

NEW JERSEY REGISTER



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THE JOURNAL OF STATE AGENCY RULEMAKING

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(Includes adopted rules filed through December 22, 1988)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: NOVEMBER 21, 1988

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT DECEMBER 19, 1988

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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

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW Uniform Administrative Procedure Rules Division of Consumer Affairs Lemon Law Hearings

Proposed New Rules: N.J.A.C. 1:13A

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

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

Proposal Number: PRN 1989-54.

Submit comments by February 16, 1989 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, CN 049
Building No. 9
Quakerbridge Road
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules establish a summary hearing process for cases arising under P.L. 1988, c. 123, the new Lemon Law, which establishes a dispute resolution system for aggrieved purchasers or lessees of automotive "lemons". Dispute resolution involving hearings at the Office of Administrative Law (OAL) is one option under the new law. The other options are pursuing the manufacturer's informal dispute settlement procedure or filing a lawsuit in the Superior Court.

These rules were developed in consultation with the Director of the Division of Consumer Affairs and must be read in conjunction with the Division's rules on dispute resolution at N.J.A.C. 13:45A-26.1 through 26.17 (as proposed November 7, 1988, 20 N.J.R. 2681(a)). Aspects of the hearing which are not covered by these special rules are controlled by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

These rules track the provisions of the Lemon Law and implement the goal of that act to provide consumers with a prompt and summary hearing. A case must be transmitted to the OAL immediately upon acceptance by the Division. The Division will not attempt settlement prior to transmittal. Upon acceptance of a complaint, a summary hearing date is to be arranged by the Division and the OAL and that date must be within 20 days, unless the consumer agrees to a later date. Cases will be scheduled as in-person summary hearings; however, the matter may be conducted as a proceeding on the papers if requested by the consumer and consented to by the manufacturer in the initial filings.

Discovery for the summary hearing is limited to the consumer's application, the required attachments and the manufacturer's response. These documents should provide adequate information about the allegations of each party. Given the prompt hearing date required by the statute, additional discovery is not feasible.

The Lemon Law authorizes the OAL to issue subpoenas in these cases. Subpoenas will be issued upon request. The rules provide that, in addition to the clerk or a judge, this ministerial function may be performed by pro se parties, attorneys and non-lawyer representatives.

Motions prior to the hearing, other than adjournment motions to which the consumer has consented, are not permitted. Prehearing conferences will not be scheduled. Posthearing submissions are not permitted except for good cause; the submission of posthearing documents shall not extend the 15-day deadline for issuance of a initial decision.

Since a prevailing consumer may be awarded attorney's fees and costs, the consumer must be prepared to present proof of those costs at the hearing. Allowable costs include, in addition to reasonable attorney's fees, the filing fee, fees for reports prepared by expert witnesses and for appearances and testimony of expert witnesses.

The initial decision is to be issued within 15 days from the conclusion of the hearing. The initial decision must contain a brief summary of findings and legal conclusions and reasoning, as well as a specific remedy,

but need not include a procedural history, factual discussion or legal discussion as required by N.J.A.C. 1:1-18.3. Finally, exceptions and cross-exceptions are not permitted.

Social Impact

The proposed new rules are based upon the process created in the Lemon Law statute and should provide consumers with an avenue for rapid resolution of their complaints.

Economic Impact

The proposed new rules provide a straightforward process for the resolution of disputes between consumers and manufacturers. The rules are intended to provide the parties with a low cost alternative to more lengthy and expensive proceedings.

Regulatory Flexibility Statement

The proposed new rules will not affect small business because it does not impose reporting, recordkeeping or other requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not necessary.

Full text of the proposal follows:

CHAPTER 13A DIVISION OF CONSUMER AFFAIRS LEMON LAW HEARINGS

SUBCHAPTER 1. APPLICABILITY

1:13A-1.1 Applicability

The special rules in this chapter shall apply to matters transmitted to the Office of Administrative Law (OAL) by the Division of Consumer Affairs (Division) wherein a consumer of a motor vehicle seeks a refund or replacement of the vehicle from a manufacturer under the provisions of the New Jersey Lemon Law, P.L. 1988, c.123, §21. These special rules must be read in conjunction with the Division of Consumer Affairs' rules on dispute resolution at N.J.A.C. 13:45A-26.1 through 26.17. Any aspect of the OAL hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these special rules are inconsistent with the U.A.P.R., these rules shall apply.

