rules are not intended to apply to adjacent property owned by another agency.

N.J.A.C. 7:11-1.1 clearly specifies that the Authority's jurisdiction applies to "water supply facilities". "Facility" is defined at N.J.A.C. 7:11-1.6 to specifically refer to those structures, buildings, equipment, storage vessels and other operations located on property owned by or under the jurisdiction of the Authority. However, in the interest of further clarifying N.J.A.C. 7:11-1.1, the Authority has added language "under the administrative jurisdiction of the Authority" following the term "water supply facilities".

N.J.A.C. 7:11-1.6

COMMENT: In the definition for "public recreation and conservation purposes" the words "and water" should be added to the phrase "... means the use of land for parks ...".

RESPONSE: The Authority agrees with this comment and has added the requested language.

N.J.A.C. 7:11-1.9

COMMENT: This provision gives the Authority the sole discretion to limit property use without consulting other DEP agencies which exercise administrative control either singly or in combination with the Authority over the subject lands and waters affected by this provision.

RESPONSE: The Authority agrees that the limitation of property use in situations where recreational uses may be adversely impacted should be coordinated with the affected agencies in all cases except extreme emergencies. Therefore, a provision has been included in this section which requires consultation with affected agencies whenever possible. The Authority also agrees that notification of land use limitations should be communicated in a better manner than the one proposed. As a result, language has been added to this section which will require that affected agencies be notified of closure verbally and in writing.

N.J.A.C. 7:11-1.15(b)

COMMENT: The word "trails" should be changed to "trials".

RESPONSE: The Authority recognizes this misprint and has changed the spelling accordingly. "Trials" is the correct word.

N.J.A.C. 7:11-1.19

COMMENT: Allow picnicking throughout the Delaware and Raritan Canal instead of only in areas "designated for such use."

RESPONSE: The Authority agrees with the comment. Appropriate language is proposed in the proposed re-adoption of N.J.A.C. 7:11 published elsewhere in this issue of the New Jersey Register.

N.J.A.C. 7:11-1.27

COMMENT: The rules of the State Parks Service and Division of Fish, Game and Wildlife appear to be subservient to the Authority's rules for use of property. This provision gives the Executive Director too much discretionary leeway.

RESPONSE: The changes made to N.J.A.C. 7:11-1.1, Scope, should adequately address any concerns relative to the applicability of State Parks Service and Division of Fish, Game and Wildlife rules in a given situation. With respect to the concern about the discretionary power of the Executive Director, the Authority maintains that such authority is not excessive and is necessary in the public interest.

N.J.A.C. 7:11-1.28(d)

COMMENT: Persons should be permitted to fish within 100 feet of Canal locks.

RESPONSE: The prohibition of fishing within 100 feet of the Delaware and Raritan Canal Locks is a long-standing rule with considerable merit. These locations are inherently dangerous due to the water current, vertical drop to the water surface and the steep embankments. To allow fishing within 100 feet of these locations would subject the Authority to substantial liability for injury or accidental drowning. Hence, the Authority has made no change to this provision of the rule.

N.J.A.C. 7:11-1.32

COMMENT: Add "recreational trails" to the list of places that motor vehicles must not trespass.

**ADOPTIONS**

**RESPONSE:** The Authority agrees with the comment. Appropriate language is proposed in the proposed readoption of N.J.A.C. 7:11 published elsewhere in this issue of the New Jersey Register.

N.J.A.C. 7:11-1.37(b)

**COMMENT:** The rule should allow a mast height of 30 feet instead of 25 feet since 30 feet has been found to allow safe operation.

**RESPONSE:** The Authority has no objection to increasing the mast height limitation from 25 feet to 30 feet and has made the change in the rule.

N.J.A.C. 7:11-1.37(e)

**COMMENT:** The rule should permit the use of small electric motors on boats in the Delaware and Raritan Canal.

**RESPONSE:** The use of small electric motors on boats in the Delaware and Raritan Canal is acceptable and should not cause detrimental bank erosion. Therefore, language has been added to this section permitting the use of small electric motors on boats as an exception and a definition of "small electric motors" has been added to N.J.A.C. 7:11-1.6.

N.J.A.C. 7:11-1.39

**COMMENT:** Do not use specific N.J.A.C. section cites when referencing the Fish and Game Code as these change from time to time. Instead use the language "the appropriate section of the current Fish Code."

**RESPONSE:** The Authority agrees and has incorporated the suggested change.

N.J.A.C. 7:11-1.43

**COMMENT:** This provision regarding low water levels is overly restrictive.

**RESPONSE:** The Authority has experienced considerable difficulty with certain sportsmen who use the circumstance of low water levels in the reservoirs to gain access to otherwise controlled restricted areas. The intent of this provision is to keep unauthorized individuals out of the few restricted areas at the reservoirs. The safety of the Authority's facilities as well as individual safety argue for this provision and the Authority therefore is not willing to change this provision.

N.J.A.C. 7:11-1.44

**COMMENT:** This provision is unenforceable considering present Water Supply Authority staff. The rule should prohibit swimming only in specific areas.

**RESPONSE:** The Canal is seven to eight feet deep throughout, with steep slopes in many locations. These factors make the Canal a very hazardous place to swim. Therefore, swimming is prohibited in the Canal.

**Agency Initiated Changes**

7:11-1.2

The agency has initiated the removal of the language at N.J.A.C. 7:11-1.2(b) as unnecessary language since the purpose and intent of this subsection is accomplished at N.J.A.C. 7:11-1.9.

7:11-1.37(d)

Please note that due to an inadvertent misprint, the correct language for N.J.A.C. 7:11-1.37(d) was left out and the language in N.J.A.C. 7:11-1.37(c) was repeated. The correct subsection (d) language is proposed in the proposed readoption of N.J.A.C. 7:11 published elsewhere in this issue of the New Jersey Register.

**Full text** of the adoption follows (additions indicated in boldface with asterisks **\*thus\***; deletions indicated in brackets with asterisks **\*[thus]\***).

**SUBCHAPTER 1. \*RULES FOR THE\* USE OF WATER SUPPLY AUTHORITY PROPERTY**

7:11-1.1 Scope

Unless otherwise provided by rule or statute, this subchapter shall constitute the rules of the New Jersey Water Supply Authority governing the use of the Spruce Run and Round Valley Reservoir Complex, Delaware and Raritan Canal Transmission Complex, and all other State operated or owned water supply facilities **\*under the administrative jurisdiction of the Authority\*** now or hereafter authorized to be designed, constructed and operated pursuant to any past or future bond issue.

7:11-1.2 Construction

**\*[(a)]\*** This subchapter shall be liberally construed to permit the New Jersey Water Supply Authority to discharge its statutory functions.

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**\*[(b) When, in the public interest, the Authority determines that it is necessary to waive the requirements of this subchapter, it may do so upon public notice. This determination may include limiting or closing to the public use of certain Authority lands, waters and facilities pursuant to N.J.A.C. 7:11-1.9.]\***

7:11-1.3 Practice where rules do not govern

The Executive Director of the New Jersey Water Supply Authority shall exercise his or her authority in respect to any other matters not governed by this subchapter.

7:11-1.4 Relationship to Federal and State law

This subchapter shall not relieve any person of the duty to comply with all other laws and regulations governing activities regulated by this subchapter, including all other applicable regulations of the Department and other State, Federal and local agencies.

7:11-1.5 Purpose

(a) The purpose of this subchapter is to protect Authority resources and improvements thereon and to assure the safety, protection and general welfare of visitors and personnel on properties under its jurisdiction.

(b) Failure or refusal to obey the rules set out in this subchapter or any other applicable State law, rule or regulation shall be sufficient cause for removal from Authority property and prosecution by duly authorized personnel.

7:11-1.6 Definitions

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

"Act" means the New Jersey Water Supply Authority Act, N.J.S.A. 58:1B-1 et seq.

"ATV" means a motor vehicle, designed to travel over any terrain which is of a type possessing between three to six rubber tires and powered by a gasoline engine not exceeding 400 cubic centimeters but shall not include golf carts.

"Authority" means the New Jersey Water Supply Authority established in but not of the Department of Environmental Protection, pursuant to N.J.S.A. 58:1B-4.

"Closed" means a complete prohibition of access except by Authority personnel.

"Code" means the New Jersey Administrative Code.

"Commission" means the Delaware and Raritan Canal Commission.

"Commissioner" means the Commissioner of the Department of Environmental Protection who is also the Chairman and Chief Executive Officer of the Authority, or any other person designated to act on his behalf.

"Delaware and Raritan Canal" or "D&R Canal" means the Delaware and Raritan Canal Transmission Complex.

"Department" shall mean the Department of Environmental Protection.

"Executive Director" means the chief administrative officer of the Authority appointed to N.J.S.A. 58:1B-5j, or any other person designated to act on his or her behalf.

"Facility" means all property, real or personnel, including but not limited to the structures, buildings, equipment, storage vessels and **\*[othe]\* \*other\*** operations located on property owned by or under the jurisdiction of the Authority.

"Furbearers" means any animal which bears a fur skin.

"Motor vehicle" means any vehicle propelled by other than muscular power, except such vehicles that run only upon rails or tracks.

"Mud flats" means the muddy bottom of the reservoir which is normally covered by water but which is exposed to the air as the water level recedes.

"Open burning" means any fire whereby products of combustion are emitted directly into the open air, and are not directed through the stack or chimney of an incinerator.

"Permission" means the written or verbal authority given by the Executive Director or his or her lawful designee to engage in a public use.

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“Permit” means a formal document issued by the Authority allowing a specified activity, properly executed and signed by the Executive Director.

“Person” means, but is not limited to, corporations, companies, associations, societies, including non-profit organizations, firms, partnerships, joint stock companies, individuals and governmental entities.

“Power boats” means all fuel or battery powered boats.

“Public agencies” means the government of the United States of America, the State of New Jersey, their political subdivisions, agencies or instrumentalities, and interstate and regional agencies exercising sovereign powers of government.

“Public recreation and conservation purposes” means the use of land **\*and waters\*** for parks, natural and historic areas, nature education, forests, camping, fishing, water reserve, wildlife preservation, hunting, boating, recreation centers, winter sports and similar uses.

“Public use” means a use or right of use available to the general public or some portion thereof for public conservation and recreation purposes.

“Round Valley Recreation Area” means those areas of the Round Valley Reservoir which are under the administrative jurisdiction of the State Park Service and/or the Division of Fish, Game and Wildlife for the purpose of providing public recreational activities, including but not limited to swimming beaches, camping and picnic sites, horse trails and boat launching areas.

“Signs” means any object, device, display or structure, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images.

**“Small electric motors” means electric powered motors with size no greater than four horse-power.\***

“Snowmobile” means any motor vehicle designed primarily to travel over ice or snow, of a type which uses sled-type runners, skis, and endless belt, treads, cleats or any combination of those or other similar means of contact with the surface upon which it is operated.

“Special event” means an organized race, exhibition or demonstration of limited duration which is conducted according to a prearranged schedule for which general public interest is apparent.

“Spelunking” means any activity which involves the exploration of caves.

“Spruce Run Recreation Area” means those areas of the Spruce Run Reservoir which are under the administrative jurisdiction of the State Park Service and/or the Division of Fish, Game and Wildlife for the purpose of providing public recreational activities, including but not limited to swimming beaches, camping and picnic sites and boat launching or storage areas.

“State” means the State of New Jersey.

“State Park Service” means the New Jersey Division of Parks and Forestry in the Department of Environmental Protection.

“Waters” means all water within the jurisdiction of the Authority.

**7:11-1.7 Designation of land and water use**

The New Jersey Water Supply Authority reserves the right to designate or direct any and all recreation or other public use on its lands and waters and within its facilities to such specific areas or locations within or upon said lands, waters and facilities as will be in the best interest of water supply, conservation, preservation, management of its facilities, and the health, safety and welfare of all persons concerned.

**7:11-1.8 Posted instructions**

No person shall make use of the lands, waters, conveniences and facilities under the jurisdiction of the Authority contrary to any instructions posted at Authority facilities and/or set out in any permit issued by the Authority.

**7:11-1.9 Limitation or closing of land and water use**

**\*(a)\*** The New Jersey Water Supply Authority may limit or close to the public the use of specific areas, lands, waters and facilities under its jurisdiction whenever such action is deemed necessary for proper management and operation of its facilities and is in the best

interest of the water supply, health, safety, and welfare of the public. Any decision to limit or close shall be announced to the public by a news release in a newspaper or newspapers of appropriate circulation, by notice on site and/or by written notice posted at the Authority’s security office located in the Authority’s administration building.

**\*(b) Except in the event of an emergency, natural or otherwise, the Authority shall first consult with affected Department divisions and/or the Commission about the need to curtail or close the use of the property. Notification of any land use limitation shall be communicated by the Authority to the Department divisions and/or the Commission verbally and in writing.\***

**7:11-1.10 Posting, soliciting and selling**

No person shall post signs or notices, distribute advertisements, beg, solicit, sell, or attempt to commit such acts on property under the control of the Authority without the written permission of the Authority.

**7:11-1.11 Commercial use**

No person shall engage in commercial enterprise and activities on lands and waters under the jurisdiction of the Authority without a permit issued by the Authority or pursuant to a contract or lease entered into with the Authority.

**7:11-1.12 Alcoholic beverages**

No person shall possess and/or consume alcoholic beverages on any lands and waters under the jurisdiction of the Authority except in certain locations in those recreation areas where the sale, use or possession of alcoholic beverages is specifically approved as evidenced by posted signs.

**7:11-1.13 Dumping/littering**

(a) No person shall dump, litter or burn trash, refuse, garbage, bottles, pollutants, or any other foreign substances or liquids on lands and waters under the jurisdiction of the Authority.

(b) Every person shall place all litter in proper refuse containers or shall remove the litter from the area.

**7:11-1.14 Furred animals and pets**

(a) Except as provided in N.J.A.C. 7:11-1.15 and (b) below, all furred animals or pets are prohibited from buildings, bathing beaches, bathing waters and overnight facilities.

(b) At other areas, where permitted, except as provided in N.J.A.C. 7:11-1.15, the owner of any furred animal or pet shall keep the furred animal or pet caged or held on a leash (maximum length—six feet) and under the immediate control of the owner at all times.

(c) Any nuisance, unsanitary condition, damage or injury caused by furred animals or pets shall be the sole responsibility of the owner of such animal.

**7:11-1.15 Exemption of seeing eye, companion and hunting dogs**

(a) Seeing eye dogs and companion dogs for the hearing impaired are permitted in any location where their presence is necessary to perform the duty for which they are trained.

(b) Dogs used while hunting during open season or used while on field **\*[trails]\* \*trials\*** in accordance with N.J.A.C. 7:25-5.20, are exempt from the leashing rule set forth at N.J.A.C. 7:11-1.14(b).

**7:11-1.16 Damage to Authority property**

(a) No person shall abuse, mutilate, injure, destroy, move or remove any living plant or animal or any structures or other physical features or properties on lands and water under the jurisdiction of the Authority without having first obtained the permission of the Authority.

(b) Subsection (a) above shall not apply to activities related to the capture, trapping, or hunting of fish, furbearers and other wildlife as permitted pursuant to Title 23 of New Jersey Statutes Annotated and N.J.A.C. 7:25-1 et seq., in those areas provided for such activities.

**7:11-1.17 Conduct**

No person shall engage in conduct or use language which disrupts, interferes with or prevents the enjoyment or maintenance of Authority lands or waters by other visitors or Authority personnel.

**ADOPTIONS****ENVIRONMENTAL PROTECTION****7:11-1.18 Fires (open)**

(a) No person shall start or maintain any open fire upon lands under the jurisdiction of the Authority unless permission is given by the Executive Director or his or her designee and all Department rules regarding open burning as set out at N.J.A.C. 7:27-2.3 are complied with, if applicable. Such permission may include designated hours, location and types of fuel to be used.

(b) All types of fire may be prohibited by the Authority during periods of high forest fire danger.

**7:11-1.19 Picnicking**

No person shall picnic, with or without cooking grills, on property under the jurisdiction of the Authority except for those areas which are designated for such use.

**7:11-1.20 Target practice**

No person shall engage in target practice with any type of firearm or bow and arrow on Authority property unless by written permission of the Executive Director or his or her designee, and then only in specific areas designated by the Executive Director or his or her designee.

**7:11-1.21 Metal detectors**

No person shall use metal detectors or similar devices without a permit issued by the Authority. Said permit may limit the location, hours, and days of use. The Authority may deny permits for use in areas of significant historical or other value or where such use would be incompatible with protection of the resource and/or would interfere with public use of the facility.

**7:11-1.22 Horseback riding**

No person shall ride horseback on property under the jurisdiction of the Authority except on designated trails and in designated areas where horseback riding is allowed.

**7:11-1.23 Hiking**

No person shall hike on property under the jurisdiction of the Authority except on designated trails and in designated areas only.

**7:11-1.24 Camping**

No person shall camp on property under the jurisdiction of the Authority except in designated areas.

**7:11-1.25 Swimming**

No person shall swim in waters under the jurisdiction of the Authority except in designated areas.

**7:11-1.26 Spelunking**

No person shall spelunk on grounds under the jurisdiction of the Authority without a permit issued by the Executive Director or his or her designee.

**7:11-1.27 Recreational activities**

(a) All individual and group visits involving recreational facilities on Authority property but under the administrative control of the State Park Service or the Division of Fish, Game and Wildlife in the Department are also subject to the rules and regulations of the State Park Service, N.J.A.C. 7:2-1 et seq., and the Division of Fish, Game and Wildlife, N.J.A.C. 7:25-1 et seq.

(b) Activities not included in (a) above shall require a written permit issued by the Executive Director of the Authority or his or her designee. Interested individuals shall apply in writing to:

Executive Director  
New Jersey Water Supply Authority  
Post Office Box 5196  
Clinton, New Jersey 08809

(c) No person shall engage in the following recreational activities on Authority lands and waters without a written permit issued by the Executive Director or his or her designee:

1. Parachuting;
2. Hot air ballooning;
3. Hang gliding;
4. Musketry, flint-lock, black powder shooting (other than hunting as noted in N.J.A.C. 7:11-1.28);
5. Rappelling;

6. Model airplane flying;

7. Rocketry;

8. Geological sampling expeditions;

9. Scuba diving;

10. Skin diving.

**7:11-1.28 Hunting, fishing and trapping**

(a) No person shall hunt, fish and trap except on specifically designated lands and waters of the Authority. All such use shall comply with Title 23 of the New Jersey Statutes Annotated, and the rules promulgated pursuant thereto, N.J.A.C. 7:25-1 et seq.

(b) No person shall fish within 200 feet of any reservoir tower.

(c) No person shall fish within any areas marked with buoys and/or signs saying "Keep-Out—No Trespassing" or "Restricted Area".

(d) No person shall fish within 100 feet of Delaware and Raritan Canal Locks.

(e) No person shall hunt with a rifle on Authority property except for muzzle loading in conformance with N.J.A.C. 7:25-5.1 et seq.

(f) The temporary use of portable hunting blinds and stands is permitted in authorized hunting areas only, provided that such devices shall be immediately removed by the hunter after use.

**7:11-1.29 Identification and license of motor vehicles**

(a) No person shall operate any motor vehicle as defined in N.J.S.A. 39:1-1 and N.J.A.C. 7:11-1.6 and identified as such by the NJ Division of Motor Vehicles in the New Jersey Department of Law and Public Safety on lands under the jurisdiction of the Authority or on established roads under the control of the Authority unless the vehicle is licensed and registered by the Division of Motor Vehicles before it is operated.

(b) No person shall operate a vehicle on said lands, unless the operator of the vehicle shall have in his or her possession a valid operator's license and other documentation required by the Division of Motor Vehicles in the New Jersey Department of Law and Public Safety as set forth in N.J.A.C. 13:21-1.1 et seq.

**7:11-1.30 Unauthorized motor vehicles**

(a) No person shall operate any motor vehicle which does not require licensing by the Division of Motor Vehicles in the New Jersey Department of Law and Public Safety on lands and/or waters under the jurisdiction of the Authority unless a permit is issued by the Executive Director or his or her designee for that activity.