SUBCHAPTERS 2-7. RESERVED

SUBCHAPTER 8. FILING AND TRANSMISSION OF CONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW

1:13A-8.1 Agency filing with the Office of Administrative Law

Immediately after accepting a consumer's application for dispute resolution under N.J.A.C. 13:45A-26.10(c), the matter shall be transmitted to the Office of Administrative Law. The division shall not attempt to settle the case before transmitting the matter to the OAL.

SUBCHAPTER 9. SCHEDULING; CLERK'S NOTICES; ADJOURNMENTS; INACTIVE LIST

1:13A-9.1 Scheduling of summary proceedings

(a) Upon acceptance of a consumer's application for dispute resolution, the Division and the Office of Administrative Law shall immediately arrange a summary hearing date which, to the greatest extent possible, shall be convenient to all parties. Unless the consumer agrees to a later date, the summary hearing shall be no later than 20 days from the date of acceptance of the consumer's application.

(b) Cases shall be scheduled for an in-person summary hearing unless the consumer requests a proceeding on the papers in the application for dispute resolution (N.J.A.C. 13:45A-26.7) and the manufacturer consents to proceeding on the papers in its response, required by N.J.A.C. 13:45A-26.10(f).

ADMINISTRATIVE LAW

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(c) The proceeding on the papers shall be based upon the application, the manufacturer's response and whatever additional documents may be required by the judge.

1:13A-9.2 Clerk's notices

The Clerk shall send a written notice of filing and summary hearing to each party.

SUBCHAPTER 10. DISCOVERY

1:13A-10.1 Discovery

(a) The consumer's application for dispute resolution, the required attachments and the manufacturer's response shall be provided as specified by N.J.A.C. 13:45A-26.10(b) and (f).

(b) No other discovery shall be permitted.

SUBCHAPTER 11. SUBPOENAS

1:13A-11.1 Subpoenas

(a) Subpoenas may be issued by the Clerk of the OAL or a judge or pro se parties, attorneys-at-law or non-lawyer representatives, if any, in the name of the Clerk to compel the attendance of a person to testify or to produce books, papers, documents or other objects at a hearing or a deposition.

(b) In all other respects, the procedures for issuance, service, challenge and enforcement of subpoenas set forth in N.J.A.C. 1:1-11.1 through 11.5 shall apply.

SUBCHAPTER 12. MOTIONS

1:13A-12.1 Limitations on prehearing motions

Except for a motion for adjournment to which the consumer has consented, a party may not file any motion before the scheduled date of hearing.

SUBCHAPTER 13. PREHEARING CONFERENCES AND PROCEDURES

1:13A-13.1 Prehearing conferences

Prehearing conferences will not be scheduled in any proceeding conducted under this chapter.

SUBCHAPTER 14. CONDUCT OF CASES

1:13A-14.1 Failure to appear

(a) If a party fails to appear at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for 10 days before taking action. If the judge does not receive an explanation for the non-appearance within 10 days, the judge may take any of the following actions depending on the circumstances:

1. If the consumer failed to appear, the judge shall issue an initial decision dismissing the matter and denying the requested relief.

2. If both parties failed to appear, the judge shall issue an initial decision dismissing the matter and denying the requested relief.

3. If the manufacturer failed to appear, the judge shall issue an initial decision granting appropriate relief after reviewing the documents and, if necessary, requiring further proof to determine the amount due.

(b) If the judge receives an explanation for either party's non-appearance, the provisions of N.J.A.C. 1:1-14.4(a) shall apply.

1:13A-14.2 Conduct of hearing

(a) Except as modified by N.J.A.C. 1:13A-14.3, the hearing shall be conducted pursuant to the provisions of N.J.A.C. 1:1-14.7(a) through (e).

(b) There shall be no proposed findings of fact, conclusions of law, briefs, forms of order or other posthearing submissions permitted after the final argument except if permitted by the judge for good cause. In no event shall the submission of posthearing documents extend the 15 days permitted for issuing an initial decision.

1:13A-14.3 Burden of producing evidence

The consumer shall first present his or her evidence. The manufacturer may then present any contradictory evidence or argument and affirmative defenses as set forth in the statute.

1:13A-14.4 Proof of fees and costs

(a) At the hearing, the consumer shall present proof of any costs incurred in preparing for the hearing. If the consumer is represented, the consumer's attorney shall also present a certified statement of fees to date and a statement of the hourly rate or other fee for appearing at the hearing.

(b) A prevailing consumer may be awarded the following fees and costs: reasonable attorney fee, filing fee, fees for reports prepared by expert witnesses or for the appearance and testimony of expert witnesses.

SUBCHAPTERS 15-17. RESERVED

SUBCHAPTER 18. INITIAL DECISION; EXCEPTIONS; FINAL DECISION; REMAND; EXTENSIONS OF TIME LIMITS

1:13A-18.1 Initial decisions

(a) An initial decision shall be issued in writing no later than 15 days from the conclusion of the hearing.

(b) The initial decision shall include a caption; date record closed; appearances by the parties and representatives, if any; statement of the case; brief summary of findings of fact and conclusions of law and reasons therefore; appropriate remedies, and specific dates for completion of all awarded remedies; and, if the decision concludes that the consumer is the prevailing party, an award of reasonable attorney's fees and other costs.

(c) Within four days after the initial decision is filed with the agency head, the Clerk shall certify the entire record with original exhibits to the agency head.

1:13A-18.2 Exceptions; replies

No exceptions or replies to the initial decision shall be permitted.

1:13A-18.3 Final decision

The Director of the Division of Consumer Affairs shall issue a final decision which shall adopt, reject or modify the initial decision no later than 10 days from receipt of the initial decision. Unless a final decision is issued within the 10 day period, the initial decision shall be deemed adopted as the final decision and the requirements and penalties of N.J.A.C. 13:45A-26.12(c) and (d) and N.J.A.C. 13:45A-26.13 shall apply.

1:13A-18.4 Extensions of time limits

Time limits for filing an initial decision and for issuing a final decision shall not be extended.

SUBCHAPTER 19. SETTLEMENTS AND WITHDRAWALS

1:13A-19.1 Settlements

If a case is settled, the settlement shall indicate whether attorney's fees and other costs will be paid by the manufacturer to the consumer or whether such fees and costs have been waived by the consumer.

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Equine Embargoes

Equine Infectious Anemia

Proposed Amendments: N.J.A.C. 2:5-2.1, 2.3, 2.5 and 2.6

Proposed Repeal: N.J.A.C. 2:5-2.8

Authorized By: State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:5-6 et seq.

Proposal Number: PRN 1989-41.

PROPOSALS

Interested Persons see **Inside Front Cover**

COMMUNITY AFFAIRS

Submit comments by February 16, 1989 to:
 Sidney R. Nusbaum, V.D.M., Director
 Division of Animal Health
 New Jersey Department of Agriculture
 CN 330
 Trenton, New Jersey 08625
 Telephone: (609) 292-3965

The agency proposal follows:

Summary

In 1988, the Department of Agriculture proposed and adopted new rules dealing with Equine Infectious Anemia (see 20 N.J.R. 1870(a)). Sections of the rules have been met with a resounding lack of participation by the industry. Therefore, the Department of Agriculture has redrafted them, eliminating the certified free herd provisions. Also, some changes in the testing requirements have been made.

Social Impact

Equine infectious anemia (EIA) was, just 15 years ago, the most expensive equine disease in New Jersey. It was estimated that as many as four percent of the equine population carried this lifetime infection. The development of, and application by, the Department of Agriculture of a control program has reduced the level of infection to less than one-tenth of one percent annually. The present program requires an annual test for each animal and a further test prior to sale. The proposed amendments provide a mechanism to continue effective control of the disease while reducing the cost to owners by extending the test period from 12 to 24 months.

Economic Impact

The adoption of these proposed amendments will reduce the income of private veterinarians who now perform in excess of 30,000 tests annually and will reduce the fee income of the State's Animal Health Laboratory. There will be an estimated savings to the horse industry of \$250,000 to \$350,000 per year.

Regulatory Flexibility Statement

These proposed amendments affect the public welfare and, thus, no exemptions for small businesses can be provided. The amendments will lessen the economic burden on some small businesses and decrease the income of others.

However, these savings are dependent on the degree of cooperation and common sense that the regulated community exercises. By ignoring these rules and good animal husbandry, those intended to benefit will suffer and the people harmed by these rules will profit.