(b) Any permit granted by the Authority pursuant to (a) above shall include designated hours and specific locations for operation.

(c) No person shall operate a motor vehicle upon the ice-covered waters of the Authority at any time without a permit issued by the Executive Director or his or her designee.

**7:11-1.31 Motor vehicle conformance to state laws**

All motor vehicles operated on lands under the jurisdiction of the Authority shall be subject to New Jersey Motor Vehicles Laws, N.J.S.A. 39:1-1 et seq., and all Authority regulations set forth in herein at N.J.A.C. 7:11-1.1 et seq.

**7:11-1.32 Operation of motor vehicles**

(a) No person shall operate any motor vehicle on Authority lands except on established public roads or in designated parking areas unless permitted otherwise in accordance with this subchapter.

(b) No person shall operate a motor vehicle at any time on or over any road designated by "closed" signs or barriers. No person shall operate a motor vehicle on or over any cultivated or planted area, transmission line, survey line or in the woods or fields unless a permit is issued by the Executive Director or his or her designee.

(c) No person shall operate ATVs, trail bikes or off-road motor vehicles on or over restricted areas described in (b) above at any time except that when an area\*[s]\* is so designated by the Authority, permits may be granted for organized special events to operate on an established course under prescribed conditions.

(d) No person or organization may conduct a motor vehicle race, rally, exhibition or demonstration of any type on Authority lands without a permit issued by the Executive Director or his or her designee.

## ENVIRONMENTAL PROTECTION

## ADOPTIONS

## 7:11-1.33 Snowmobiles

No person shall use snowmobiles on lands and ice-covered waters under the jurisdiction of the Authority.

## 7:11-1.34 Motor vehicle speed limits

(a) No person shall travel by motor vehicle around the Authority Administration Building at a speed greater than 10 miles per hour.

(b) No person shall travel by motor vehicle on improved roadways under the jurisdiction of the Authority at a speed greater than 20 miles per hour unless posted otherwise.

## 7:11-1.35 Parking

No person shall park any vehicle, conveyance, or equipment except in areas designated for parking.

## 7:11-1.36 Application of rules to boating

Boating activities on Authority waters are also subject to the jurisdiction of the State Park Service and therefore all boating activities shall be in conformance with all rules of the State Park Service, N.J.A.C. 7:2-1.1 et seq.

## 7:11-1.37 Additional boating restrictions

(a) No person shall operate a power boat which has a motor size greater than 10 horsepower on Authority waters.

(b) No person shall operate a sailboat or ice sailboat with a mast height of greater than \*~~25~~\* **30**\* feet on Authority waters.

(c) No person shall operate a boat at less than 200 feet distance from all reservoir towers.

(d) \*~~[No person shall operate a boat at less than 200 feet distance from all reservoir towers.]~~\* **\*(Reserved)\***

(e) No person shall operate a power boat on the Delaware and Raritan Canal **\*except that small electric motors may be used\***.

## 7:11-1.38 Sledding, skiing and tobogganing

No person shall sled, ski or toboggan except in designed areas only.

## 7:11-1.39 Ice fishing

No person shall ice fish unless in compliance with **\*the appropriate section of the current Fish Code,\*** N.J.A.C. 7:25-6.\*~~[10.]~~\*

## 7:11-1.40 Ice skating

No person shall ice skate except in designated areas under the supervision of the State Park Service.

## 7:11-1.41 Ice boating

No person shall ice boat or ice yacht on Spruce Run and Round Valley Reservoirs unless in compliance with all applicable rules of the State Park Service, N.J.A.C. 7:2-8.1 et seq.

## 7:11-1.42 Trespassing

No person shall trespass in designated restricted areas posted with "Keep Out—No Trespassing" or "Restricted Area" signs.

## 7:11-1.43 Low water levels

During periods of low water levels in the reservoirs as evidenced by increased exposure of mud flats, all restricted area fence lines shall be deemed to be extended to the water's edge. This extension shall then be included in the restricted area limits and shall constitute the restricted area limits.

## 7:11-1.44 Delaware and Raritan Canal

(a) Swimming: In addition to all other restrictions set forth at N.J.A.C. 7:11-1.1 et seq. regarding use of Authority property, no person shall swim in the Delaware and Raritan Canal.

(b) Building of docks: No person shall build docks, of any kind or size, unless a written permit to build a dock has been given by the Authority and the State Park Service.

## 7:11-1.45 Explosives

No person shall use or possess explosives of any kind on any Authority property unless such activity is authorized by a permit issued by the Executive Director of the Authority or his or her designee.

## 7:11-1.46 Early warning systems

All early warning systems installed by the Authority to alert downstream residents of dangerous conditions involving Authority dams are the property of the Authority. No person shall damage, alter,

tamper with, or disturb this equipment. Any person who causes damage, alters, tampers with or disturbs this equipment shall be subject to criminal action pursuant to N.J.S.A. 2C:17-3.

## 7:11-1.47 Severability

If any provision of this subchapter is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of the provisions shall not be affected thereby.

## CORRECTIONS

## THE COMMISSIONER

(a)

## Security and Control

## Use of Personal Firearms and Use of Force While Off-Duty

## Adopted Repeal and New Rule: N.J.A.C. 10A:3-4.1

Proposed: January 4, 1988 at 20 N.J.R. 42(a).

Adopted: February 9, 1988 by William H. Fauver,

Commissioner, Department of Corrections.

Filed: February 9, 1988 as R.1988 d.107, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1B and 30:1B-10.

Effective Date: March 7, 1988.

Expiration Date: October 6, 1991.

## Summary of Public Comments and Agency Responses:

## No comments received.

The Department of Corrections is adding to N.J.A.C. 10A:3-4.1(b) the title "Deputy Director—Division of Adult Institutions" to the adopted new rule. This title is in the current rule and was inadvertently omitted in the proposed new rule.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks **\*thus\***).

## 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

Deputy Commissioner

Assistant Commissioner—Division of Adult Institutions

**\*Deputy Director—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.

(a)

**Classification Process****Discretion of Classification Committee; Factors to be Considered****Adopted Amendment: N.J.A.C. 10A:9-4.5**

Proposed: December 7, 1987 at 19 N.J.R. 2235(a).

Adopted: February 9, 1988 by William H. Fauver,

Commissioner, Department of Corrections.

Filed: February 9, 1988 as R.1988 d.106, **without change**.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: March 7, 1988.

Expiration Date: January 20, 1992.

**Summary of Public Comments and Agency Responses:**

The Department of Corrections received three comments on this proposal. Two comments were philosophical statements relating to the difficulties inherent in administering the subject area. The third comment was unrelated to the administration of the rule. As the comments were not directly related to the substance of the rule nor suggested modification of the rule, no response could be made.

**Full text of the adoption follows.**

10A:9-4.5 Discretion of Classification Committees: factors to be considered

(a) (No change.)

(b) In making decisions to reduce an inmate's custody status, Classification Committees shall take into consideration all relevant factors which, in their professional judgment, bear upon the inmate's suitability for reduced custody. These factors shall include, but not be limited to:

1.-3. (No change.)

4. Correctional facility adjustment;

5. Reports from professional and custody staff; and

6. Any reason which, in the opinion of the Superintendent and Classification Committee, relates to the best interests of the inmate or the safe and orderly operation of the correctional facility or the safety of the public at large or community.

(c)-(g) (No change.)

**LABOR**

(b)

**DIVISION OF UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE****Certificate of Approval of Private Plan****Adopted Amendment: N.J.A.C. 12:18-2.13**

Proposed: December 7, 1987 at 19 N.J.R. 2238(b).

Adopted: February 5, 1988, by Charles Serraino, Commissioner, Department of Labor.

Filed: February 5, 1988 as R.1988 d.98, **without change**.

Authority: N.J.S.A. 43:21-25 et seq., specifically N.J.S.A. 43:21-32.

Effective Date: March 7, 1988.

Expiration Date: March 7, 1993.

**Summary of Public Comments and Agency Responses:****No comments received.****Full text of adoption follows.**

12:18-2.13 Certificate of Approval: effective date

(a) The Division shall issue a "Certificate of Approval of Private Plan" which shall constitute evidence of approval of the plan by the Division.

(b) The private plan shall take effect on the first day of the calendar quarter next following approval date. If the employer requests

that the plan or transfer be effective prior to that calendar quarter, the Division may grant approval only if it finds that the plan:

1. Is the result of an agreement contained in a labor-management contract; or
2. Covers a newly formed subsidiary of an employer with an existing private plan; or
3. Is the result of a succession from an employer with an existing private plan. As provided in N.J.S.A. 43:21-7(c)(7)(A), a successor in interest is an entity that acquires the organization, trade, or business, or substantially all the assets of an employer, whether by merger, consolidation, sale, transfer, descent, or otherwise.

## COMMERCE AND ECONOMIC DEVELOPMENT

### (a)

#### DIVISION OF BUSINESS DEVELOPMENT FOR SMALL BUSINESSES AND WOMEN AND MINORITY BUSINESSES

##### Development of Small Businesses and Women and Minority Businesses Services

###### Adopted New Rule: N.J.A.C. 12A:9-1

Proposed: December 21, 1987 at 19 N.J.R. 2377(b).

Adopted: January 28, 1988 by Borden R. Putnam, Commissioner, Department of Commerce and Economic Development.

Filed: February 2, 1988 as R.1988 d.95, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27H-6F, P.L. 1987. c.55, specifically section 9.

Effective Date: March 7, 1988.

Expiration Date: March 7, 1993.

###### Summary of Public Comments and Agency Responses:

Two letters of comment were received and are addressed as follows.

COMMENT: Deborah Aguior-Velez, of the Governor's Minority Business Advisory Council, submitted a letter of comment which addressed four issues concerning these rules.

1. That N.J.A.C. 12A:9-1.1, which provides a listing of the services the Division is to provide to designated businesses, should also include the service of "providing a listing of plans, programs, activities, business conferences and seminars available in the public and private sector which relate to small, minority and women owned businesses";

2. That N.J.A.C. 12A:9-1.5 is not clear as to how the listing of qualified professionals is to be compiled;

3. That N.J.A.C. 12A:9-1.6 is not clear as to the type of internship the Division is to establish and who shall be eligible for those internships; and

4. Whether the quorum number in N.J.A.C. 12A:9-1.24(f), which defines a quorum as five members necessary for any of the three advisory councils to hold an official meeting, is correct.

###### RESPONSE:

1. Although the Division may in fact choose to provide the additional service suggested, it is not required to do so pursuant to the Division's enabling statute, P.L. 1987 c.55. The services listed in N.J.A.C. 12A:9-1.1(c) are those services the Division is to perform as assigned by statute.

2. No specific method of compilation of the qualified professional listing was enumerated because the diverse nature of the listing requires flexibility in its compilation. However, where applicable to a profession, the professional on the list must meet all licensing and qualification standards specified by State law (see N.J.A.C. 12A:1-1.5(d)).

3. The type of internship programs to be established in the Division was specified only to the degree that they be in cooperation with institutes of higher learning. Additionally, specificity in this area would be counter-productive in that the Division needs the flexibility to establish such programs with cooperating institutions of higher learning.

4. The establishment of a quorum of five members to be present to constitute an official advisory board meeting is reflective of a requirement of slightly more than one-half of the total membership of a board.

COMMENT: The New Jersey Department of Transportation submitted a letter of comment which addressed one issue concerning these rules, that N.J.A.C. 12A:9-1.23(b) should be amended in its current form to read, "[t]he division shall be the certifying authority for all department agencies and authorities of the state. The division may, in its discretion, delegate the authority to administer minority and women business certifications to specific departments of state, agencies and authorities which, in the division's discretion, presently operate effective and efficient programs."

The Department's rationale is that certain designated State agencies, such as the Department of Transportation, should be allowed to continue their already existing certification program until the Department of Commerce and Economic Development is prepared to administer all State programs.

RESPONSE: The suggested change of N.J.A.C. 12A:9-1.23(b) is unnecessary because the issue of delegation of the Department of Commerce and Economic Development's authority to certify is addressed in the rule specifically dealing with certification for State programs, (see N.J.A.C. 12A:11-1.12). The main thrust of N.J.A.C. 12A:9-1.23 is to deal with certification by counties and municipalities as their possible programs relate to the State.

Full text of the adopted new rules follows (additions to adoption indicated in boldface with asterisks \*thus\*; deletions from adoption indicated in brackets with asterisks \*[thus]\*):

#### CHAPTER 9

##### DEVELOPMENT OF SMALL BUSINESSES AND WOMEN AND MINORITY BUSINESSES

##### SUBCHAPTER 1. SERVICES TO SMALL BUSINESSES AND WOMEN AND MINORITY BUSINESSES

###### 12A:9-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Department of Commerce and Economic Development to implement P.L. 1987, ch. 55, an Act to establish within the Department of Commerce and Economic Development a Division of Development for Small Businesses and Women and Minority Businesses.

(b) The Act provides for consolidation, in the interest of efficiency, of the State's service to small businesses and women and minority businesses.

(c) The Act provides that the Division shall provide certain services to small businesses and women and minority businesses those services being: the establishment of a loan referral and packaging program; a compiled list of qualified professionals in specific areas of expertise; to coordinate managerial and technical assistance programs in the state; establish internship programs; serve as liaison on behalf of businesses with the agencies and departments of the state, federal, and local governments; provide assistance in obtaining legal counsel; provide financial analysis and accounting assistance; provide assistance in obtaining insurance; provide assistance in arranging contracts with franchisees; provide assistance in arranging for loans from commercial banks; assist in negotiating license agreements; assist in procuring bonding; make referrals to private consultants, institutions, and other business services; assist in finding sources of financing from federal, state and local sources; provide a central resource for eligible businesses in their dealings with various levels of governments; initiate and encourage education programs for eligible businesses; and establish a uniform procedure for certification of minority and women businesses.

(d) The Act also provides for the establishment of the office of the Director of the Division for the Development of Small Businesses and Women and Minority Businesses, and the Office of Women Business Enterprise.

###### 12A:9-1.2 Definitions

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

"Authority" means the New Jersey Development Authority for Small Businesses and Minority and Women Enterprises.

"CAU" means the Certification and Approvals Unit which has sole authority in the Division to register vendors for the New Jersey Set-Aside program and/or certify businesses under the Uniform Certification Act for State programs.

"Commissioner" means the Commissioner of the Department of Commerce and Economic Development.

"DCED" means the Department of Commerce and Economic Development.

"Director" means the Director of the Division of Development for Small Businesses and Women and Minority Businesses.

"Division" means the Division of Development for Small Businesses and Women and Minority Businesses.

"Eligible businesses" means a minority and/or women business certified and/or registered by CAU or a small business registered by the Division and/or determined to be eligible to receive assistance and/or to participate in various State programs.

"Minority" means a person who is:

1. Black, which is a person having origins in any of the black racial groups of Africa;

2. Hispanic, which is a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean islands, regardless of race;

3. Asian American, which is a person having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, Hawaii, or the Pacific Islands; or

4. American Indian or Alaskan native, which is a person having origins in any of the original peoples of North America.

"Minority business" means a business which is at least 51 percent owned, operated and controlled by a minority or group of minorities and whose ownership is responsible for the daily as well as long term management decisions of the business.

"Small business" means a sole proprietorship, partnership, or corporation which is a size and type as defined by the Commissioner.

"Women" means all women regardless of race.

"Women business" means a business which is at least 51 percent owned, operated, and controlled by a woman or group of women and whose ownership is responsible for a daily as well as long term management decision of the business.

#### 12A:9-1.3 Nature of Division service

The Division shall provide such services to small businesses, minority and women businesses as enumerated by the Act. Where specified, these services shall be subject to standards of Federal programs and be coordinated with the Authority. Services shall be limited in their scope to prevent the Department from incurring adverse liability and to ensure that the services do not compete with those private businesses traditionally providing services to the enumerated businesses.

#### 12A:9-1.4 Loan referral and packaging

(a) The Division shall develop a loan referral and packaging program for small businesses, minority and women businesses which shall be subject to standards established by the Authority.

(b) The Division shall make referrals to private sector sources for loans without prejudice to those sources.

1. The referrals shall, where market conditions permit, include a minimum of three private source referrals.

2. The Division shall not directly involve itself in negotiations between the referred business and the private sector financing source.

3. The Division may, based on market conditions and needs, negotiate with private sector financing sources to provide loan packages or programs.

#### 12A:9-1.5 Qualified professional listing

(a) The Division shall compile a list of qualified professionals who can or have provided services to small businesses, minority and women businesses. This list of qualified professionals shall include:

1. Accountants;
2. Financial specialists;
3. Management consultants;
4. Marketing consultants;
5. Employee training and development specialists; and

6. Other professionals as may be deemed appropriate by the Director.

(b) The Qualified Professionals List shall be made available upon request by an eligible business. The list shall not be restricted or edited in any manner which would provide favoritism or be detrimental to any professional contained on the list.

(c) There shall be no limit to the number of enumerated qualified professionals on the list.

(d) For purposes of this subchapter, qualified professional shall mean a professional who meets all licensing and qualification standards required by the State of New Jersey.

#### 12A:9-1.6 Internship programs

(a) The Division, in cooperation with institutions of higher education, shall establish internship programs for candidates pursuing undergraduate and graduate degrees.

(b) For purposes of this subchapter, institutions of higher learning shall mean those schools which at a minimum have undergraduate programs which provide recognized associate of arts or science degrees.

(c) The Director may limit the number of interns participating in the internship program.

(d) The Director may choose or limit the number of higher educational institutions in the internship program.

#### 12A:9-1.7 Market research and analysis

(a) The Division shall, in conjunction with or at the request of the authority, undertake market research projects.

(b) To the extent possible, the market research projects pursuant to (a) above shall use existing pools of data and/or be coordinated with other entities within the State which have relevant information or the means of collecting the information.

(c) The Director shall define the scope and nature of the market research project in (a) above as may be necessary based on limitations of funds for such study.

#### 12A:9-1.8 Advertising and marketing

(a) The Division shall, in conjunction with or at the request of the Authority, provide advice to eligible businesses as to advertising, marketing, and selecting sales and distribution channels.

(b) To the extent possible the assistance in (a) above shall use existing pools of data and/or be coordinated with other government entities within the State, which have relevant information or the means of providing the information.

(c) The Director shall define the scope and nature of the services in (a) above as may be necessary based on limitation of funds for such services.

#### 12A:9-1.9 Training for bidding on government contracts

(a) The Division shall, in conjunction with or at the request of the Authority, provide training and information to eligible businesses on bidding for government contracts.

(b) To the extent possible the training referred to in (a) above shall use existing pools of data and/or be coordinated with other government entities within the State.

(c) The training referred to in (a) above shall include but not be limited to:

1. Sponsoring or co-sponsoring seminars and training conferences for eligible businesses; and

2. Providing counseling as may be requested by eligible businesses.

(d) The Director shall define the scope and nature of the training referred to in (a) above as may be necessary based on limitation of funds for training and counseling.

#### 12A:9-1.10 Liaison with other departments and agencies of State,

##### Federal and local government

(a) The Division shall serve as liaison with the Department of Treasury and other departments and agencies of State, Federal and local government to promote procurement of contracts and purchases from eligible businesses.

(b) The Division shall, where requested, provide assistance to the various entities of government to facilitate the procurement of contracts and purchases to eligible businesses.

(c) The Division shall make available a means by which the various government entities may obtain lists of eligible businesses.

(d) Upon request the Division shall provide technical assistance to the various government entities wishing to establish contracting and purchasing set-aside programs for eligible businesses.

(e) The Director shall define the scope and nature of the technical assistance referred to in (d) above as may be necessary based on limitations of funds for technical assistance.

#### 12A:9-1.11 Obtaining legal counsel

(a) The Division shall, in conjunction with or at the request of the Authority, provide assistance in obtaining legal counsel to eligible businesses.

(b) The provision of legal service shall be limited to referrals by the Division to the New Jersey Bar Association referral service, County Bar referral services, legal professional associations referral services, or public or quasi-public legal service associations.

(c) The Division shall make no referrals to individual attorneys or law firms.