Should a number of cases of the disease rise, through whatever cause, to unacceptable levels, the Department will have no other choice but to respond with a return to annual testing and/or such other measures that will control the disease.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 2:5-2.8.

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

SUBCHAPTER 2. EQUINE INFECTIOUS ANEMIA

2:5-2.1 Definitions

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

"Equine infectious anemia (EIA)" means an infectious and contagious disease of equidae caused by a transmissible virus, known colloquially as swamp fever.

["Herd" means a discrete group of equidae maintained on a common ground.

"Herd test" means an examination by official test of all animals that have been a part of the herd for more than 60 days.]

"Infected animal" means an animal which has been examined by two or more official tests and is positive to both.

["Natural additions" means animals born and raised in the herd.

"New Jersey EIA certified free equidae (herd)" means an individual horse or group of equidae recognized as being free of equine infectious anemia as a result of a negative herd test or proof of an official test on the farm within the past 12 months of all equidae

on the farm, with the proviso that the animals were on the farm for 60 days prior to the test.

"Non-certified additions" means animals without EIA certified free status brought into an EIA certified free herd.

"Non-certified horse/herd" means animals which have not met the requirements for certification.]

"Official test" means the equine infectious anemia agar gel immuno-diffusion procedure recognized and controlled by the United States Department of Agriculture as conducted by the New Jersey Department of Agriculture's Division of Animal Health Laboratory.

"Official test requirements" means blood samples taken by accredited veterinarians, tested by the Department of Agriculture Laboratory.

"Slaughter buyers" means one who purchases horses for the express purpose of slaughter for human consumption.

2:5-2.3 Horses consigned [from out-of-State] to horse auction markets

(a) Horses consigned [from out-of-State] to horse auction markets will be permitted to enter these markets if they do not have a negative Coggins test provided:

1.-6. (No change.)

2:5-2.5 Test requirements for transport

(a) No horse or other equidae six months or more of age unless exempted by the provisions of N.J.A.C. 2:5-2.3, 2.6, or 2.7 shall be transported on any public highway within the State unless the custodian of such animal has in his or her possession during the period of such movement a report of a negative agar gel immunodiffusion test for equine infectious anemia for such animal taken within the past [12] 24 months [or proof of origin from a certified free herd.] **except that horses without such test(s) may be transported directly from a farm of origin to an auction for immediate sale. Said horse may proceed to a second farm after sale if official blood sample has been taken for testing.**

1. (No change.)

2. Said test shall have been conducted during the [12] 24 months prior to transportation.

3.-4. (No change.)

2:5-2.6 Test requirements for sale or other change of ownership

(a) No horse or other equidae six months or more of age, unless exempted by provisions of this section or N.J.A.C. 2:5-2.3 or 2.8, shall be sold, exchanged, bartered or given away unless such animal has been subjected to an agar gel immunodiffusion test for equine infectious anemia and reacted negatively within 90 days prior to such transfer of ownership [or has proof of origin as a member of a certified free herd].

1. (No change.)

2. At the time of such transfer of ownership, the transferer shall deliver personally or by certified mail to the transferee, a copy of the report of such negative test [or the official proof of origin as a member of a certified free herd]. The negative test shall include:

i.-iv. (No change.)

3. (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Rooming and Boarding House Standards

Bureau Authorization to Evict Residents

Proposed Amendment: N.J.A.C. 5:27-3.3

Authorized By: Anthony M. Villane, Jr., D.D.S., Commissioner,
 Department of Community Affairs.

Authority: N.J.S.A. 55:13B-4.

Proposal Number: PRN 1989-26.

COMMUNITY AFFAIRS

PROPOSALS

Submit comments by February 16, 1989 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the current rooming and boarding house rules, eviction other than in accordance with N.J.S.A. 2A:18-61.1 et seq. is only permissible if "directed" by the Bureau of Rooming and Boarding House Standards. However, situations may arise in which the owner or operator of the facility determines that a person is endangering the safety or welfare of others and ought to be removed for their immediate protection. In such a case, the Bureau's role would be to authorize such an action, rather than to initiate it and N.J.A.C. 5:27-3.3 is therefore proposed to be amended to make it clear that such authorization would have the same force and effect as an order from the Bureau.