#### 12A:9-1.12 Financial analysis and accounting assistance

(a) The Division shall, in conjunction with or at the request of the Authority, provide financial analysis and accounting assistance to eligible businesses.

(b) Financial analysis and accounting assistance shall be limited to:

1. Referrals by the Division to professional associations in the field respective of the eligible business request for assistance;

2. Analysis or assistance provided by staff of the Division;

3. The Division shall make no referrals to individual companies or individuals who are capable of providing financial analysis or accounting assistance.

(c) The Director shall define the scope and nature of this assistance as may be necessary based on limitations of funding for this type of assistance.

#### 12A:9-1.13 Assistance in obtaining insurance

(a) The Division shall in conjunction with, or at the request of the authority, provide assistance to eligible businesses in obtaining insurance.

(b) The assistance referred to in (a) above shall only cover commercial insurance including but not limited to employee benefit packages, product liability insurance, and general commercial liability insurance.

(c) The service in (a) above shall be limited to providing information about the requirements for making an eligible business capable of obtaining insurance or reducing premium levels.

(d) The Division shall not be involved in any negotiations or transactions between an eligible business and an insurance company which is authorized to conduct business under the laws of the United States.

#### 12A:9-1.14 Assistance in arranging contracts with franchisees

(a) The Division shall, in conjunction with or at the request of the Authority, provide assistance to eligible businesses in arranging contracts with franchisees.

(b) The assistance referred to in (a) above shall be limited to providing information on franchises at the request of an eligible business.

(c) The Division shall not be involved in any negotiations or transactions between an eligible business and a franchisee.

#### 12A:9-1.15 Assistance in arranging commercial loans

(a) The Division shall, in conjunction with or at the request of the Authority, provide assistance in arranging for loan referral and packaging programs for eligible businesses.

(b) The Division shall develop commercial loan programs with State or Federal chartered banks, savings banks, or savings and loan associations.

(c) All loan packaging programs, when made in conjunction with State chartered institutions, must be made in accordance with the powers conferred on these institutions pursuant to Title 17 of the revised statutes including bridge loans and cash flow loans.

#### 12A:9-1.16 Assistance in negotiating license agreements

(a) The Division shall, in conjunction with or at the request of the Authority, provide assistance to eligible businesses for purposes of negotiating license agreements.

(b) The Division shall not become directly involved or become a participant in negotiations dealing with license agreements.

(c) The Division shall, at the request of the any eligible business, provide counseling and information relevant to the business securing a licensing agreement.

#### 12A:9-1.17 Assistance in procuring bonding

(a) The Division shall, in conjunction with or at the request of the Authority, provide assistance in procuring bonding.

(b) The Division shall at the request of an eligible business provide counseling and information relevant to the procuring of bonding.

(c) The Division where applicable shall seek to ease bonding requirements and availability.

(d) The Division shall, at the request of an eligible business, provide counseling and information relevant to a business procuring substitutes for bonding.

#### 12A:9-1.18 Referrals to private consultants, institutions, and other providers of services

(a) The Division shall, in conjunction with or at the request of the Authority, make referrals to private consultants, institutions and other providers of services at the request of eligible business.

(b) All referrals in (a) above shall be made available from the Qualified Professionals List pursuant to N.J.A.C. 12A:\*[13-1.5.]\***\*9-1.5.\***

(c) The Division shall make no referrals pursuant to (a) above \*[to]\* **\*of\*** individual companies or individuals.

#### 12A:9-1.19 Assistance in finding sources of financing from government sources

(a) The Division shall, in conjunction with or at the request of the Authority, assist eligible businesses in finding sources of financing from Federal, State, and local sources.

(b) For purposes of assistance in finding sources of financing from government entities pursuant to (a) above, the Division shall maintain a listing of these financing sources and make them available to eligible businesses at their request.

#### 12A:9-1.20 Assistance in gaining information about employee training and development programs

(a) The Division shall, in conjunction with or at the request of the Authority, assist eligible businesses in gaining information about employee training and development programs.

(b) The Division shall refer the eligible requesting business in (a) above to the Qualified Professionals List pursuant to N.J.A.C. 12A:\*[12-1.5]\*\*9-1.5\*.

#### 12A:9-1.21 Centralized information concerning laws and rules

(a) The Division shall create a centralized source of information for eligible businesses in their dealings with Federal, State and local governments, which shall include:

1. Government rules affecting eligible businesses;
2. Laws affecting eligible businesses; and
3. Government procurement programs affecting eligible businesses.

(c) The Division shall not provide materials to eligible businesses relevant to pending State legislation except as provided for at the direction of the Commissioner.

#### 12A:9-1.22 Internship programs

(a) The Division, in conjunction with requirements of this subchapter, shall initiate and encourage education programs for eligible businesses.

(b) The Division may sponsor educational seminars and conferences for eligible business to facilitate the Division's ability to accomplish its other duties provided for under the Act.

#### 12A:9-1.23 Uniform certification

(a) The Division shall establish, pursuant to the requirements of the Uniform Certification Act, P.L. 1986, c. 195, a uniform procedure for the certification of minority and women businesses wishing to

participate in State programs which require certification of authenticity of ownership and control of a business as a criteria for participation in State programs, state political subdivision programs, and casino set-aside programs pursuant to P.L. 1987, c. 137.

(b) The Division shall be the certifying authority for all departments, agencies, and authorities of the State.

(c) Where the certification procedure established by the Division pursuant to (a) above conflicts with Federal certification procedures, and that conflict would adversely affect the Federal funding of a State project, the Federal certification procedure shall take precedence when the Division has been properly and reasonably notified by the affected public agency that such conflict exists and the State's participation in such program is in jeopardy.

(d) The political subdivisions of the State shall certify the eligibility of minority and women businesses for the political subdivision's programs which require certification of the authority of ownership and control of a vendor or firm.

1. The political subdivisions of the State may accept those businesses certified by the Division as eligible to participate in their programs.

2. The political subdivisions of the State may by specific assignment and agreement have the Division serve as its certifying authority pursuant to approval by the Commissioner.

(e) The political subdivisions of the State shall utilize the uniform procedures formulated by the Division pursuant to (a) above.

1. Any political subdivision of the State choosing to establish its own certification program shall submit a plan to the Division for review and approval. The plan shall include:

- i. A description of the political subdivision's certification program;
- ii. An analysis of the program as to its compliance with the Division's uniform procedures;
- iii. The amount of funds assigned by the political subdivision for the programs;
- iv. Resumes of the personnel who will supervise and work within the program; and
- v. Any other information the Director or CAU administrator may deem relevant.

2. Any political subdivision of the State choosing to establish its own certification program shall submit annual reports to the Division as to the performance of the program. The report shall include:

- i. The number of minority businesses certified by the political subdivision;
- ii. The number of women businesses certified by the political subdivision;
- iii. Total number of applications for certification received by that political subdivision;
- iv. The number of site visits conducted by the political subdivision; and
- v. The number of businesses decertified by the political subdivision.

3. Any political subdivision of the State choosing to establish its own certification program shall make available, at the request of the Division, any and all information relevant to any businesses applying for status as a certified business.

(f) The authority of the Division in matters relating to certification and vendor set-aside approval shall be vested in the CAU administrator.

1. The ruling of the administrator in these matters shall be final, except as may be provided by appeals of his decisions relating to the status of a business provided in regulation under those programs.

#### 12A:9-1.24 Advisory Council

(a) For the purpose of assisting the Division in development and establishment of financial and technical assistance policy; resource allocation; eligibility for assistance and program participation standards; and coordination of programs with the Authority there is established, pursuant to the Act, the Small Business Advisory Council, the Minority Business Advisory Council, and the Women Business Advisory Council.

(b) Each Council shall consist of members appointed pursuant to and in the manner described in the Act.

(c) The respective Councils shall elect a chairman from among their membership. The chairman shall preside over all Council meetings.

(d) Each Council shall meet at least six times a year.

(e) At their discretion, the Councils may meet together as a group to satisfy the meeting requirements in (d) above.

(f) The Council may not hold an official meeting without a quorum. A quorum shall consist of five members of the board being present.

(g) Each member of a Council shall have one equal vote.

(h) The Councils may form ad hoc committees for specific areas of concern by majority vote.

(i) The Division shall be represented at the Council meetings by the Director or his or her designee.

(j) The Councils shall hold meetings pursuant to the requirements of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.

## LAW AND PUBLIC SAFETY

### DIVISION OF CONSUMER AFFAIRS

#### (a)

### BOARD OF ARCHITECTS AND CERTIFIED LANDSCAPE ARCHITECTS

#### Licensing Examination Fees

#### Adopted Amendment: N.J.A.C. 13:27-5.8

Proposed: November 16, 1987 at 19 N.J.R. 2123(b).

Adopted: January 14, 1988 by Harry Spies, President, New Jersey

State Board of Architects and Certified Landscape Architects.

Filed: January 25, 1988 as R.1988 d.91, **without change**.

Authority: N.J.S.A. 45:3-3.

Effective Date: March 7, 1988.

Expiration Date: April 1, 1990.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text of the adoption follows.**

#### 13:27-5.8 Fees

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

(c) The fees for the licensing examination are as follows:

1. Entire Architectural Registration Examination—\$350.00:

- i. Division A: Pre-Design \$35.00;
- ii. Division B: Site Design \$70.00;
- iii. Division C: Building Design \$90.00;
- iv. Division D: Structural General \$20.00;
- v. Division E: Structural Lateral Forces \$15.00;
- vi. Division F: Structural Long Span \$15.00;
- vii. Division G: Mechanical, Plumbing, Electrical and Life Safety Systems \$35.00;
- viii. Division H: Materials and Methods \$35.00;
- ix. Division I: Construction Documents and Services \$35.00;
- x. The fee for retake of any part of the exam is the same as listed above.

2. (No change.)

(d)-(l) (No change.)

**(a)****BOARD OF MEDICAL EXAMINERS****Hearing Aid Dispensers Examining Committee  
Hearing Aid Dispensers****Adopted Repeal: N.J.A.C. 13:35-8.1 to 13:35-8.24****Adopted New Rules: N.J.A.C. 13:35-8.1 to 13:35-8.16****Adopted Recodification: N.J.A.C. 13:35-8.25 to  
13:35-8.17**

Proposed: November 2, 1987 at 19 N.J.R. 1949(a).

Adopted: January 29, 1988 by Hearing Aid Dispensers

Examining Committee, Larry Haber, President.

Filed: February 10, 1988 as R.1988 d.112, **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. 45:9A-7.

Effective Date: March 7, 1988.

Expiration Date: November 19, 1989.

**Summary of Public Comments and Agency Responses:**

The Committee received letters of comment on behalf of the New Jersey Speech Language Hearing Association (NJSLHA), the New Jersey Guild of Hearing Aid Dispensers (Guild) and a number of individual hearing aid dispensers.

The Guild's comments and agency responses are summarized below:

**COMMENT:** The Guild recommended that the National Hearing Aid Society training course be used as a substitute for six months of training and experience required of candidates for the licensing examination.

**RESPONSE:** The use of the National Hearing Aid Society training course as a substitute of six months of training and experience is inappropriate in the Committee's view. A correspondence course is not a legitimate substitute for hands-on training. Post-examination results support the conclusion that a person who has taken a correspondence course is not as likely to pass the licensing examination as a person who has received hands-on training. For this reason, the Committee will not accept a correspondence course in lieu of six months training and experience in hearing aid dispensing.

**COMMENT:** The training of a temporary licensee should be permitted outside of regular business hours.

**RESPONSE:** The recommendation that training should be permitted outside of regular business hours is, in the Committee's view, without merit. Regular business hours can include nights and weekends provided the business is regularly open during these times. To permit a temporary licensee to obtain the necessary training and experience in hearing aid dispensing outside of business hours would defeat the purpose of the training and experience requirement, which is to insure that prospective licensees are trained in methods of fitting and dispensing hearing aids to the public.

**COMMENT:** An individual who fails the licensing examination should be permitted to continue to practice as a temporary licensee pending the next examination.

**RESPONSE:** The Committee does not accept the suggestion that an individual who fails the licensing examination should be permitted to continue to practice as a temporary licensee pending the next examination. Once an individual has failed the examination he or she has proven that he or she is unqualified to fit and dispense hearing aids. To allow such a person to continue to practice as a temporary licensee would create a situation where unqualified persons are fitting and dispensing hearing aids. When a temporary licensee fails the licensing examination, he or she should be required to sit for and pass the next licensing examination before being permitted to dispense hearing aids to the public.

**COMMENT:** A current license to practice audiology should not be equated to two years experience and training in hearing aid dispensing.

**RESPONSE:** The Committee believes that the Guild has misinterpreted the meaning of N.J.A.C. 13:35-8.4. There was no intent by the Committee to equate a license to practice audiology with two years experience and training. The Committee views "education" as one of the major components of "training and experience" which is subject to a qualification's review by the Committee. In order to resolve any further miscommunication, the Committee has adjusted the language of N.J.A.C. 13:35-8.4 to reflect the true intent of the rule.

**COMMENT:** Advertising, canvassing and other promotional activities should not be defined as the practice of hearing aid dispensing.

**RESPONSE:** The Committee disagrees with the Guild's suggestion that advertising and canvassing should not be considered the practice of hearing aid dispensing. It is the Committee's view that any time a dispenser holds himself or herself out to the public as offering a hearing aid, in actuality, he or she is engaged in the practice of hearing aid dispensing.

**COMMENT:** The term, "holding oneself out . . ." should be defined in the rule and a hearing aid dispenser should be permitted to use titles connoting medical or audiological competence.

**RESPONSE:** The Guild's assertion that the term, "holding oneself out . . ." should be defined in the rule is without merit. The term requires no express definition in the rule because it clearly includes "advertisements, canvassing, and other promotional activities." The use of any title that would connote medical or audiological expertise has been prohibited because it will avoid possible confusion among the public as to the true qualifications of the hearing aid dispenser.

**COMMENT:** A hearing aid dispenser should be permitted to obtain a waiver of the obligation to refer any person who has an air bone gap to a medical doctor.

**RESPONSE:** The Committee agrees that it may be appropriate to accept a waiver from a person who does not desire a medical examination. Appropriate language adjustments have been made to N.J.A.C. 13:35-8.11 which do not alter the obligation of a hearing aid dispenser to refer persons with air bone gap to a medical doctor, but will provide them with a reasonable alternative of fitting a person who has already received such a medical evaluation or chooses not to see a medical doctor.

**COMMENT:** A hearing aid dispenser should be permitted to use the term "prescription made."

**RESPONSE:** The suggestion that a hearing aid dispenser should be permitted to use the term "prescription made" is unacceptable. The word "prescription" is one which is most commonly used by physicians and thus it is likely that the general public may falsely assume that a hearing aid dispenser who uses this term has medical expertise.

**COMMENT:** A hearing aid dispenser should be permitted to prominently display the supervising licensee's name in the office or in the place of business instead of having to post the name on the sign itself.

**RESPONSE:** The Committee agrees that the prominent display of the supervising licensee's name in the office or place of business is acceptable where it would be unduly burdensome to replace or reinstall a sign. However, any signs installed after the effective date of this rule should contain the supervising licensee's name on it.

**COMMENT:** The term "good cause" for terminating a service agreement should be defined in the rule. There should also be an express provision for a dispenser to fashion "reasonable terms for termination of a service agreement."

**RESPONSE:** The Guild's assertion that the term "good cause" should be defined in the rule is without merit. "Good cause to terminate a service agreement" requires no express definition in the rule because it will be determined by the Committee after examining all of the relevant factors leading to the termination. Likewise, there is no need to include an express provision for a dispenser to fashion reasonable terms for termination of the service agreement. Clearly, a dispenser may include in his or her service contract any terms he or she desires as long as they are reasonable and meet the requirements of the Committee's statute and rules.

**COMMENT:** A review of excessive fees should be made by a panel of three licensees and then reviewed by the Committee to determine whether it is "so unjustifiably high as to be unconscionable."

**RESPONSE:** The Guild suggests that excessive fees should be reviewed by a panel of three licensees. The Committee is comprised of licensees and a consumer representative and is the appropriate body to review excessive fees. The Committee sees no reason to change the wording of the rule. A determination of the excessive fees will be made upon the "reasonable person" standard, a concept which has long been established in the law and requires no further definition in the rule. The rule also relies upon N.J.A.C. 13:35-6.11(c) (the excessive fee rule of the Board of Medical Examiners) insofar as it describes the factors to be used in determining whether a fee is excessive.

The comments of NJSLHA and agency responses are summarized below:

**COMMENT:** NJSLHA recommended that the definition of "licensee" be broadened to include temporary licensees.

**RESPONSE:** The Committee finds no reason to make any changes to this section. The term "licensee" does not refer to temporary licensees.

## ADOPTIONS

## LAW AND PUBLIC SAFETY

Temporary licensees do not have the same rights or responsibilities under N.J.S.A. 45:9A-1 et seq., therefore they should not be placed in the same category.

COMMENT: NJSLHA recommended that the term "supervising licensee" should be defined in the rule.

RESPONSE: The term "supervising licensee" is not defined in N.J.A.C. 13:35-8.2, but the responsibilities of a supervising licensee are set forth in N.J.A.C. 13:35-8.8.

COMMENT: NJSLHA suggests that the definition of "advertisement" should be limited to paid advertisements.

RESPONSE: The definition of "advertisement" should not be limited to paid advertisements. An advertisement should be determined by its effect on the public, not by its cost.

COMMENT: The requirement that a sponsor must be licensed for two years before undertaking to sponsor a temporary licensee should be eliminated.

RESPONSE: The Committee does not accept the recommendation that a sponsor need not be licensed for two years before undertaking to sponsor a temporary licensee. A sponsor has important responsibilities to train a temporary licensee. His or her function cannot be adequately performed unless the sponsor has a sufficient base of knowledge and experience. Two years is a reasonable period of time to assure that the sponsor has attained adequate experience to train others.

COMMENT: Issuance of a training permit should be mandatory and not discretionary.

RESPONSE: The Committee determines whether to grant a training permit only after the requirements of N.J.S.A. 45:9A-9 and 16 are met; therefore, it should not be mandatory.

COMMENT: A temporary license should not be issued to a person who has previously applied to take the licensing examination. A temporary licensee should be permitted to renew his or her temporary license even if he or she failed the licensing examination. The requirement that applicants for a temporary license are to be interviewed by the Committee should be eliminated.

RESPONSE: It is suggested that a temporary license should not be issued to a person who has previously applied to take the licensing examination, but that it should be issued to a temporary licensee who has failed the licensing examination. The Committee believes that this position is inconsistent and not in the public's interest. The purpose of denying a temporary license to persons who have failed the licensing examination is because they have proven themselves to be unqualified for practice. Persons who have applied to take the examination have not proven themselves unqualified, therefore they may apply for a temporary license. The rule does not preclude a person who had failed the examination from applying for a training permit. The Committee believes that a personal interview is important to consider the candidates training and experience and to assure that both the candidate and sponsor are aware of their responsibilities. There may be instances where a personal interview is not necessary; therefore, the Committee will make appropriate changes so that it will be in the Committee's discretion whether or not to conduct a personal interview. The Committee may at its discretion waive the interview requirement.

COMMENT: The requirement that a temporary licensee must spend a minimum of 20 out of 60 days in the office or place of business of his or her sponsor should be eliminated.

RESPONSE: The Committee believes that this modest 20 day requirement simply insures that the temporary licensee will spend a minimum number of days training with his or her sponsor. The previous five day rule was not sufficient to insure adequate training and experience.

COMMENT: The requirement that a sponsor must be physically present before the temporary licensee completes the sale of a hearing aid should be removed. Audiologists should be exempt from the requirement that a sponsor must be present at the same physical location as the temporary licensee.

RESPONSE: The requirement that a sponsor must be physically present before a temporary licensee completes a sale of hearing aids is not a change from longstanding Committee rules. Moreover, there is no justification for exempting an audiologist from this requirement. Audiologists have more knowledge and skills relating to the area of audiology than non-audiologists; however, they are not in a different class when it comes to fitting and dispensing hearing aids.