This amendment does not limit the owner or operator's responsibility, under N.J.A.C. 5:27-3.5, to give notice to the county welfare board if a resident requires services not available at the facility.

Social Impact

Removing any doubt as to the ability of an owner or operator to initiate emergency removal of a resident by seeking Bureau authorization for such removal will have a seriously detrimental effect upon those who thereby find themselves without their accustomed shelter, but will have a correspondingly positive effect upon those who were endangered by the acts of the removed person.

Economic Impact

To the extent that owners and operators are better able to secure the prompt removal of persons who are acting in a manner that is dangerous to others, they will be better able to protect their physical well-being and property, as well as that of others, and thereby avoid economic loss.

Regulatory Flexibility Statement

All, or virtually all, rooming and boarding houses qualify as "small businesses" for purposes of the Administrative Procedure Act, as amended. The amendment allows owners and operators of such facilities to initiate a "good cause" eviction through seeking Bureau authorization for such action.

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

5:27-3.3 Harassment; fraud; eviction without due cause

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

(c) Unless otherwise directed **or authorized** by the Bureau, no licensee shall cause any resident to be evicted from any rooming or boarding house except for good cause, as defined in N.J.S.A. 2A:18-61.1 et seq., and except in accordance with the procedural requirements of N.J.S.A. 2A:18-61.1 et seq.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Return on Equity

Proposed Amendment: N.J.A.C. 5:80-3.3

Authorized By: New Jersey Housing and Mortgage Finance Agency, James L. Logue, III, Executive Director/Secretary.
Authority: N.J.S.A. 55:14K-5K-7a(6).
Proposal Number: PRN 1989-40.

Submit comments by February 16, 1989 to:

Anthony W. Tozzi
Division of Policy Development
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road
CN 18550
Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

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

Recently, the Agency began participation in the New Jersey Urban Multi-family Production Program. This new program is designed to expand the supply of privately developed rental housing in New Jersey's urban areas by combining subsidies from the Department of Community Affairs with financing from the Agency. The proposed amendments would limit the rate of return on equity to 12 percent for housing projects financed under this new program.

Social Impact

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

Economic Impact

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

Regulatory Flexibility Statement

As this proposed amendment governs the rate of return housing sponsors can earn on their investment in a housing project financed by the Agency and do not affect small businesses, the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., does not apply and a flexibility analysis is not required.

Full text of the proposed amendment follows (additions shown in boldface **thus**).

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

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

1.-2. (No change.)

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

(b) **For housing projects which receive a loan from the Agency under the New Jersey Urban Multi-family Production Program, the rate of return on investment may not exceed 12 percent.**

Redesignate existing (b) as (c) (No change in text.)

EDUCATION

(a)

STATE BOARD OF EDUCATION

Bilingual/ESL Certification and Basic Skills Certification Test

Proposed New Rule: N.J.A.C. 6:11-8.3

Proposed Repeals and New Rules: N.J.A.C. 6:11-4.1, 8.4 and 8.5

Proposed Repeals: N.J.A.C. 6:11-5.1, 6.3, 8.1 and 8.2

Proposed Amendments: N.J.A.C. 6:11-3.23, 4.2, 4.3, 6.2 and 7.3

Proposed Recodifications and Amendments:

N.J.A.C. 6:11-5.2, 5.3, 5.4, 5.5, 5.6, 5.7 and 8.3

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

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-7, 18A:6-34, 18A:6-38 and 18A:26-10.

Proposal Number: PRN 1989-32

Submit comments by February 16, 1989 to:

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

The agency proposal follows:

Summary

Bilingual/ESL Certification

Amendments to the rules governing the certification of teachers of bilingual education and English as a second language ESL are being proposed in order to improve educational services provided to bilingual students and students of English as a second language by expanding the size and quality of the pool of prospective teachers in these fields and upgrading requirements for the preparation and evaluation of prospective teachers for purposes of State certification. These goals will be achieved mainly through the establishment and rigorous enforcement of broader entry requirements than currently exist, through the development of a more concise definition of the specialized knowledge which prospective bilingual and ESL teachers must acquire, and through the replacement of emergency certification with an alternate preparation route which will supplement approved college programs as a source of new teachers. **If adopted, the amendments become operative September 1, 1990** and apply to all persons who have not enrolled in formal programs of preparation as documented by the State Department of Education or an approved New Jersey college.