COMMENT: The scope of practice of a hearing aid dispenser includes activities of a licensed audiologist.

RESPONSE: The Committee agrees that there are aspects of hearing aid dispensing which fall within the practice of audiology. However, there

is nothing in the rule which encroaches upon the practice of audiology by licensed audiologists. The Committee's rule is intended to apply only to persons practicing as hearing aid dispensers, whether they are audiologists or not.

COMMENT: Referral should be made to a licensed audiologist when air bone gap is discovered.

RESPONSE: The Committee disagrees that referral should be made to an audiologist when it is discovered that a person has significant air bone gaps. The Committee believes that significant air bone gaps may indicate a medical problem which should be addressed by a medical doctor.

COMMENT: A temporary licensee should be permitted to list his or her name in an advertisement.

RESPONSE: A temporary licensee should not, in the Committee's view, be permitted to list his or her name in an advertisement. A temporary licensee is not qualified to hold himself or herself out to the public as a person licensed to fit and dispense hearing aids. Therefore, such advertisement may be misleading to the public because the public is not able to distinguish between a temporary licensee and a licensed hearing aid dispenser.

COMMENT: The term "supervising licensee" should be defined in the rule. A supervising licensee should not have to be a licensee.

RESPONSE: The responsibilities of a supervising licensee are set forth in N.J.A.C. 13:35-8.8. The suggestion that a supervising licensee need not be a licensee is incongruous. The purpose of N.J.A.C. 13:35-8.8 is to insure that a supervising licensee is accountable to the Hearing Aid Dispensers Examining Committee, and will be ultimately responsible for the sale of a hearing aid.

COMMENT: Information concerning examination content and specific grade point requirements should be contained in the rule.

RESPONSE: The Committee does not agree that the specific examination content and grade point requirements should be contained in the rule. The examination content and grade point information is made available to candidates for the exam so that each is aware in advance of what subjects will be covered and what will be required of them.

COMMENT: The Committee received a number of letters from individuals requesting that a public hearing be held to discuss issues relating to the proposed rules.

RESPONSE: The Committee believes it is unnecessary to conduct a public hearing. None of the letters received from persons requesting a public hearing raised any substantive issues which had not been fully addressed in this summary of comments and agency responses. The letters were written in apparent support of the letter of comment received on behalf of the NJSLHA. The comments of NJSLHA were thoroughly discussed by the Committee and are responded to at length in this summary. There is nothing to indicate that a public hearing would shed any further light on any of these issues.

COMMENT: An individual hearing aid dispenser, Claire Corcoran, suggested that the requirement that a sponsor must be present at any time a temporary licensee completes a sale of hearing aids should be eliminated. She also objected to the excessive fee rule and the requirement that a supervising licensee's name appear on every sign.

RESPONSE: The Committee believes that it is necessary to have a sponsor present any time a temporary licensee completes a sale of hearing aids. This requirement insures that the temporary licensee is receiving the training and experience in hearing aid dispensing and is not permitted to practice independently or without supervision until his or her knowledge and skills have been tested. The Committee believes that the excessive fee rule will serve the public interest by deterring dispensers from charging excessive fees. The Committee will look at all of the factors surrounding a sale instead of just at the price itself. The requirement that a supervising licensee's name appear on every advertisement or sign will insure that a licensed dispenser will be ultimately responsible for each sign.

COMMENT: Another individual hearing aid dispenser, Stephen Gonzenbach, indicated his support of the rules, especially with regard to the supervision of temporary licensees and advertising. He suggests that a licensee be permitted to advertise that he is "Licensed by the State of New Jersey." He objects to the excessive fee rule because he claims it is susceptible to subjective analysis.

RESPONSE: The Committee believes that the use of the term "Licensed by the State of New Jersey" could be misleading to the public. Since every hearing aid dispenser must be licensed, the use of the term may connote to the public that the dispenser so advertising may have attained a special licensure status, which is clearly false. The Committee

believes that the language of the excessive fee rule will serve as a protection to the public from sales which are unconscionably unfair. The Committee will rely on the factors set forth in the Board of Medical Examiners' excessive fee rule (N.J.A.C. 13:35-6.11(c)) and in this way the "susceptibility for subjective analysis" will be minimized.

#### Summary of Technical and Substantive Changes not Requiring Additional Public Notice and Comment:

There were a number of printing errors noted. The name of the Hearing Aid Dispensers Examining Committee was incorrectly referred to as the "Hearing Aid Dispensers Examiners Committee". The proposed repeal erroneously included the repeal of N.J.A.C. 13:35-8.25, Fee schedule, which was not intended to be repealed; it has been recodified as N.J.A.C. 13:35-8.17. There are additional citation errors which required correction in N.J.A.C. 13:35-8.4(a), 8:12(a)6, 8.13(b) and 8.16(b). There are several minor grammatical changes in N.J.A.C. 13:35-8.7(a)1, 8.11(a)2 and 8.12(a)8.

There are three substantive changes not requiring additional public notice or comment. In N.J.A.C. 13:35-8.4(c), at the request of the NJSLHA, the Committee has recognized that there may be certain instances where a personal interview may not be necessary. This change allows the Committee latitude to waive the requirement of holding a personal interview. In N.J.A.C. 13:35-8.4(c) at the request of the Guild, the Committee has recognized that the meaning of education and training needed to be clarified. It does not change the requirement that all applicants are subject to qualifications review by the Committee. In N.J.A.C. 13:35-8.11(b), in response to the request of the Guild, the Committee recognized that a written waiver of the right to be examined by a medical doctor may be appropriate. The wording adjustment does not change the dispensers' obligation to refer an individual to a medical doctor when significant air bone gap is discovered.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from the proposal indicated in brackets with asterisks **\*[thus]\***).

### SUBCHAPTER 8. HEARING AID DISPENSERS

#### 13:35-8.1 Purpose

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

#### 13:35-8.2 Definitions

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

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

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

"Board" means the State Board of Medical Examiners.

"Committee" means the Hearing Aid Dispensers Examining Committee.

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

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

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

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

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

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

#### 13:35-8.3 Training permits; issuance and practice

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

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

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

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

1. 40 hours of training with an audiometer;
2. 160 hours of hearing aid dispensing procedures, including the taking of earmold impressions, the alteration of earmolds and hearing aids, and application and fitting techniques;
3. Reading all the books and articles relating to hearing aid dispensing specified in a list formulated by the Committee.

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

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

#### 13:35-8.4 Temporary licenses; issuance

(a) The Committee may issue a temporary license in accordance with N.J.S.A. 45:9-16(a) and the provisions of this subchapter to an applicant provided he or she has not previously held a training permit or has not previously taken the licensing examination described in N.J.S.A. 45:9A-10 and N.J.A.C. **\*[13:37-8.15]\* \*13:35-8.15\***. A temporary license shall not be renewed when an applicant has failed the licensing examination, except on showing of good cause (such as illness or emergency<sup>(1)</sup>)**\* precluding the taking of the examination)\***.

(b) Persons from another jurisdiction who are not eligible for license by endorsement under N.J.S.A. 45:9A-13 who wish to sit for the licensing examination shall demonstrate a minimum of two years of full-time independent experience in dispensing, fitting and selling hearing aids as defined by N.J.S.A. 45:9A-2(d) and N.J.A.C. **\*[13:35-8.6]\* \*13:35-8.7\***. The applicant must submit documentation and verification of said experience satisfactory to the Committee, or submit verification of current licensure to practice audiology in the State of New Jersey.

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

#### 13:35-8.5 Temporary licenses; practice

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

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

## ADOPTIONS

## LAW AND PUBLIC SAFETY

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

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

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

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

## 13:35-8.6 Sponsors

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

(b) In addition, a sponsor shall:

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

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

3. Not pre-sign purchase agreements;

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

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

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

## 13:35-8.7 Scope of practice

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

1. The evaluation or measurement of the power or range of human hearing\*[s]\* utilizing customary and appropriate instrumentation available in the field;

2. The making of an ear impression;

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

4. The change of frequency response of any instrument;

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

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

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

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

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

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

## 13:35-8.8 Supervising licensee

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

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

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

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

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

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

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

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

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

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

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

## 13:35-8.10 Equipment

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

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

## 13:35-8.11 Hearing testing

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

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

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

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

## 13:35-8.12 Advertising and Solicitation

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

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

2. Any misrepresentation of material fact;

3. Any omission or concealment of material fact, under circumstances where a licensee knows or should know that the omission

is improper or is likely to hamper a customer from making a full and informed judgment on the basis of the information set forth;

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

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

6. The use of terms such as "prescription made" and "certified hearing aid audiologist" or "audiologist," unless the person to whom reference made is a licensed audiologist as defined by N.J.S.A. \*45:3B-21(a)\* \*45:3B-2(a)\*;

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

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

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

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

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

#### 13:35-8.13 Abandonment; excessive fees

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

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

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

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

1. Hearing test and examination of the ear;
2. Fitting of an earmold;
3. Dispensing services;
4. Necessary cleaning, servicing and refitting for at least the first year following sale;
5. The cost of the earmold; and
6. The cost of the hearing aid.

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

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

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

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

#### 13:35-8.15 Licensing examination

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

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

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

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

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

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

#### 13:35-8.16 Violation of the Rules

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

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

\*[13:35-8.25]\*\*13:35-8.17\* Fee schedule  
(No change in text.)

(a)

## NEW JERSEY STATE BOARD OF MORTUARY SCIENCE

### Qualification for Intern Registration

#### Adopted Amendment: N.J.A.C. 13:36-2.1

Proposed: December 7, 1987 at 19 N.J.R. 2245(a).

Adopted: February 9, 1988, by Donald R. Codey, President, New Jersey State Board of Mortuary Science.

Filed: February 10, 1988 as R.1988 d.111, **without change**.

Authority: N.J.S.A. 47:7-38.

Effective Date: March 7, 1988.

Expiration Date: November 19, 1989.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the adoption follows.

#### 13:36-2.1 Qualification for intern registration

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

1. "Two years of academic instruction" means the successful completion of 60 degree credits at a community college or one-half the credits required to complete a degree at a four year college or university.

2. "Remedial or basic course" means a non-degree credit course required by a college or university to be completed by a student before being admitted to a specific college level course or degree program course.

(b) (No change in text.)

**ADOPTIONS**

**TRANSPORTATION**

(c) An intern who is registered while concurrently attending college to complete the two year academic educational licensure requirement shall:

- 1. (No change.)
- 2. Achieve a minimum of eight degree program credits per semester with a minimum cumulative average of 2.0 or its academic equivalent throughout the concurrent registration program. A person who receives less than a 2.0 cumulative average, withdraws from a course, or who takes more than one remedial or basic course per semester shall have his internship terminated unless good cause is established for the continuation of the internship.
- 3.-4. (No change.)
- (d) (No change in text.)
- (e) (No change in text.)

(f) Any credit granted to a student by a college or university for completion of any remedial or basic course shall not be recognized by the Board in any transcript evaluation made by the New Jersey State Department of Higher Education for an academic qualifying certificate.

**(a)**

**DIVISION OF CONSUMER AFFAIRS  
OFFICE OF WEIGHTS AND MEASURES  
Ready to Eat Food**

**Adopted Repeal and New Rule: N.J.A.C. 13:47C-2.5**

Proposed: November 16, 1987 at 19 N.J.R. 2124(a).  
 Adopted: December 30, 1987 by Thomas W. Kelly, State Superintendent, Office of Weights and Measures.  
 Filed: January 27, 1988 as R.1988 d.92, **without change**.  
 Authority: N.J.S.A. 51:1-61.  
 Effective Date: March 7, 1988.  
 Expiration Date: August 20, 1989.

**Summary of Public Comments and Agency Responses:**  
 Two letters of support for the new rule were received that both contained essentially the same information and requests.

One letter was from Barbara McConnell, President of the New Jersey Food Council; the other was sent by Betty F. Greitzer, Manager of Public Affairs, Supermarkets General Corporation.

Both commenters requested that the proposed rule be extended to allow the sale of precooked, prepackaged chicken by count and not by net weight, as is required at the present time.

The State Superintendent responded to both inquiries that the Office of Weights and Measures is not prepared, at this time, to alter the proposed rule, because New Jersey law requires that food in package form must be sold by net weight.

**Full text of the adoption follows.**

13:47C-2.5 Ready-to-eat food

- (a) The following may be sold by net weight, measure or count:
  - 1. Items sold for, or intended to be sold for, consumption on the premises of the seller;
  - 2. Items sold as one of three or more different elements, excluding condiments, comprising a ready-to-eat meal sold as a unit, for consumption elsewhere than on the premises where sold;
  - 3. Ready-to-eat chicken parts cooked on the premises but not packaged in advance of sale;
  - 4. Sandwiches when offered or exposed for sale on the premises where packed or produced and not intended for resale.

**(b)**

**VIOLENT CRIMES COMPENSATION BOARD  
Eligibility of Claims**

**Adopted Amendment: N.J.A.C. 13:75-1.6**

Proposed: November 2, 1987 at 19 N.J.R. 1967(b).  
 Adopted: February 3, 1988 by Kenneth W. Welch, Chairman, Violent Crimes Compensation Board.  
 Filed: February 9, 1988 as R.1988 d.108, **without change**.  
 Authority: N.J.S.A. 52:4B-9.  
 Effective Date: March 7, 1988.  
 Expiration Date: August 20, 1989.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows.**

13:75-1.6 Eligibility of claims

- (a)-(c) (No change.)
- (d) The Board reserves the right to consider any circumstances it deems to be relevant, including but not limited to, provocation, consent or behavior on the part of the victim which directly, or indirectly contributed to his injury or death, the prior case history of the victim which may also include matters pertaining to the victim's medical history, and whether the victim cooperated with reasonable requests of law enforcement authorities or showed a compelling health or safety reason why they could not cooperate.

**TRANSPORTATION**

**TRANSPORTATION OPERATIONS**

**(c)**

**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**

**Adopted Amendments: N.J.A.C. 16:28A-1.9, 1.33,  
1.51 and 1.93**

Proposed: January 4, 1988 at 20 N.J.R. 45(b).  
 Adopted: February 8, 1988 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design, Department of Transportation.  
 Filed: February 8, 1988 as R.1988 d.105, **without change**.  
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:138.1 and 39:4-199.  
 Effective Date: March 7, 1988.  
 Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows.**

16:28A-1.9 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.

**TRANSPORTATION**

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(2) Milton Avenue—Beginning at the southerly curb line of Milton Avenue and extending 105 feet southerly therefrom.

(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 highway Route U.S. 322 described in this subsection shall be designated and established as "no stopping or standing" zones.

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  
Routes N.J. 31 in Warren County**

**Adopted Amendment: N.J.A.C. 16:28A-1.22**

Proposed: January 4, 1988 at 20 N.J.R. 46(a).

Adopted: February 4, 1988 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design, Department of Transportation.

Filed: February 8, 1988 as R.1988 d.104, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139.

Effective Date: March 7, 1988.

Expiration Date: November 7, 1988.

(CITE 20 N.J.R. 544)

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

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 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**

**Adopted Amendment: N.J.A.C. 16:31-1.11**

Proposed: January 4, 1988 at 20 N.J.R. 46(b).

Adopted: February 8, 1988, John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design, Department of Transportation.

Filed: February 8, 1988 as R.1988 d.103, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-183.6.

Effective Date: March 7, 1988.

Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

16:31-1.11 Route 21

(a) Turning movements of traffic on the certain parts of State highway Route 21 described 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**

**(c)**

**DIVISION OF PENSIONS**

**Police and Firemen's Retirement System  
Interfund Transfers**

**Adopted Amendment: N.J.A.C. 17:4-7.1**

Proposed: December 7, 1987, at 19 N.J.R. 2255(a).

Adopted: February 1, 1988, by Anthony Ferrazza, Secretary, Board of Trustees, Police and Firemen's Retirement System.

Filed: February 8, 1988 as R.1988 d.102, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 43:16A-13.

Effective Date: March 7, 1988.

Expiration Date: July 1, 1990.

**Summary of Public Comments and Agency Responses:**

**No comments were received.**

The Board has added new language to N.J.A.C. 17:4-7.1(a)5 which provides that the interfund transfer procedure does not apply where a

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person has ceased to be a member of the present system before being eligible for deferred retirement. This addition was made to clarify the non-applicability provisions and standardize the interfund transfer provisions of the Police and Firemen's Retirement System with identical provisions proposed for the Teacher's Pension and Annuity Fund at N.J.A.C. 17:3-7.1(a)5, the State Police Retirement System at N.J.A.C. 17:5-6.1(a), and the Judicial Retirement System at N.J.A.C. 17:10-6.1(a) (see 20 N.J.R. 47(a), 47(b) and 179(b), respectively).

**Full text** of the adoption follows (additions to the proposal indicated in boldface with asterisks **\*thus\***):

## 17:4-7.1 Interfund transfers; State-administered retirement systems

(a) The system will transfer membership to any State-administered retirement system, as follows:

1.-4. (No change.)

5. This procedure would not apply where a member 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) 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

## Lottery Commission Rules

**Adopted Amendments: N.J.A.C. 17:20-4.1, 4.2, 4.4, 4.5, 4.6, 4.7, 4.8 and 4.9**

**Adopted Repeal: N.J.A.C. 17:20-4.2**

**Adopted New Rule: N.J.A.C. 17:20-4.3**

Proposed: November 2, 1987 at 19 N.J.R. 1969(a).

Adopted: January 14, 1988 by Barbara A. Marrow, Secretary, New Jersey State Lottery Commission.

Filed: January 28, 1988 as R.1988 d.94 with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Effective Date: March 7, 1988.

Expiration Date: November 7, 1988.

## Summary of Public Comment and Agency Response:

**No comments received.**

The text of the proposed amendment to N.J.A.C. 17:20-4.4 which identified the present provisions of subsection (d) for deletion was erroneous. It was the intent of the Commission that those requirements for the reporting of status changes remain part of the rule. Therefore, upon adoption, the text of subsection (d) has been recodified to N.J.A.C. 17:20-4.4(g).

**Full text** of the adoption follows (additions indicated in boldface with asterisks **\*thus\***).

## 17:20-4.1 Application; form

(a) Any person who wishes to be licensed as an agent of the Division of the State Lottery must first request an "Application for Lottery Agent's License" from the Division. Upon receipt of such

request, the Director shall cause a preliminary field investigation to be made. If the investigation discloses reasons why the requesting party or the involved location is obviously unsuitable for licensing based on the standards set forth in the Act and this chapter, no application shall be issued, and the requesting party shall be so informed. Such action shall be tantamount to the denial of an application for purposes of N.J.A.C. 17:20-5.3.

(b) The Director may prescribe a form of application to call for such information as may be deemed necessary or helpful in evaluating the factors for licensing as set forth in the Act and this chapter.

(c) An applicant for licensure must divulge any previous application to or licensure with the New Jersey State Lottery or any other State agency, along with any record of arrests or convictions in this or any other State.

(d) The application form shall include the applicant's consent to credit checks and criminal record searches, along with such waiver and release provisions as may be needed to assure a full and complete review of the application.

## 17:20-4.2 Ineligibility of minors

No person under the age of legal majority may make application or be licensed as an agent.

## 17:20-4.3 Review

(a) Upon receipt of an application which appears to be complete and in order, the Director shall subject it to a thorough review, including:

1. Verification of references;
2. A check of credit reporting sources and criminal justice agencies;
3. A separate marketing study which may include (but need not be limited to) the following factors:
  - i. The applicant's hours of operation;
  - ii. The type of business in which the applicant engages;
  - iii. The presence or absence of similar type businesses among nearby licensed agents;
  - iv. The distance from the applicant's location to nearby licensed agents;
  - v. Traffic patterns, parking access, store type and other factors which affect public access;
  - vi. The potential for increased ticket sales, arrived at by comparing 10-week average sales for agents in the applicant's municipality with the statewide per-agent average for the same time period and by analyzing the public cross-section frequenting establishments for the applicant's type;
  - vii. The relative saturation of the involved municipality (arrived at by computing the ratio of agents per capita by use of census data); and
  - viii. The applicant's business experience and marketing attitude; and
4. Such other procedures as may be needed to substantiate the applicant's moral character and the ability to satisfy the other licensing criteria as set forth in the Act and this chapter.