Basic Skills Certification Test

The proposed amendments require all candidates for instructional certification to pass a State test of basic communication skills. The test requirement does not apply to candidates for special education or vocational certificates.

In 1984, the State Board of Education adopted a rule requiring all teacher certification candidates to pass State certification tests in their subject fields. At that time, members of the Board also discussed the possible need for a certification test of basic skills. However, the Board decided to implement the subject tests and to reevaluate the need for basic skills testing at a point in the future.

There are two major reasons for proposing the adoption of a basic skills testing requirement. First, communication skills are essential to success in teaching. While the current testing policy screens out candidates on the basis of their subject knowledge, the proposed requirement will help to screen those who are most deficient in their abilities to communicate their subject knowledge. Second, data produced from many sources, within New Jersey as well as outside the State, provide continuing evidence of possible basic skills deficiencies among college students. The proposed test requirement helps to ensure that skills-deficient college graduates do not receive teaching certificates in our State.

As a result of the State Board's original interest in this issue, the Department included communication skills testing in its major 1985 study of testing alternatives. As with the subject tests, the study indicated the

NTE Communication Skills Test as the most promising alternative. Therefore, that test was included in the validity study that the Department conducted in concert with Educational Testing Service.

The Communication Skills Test received the highest validity ratings of all tests studied. The Content Review Panel, comprised of New Jersey college professors involved in preparing teachers, rated the test as very closely related to the content of preparation curricula. Nearly 100 percent of the test items were judged appropriate, and every panel member indicated that the test closely parallels the curriculum. The Job Relevance Panel, comprised of public school teachers, also rated the test to be "very relevant" to skills required to perform the job of teacher.

The NTE Communications Skills Test, "... is based on the assumption that teachers must be able to write, read and listen well in order to teach with any degree of effectiveness" (NTE Programs, ETS, 1982). The test is divided into four sections:

1. Listening: assesses candidates' ability to comprehend, recall and respond to tape recorded oral messages;
2. Reading: assesses skills needed to understand, analyze and evaluate written messages;
3. Writing (Multiple Choice): assesses examiners' abilities to detect grammatical and other errors, and to choose appropriate corrections; and
4. Writing (Essay): assesses candidates' ability to read a given general topic, to organize their thoughts for writing on that topic, and to write an essay with reasonable care and precision.

If the State Board adopts a communication skills test requirement, the NTE Communications Skills Test will be implemented in fulfillment of that requirement.

The proposed amendment at N.J.A.C. 6:11-3.23 reflects the requirement of multiple tests (subject matter and basic skills) for certification.

The amendments proposed at N.J.A.C. 6:11-4.1, 4.2 and 4.3 respectively include requirements for the Standard Certificate, formerly listed in N.J.A.C. 6:11-5.1 and establish requirements for the standard certification of bilingual and ESL teachers. The amendments also establish requirements for the provisional and standard certification of those bilingual and ESL teachers who are seeking certification through the completion of a district-sponsored alternative training program. The Provisional Certificate allows the employment of these teachers during the time that they complete certain aspects of their training. The amendments also eliminate the use of emergency certification in the fields of bilingual and ESL certification. They require a basic communication skills test for the Standard and Provisional Certificates in all instructional fields except vocational and special education. N.J.A.C. 6:11-5.2, Reciprocity, has been recodified to N.J.A.C. 6:11-4.6 and language added reflecting the requirement of the test of basic communication skills.

The amendments to N.J.A.C. 6:11-5, State-Approved Alternative Training Programs, allow the operation of State-approved alternative training programs for the preparation of bilingual and ESL teachers, and would establish specialized preparation requirements (topics and clock hours of instruction) for these programs.

The amendment at N.J.A.C. 6:11-6.2 requires teachers of bilingual/bicultural students to hold appropriate certification for the subjects and grade levels to which they are assigned.

The amendment at N.J.A.C. 6:11-7.3 establishes specialized preparation requirements (topics and credit hours) for New Jersey college programs that are approved by the State Department of Education to prepare bilingual and ESL teachers.

The amendments to N.J.A.C. 6:11-8, Exceptions to Requirements, remove to other subchapters (5 and 7) requirements for the content of professional study for instructional certification, and devotes subchapter 8 to exceptions to requirements for standard instruction certification.