(b) The Director may schedule and hold a public information gathering hearing to facilitate the review of a license application, in addition to any hearing which may be requested pursuant to N.J.A.C. 17:20-5.3.

(c) The Director may dispense with such of the above procedures or factors as are deemed unnecessary in completing a particular application review.

## 17:20-4.4 Issuance of license; conditions

(a) The Director may license an applicant to be a manual agent or a machine agent as the facts and circumstances may warrant.

(b) The Director may grant a license subject to such conditions as may reasonably assure satisfaction of the licensing criteria set forth in the Act and this chapter.

(c) The Director may grant a license for a trial period, subject to further review and evaluation.

(d) No license shall be issued to an applicant whose business primarily involves:

1. The sale, rental or display of sexually explicit material; or

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2. The sale of literature or equipment dealing with the cultivation or use of controlled dangerous substances.

(e) Subject to (f) below, an agent's license shall remain in full force and effect until the license is suspended or revoked by the Director or until the Director receives a written resignation from the agent.

(f) The Director may require annual certifications from any agent regarding continuing compliance with the Act and with this chapter, and providing such other information as the Director may deem necessary for the proper administration of the Division's activities. Failure to submit the completed form when requested may be cause for license suspension or revocation.

**\*(g) All applicants and agents shall report any change in status, such as ownership, control, address or other data relevant to licensure, within 10 days of occurrence. Failure to do so shall be cause for discipline under N.J.A.C. 17:20-5.1\***

17:20-4.5 License to be displayed

(a) Every agent shall prominently display in an area visible to the general public:

1. The license; and
2. Lottery promotional signs.

(b) In addition, the "Authorized Lottery Agent" decal shall be mounted on a prominent public window of the agent's premises.

(c) The agent shall maintain and display all Lottery flyers, betting cards and other circulating material in an area open to the public.

17:20-4.6 Bonding of agents

The Director may require a non-refundable annual bonding fee from any or every licensed agent. For agents operating less than a full calendar year, the fee may be determined proportionately.

17:20-4.7 Conversion of agents

The Director may in the exercise of discretion convert any licensed location from a manual agent to a machine agent, or vice versa.

17:20-4.8 Sale of lottery tickets at specific locations licensed

An agent shall not sell tickets at any location other than that which is specified in the license.

17:20-4.9 Special or seasonal lottery agents

(a) The Director may, upon proper application, license special or seasonal lottery agents.

(b) A special license may be issued subject to such special conditions or limitations as the Director in the exercise of discretion may deem prudent, consistent with the dignity of the State, the general welfare of the people and the dignity and integrity of the Lottery.

(c) These limitations or conditions may include, but are not limited to the following:

1. Length of licensure period;
2. Hours of sale;
3. Location;
4. Specific persons who may sell lottery tickets; or
5. Specific sporting, charitable, social or other special events where lottery tickets may be sold.

(d) Agents holding special lottery licenses shall be subject to all rules and regulations of the Lottery Commission not inconsistent with this rule.

17:20-4.10 Transfers of ownership (of license premise)  
(No change.)

**(a)**

**Lottery Commission Rules**

**Adopted Amendments: N.J.A.C. 17:20-7.1, 7.2, 7.4 through 7.8**

Proposed: October 19, 1987 at 19 N.J.R. 1889(b).

Adopted: January 14, 1988 by Barbara A. Marrow, Secretary,  
New Jersey State Lottery Commission.

Filed: January 28, 1988 as R.1988 d.93, **without change.**

Authority: N.J.S.A. 5:9-7(a), (b).

Effective Date: March 7, 1988.

Expiration Date: November 7, 1988.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows.**

17:20-7.1 Information to be furnished by prize claimant

(a) Before receiving any prize, the claimant shall furnish the Director with a Social Security number if one exists, or with any identifying number or account number assigned by the Internal Revenue Service for Federal Income Tax purposes, in addition to such other identification data as may be requested by the Director.

(b) Prize claimants who are nonresident aliens for Federal Income Tax purposes shall also file with the Director proof of their nonresident alien status.

(c) The Director may require proof of age prior to the award of any prize.

(d) If more than one person claims ownership of a winning ticket, that fact must be shown on the ticket or claim form submitted to the Lottery, and each claimant must provide the required data.

17:20-7.2 Waiver of conditions

The Director may waive compliance with any of the requirements of this subchapter in appropriate cases if satisfied that such compliance is unnecessary.

17:20-7.4 Time of award of prizes

(a) Except as herein provided, prizes shall be awarded as soon as reasonably possible after the claimant has been identified to the satisfaction of the Director and the claim validated pursuant to the applicable game rules.

(b) Unless the individual game rules provide otherwise, the payment of prizes to winners who are to be paid in installments shall be made annually on or about the anniversary date of the claim except that the first payment shall be made as soon as reasonably possible.

(c) Upon the death of a prize winner, all moneys or any portion thereof that remain payable to his or her estate shall be paid either to an executor (executrix) or administrator (administratrix) of the decedent's estate, in accordance with the provisions of N.J.S.A. 54:35-19 and individual game rules.

1. Said moneys may be transferred either by intestate succession or by testamentary disposition.

2. Upon payment to the estate, the Lottery shall be absolved of any further liability for award of prizes.

(d) Under no circumstances will prize awards be accelerated.

(e) Claims may be amended prior to the issuance of checks, with the approval of the Director. Thereafter, no change shall be made except in conformity with N.J.S.A. 5:9-13.

17:20-7.5 Manner of payment of prizes

(a) Payment of monetary prizes shall be made by check payable to the bearer of the ticket; however, the Director may, in the exercise of discretion, withhold payment pending clarification of ownership of the ticket. The Director may authorize cash redemption of certain prizes payable to the bearer of the "winning" ticket. With respect to machine issued tickets, the Director may refuse payment if the computer file and other validation records show that payment has been made.

(b) In cases of multiple ownership, a check will be issued to the group representative designated on the claim form.

1. Each winner may request the issuance of a separate check. Separate checks will not be issued in amounts less than \$600.

2. Where multiple winners are issued a single check, the individual designated to represent the group shall be responsible for filing the appropriate income tax form with the Lottery and distributing the moneys to co-winners.

(c) Non-cash prizes such as tickets to theatres or other places of amusement, meals or tangible property shall be awarded by the Director in such manner as is consistent with the dignity and integrity of the Lottery, the convenience of the winner and of the provider

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## TREASURY-TAXATION

of the prize. The Director may establish time limits for the filing of claims for prizes where the event is one of limited duration.

## 17:20-7.6 Discharge of State liability upon award

(a) The State of New Jersey, its subdivisions, agents, officers, and employees, the State Lottery Commission, the Director, the Division of the State Lottery, its agents, officers, and employees shall be discharged of all liability upon award of a prize.

(b) The Director's decision regarding the determination of a winning ticket shall be final.

(c) In the event of a dispute between two or more persons claiming to be the owners of a winning ticket, the Director may with or without holding a hearing, deposit the prize money in the Superior Court of the State of New Jersey and interplead all known claims. The Lottery shall thereafter be relieved of any further responsibility or liability with respect to such moneys.

## 17:20-7.7 Unallocated prize money; breakage

(a) Upon the conclusion of any specific game, when the prize allocation is in excess of the allocation necessary to sustain the payment of prizes within the prize pool, such excess shall be allocated as unclaimed prize money pursuant to N.J.S.A. 5:9-17.

(b) During the term of any specific game, when the prize allocation is in excess of the allocation necessary to sustain the payment of prizes within the prize pool as a result of rounding-off to even dollar amounts ("breakage"), such excess shall be added to the pool of moneys available for the award of future prizes pursuant to specific game rules.

## 17:20-7.8 Disclosure

The Lottery may use the names, addresses, prize amounts and photographs of winners. The address used shall not contain the street or house number of the winner.

## TREASURY-TAXATION

## DIVISION OF TAXATION

## (a)

**Homestead Rebate Act  
Extension of Time to File Homestead Rebate Claim  
Adopted Concurrent Proposal: N.J.A.C. 18:12-7.12**

Proposed: December 21, 1987 at 19 N.J.R. 2498(a).

Adopted: February 8, 1988 by John R. Baldwin, Director,  
Division of Taxation.

Filed: February 9, 1988 as R.1988 d.109, **without change**.

Authority: N.J.S.A. 54:4-3.80 and 54:50-1.

Effective Date: March 7, 1988.

Expiration Date: August 12, 1988.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows.

## 18:12-7.12 Extension of filing date

(a)-(k) (No change.)

(l) The time for property owners to file their applications for a homestead rebate payable in 1988 pursuant to P.L. 1976, c.72, including applications by shareholders in cooperative associations and those residing in properties of certain mutual housing corporations, has been extended to March 1, 1988.

## (b)

**Local Property Tax  
County Board of Taxation; Cross-Petitions of Appeal  
Adopted Amendments: N.J.A.C. 18:12A-1.6 and 1.20**

Proposed: December 7, 1987 at 19 N.J.R. 2264(a).

Adopted: February 8, 1988 by John R. Baldwin, Director,  
Division of Taxation.

Filed: February 9, 1988 as R.1988 d.110, **without change**.

Authority: N.J.S.A. 54:3-14, 54:3-21 (P.L. 1987, c.185) and  
54:50-1.

Effective Date: March 7, 1988.

Expiration Date: August 12, 1988.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows.

## 18:12A-1.6 Petitions of appeal; cross-petitions of appeal

(a) All complaints concerning property tax assessments, whether by an individual or corporation, shall be by written petition of appeal on forms prescribed by the Director, Division of Taxation, to be furnished to the boards. All petitions shall contain the name and address of the taxpayer, the block and lot number or account number of the property and the assessed value of the land and improvement respectively stated, and such other information as the Director may require.

(b) A petition of appeal filed by a party respondent in a tax appeal shall be denominated as a "cross-petition of appeal" and shall be filed on the same form and subject to the same standards applicable to petitions of appeal. Where a petition of appeal is filed within the period covering 19 days next preceding August 15, a respondent shall have 20 days from the date of service to file a cross-petition with the county board of taxation.

Redesignate (b)-(k) as (c)-(l) (No change in text.)

## 18:12A-1.20 Appeals; cross-appeals; late filing

(a) Where a petition of appeal to a county board of taxation is actually received by the board after August 15 of the tax year (except if August 15 shall fall on a Saturday, Sunday or holiday, then after the first business day immediately thereafter), the county board of taxation or the county tax administrator, if authorized by the board by resolution, shall not accept said petition of appeal for filing but shall forthwith return the same to the person filing it, together with the filing fee, if the filing fee accompanied said petition or was otherwise paid. The petition to be returned shall have endorsed thereon the date of receipt and a statement "Petition is returned by reason of late filing" and shall be accompanied by a judgment of dismissal by the county board of taxation for late filing.

(b) Where a cross-petition of appeal to a county board of taxation is actually received by the board after the 20th day following the date of service noted on the petition of appeal (except if the 20th day shall fall on a Saturday, Sunday or holiday, then after the first business day immediately thereafter), the county board of taxation or the county administrator, if authorized by the board by resolution, shall not accept said cross-petition of appeal for filing but shall forthwith return the same to the person filing it, together with the filing fee, if the filing fee accompanied said cross-petition or was otherwise paid. The cross-petition of appeal to be returned shall have endorsed thereon the date of receipt and a statement "Cross-petition is returned by reason of late filing" and shall be accompanied by a judgment of dismissal by the county board of taxation for late filing.

# EMERGENCY ADOPTION

## HUMAN SERVICES

### (a)

#### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

#### Administration Manual JerseyCare Manual

#### Medical Assistance for the Aged, Blind, and Disabled

#### Adopted Emergency Amendments and Concurrent Proposal: N.J.A.C. 10:49-1.1 and 1.2; 10:72-1.1, 1.2, 2.1, 2.3, 2.7, 3.4, 3.5, 4.3, 4.4, and 4.5.

Emergency Amendments Adopted: January 20, 1988 by Drew Altman, Commissioner, Department of Human Services.  
Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): February 2, 1988.

Emergency Amendments Filed: February 2, 1988 as R.1988 d.96.

Authority: N.J.S.A. 30:4D-3, 30:4D-6, 30:4D-7a, b, and c, 30:4D-12, and section 1902(m) of the Social Security Act.

Emergency Amendments Effective Date: February 2, 1988.

Emergency Amendments Expiration Date: April 2, 1988.

Concurrent Proposal Number: PRN 1988-99.

Submit comments and inquiries by April 6, 1988 to:

Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance and Health Services  
CN-712  
Trenton, New Jersey 08625

These amendments and new rules were adopted on an emergency basis and became effective upon acceptance for filing by the office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency amendments are being proposed for reoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The agency emergency adoption and concurrent proposal follow:

#### Summary

On January 4, 1988, New Jersey enacted legislation expanding eligibility for Medicaid coverage for persons aged 65 years or older and for the blind and disabled (as defined by the Social Security Act). This new coverage, authorized under Title XIX of the Social Security Act, extends eligibility to certain aged, blind, and disabled individuals whose income and resources exceed the current categorical requirements. These emergency amendments describe the basic criteria by which persons may be eligible for medical assistance under this program expansion. The topics of these amendments include the application process and financial eligibility.

Under this program expansion, income eligibility is based on 100 percent of the federal poverty income guidelines, as published annually by the U.S. Department of Health and Human Services. If an otherwise eligible individual's monthly countable income as determined under these amendments are equal to or less than the poverty guideline, income eligibility will exist. Currently, the poverty guideline for an individual is \$458.00 monthly and for a couple, \$616.00 monthly.

Currently, for noninstitutional Medicaid coverage, eligibility does not exist if the value of countable resources exceeds \$1900 for an individual and \$2,850 for a couple. Under these amendments, those limits are increased to \$3,800 for an individual and \$5,700 for a couple. It should be noted that, because New Jersey's income eligibility limit for Medicaid coverage in an institutional setting is already higher (\$1,062 monthly) this expansion primarily affects aged, blind, and disabled persons residing in the community. The current resource maximum on countable assets for persons in a long term care facility is \$1,900. That limit remains unchanged for persons whose monthly countable income is between the poverty income guideline and \$1,062. For persons requiring institutional

long term care whose monthly countable income is less than or equal to the poverty income guideline (\$458.00) the higher resource limits established under these amendments will apply.

Persons determined eligible for this program will be entitled to the full range of Medicaid services, including but not limited to, hospital services (inpatient and outpatient), physician's services, independent clinic services, laboratory and radiological services, pharmaceutical services, medical supplies and equipment, prosthetic and orthotic devices, vision care services, dental services, and long term care and home care services.

#### Social Impact

These amendments affect aged, blind, and disabled individuals who do not currently qualify for medical assistance coverage because countable income or resources exceed the existing limits.

The Medically Needy program currently provides certain medical services to aged, blind, and disabled persons whose income or resources exceed the categorical Medicaid limits. In that program, however, many persons must "spend-down" to the Medically Needy income limits in order to establish program eligibility. There is no spend-down requirement to qualify for Medicaid benefits described in these amendments. Aged, blind, and disabled persons qualifying under the provisions of these amendments will be eligible for full Medicaid benefits without spend-down liability.

These amendments will affect virtually all providers of medical care, services, goods, and supplies authorized under the State's Medicaid program. Providers will be responsible for verifying the patient's eligibility status when services are rendered or treatment is provided, and must submit a completed claim within prescribed time limits in order to be reimbursed by the program. Providers should follow the same procedures for this new group of eligible individuals as they do for currently eligible Medicaid patients.

#### Economic Impact

The estimated additional population that will be eligible for Medicaid benefits under this expansion is approximately 65,000. The additional annualized cost to the Medicaid program for the newly eligible population is estimated to be \$54 million. Of this additional cost, the federal government will be responsible for about 50 percent.

These amendments do not change reimbursement for service providers. The providers will be reimbursed in accordance with existing Medicaid policies and procedures. The economic impact on individual providers will vary depending on the number of Medicaid patients treated or served.

#### Regulatory Flexibility Statement

These eligibility rules do not impact small businesses but, rather, on the State and county governments which administer the Medicaid program.

While many Medicaid providers may be classified as small businesses, no additional reporting, recordkeeping or compliance requirements are imposed on providers under these amendments. Medicaid providers are already required to keep and maintain sufficient records to fully identify the recipient to whom the service was rendered, the dates and nature of the service, etc. (N.J.S.A. 30:4D-12(d)). These amendments do not modify this statutory requirement.

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

10:49-1.1 Who is eligible for Medicaid

(a) (No change.)

(b) 1.-8. (No change.)

**9. An individual 65 years of age and older, or an individual who is blind or disabled pursuant to federal regulations (either 42 CFR 435.530 et seq. or 42 CFR 435.540 et seq.), who meets the income and resource standards of the Optional Categorically Needy Program (OCN) (see N.J.A.C. 10:72-4.1) is eligible under JerseyCare.**

**i. An individual is determined eligible by the County Welfare Agency/Board of Social Services. The individual's income cannot exceed 100 percent of the federal poverty level adjusted for family size. Resources cannot exceed the limits of N.J.A.C. 10:72-4.5.**

[9]10. (No change in text.)

(c)-(g) (No change.)

## EMERGENCY ADOPTION

## HUMAN SERVICES

## 10:49-1.2 How to identify a covered person

Note: (No change.)

(a) An HSP (Medicaid) Case Number, as currently assigned, consists of 12 digits.

1.-2. (No change.)

3. The third and fourth digits of the 12-digit HSP (Medicaid) Case Number designate the category under which a person is determined eligible for the New Jersey Medicaid Program.

10—Aged-[SSI related] (65 years of age or older) **SSI related and Optional Categorically Needy (OCN) eligible individuals.**

15—Aged-Medically Needy related

20—Disabled [SSI related] (under 65 years of age) **SSI related and Optional Categorically Needy (OCN) eligible individuals.**

25-35 (No change.)

50—Blind-SSI related and **Optional Categorically Needy.**

4.-6. (No change.)

(b) (No change.)

## 10:72-1.1 Program scope

(a) This chapter contains the criteria for Medicaid eligibility for certain pregnant women and children not eligible under the provisions of N.J.A.C. 10:81 and 82, **as well as, certain aged, blind, and disabled persons not eligible under the provisions of N.J.A.C. 10:71.** The provisions of this chapter **relating to pregnant women and children** are effective July 1, 1987. **The provisions of this chapter relating to the aged, blind, and disabled are effective February 2, 1988.**

1. Because the eligibility criteria established by the rules contained within this chapter are more liberal than those applicable under AFDC-related Medicaid and **SSI-related Medicaid**, children (of the applicable ages) [and], pregnant women, **and aged, blind or disabled individuals** losing Medicaid eligibility because of financial reasons should be evaluated under the provisions of this chapter for the possibility of continuing Medicaid eligibility.

2. [Children and pregnant women] **Persons** financially ineligible for Medicaid under the provisions of N.J.A.C. 10:71, 81 and 82 and who are income ineligible for Medicaid under the provisions of this chapter shall be evaluated for eligibility as Medically Needy under the provisions of N.J.A.C. 10:70.

(b) Medicaid eligibility under the provisions of this chapter is limited to:

1.-2. (No change.)

3. **Effective February 2, 1988, aged, blind, and disabled individuals (as defined by Title XIX of the Social Security Act). For purposes of this chapter, an aged individual is a person who is 65 years of age or older.**

(c) Retroactive Medicaid eligibility is available beginning with the third month prior to the month of application for Medicaid for any month during which the applicant meets all eligibility criteria and during which the applicant has unpaid medical expenses for covered services. In order to qualify for retroactive coverage, an individual need not be determined eligible at the time of application for Medicaid benefits. Application for retroactive Medicaid coverage may be made on behalf of a deceased person so long as the person was alive during a portion of the three month period immediately prior to the month of application and he or she has unpaid medical expenses for Medicaid covered services.

i. Retroactive Medicaid coverage is not available under the provisions of this chapter for **pregnant women and children** for any period prior to July 1, 1987 **and for aged, blind, and disabled individuals for any period prior to February 2, 1988.**

## 10:72-1.2 Purpose

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

(c) The director of the county welfare agency shall assign copies of this chapter to administrative staff, all staff responsible for the determination of Medicaid eligibility for pregnant women [and], children, **aged, blind, and disabled individuals** and to social service staff as appropriate and shall ensure that each staff member is thoroughly familiar with its requirements in order to apply the policy and procedures consistently.

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

## 10:72-2.1 Application

(a) Application for Medicaid benefits for pregnant women and children shall be accomplished by the completion and signing of Form PA-1J as well as any addenda to that form as prescribed by the Division of Medical Assistance and Health Services. **Applications for Medicaid benefits for aged, blind, and disabled individuals shall be accomplished by the completion and signing of Form PA-1G as well as any addenda to that form as prescribed by the Division of Medical Assistance and Health Services.**

1. The application for the program shall be executed by:

i. The pregnant woman (regardless of age); [or]

ii. The parent, guardian, or caretaker relative of a child (**including a blind or disabled child**) for whom Medicaid is sought; **or**

iii. **The aged, blind, or disabled individual.**

2. (No change.)

3. A legal guardian shall be recognized as an authorized agent to execute an application on behalf of [a pregnant woman or child] **any individual.**

(b) (No change.)

(c) As part of the application process, an applicant for Medicaid has the responsibility to:

1. (No change.)

2. Assist the county welfare agency in securing evidence that verifies his or her statements regarding eligibility; [and]

3. Provide medical confirmation of pregnancy when Medicaid benefits are sought on that basis[.]; **and**

4. **Submit to necessary medical tests and examinations to determine disability or blindness and provide the county welfare agency with evidence relating to that determination.**

(d) For any application for Medicaid benefits under the provisions of this chapter, the county welfare agency must accomplish disposition of the application as soon as all factors of eligibility are met and verified but not later than 30 days from the date of application (or from the date of the inquiry form PA-1C, if applicable) **for pregnant women, children, and aged individuals. For disabled and blind individuals, the standard for application disposition is 60 days.** Exceptions to the timeliness standard appear in (d)2 below.

1. "Disposition of the application" means the official determination by the county welfare agency of eligibility or ineligibility of the applicant(s) for Medicaid.

2. Disposition of the application may exceed the [30-day] **applicable** processing standard when substantially reliable evidence of eligibility or entitlement for benefits is lacking at the end of the processing period. In such circumstances, the application may be continued in pending status. The county welfare agency shall fully document in the case record the circumstances of the delayed application processing. The processing standard may be exceeded for any of the following:

i.-iv. (No change.)

3.-4. (No change.)

(e) (No change.)

## 10:72-2.3 Verification requirements

(a) The county welfare agency is required to verify all factors related to eligibility for the Medicaid program. Factors subject to verification include:

1. (No change.)

2. **Disability and blindness: For individuals seeking Medicaid benefits because of disability or blindness, the condition must be established in accordance with the definitions, verification requirements, and processes set forth at N.J.A.C. 10:71-3.10 through 3.13.**

Renumber 2. through 6. as 3. through 7. (No change in text.)

[7]8. The county welfare agency must verify all sources of income of any person whose income must be counted in the determination of program eligibility. While resources are not a factor of eligibility for benefits **for pregnant women and children** under this chapter, resources must be identified and verified to determine if income is derived from the resources. **For the aged, blind, and disabled, resources must be verified.**

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

#### 10:72-2.5 Redetermination of eligibility

(a) Eligibility for Medicaid under this chapter shall be redetermined, including a face-to-face interview and the completion of a new application form, as follows:

1.-2. (No change.)

**3. For an aged, blind, or disabled individual, eligibility must be redetermined no later than 12 months following the month of initial eligibility or the last redetermination.**

(b) (No change.)

#### 10:72-2.7 Retroactive eligibility

(a) Persons may be eligible under the provisions of this chapter for retroactive Medicaid eligibility for the three months preceding the month of application. [In order to be entitled for retroactive Medicaid, the applicant(s) must have been eligible during any of the three months prior to the month of application and have unpaid medical bills during a month of eligibility.] **Retroactive Medicaid coverage is available for any of the three months prior to application so long as eligibility existed and there are unpaid medical bills for services in that month.** In the case of a pregnant woman, in order to be eligible for a retroactive month, the medical verification of pregnancy must have occurred in the retroactive month or in a previous month. **In the case of a disabled or blind individual, the disability or blindness must be confirmed to have begun in a retroactive month or earlier.**

(b) (No change.)

#### 10:72-3.4 Eligible persons

(a) The following persons who meet all eligibility criteria of this chapter are eligible for Medicaid benefits:

1.-5. (No change.)

**6. Aged individuals: Persons who are age 65 years or older.**

**7. Disabled individuals: Persons who have been medically determined to meet the criteria of disability as set forth at N.J.A.C. 10:71-3.10 through 3.13.**

**8. Blind individuals: Persons who have been medically determined to meet the criteria of blindness as set forth at N.J.A.C. 10:71-3.10 through 3.13.**

#### 10:72-3.5 Household unit

(a) The term "household unit" means those persons whose income is counted in the determination of eligibility [of pregnant women and children] under the provisions of this chapter. The following persons, if they reside with [a pregnant woman or a child] **the program applicant or recipient**, shall be considered members of the household unit:

1. In the case of a pregnant woman:

i.-ii. (No change.)

iii. The pregnant woman's natural or adoptive children under the age of 21; [and]

iv. The blood-related siblings (including those of half blood) of the pregnant woman's children who are under the age of 21[.]; and

v. **The natural or adoptive father of any children in the household unit.**

2. (No change.)

**3. In the case of an aged, blind, or disabled individual, the household unit will consist of that individual and his or her spouse if the spouse resides with the aged, blind, or disabled individual. In the case of a blind or disabled child, the household unit will consist of only that child, however, the income and resources of the child's parents will be deemed to that child in accordance with N.J.A.C. 10:72-4.4(d).**

[3.]**4. Any person who is in receipt of AFDC or SSI or who has applied for and been found eligible for Medicaid based on eligibility for those cash assistance programs will not be included in the household unit. Any person whose income and resources have been deemed to an eligible SSI recipient shall likewise not be included in the household unit unless that person is applying for benefits under this chapter.**

[4.]**5. Any person in (a)1 and 2 above shall be included in the household unit even [if] though he or she is in an AFDC-related Medically Needy budget unit in accordance with N.J.A.C. 10:70-3.5. Likewise, any person in (a)1 and 2 above required by [that rule] N.J.A.C. 10:70-3.5 to be included in an AFDC-related Medically Needy budget unit, shall be included in that budget unit even if he**

or she is included in a household unit under the provisions of this section. **Any aged, blind, or disabled person eligible under the provisions of this chapter or who is eligible for Medically Needy (or pending spend-down) will not be included in the household unit of a pregnant woman or child.**

**6. A spouse shall not be included in the household unit of an aged, blind, or disabled individual if the spouse is himself or herself in the household unit of an eligible pregnant woman or child under the provisions of this chapter, or is in the budget unit of an eligible AFDC-related Medically Needy case (including eligible pending spend-down). Note: Resources of a spouse of an aged, blind, or disabled individual will be deemed to that individual in accordance with N.J.A.C. 10:72-4.5 even though the spouse is not in the household unit.**

#### 10:72-4.1 Income eligibility limits

(a) (No change.)

(b) In order to be eligible for Medicaid under the provisions of this chapter, monthly income (as determined by this chapter) must be equal to or less than the income limit established in (a) above.

1. If a pregnant woman is determined to be income eligible during any month prior to the end of her pregnancy, she, if otherwise eligible, will continue eligible without regard to changes in the household unit's income for the term of her pregnancy, including the 60-day period beginning with the last day of the pregnancy whether or not the pregnancy results in a live birth. If the income change results from the addition of a new household member, the new income is not considered through the 60-day period beginning with the last day of the pregnancy.

i. (No change.)

ii. **A pregnant woman who, during the course of the pregnancy, was eligible for and received AFDC, Medicaid Special, or Medicaid for the Unborn is deemed to have met the income requirements of this chapter.**

2. With the exception in (b)1 above, income eligibility exists for each month in which the household unit's income is equal to or less than the income limits.

#### 10:72-4.3 Countable income: pregnant women and infants

(a) Except as specified below, countable income for [persons] **pregnant women and infants** under the provisions of this chapter shall include the income of all members of the household unit as determined at N.J.A.C. 10:72-3.5(a)1 and 2, and shall be determined in accordance with regulations applicable to income in the AFDC-C program (see N.J.A.C. 10:82).

1.-4. (No change.)

(b) Nonrecurring lump sum income received by a household unit of a **pregnant woman or child** shall be added to any other income received by the household unit in that month. The total shall be divided by the income eligibility limit applicable to the household. The result will be the number of months the eligible members of the household unit shall be ineligible to receive Medicaid under the provisions of this chapter. Any remaining income from this calculation is treated as if it were unearned income in the first month following the period of ineligibility. No period of ineligibility shall apply to a pregnant woman eligible under the provisions of this chapter.

1.-2. (No change.)

(c) (No change.)

(d) The parents of children and the spouse of a pregnant woman are legally responsible relatives to [persons] **pregnant women and children** applying for or eligible for benefits under the provisions of this chapter. When a legally responsible relative resides in the same household, his or her income is considered in the determination of eligibility and no further action is required. When a legally responsible relative does not reside in the same household, the county welfare agency shall pursue support from that relative in accordance with the provisions of N.J.A.C. 10:82-3.8 et seq.

1. (No change.)

#### 10:72-4.4 Income eligibility; aged, blind, and disabled individuals

(a) **Except as specified below, countable income for aged, blind, and disabled individuals shall be determined in accordance with rules applicable to income in Medicaid Only—Aged, Blind, and Disabled (see N.J.A.C. 10:71-5).**

**EMERGENCY ADOPTION**

**HUMAN SERVICES**

1. The disregard of cost-of-living increases in Social Security benefits provided for in N.J.A.C. 10:71-5.3(a)7x and xi do not apply.

2. The deeming of the income of an alien's sponsor as provided for at N.J.A.C. 10:71-5.7 does not apply.

(b) Nonrecurring lump sum income received by the household unit of an aged, blind, or disabled individual shall be counted as income in the month received and any portion retained shall be counted as a resource in subsequent months.

(c) An aged, blind, or disabled individual will have the value of in-kind support and maintenance counted as unearned income in the following circumstances.

1. An aged, blind, or disabled adult, who would in accordance with rules at N.J.A.C. 10:71-5.6(c) be determined to be "living in the household of another", shall be considered to have unearned income in the amount specified at N.J.A.C. 10:71-5.4(a)12 less \$20.00. The amount of income so assigned is not rebuttable by the applicant or recipient.

2. Any aged, blind, or disabled person other than those addressed in (c)1. above, to whom food, clothing, or shelter is given or paid for by someone other than a spouse, parent, or minor child residing in the same household, shall be presumed to receive in-kind support and maintenance. The presumed value of the support and maintenance will be the values specified at N.J.A.C. 10:71-5.4(a)12. The presumed value so assigned may be rebutted in accordance with the provisions of that subsection.

(d) In accordance with the rules at N.J.A.C. 10:71-5.5, the income of the spouse of an aged, blind, or disabled individual shall be deemed to the aged, blind, or disabled individual if they are residing in the same household. Income of the parent(s) of a blind or disabled child under the age of 18 residing in the same household shall be deemed available to the child in determining income eligibility for benefits under this chapter. No income shall be deemed to an aged, blind, or disabled individual from a person who is a member of a household unit of an eligible pregnant woman or child under the provisions of this chapter or who is in the budget unit of eligible AFDC-related Medically Needy cases (including a case that is eligible pending spend-down.)

1. If the countable income (before income deeming) of the aged, blind, or disabled individual exceeds the poverty income guideline for one person he or she is ineligible for benefits and income deeming does not apply.

2. When income of a spouse is deemed to an aged, blind, or disabled individual, the total countable income after deeming is compared to the poverty income guideline for two persons.

3. In determining income eligibility of a child, the child's income after deeming is compared to the poverty income guideline for one person.

4. When the income of a spouse must be deemed to both an aged,

blind, or disabled individual and a blind or disabled child, the income is first deemed to the aged, blind, or disabled spouse. If the income (after deeming) of the aged, blind, or disabled spouse does not exceed the poverty income guideline, he or she is income eligible and there is no income to be deemed to the blind or disabled child. If the poverty income guideline is exceeded, the aged, blind, or disabled adult is income ineligible and the excess income is deemed to the blind or disabled child.

5. When parental income must be deemed to more than one blind or disabled child, the deemable income shall be divided equally among such children.

10:72-4.[4]5 Resource eligibility

(a) [Persons] Pregnant women and infants seeking Medicaid benefits under the provisions of this chapter are eligible without regard to the value of the household unit's resources. The county welfare agency shall inquire about the household unit's resources only in order to establish income that may result from the household unit's resources.

(b) Aged, blind, or disabled persons must meet resource eligibility criteria as specified below in order to be eligible for benefits under this chapter. Eligibility for benefits does not exist in any month in which the countable resources of an aged, blind, or disabled person exceeds the limits below:

	Individual	Couple
January 1, 1988 through December 31, 1988	3,800	5,700
January 1, 1989 and thereafter	4,000	6,000

1. The resource provisions of the Medicaid Only Manual apply in the determination of countable resources for aged, blind, or disabled individuals except that, the provisions requiring the deeming of the resources of an alien's sponsor (N.J.A.C. 10:71-4.6(f)) do not apply in this chapter.

2. The spouse-to-spouse and parent-to-child deeming of resources found at N.J.A.C. 10:71-4.6 apply to eligibility under this chapter. In the deeming of resources from one parent to a child, the countable parental resources in excess of the Medicaid Only resource limit for an individual shall be deemed to the blind or disabled child. When the resources of two parents must be deemed to a child, the countable parental resources in excess of the Medicaid Only resource limit for a couple shall be deemed to the child.

3. For aged, blind, or disabled persons, the policy concerning transfer of resources within 24 months of the date of application (see N.J.A.C. 10:71-4.7), applies equally to eligibility under this chapter.

# MISCELLANEOUS NOTICES

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF COASTAL RESOURCES

#### Hudson River Waterfront Development: Extension of Comment Period

**Reproposed Amendment: N.J.A.C. 7:7E-3.41, 7.41 and 8.11**

**Proposed New Rule: N.J.A.C. 7:7E-3.46**

Take notice that the Department of Environmental Protection is extending until **March 18, 1988** the comment period for the submission of written comments on the proposal establishing a Hudson River Waterfront Special Area Policy within the rules on Coastal Resources and Development. The proposal was published on January 19, 1988 at 20 N.J.R. 139(a). Please refer to the proposal for additional information.

**Interested persons** may submit written comments on the proposal until March 18, 1988 to:

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

(b)

### OFFICE OF GREEN ACRES

#### Green Acres Program: Extension of Comment Period

**Proposed Repeals and New Rules: N.J.A.C. 7:36-1, 4 and 7**

**Proposed New Rules: N.J.A.C. 7:36-2, 3, 5 and 6**

Take notice that the Department of Environmental Protection is extending until **April 6, 1988** the period for submission of written comments on the proposal establishing criteria and procedures for the disbursement of Green Acres Funds to counties and municipalities within the State. The proposal was published on December 21, 1987 in the New Jersey Register at 19 N.J.R. 2358(b). Please refer to the proposal for additional information.

**Interested persons** may submit written comments on the proposal until April 6, 1988 to:

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

(c)

### DELAWARE AND RARITAN CANAL COMMISSION

#### Delaware and Raritan Canal State Park Review Zone: Extension of Comment Period

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

Take notice that the Department of Environmental Protection is extending until **April 6, 1988** the period for the submission of written comments on the proposed adoption of new rules concerning the Delaware and Raritan Canal State Park Review Zone, N.J.A.C. 7:45. The proposed new rules were published on January 4, 1988 in the New Jersey Register at 20 N.J.R. 23(a). Please refer to the proposal for further information.

**Interested persons** may submit written comments on the proposal until April 6, 1988 to:

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

(d)

### NEW JERSEY CLEAN AIR COUNCIL

#### Resource Recovery and Hazardous Waste Disposal Notice of Public Hearing

Take notice that the New Jersey Clean Air Council, pursuant to the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., will hold a public hearing entitled "Resource Recovery and Hazardous Waste Disposal". The public hearing will be held on:

Monday, April 18, 1988 at 9:00 A.M.  
Lewis Herrmann Labor Education Center  
Labor Education Center Auditorium  
Rutgers University  
Ryders Lane  
New Brunswick, New Jersey

This public hearing will seek to obtain information about issues affecting ambient air quality at each step of the waste disposal pathway. The waste could be either solid waste or hazardous waste and could evolve from the kitchen sink, the plant floor, or the business office. The air quality could be affected by the evolution, collection, transportation, or ultimate disposal of the waste.

The objective of the Clean Air Council's 1988 public hearing is to determine the effectiveness of emission controls for those facilities and technologies presently employed or to be employed for collecting, transporting, or disposing of waste. If the controls are adequate, a good job has been done. If not, now is the time to make adjustments to minimize or eliminate the impact of waste disposal activities on the ambient air quality in the State of New Jersey.

Waste disposal technology is generally available. Local, county, and state governments are seeking to apply available solutions and technology, which range from mass burning to source separation. The private solid waste disposal technology sector is proceeding to improve operations and minimize by-products, while attempting to respond to the changing demands of both public and private solid waste disposal facilities in unique and specific ways.

The recent phenomenal growth of New Jersey's economy and the development of certain areas of the state will also affect how waste is collected and disposed.

**Persons wishing to make oral presentations** are asked to reserve a 15 minute time period by telephoning or writing to:

Helen Benedetti  
New Jersey Department of Environmental Protection  
Division of Environmental Quality  
CN027  
401 East State Street  
Trenton, New Jersey 08625  
609-292-6704

Presenters should bring 15 copies of their remarks to the hearing for use by the Council members, the hearing transcriber, and the press. The hearing record will be held open for 15 days following the date of the public hearing so that additional written testimony can be received.

**Submit written comments** by May 3, 1988 to:

John D. Grant, Chairman  
New Jersey Clean Air Council  
New Jersey Department of Environmental Protection  
Division of Environmental Quality  
CN027  
401 East State Street  
Trenton, New Jersey 08625

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

The Clean Air Council wants to explore the following questions at the public hearing:

1. What are we doing or planning in regard to the creation and disposal of new types of waste products and how will this affect New Jersey's air quality?
2. What can be done to make emission controls from these activities more effective and less costly? How do the alternatives affect air quality?
3. What controls are needed to ensure the reduction or elimination of emissions?
4. How can existing regulations be made more emissions effective and cost effective?
5. What resources are required to ensure effective operation of emissions controls at disposal facilities?
6. What are the limits of local, county, and State personnel and budgets?
7. What role should New Jersey Board of Public Utilities play to ensure environmentally sensitive disposal operations have competitive returns for the capital invested?
8. How is the private sector minimizing waste generation? Are these efforts helping to reduce or eliminate air emissions? How might such technologies and facilities help control emissions at public disposal operations?
9. How is the private sector minimizing the impact of its waste disposal on the ambient air quality? How might these solutions help the implementation of public waste disposal? Is on-site disposal more effective than off-site disposal?
10. How do we minimize or dispose of our waste to have a minimal impact on air emissions—as operators, as contributors to waste repositories, as the regulated community, as the regulators? What examples are there from other local, county or state governments?

(a)

**DIVISION OF WATER RESOURCES**

**Amendment to the Mercer County Water Quality Management Plan**

**Public Notice**

Take notice that the East Windsor Municipal Utilities Authority has petitioned Mercer County to amend the Mercer County Water Quality Management (WQM) Plan. This amendment would approve a revised Wastewater Management Plan for East Windsor Township. Among the actions which would be authorized by the Wastewater Management Plan are an expansion of the existing East Windsor Municipal Utilities Authority sewage treatment plant to 3.35 million gallons per day and a new East Windsor Municipal Utilities Authority sewage treatment plant with a capacity of 1.15 million gallons per day. The East Windsor Municipal Utilities Authority will be designated as Wastewater Management Agency for all facilities in East Windsor Township.

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, April 13, 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 Horzempa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted by April 28, 1988. 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 the 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.

(b)

**Amendment to the Upper Raritan and Northeast Water Quality Management Plans**

**Public Notice**

Take notice that an amendment to the Upper Raritan and Northeast Water Quality Management (WQM) Plans has been submitted for approval. This amendment proposes to adopt a Wastewater Management Plan for the Borough of Bernardsville. Among the actions authorized by the document will be the expansion of the existing Borough of Bernardsville Sewage Treatment Plant to a capacity of 0.8 million gallons per day. The document will also establish sewer service areas for wastewater treatment facilities in the Borough of Bernardsville. The Borough of Bernardsville will be Wastewater Management Agency for all facilities for which it serves as co-permittee.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan and Northeast WQM Plans. All information dealing with the aforesaid WQM Plans 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 Horzempa, 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. Horzempa 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 amendment would approve the Delran Township Wastewater Management Plan (WMP). This WMP would allow the expansion of the existing Delran Sewage Treatment Plant (STP) from 1.5 million gallons per day (MGD) to 2.5 MGD. The WMP would also expand the sewer service area of the 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 Horzempa, 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.

**ENVIRONMENTAL PROTECTION**

Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

**(a)**

**DIVISION OF ENVIRONMENTAL QUALITY  
Notice of Correction and Extension of Comment  
Period  
Toxic Catastrophe Prevention Act  
Confidentiality and Trade Secrets  
Proposed New Rules: N.J.A.C. 7:31-2.12, 2.15 and  
7:31-5**

Take notice that the Notice of Proposal for proposed new rules N.J.A.C. 7:31-2.12, 2.15 and 7:31-5, published in the February 16, 1988 New Jersey Register at 20 N.J.R. 350(a) contained erroneous initial capitalizations of the word "state" in the ninth and fifteenth paragraphs of the Summary, the second paragraph of the Environmental Impact statement and the proposed text of N.J.A.C. 7:31-5.3(a)3; 5.5(d)9; 5.6(c)5; 5.7(d)3 and (g)liii; and 5.12 "privileged trade secret or security information" definition. At each of these locations, the word "state" should be lower case.

Take further notice that the comment period for these proposed new rules is extended to April 6, 1988. Submit comments by that date to:

James A. Blocher  
Office of Regulatory Services  
New Jersey Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625

**HEALTH**

**(b)**

**Nursing Shortage Study Commission  
Notice of Public Hearings**

Take notice that the Nursing Shortage Study Commission, created by Governor Thomas H. Kean through Executive Order No. 179, will hold public hearings as follows:

Friday, March 11, 1988 from 2:00 PM to 6:00 PM in the Ballroom, Student Center, Glassboro State College, Route 322, Glassboro, NJ.

Monday, March 21, 1988 from 2:00 PM to 6:00 PM in the Cavalla Room, Rider College, 2083 Lawrenceville Road, Student Center Building, Lawrenceville, NJ.

The purpose of these hearings is to consider issues pertaining to the nursing shortage. Testimony should include a statement of the problem, contributing factors, potential solutions and a recommendation for action. All testimony will be considered by the entire Commission in a report of findings and recommendations to the Governor.

Persons wishing to testify should write Mary Anne Yeager, Special Assistant, NJ State Department of Health, Room 801, Health-Agriculture Building, CN 360, Trenton, NJ 08625.

Fifteen copies of testimony should be provided to Ms. Yeager at the hearing. For those wishing to testify, presentation time will be limited to five minutes.

**TRANSPORTATION**

**(c)**

**THE COMMISSIONER  
Policy Prohibiting Sexual Harassment on NJDOT  
Construction Projects  
Notice of Correction**

Take notice that two errors appear in the text published on December 7, 1987 at 19 N.J.R. 2307(c) concerning the Department's Policy Prohibiting Sexual Harassment on NJDOT Construction Projects. First, that

**MISCELLANEOUS NOTICES**

portion of the text in the first full paragraph which reads "which shall be added to NJDOT contracts for work specified below," should be deleted, as that language is erroneous and not in accordance with the Department's policy. Secondly, the word "Commissioner" which appears at Section II C. Authority, should be changed to read "Commission."

**TREASURY-GENERAL**

**(d)**

**DIVISION OF BUILDING AND CONSTRUCTION  
Architect-Engineer Selection  
Notice of Assignments—Month of January 1988**

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

Last list dated December 30, 1987.

The following assignments have been made:

DBC No.	PROJECT	A E	CCE
I017	Waterproof Various Buildings Montclair State College Upper Montclair, NJ	Myland-Valk Partnership	\$130,000
M773	Asbestos Removal D. A. Tank & Water Softener Tank at Power House Hunterdon Developmental Center Clinton, NJ	Environmental Health Inspections Commercial, Inc.	\$40,000
C311-01	Asbestos Removal Laundry Building Rahway State Prison Rahway, NJ	PMK Engineering & Testing, Inc.	\$60,000
M755	Evaluation of Water Supply System Marlboro Psychiatric Hospital Marlboro, NJ	T & M Associates	\$2,000 Services
M764	Reroof Main Building Ancora Psychiatric Hospital Ancora, NJ	Goldberg Associates, PA	\$300,000
I030	Replacement of #2 Chiller Ramapo College of NJ Mahwah, NJ	Barrett Associates	\$250,000
I015	Pavement & Sidewalk Repairs Montclair State College Upper Montclair, NJ	Tighe Firtion Carrino	\$340,000
M760	Study-Upgrade Wastewater Plant Arthur Brisbane Child Treatment Center Farmingdale, NJ	Kupper Associates	\$2,500 Services
T199	Sanitary Sewer Line DOT Maintenance Facility Totowa, NJ	O'Brien & Gere Engineers, Inc.	\$70,500
C353 Renego- tiated Project	162 Bed Reception Unit Yardville, NJ	CUH2A	\$13,917,810
F047	Facility Consultant-FY 88 Montclair State College	Thomas E. Torricelli, AIA	\$15,000 Services
F048	Facility Consultant-FY 88 Stockton State College	Pennoni Associates	\$50,000 Services
J028	Facility Consultant-FY 88 Dept. of Property & Facilities Management	Rolf Jensen & Assoc.	\$50,000 Services
J029	Facility Consultant-FY 88 Dept. of Property & Facilities Management	Shirmer Engineering	\$10,000 Services
J030	Facility Consultant-FY 88 Dept. of Property & Facilities Management	Ebasco Services, Inc.	\$10,000 Services
J031	Facility Consultant-FY 88 Dept. of Property & Facilities Management	Tighe, Firtion, Carrino & Associates	\$10,000 Services
J032	Facility Consultant-FY 88 Dept. of Property & Facilities Management	Maida Engineering, Inc.	\$10,000 Services

**MISCELLANEOUS NOTICES**

**TREASURY-GENERAL**

D045	Facility Consultant-FY 88 Dept. of Corrections	Thomas Tyler Moore Associates	\$20,000 Services
D046	Facility Consultant-FY 88 Dept. of Corrections	Applied Wastewater Technology	\$10,000 Services
C351	Contact Visiting Building Rahway State Prison Woodbridge Township Middlesex Co., NJ	Kitchen & Associates	\$700,000
COMPETITIVE PROPOSALS			
	Kitchen & Associates	6.643%	
	Williams/Widmer & Assoc.	7.85%	
	Fariday Thorne Maddish	No Proposal Received	
S207	New Two Lane Inspection Facility with Service Core Division of Motor Vehicles Winslow Twp., Camden County, NJ	The Lisiewski Group, PA	\$1,500,000
COMPETITIVE PROPOSALS			
	The Lisiewski Group, PA	3.95%	
	Armstrong Jordan Pease, Architects	4.94%	
	Basco Associates, PA	5.18%	
	Eugene F. O'Connor, AIA	8.73%	
P555	Liberty Walk & Amphitheatre Liberty State Park Jersey City, NJ	Wallace Roberts & Todd	\$4,400,000
COMPETITIVE PROPOSALS			
	Wallace Roberts & Todd	4.45%	
	Vollmer Associates/Bohm-NBBJ	4.49%	

E180	The Grad Partnership Geddes Brecher Qualls Cunningham	5.95% 9.90%	
	Facilities Master Plan Division of Direct Services Dept. of Education	EI Associates	\$96,750 Services

COMPETITIVE PROPOSALS

	EI Associates	\$96,750 Lump Sum	
	Haines Lundberg Waehler Kolbe & Poponi	\$275,000 Lump Sum \$296,500 Lump Sum	
C356	Asbestos Removal Marlboro Camp Building Marlboro Psychiatric Hospital Marlboro, NJ	Testwell Craig of NJ, Inc.	\$3,950 Services

COMPETITIVE PROPOSALS

	Testwell Craig Labs of NJ, Inc.	\$3,950 Lump Sum	
	Princeton Testing Lab, Inc.	\$4,725 Lump Sum	
	PMK Engineering & Testing, Inc.	\$14,000 Lump Sum	
C311-01	Asbestos Removal—Laundry Building Rahway State Prison Rahway, NJ	PMK Engineering & Testing, Inc.	\$60,000

COMPETITIVE PROPOSALS

	PMK Engineering & Testing, Inc.	\$10,875 Lump Sum	
	Northeastern Analytical Corp.	\$17,252 Lump Sum	
	Testwell Craig Labs of NJ, Inc.	\$17,490 Lump Sum	

## 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.

<b>OFFICE OF ADMINISTRATIVE LAW—TITLE 1</b>		<b>N.J.A.C.</b>	<b>Expiration Date</b>
<b>N.J.A.C.</b>	<b>Expiration Date</b>		
1:1	5/4/92	3:22	5/21/89
1:5	10/20/91	3:23	7/6/92
1:6	5/4/92	3:24	8/20/89
1:6A	5/4/92	3:25	8/17/92
1:7	5/4/92	3:26	12/31/90
1:10	5/4/92	3:27	9/16/90
1:10A	5/4/92	3:28	12/17/89
1:10B	10/6/91	3:30	10/17/88
1:11	5/4/92	3:38	10/5/92
1:13	5/4/92	3:41	10/16/90
1:20	5/4/92		
1:21	5/4/92		
1:30	2/14/91		
1:31	6/17/92		
		<b>PERSONNEL (CIVIL SERVICE)—TITLE 4/4A</b>	
		<b>N.J.A.C.</b>	<b>Expiration Date</b>
		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
<b>AGRICULTURE—TITLE 2</b>			
<b>N.J.A.C.</b>	<b>Expiration Date</b>		
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		
		<b>COMMUNITY AFFAIRS—TITLE 5</b>	
		<b>N.J.A.C.</b>	<b>Expiration Date</b>
		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	12/24/92
		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
		5:19	2/1/93
		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
<b>BANKING—TITLE 3</b>			
<b>N.J.A.C.</b>	<b>Expiration Date</b>		
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		
3:18	1/19/93		
3:19	3/17/91		
3:21	2/2/92		
		<b>DEPARTMENT OF DEFENSE—TITLE 5A</b>	
		<b>N.J.A.C.</b>	<b>Expiration Date</b>
		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
7:6	12/19/88
7:7	5/7/89
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
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	2/1/93

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

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
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	10:141	2/21/89

**HUMAN SERVICES—TITLE 10**

N.J.A.C.	Expiration Date
10:1	5/6/88
10:2	1/5/92
10:3	9/19/88
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:12	1/5/92
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:40	3/15/89
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	2/7/88
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/88
10:67	3/3/91
10:68	7/7/91
10:69A	4/26/88
10:69B	11/21/88
10:70	6/16/91
10:71	1/6/91
10:80	8/23/89
10:81	10/15/89
10:82	10/29/89
10:85	1/30/90
10:87	3/1/89
10:89	9/11/90
10:90	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**

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A: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**

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	7/7/88
11:1-22	7/7/88
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	11/7/88
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91

**LABOR—TITLE 12**

N.J.A.C.	Expiration Date
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:18	3/7/93
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
12:110	1/19/93
12:120	5/3/90
12:175	12/9/88

N.J.A.C.	Expiration Date
12:190	1/4/93
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:9	3/7/93
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
13:77	2/1/93

**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
		18:38	2/16/93
		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 January 4, 1988 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(c).

### 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.1988 d.1 means the first rule adopted in 1988.

**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 series number and supplement 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: SUPPLEMENT DECEMBER 21, 1987**

**NEXT UPDATE: SUPPLEMENT JANUARY 19, 1988**

**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. 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	20 N.J.R. 125 and 220	January 19, 1988
19 N.J.R. 1259 and 1352	July 20, 1987	20 N.J.R. 221 and 320	February 1, 1988
19 N.J.R. 1353 and 1474	August 3, 1987	20 N.J.R. 321 and 434	February 16, 1988
19 N.J.R. 1475 and 1588	August 17, 1987	20 N.J.R. 435 and 570	March 7, 1988
19 N.J.R. 1589 and 1676	September 8, 1987		

**N.J.A.C. CITATION**

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1:1-14.1	Media coverage of public hearings
1:1-14.5	Ex parte communications and agency heads
1:30-1.2, 2.8	Use of appendices

**PROPOSAL NOTICE (N.J.R. CITATION)**

20 N.J.R. 127(a)
19 N.J.R. 1761(b)
19 N.J.R. 675(a)

**DOCUMENT NUMBER**

R.1988 d.78
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**ADOPTION NOTICE (N.J.R. CITATION)**

20 N.J.R. 385(a)
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**Most recent update to Title 1: TRANSMITTAL 1987-6 (supplement December 21, 1987)**

**AGRICULTURE—TITLE 2**

2:32-2.1, 2.3, 2.5, 2.8, 2.10, 2.12, 2.13, 2.14, 2.19, 2.20, 2.22, 2.25, 2.27, 2.33	Sire Stakes Program
2:71-2.4, 2.5, 2.6	Jersey Fresh Logo program
2:76-6.2, 6.5, 6.6, 6.9, 6.15, 6.16	Farmland development easements: residual dwelling sites

20 N.J.R. 323(a)

19 N.J.R. 2327(b)	R.1988 d.97
20 N.J.R. 324(a)	

20 N.J.R. 525(a)

**Most recent update to Title 2: TRANSMITTAL 1987-8 (supplement November 16, 1987)**

**BANKING—TITLE 3**

3:1-1.1	Maximum interest rate on first mortgages on residences with one to six units
3:1-14	Revolving credit equity loans
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions
3:6-4	Banks and savings banks: action upon detection or discovery of crime
3:6-9	Capital stock savings bank: change in control
3:10-8, 9	Banks and savings banks: mortgage loan practices
3:11-12	Commercial loans by savings banks
3:13-2.2, 4.3, 4.4	Bank holding companies: financial filings
3:18-10	Secondary mortgage loan licensure
3:23-2.1	Secondary mortgage loan licensure
3:27-6, 7	Savings and loan associations: mortgage loan practices
3:38-4, 5, 7	Mortgage bankers and brokers: loan practices
3:42	Pinelands Development Credit Bank: procedural rules

19 N.J.R. 2089(a)

19 N.J.R. 1594(a)

19 N.J.R. 1355(a)

19 N.J.R. 1595(a)

19 N.J.R. 1762(a)

19 N.J.R. 1356(a)

19 N.J.R. 1679(b)

20 N.J.R. 127(b)

19 N.J.R. 1929(a)

19 N.J.R. 1929(a)

19 N.J.R. 1358(a)

19 N.J.R. 1360(a)

20 N.J.R. 128(a)

R.1988 d.28

R.1988 d.36

R.1988 d.36

20 N.J.R. 183(a)

20 N.J.R. 183(b)

20 N.J.R. 183(b)

**Most recent update to Title 3: TRANSMITTAL 1987-6 (supplement October 19, 1987)**

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4:1-16.1-16.6, 24.2	Repeal (see 4A:8)
4:1-17, 18, 20, 26	Repeal (see 4A:6-1, 2, 3, 4, 5)
4:2-6.3, 11, 13, 14.1, 15.1	Repeal (see 4A:4)
4:2-16.1, 16.2	Repeal (see 4A:8)
4:2-17, 18, 20, 26	Repeal (see 4A:6-1, 2, 3, 4, 5)
4:3-6.4, 11.1, 13.2, 14	Repeal (see 4A:4)
4:3-16.1, 16.2	Repeal (see 4A:8)

20 N.J.R. 327(a)

19 N.J.R. 1363(a)

19 N.J.R. 1764(a)

20 N.J.R. 327(a)

19 N.J.R. 1363(a)

19 N.J.R. 1764(a)

20 N.J.R. 327(a)

19 N.J.R. 1363(a)

R.1988 d.13

R.1988 d.13

20 N.J.R. 54(a)

20 N.J.R. 54(a)

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4:3-17, 20	Repeal (see 4A:6-1, 2, 3, 4, 5)	19 N.J.R. 1764(a)	R.1988 d.13	20 N.J.R. 54(a)
4:4	Repeal (see 4A:6-6)	19 N.J.R. 1774(a)	R.1988 d.11	20 N.J.R. 67(a)

**Most recent update to Title 4: TRANSMITTAL 1987-4 (supplement November 16, 1987)**

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4A:4	Selection and appointment	20 N.J.R. 327(a)		
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:6-1.3, 1.10	Sick leave; leave without pay	20 N.J.R. 133(a)		
4A:6-1.3, 1.10	Sick leave, leave without pay: extension of comment period	20 N.J.R. 341(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)		

**Most recent update to Title 4A: TRANSMITTAL 1987-2 (supplement November 16, 1987)**

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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)	R.1988 d.49	20 N.J.R. 256(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)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)		
5:19	Continuing care retirement communities: disclosure requirements	19 N.J.R. 597(a)	R.1988 d.60	20 N.J.R. 256(b)
5:19-6.3, 8	Continuing care retirement communities: application fees; nonbinding reservation agreements	20 N.J.R. 347(a)		
5:23	Uniform Construction Code	20 N.J.R. 223(a)		
5:23-2.23	UCC: use and occupancy of buildings undergoing alteration	20 N.J.R. 223(b)		
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)	R.1988 d.50	20 N.J.R. 268(a)
5:23-9.1, 9.2	UCC interpretations: Plumbing Subcode and manufactured housing	20 N.J.R. 224(a)		
5:24-2.3	Senior citizens and disabled protected tenancy: taxable income	20 N.J.R. 349(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)	R.1988 d.84	20 N.J.R. 385(b)
5:100-2.5	Failure to report suspected abuse or exploitation of institutionalized elderly	19 N.J.R. 1686(a)	R.1988 d.101	20 N.J.R. 526(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)		

**Most recent update to Title 5: TRANSMITTAL 1987-10 (supplement December 21, 1987)**

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**Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)**

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6:20-3.1	Reproposed: Determining tuition rates for sending and receiving districts	19 N.J.R. 2329(a)		
6:22-1.1-1.7, 2.1-2.5, 3.1, 3.4	School facility planning services	20 N.J.R. 3(a)		
6:28-11	Special education pilot project	20 N.J.R. 14(a)		
6:64	County and local library services	19 N.J.R. 1931(a)	R.1988 d.67	20 N.J.R. 386(a)

**Most recent update to Title 6: TRANSMITTAL 1987-11 (supplement December 21, 1987)**

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7:1C-1.2, 1.5	90-day construction permits: fee structure for treatment works approvals	20 N.J.R. 135(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)	R.1988 d.89	20 N.J.R. 387(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)	R.1988 d.90	20 N.J.R. 388(a)
7:1G-3.2, 5.2, 7	Worker and Community Right to Know: extension of comment period	19 N.J.R. 2234(b)		
7:3-2	Management of privately-owned woodlands: approved foresters list	20 N.J.R. 137(a)		
7:6-3.10	Water-skiing on Lake Hopatcong	20 N.J.R. 138(a)		
7:7-2.1, 2.3	Coastal Permit Program: CAFRA exemptions: waterfront development	19 N.J.R. 807(a)		
7:7-2.2	Coastal wetlands maps for Gloucester County	19 N.J.R. 2090(b)		
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)		
7:7A	Freshwater Wetlands Protection Act rules	19 N.J.R. 2330(a)		
7:7A-8.1	Freshwater Wetlands Protection Act rules: correction	20 N.J.R. 22(a)		
7:7E-3.41, 3.46, 7.14, 8.11	Hudson River waterfront development	20 N.J.R. 139(a)		
7:7F	Shore Protection Program	19 N.J.R. 2091(a)	R.1988 d.43	20 N.J.R. 186(a)
7:8	Storm water management	19 N.J.R. 2227(a)	R.1988 d.99	20 N.J.R. 526(b)
7:9-1	Sewer systems and wastewater treatment plants	19 N.J.R. 2227(b)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(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)	R.1988 d.100	20 N.J.R. 528(a)
7:11-2.2, 2.3, 2.9, 2.13	New Jersey Water Supply Authority rates and charges	20 N.J.R. 144(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)	R.1988 d.79	20 N.J.R. 391(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-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)	R.1988 d.59	20 N.J.R. 269(a)
7:14A-11.1	Hazardous waste management: public access to records and information	19 N.J.R. 1869(a)	R.1988 d.57	20 N.J.R. 273(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)		
7:26-1.4, 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)	R.1988 d.57	20 N.J.R. 273(a)
7:26-2.13	Solid waste facilities: recordkeeping	19 N.J.R. 171(a)	R.1988 d.73	20 N.J.R. 393(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)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties	19 N.J.R. 1142(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Cumberland and Gloucester counties	19 N.J.R. 1481(a)		
7:26-8.14	Ethylene bisdithiocarbamic acid (EBDC) production	19 N.J.R. 1938(a)		
7:26-12.2	Hazardous waste facilities: application signatories	19 N.J.R. 11(b)	R.1988 d.56	20 N.J.R. 276(a)
7:26-14.1, 14A	Resource Recovery and Solid Waste Disposal Facility Loans	19 N.J.R. 828(a)		
7:27-16.1, 16.3	Stage II recovery of gasoline vapors	19 N.J.R. 1938(b)	R.1988 d.44	20 N.J.R. 186(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:29B	Determination of noise from stationary sources	19 N.J.R. 1483(a)	R.1988 d.58	20 N.J.R. 278(a)
7:29B	Determination of noise from stationary sources: extension of comment period	19 N.J.R. 2092(a)		
7:30	Pesticide Control Code	19 N.J.R. 1611(a)	R.1988 d.9	20 N.J.R. 75(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 Catastrophe Prevention Act program: extension of comment period	19 N.J.R. 2092(b)		
7:31-2.12, 2.15, 5	Toxic Catastrophe Prevention Act program: confidentiality and trade secrets	20 N.J.R. 350(a)		
7:36	Green Acres Program	19 N.J.R. 2358(b)		
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)		

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**HEALTH—TITLE 8**

8:7-1.2	Public Health Licensing and Examination Board	20 N.J.R. 364(a)		
8:24	Chapter XII, State Sanitary Code: retail food establishments	20 N.J.R. 365(a)		
8:31B-3.7, 3.17, 3.27, 3.51, 3.55, 3.73, 4.42	Hospital reimbursement for existing capital indebtedness	19 N.J.R. 1145(a)	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)	R.1988 d.88	20 N.J.R. 393(b)
8:33G-3.11	Long-term care beds for former psychiatric hospital patients	19 N.J.R. 614(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)	R.1988 d.87	20 N.J.R. 394(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)
8:65-1.3, 6.6, 8.13	Handling of sodium pentobarbital in animal humane facilities	20 N.J.R. 366(a)		
8:65-7.14	Controlled substances: Schedule III and IV prescription refills	19 N.J.R. 1612(a)		
8:65-7.14	Schedules III and IV prescription refills: withdrawal of proposal	20 N.J.R. 32(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 1312(b), 1644(a), 2278(b), 2400(a))	19 N.J.R. 615(a)	R.1988 d.32	20 N.J.R. 191(a)
8:71	Interchangeable drug products (see 19 N.J.R. 2279(b), 2401(a))	19 N.J.R. 1488(a)	R.1988 d.31	20 N.J.R. 190(a)
8:71	Interchangeable drug products	19 N.J.R. 1878(a)	R.1988 d.33	20 N.J.R. 191(b)
8:71	Interchangeable drug products	20 N.J.R. 146(a)		

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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	Student Assistance Board: scholarship and tuition aid programs	20 N.J.R. 33(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)		
9:7-3.2	1988-89 Tuition Aid Grant Award Table	20 N.J.R. 147(a)		
9:7-9.9, 9.11, 9.12	Congressional Teacher Scholarship Program	19 N.J.R. 2102(a)		
9:9-1.12, 1.13, 1.16	Repayment of student loans: nonconverted accounts	19 N.J.R. 1619(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)		
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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)		
10:4	Communication with communities regarding development of group homes: extension of comment period	20 N.J.R. 149(a)		
10:8	Personal needs allowance for indigent persons in State and county institutions	19 N.J.R. 617(a)		
10:44A	Licensed community residences for developmentally disabled	20 N.J.R. 149(b)		
10:49-1.1	Presumptive Medical eligibility for pregnant women	20 N.J.R. 367(a)		
10:49-1.1, 1.2	Medical assistance for aged, blind and disabled	Emergency (expires 4-2-88)	R.1988 d.96	20 N.J.R. 548(a)
10:49-1.3-1.6, 3	HealthStart: comprehensive maternity and pediatric care services	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:49-1.4	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:49-3.20	HealthStart Pediatric Care Registration: correction to HCPC codes	_____	_____	20 N.J.R. 401(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	19 N.J.R. 2203(a)	R.1988 d.48	20 N.J.R. 288(a)
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)	R.1988 d.62	20 N.J.R. 278(b)
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)	R.1988 d.62	20 N.J.R. 278(b)
10:54-1.1, 1.2	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:58-1.2, 1.3	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
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)	R.1988 d.62	20 N.J.R. 278(b)
10:66-3	Family planning services provided by independent clinics	19 N.J.R. 2376(a)		
10:69A	Pharmaceutical Assistance to the Aged and Disabled	20 N.J.R. 369(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)		
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only computation amounts and income eligibility standards	Emergency (expires 3-4-88)	R.1988 d.55	20 N.J.R. 207(a)
10:72-1.1, 1.2, 2.1, 2.3, 2.7, 3.4, 3.5, 4.3, 4.4, 4.5	Medical assistance for aged, blind and disabled	Emergency (expires 4-2-88)	R.1988 d.96	20 N.J.R. 548(a)
10:72-6	Presumptive Medicaid eligibility for pregnant women	20 N.J.R. 367(a)		
10:81-8.22, 14.20	PAM: extension of Medicaid benefits to certain employed persons	19 N.J.R. 2206(a)	R.1988 d.47	20 N.J.R. 291(a)
10:81-11.7	Child support enforcement program	19 N.J.R. 1879(b)		
10:82-2.6	Initial eligibility in AFDC	19 N.J.R. 1781(a)	R.1988 d.38	20 N.J.R. 193(a)
10:82-4.15	Lump sum income and AFDC eligibility	19 N.J.R. 1782(a)	R.1988 d.40	20 N.J.R. 193(b)
10:85-1.5	General Assistance Program audits	19 N.J.R. 2376(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)	R.1988 d.39	20 N.J.R. 194(a)
10:85-5.3	General Assistance Manual: deadline for medical bills	20 N.J.R. 162(a)		
10:85-6.3	General Assistance Program statement of refunds: preparation of Form GA-12	19 N.J.R. 2377(a)		
10:86	AFDC Work Incentive Program	20 N.J.R. 162(b)		
10:87-5.9	Food Stamps eligibility: income exclusion and utility allowance payments	19 N.J.R. 1986(a)		
10:87-11.21, 11.28	Liability for overissuance of food stamp benefits	20 N.J.R. 162(c)		
10:89-2.2, 2.3, 3.2, 3.3, 3.4, 3.6, 4.1	Home Energy Assistance program	19 N.J.R. 2208(a)	R.1988 d.46	20 N.J.R. 291(b)
10:100-3.7	Chargeable CWA for funerals and burials	20 N.J.R. 163(a)		
10:100, App. A	Supplemental Security Income payment levels	Emergency (expires 3-4-88)	R.1988 d.54	20 N.J.R. 208(a)

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10:123-3.2	Residential health care facilities and boarding homes: personal needs allowance of residents	20 N.J.R. 225(b)		
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<b>CORRECTIONS—TITLE 10A</b>				
10A:3-4.1	Off-duty carrying of firearms: peace officer titles	20 N.J.R. 42(a)	R.1988 d.107	20 N.J.R. 532(a)
10A:4-9.18	Inmate discipline: suspending sanctions	19 N.J.R. 1717(b)	R.1988 d.61	20 N.J.R. 294(a)
10A:9-4.5	Inmate classification: increasing custody status	19 N.J.R. 1782(b)	R.1988 d.30	20 N.J.R. 194(b)
10A:9-4.5	Reduction of inmate custody status	19 N.J.R. 2235(a)	R.1988 d.106	20 N.J.R. 533(a)
10A:10-6.3, 6.6	International transfer of inmates	19 N.J.R. 1620(a)	R.1988 d.29	20 N.J.R. 194(c)
10A:16-11	Special medical unit	20 N.J.R. 163(b)		
10A:17-2, 5, 6	Social services: Volunteer Service Program; religion; institutional chaplaincy	20 N.J.R. 167(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)		
<b>Most recent update to Title 10A: TRANSMITTAL 1987-8 (supplement December 21, 1987)</b>				
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11:1-8.1, 9, 12.1, 12.3, 12.4, 12.6, 14, 18, 19	Repeal (see 11:17-1, 2, 5)	20 N.J.R. 225(c)		
11:1-25	Official department mailing list: address information	19 N.J.R. 2236(a)	R.1988 d.64	20 N.J.R. 294(b)
11:2-1.1-1.6, 19.1-19.5	Repeal (see 11:17-3.1-3.5, 5.7)	20 N.J.R. 237(a)		
11:3-22.3	Submission of automobile coverage option survey	19 N.J.R. 2237(a)	R.1988 d.65	20 N.J.R. 295(a)
11:4-2	Replacement of life insurance policy	19 N.J.R. 1286(a)		
11:4-16.6	Basic hospital expense coverage	20 N.J.R. 172(a)		
11:4-18.3, 18.5, 18.10	Individual health policies: loss ratio standards	19 N.J.R. 1620(b)		
11:4-19	Optional coverage for pregnancy and childbirth benefits	20 N.J.R. 43(a)		
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)	R.1988 d.69	20 N.J.R. 402(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)		
11:12-1.3	Repeal (see 11:17-1, 2, 5)	20 N.J.R. 225(c)		
11:17-1, 2, 5	Insurance producer licensing	20 N.J.R. 225(c)		
11:17-3.1-3.5, 5.7	Insurance producer licensing: professional qualifications	20 N.J.R. 237(a)		
11:17-3.2	Insurance producer precicensing education: correction to proposal at 20 N.J.R. 237(a)	20 N.J.R. 370(a)		
11:18	New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge: pre-proposed new rules	20 N.J.R. 242(a)		
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<b>LABOR—TITLE 12</b>				
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12:60	Prevailing wages for public works	19 N.J.R. 345(b)		
12:100-4.2	Public employee safety and health: exposure to benzene	19 N.J.R. 2239(a)	R.1988 d.86	20 N.J.R. 403(a)
12:110	Public employee occupational safety and health	19 N.J.R. 1941(a)	R.1988 d.42	20 N.J.R. 195(a)
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<b>COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A</b>				
12A:9-1	Services to small businesses and women and minority businesses	19 N.J.R. 2377(b)	R.1988 d.95	20 N.J.R. 534(a)
12A:12-2	Local Development Financing Fund	19 N.J.R. 2381(a)		
12A:12-3	Tourism Matching Grant Program	20 N.J.R. 172(b)		
12A:50-1	Cogeneration: reporting by non-utility generators	19 N.J.R. 2383(a)		
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13:2-40.5	ABC county ID cards: correction			20 N.J.R. 425(a)
13:3-3.4, 3.5, 3.6	Amusement games: preproposal concerning player fees and value of prizes	20 N.J.R. 44(a)		
13:21-11.13	Temporary registration of motor vehicles	20 N.J.R. 176(a)		
13:21-21	Auto body repair facilities	19 N.J.R. 1624(c)		

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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)	R.1988 d.91	20 N.J.R. 537(a)
13:27A	Repeal (see 13:28)	20 N.J.R. 370(b)		
13:28	Board of Cosmetology and Hairstyling	20 N.J.R. 370(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)	R.1988 d.81	20 N.J.R. 403(c)
13:33-1.41	Ophthalmic dispensers and technicians: Board of Examiners fees	19 N.J.R. 2242(a)	R.1988 d.66	20 N.J.R. 295(b)
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)	R.1988 d.112	20 N.J.R. 538(a)
13:36-1.6	Board of Mortuary Science fees	20 N.J.R. 177(a)		
13:36-2.1	Qualification as mortuary science intern	19 N.J.R. 2245(a)	R.1988 d.111	20 N.J.R. 542(a)
13:39	Board of Pharmacy rules	19 N.J.R. 1952(a)		
13:39	Board of Pharmacy rules: extension of comment period	20 N.J.R. 244(a)		
13:40-5.1	Corner markers and ultimate user of land survey	19 N.J.R. 1631(a)	R.1988 d.45	20 N.J.R. 203(a)
13:42-1.1, 3.1	Board of Psychological Examiners: oral examination process	19 N.J.R. 2246(a)	R.1988 d.82	20 N.J.R. 404(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)
13:44C	Practice of audiology and speech-language pathology	20 N.J.R. 244(b)		
13:45A-12	Sale of dogs and cats	19 N.J.R. 853(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)
13:46-1A.3	Athletic Control Board: weighing of boxers	20 N.J.R. 380(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)
13:47-6.20, 7.17	Legalized games of chance: unaffiliated organizations; unlicensed games	20 N.J.R. 249(a)		
13:47C-2.1	Meat, poultry, fish and shellfish sold by net weight	19 N.J.R. 1787(b)	R.1988 d.35	20 N.J.R. 204(a)
13:47C-2.5	Weights and measures: ready-to-eat foods	19 N.J.R. 2124(a)	R.1988 d.92	20 N.J.R. 543(a)
13:70-1.30	Thoroughbred racing: horsemen associations	19 N.J.R. 1418(a)	R.1988 d.75	20 N.J.R. 404(b)
13:70-20.11	Thoroughbred racing: entering or starting nerved horses	19 N.J.R. 1788(a)	R.1988 d.77	20 N.J.R. 405(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)	R.1988 d.76	20 N.J.R. 405(b)
13:71-20.23	Harness racing: nerving and registration of nerved horses	19 N.J.R. 2125(a)	R.1988 d.74	20 N.J.R. 406(a)
13:71-23.8	Harness racing: competition by respiratory bleeders	20 N.J.R. 250(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)	R.1988 d.108	20 N.J.R. 543(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(b)	R.1988 d.63	20 N.J.R. 296(a)

Most recent update to Title 13: TRANSMITTAL 1987-12 (supplement December 21, 1987)

**PUBLIC UTILITIES—TITLE 14**

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)		

Most recent update to Title 14: TRANSMITTAL 1987-7 (supplement December 21, 1987)

**ENERGY—TITLE 14A**

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14A:3-7, 9	Repeal (see 5:23-3.18)	19 N.J.R. 1862(b)	R.1988 d.50	20 N.J.R. 268(a)
14A:6-2	Business Energy Improvement Program	20 N.J.R. 250(b)		
14A:12-1.3, 1.4, 1.5, 1.7	Energy cost savings contracts with municipal governments and local school boards	20 N.J.R. 174(a)		
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)		

Most recent update to Title 14A: TRANSMITTAL 1987-4, (supplement December 21, 1987)

**STATE—TITLE 15**

15:10-6	Voting accessibility for elderly and handicapped	19 N.J.R. 2249(a)		
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Most recent update to Title 15: TRANSMITTAL 1987-1 (supplement February 17, 1987)

N.J.A.C. CITATION PUBLIC ADVOCATE—TITLE 15A	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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**Most recent update to Title 15A: TRANSMITTAL 1987-1 (supplement 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)	R.1988 d.37	20 N.J.R. 204(b)
16:28-1.25	Speed rates on Route 23 in Wayne	20 N.J.R. 45(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	19 N.J.R. 2211(a)	R.1988 d.51	20 N.J.R. 299(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)
16:28-1.79	Speed limits on Route 94 in Sussex County	20 N.J.R. 177(b)		
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)	R.1988 d.71	20 N.J.R. 407(a)
16:28A-1.9, 1.33, 1.51, 1.93	Restricted parking along Routes 17 in Lyndhurst, 47 in Millville, 168 in Bellmawr, and U.S. 322 in Glassboro	20 N.J.R. 45(b)	R.1988 d.105	20 N.J.R. 543(c)
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-1.22	Restricted parking along Route 31 in Washington Borough	20 N.J.R. 46(a)	R.1988 d.104	20 N.J.R. 544(a)
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)	R.1988 d.52	20 N.J.R. 299(b)
16:28A-1.25, 1.36, 1.38	Restricted parking along Routes 35 and 71 in Monmouth County, and Route 57 in Warren County	20 N.J.R. 178(a)		
16:28A-1.57	Restricted parking along U.S. 206 in Somerset County	20 N.J.R. 179(a)		
16:29-1.18	No passing zones along Route 154 in Cherry Hill	19 N.J.R. 2253(b)	R.1988 d.72	20 N.J.R. 407(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)	R.1988 d.70	20 N.J.R. 407(c)
16:31-1.11	No left turn along Route 21 in Newark	20 N.J.R. 46(b)	R.1988 d.103	20 N.J.R. 544(b)
16:31-1.24	No left turn on Route N.J. 82 in Union	19 N.J.R. 2128(a)	R.1988 d.53	20 N.J.R. 300(a)
16:32-1	Routes and access for maxi-cube vehicles			20 N.J.R. 109(c)
16:44-1.2	Contract administration: classification of prospective bidders	20 N.J.R. 380(b)		

**Most recent update to Title 16: TRANSMITTAL 1987-11 (supplement December 21, 1987)**

**TREASURY-GENERAL—TITLE 17**

17:1-1.10	Positive or negative balances in retirement accounts	19 N.J.R. 2129(a)	R.1988 d.68	20 N.J.R. 408(a)
17:2-7.1	Public Employees' Retirement System: transfer of service credit	19 N.J.R. 2386(a)		
17:3-7.1	Teachers' Pension and Annuity Fund: transfer of service credit	20 N.J.R. 47(a)		
17:4-7.1	Police and Firemen's Retirement System: transfer of service credit	19 N.J.R. 2255(a)	R.1988 d.102	20 N.J.R. 544(c)
17:5-6.1	State Police Retirement System: transfer of service credit	20 N.J.R. 47(b)		
17:10-6.1	Judicial Retirement System: transfer of service credit	20 N.J.R. 179(b)		
17:19-10.4, 10.5, 10.7, 10.9	Architect/engineer selection procedures	20 N.J.R. 180(a)		
17:20-4	Licensure as ticket sales agent of State Lottery	19 N.J.R. 1969(a)	R.1988 d.94	20 N.J.R. 545(a)
17:20-6.3	State Lottery: confidentiality of individual agent's operation	20 N.J.R. 48(a)		
17:20-7	Payment of State Lottery prizes	19 N.J.R. 1889(b)	R.1988 d.93	20 N.J.R. 546(a)
17:32	State Planning Rules	19 N.J.R. 1971(a)		

**Most recent update to Title 17: TRANSMITTAL 1987-9 (supplement December 21, 1987)**

**TREASURY-TAXATION—TITLE 18**

18:2-2	Post tax amnesty	19 N.J.R. 2255(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)		
18:7-3.18	Corporation business tax: recycling equipment credit	20 N.J.R. 48(b)		
18:8-4.5, -8	Post tax amnesty	19 N.J.R. 2255(b)		
18:9-8.5-8.7	Post tax amnesty	19 N.J.R. 2255(b)		