Social Impact

The proposed amendments concerning bilingual/ESL certification improve both the size and the quality of the pool of prospective teachers in the fields of bilingual and ESL education. The amendments ensure that all new teachers in these fields meet entry requirements before they are employed in the public schools and that all bilingual and ESL teachers complete their training for standard certification within two years of their employment. These modifications are expected to expand the number of teachers available for employment in the public schools and to do a more effective job of documenting their basic competency.

The basic skills test requirement helps to improve the education of public school children by helping to assure that they are taught by persons who possess the basic skills of listening, reading and writing that are most directly related to instructional effectiveness. The test requirement will

affect negatively those certification applicants who do not possess minimum levels of proficiency in these important skill areas. Such individuals will not be certified to teach public school students. The test will be a new requirement which will apply to all persons who seek any New Jersey instructional certificate. Such persons include graduates of New Jersey college preparation programs, applicants to the Provisional Teacher Program, graduates of out-of-State colleges seeking New Jersey certificates, employed New Jersey teachers seeking certification in new areas, and applicants certified in other states.

Economic Impact

Costs of maintaining the proposed bilingual/ESL certification system will be paid through fees charged to certification candidates in the form of college tuition, alternate route instructional fees and general certification fees. There will be no significant cost to the public.

Since the State Department of Education has already conducted the necessary studies associated with validating the proposed test, there will be no significant additional State expense involved in its implementation. As with all other such tests, certification candidates will be charged fees which will cover the cost of administering the test to them and of processing their scores.

Regulatory Flexibility Statement

A Regulatory Flexibility Analysis is not required because the proposed amendment does not impose reporting, recording or compliance requirements on small businesses. All requirements of the amendment affect applicants for professional licenses which qualify them for employment.

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

RECODIFICATION CHART

Old Citation	New Citation	Old Citation	New Citation
6:11-5.1 (Repealed)		6:11-8.1 (Repealed)—	
6:11-5.2	6:11-4.6	6:11-8.2 (Repealed)—	
6:11-5.3	6:11-5.1	6:11-8.3(a)	6:11-8.1
6:11-5.4	6:11-5.2	6:11-8.3(b)	6:11-8.2
6:11-5.5	6:11-5.3	—	6:11-8.3
6:11-5.6	6:11-5.4	6:11-8.4 (Repealed)—	
6:11-5.7	6:11-5.5	6:11-8.5 (Repealed)—	
—	6:11-5.6 (Reserved) —		6:11-8.4
—	6:11-5.7 (Reserved) —		6:11-8.5

6:11-6.3 (Repealed)(Reserved)

6:11-3.23 Substitution of alternative [educational] **educational** background and/or experience

(a) Notice of certification deficiency [rules] **requirements** are as follows:

1. (No change.)

(b) Offer of alternative education and/or experience [rules] **provisions** are as follows:

1. Any applicant lacking required preparation may supply the State Board of Examiners with evidence of alternative education and/or experience except that such education and/or experience may not be substituted for a passing score on [the] State certification tests nor may the State Board of Examiners in any circumstances waive the test requirement.

2. (No change.)

3. The applicant wishing to substitute alternative education and/or experience for routine credentials shall complete and return 25 copies of the forms supplied pursuant to [paragraph] (b)2 above within 30 days of their receipt.

(c) Review of alternative education and/or experience by State Board of Examiners' [rules] **provisions** are as follows:

1. and 2. (No change.)

(d) Public discussion of alternative education and/or experience [rules] **provisions** are as follows:

1.-3. (No change.)

(e) [Decision rules are] **The following provisions concern Board of Examiners' application decisions:**

1.-2. (No change.)

(f) [Appeal rules are:

1. Said] **Board of Examiners'** decisions shall be appealable to the Commissioner of Education pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6:24[-1.1 et seq].

6:11-4.1 Standard certificate

(a) [Certificates with lifetime validity are issued to candidates who meet New Jersey Standards for standard certification.] **The standard certificate is a permanent certificate that is issued to candidates who meet all certification requirements.**

(b) **New Jersey standard instructional certificates are issued to applicants who meet the following requirements:**

1. Possess a baccalaureate degree from an accredited institution;

2. Complete an approved preparation program at a New Jersey college pursuant to N.J.A.C. 6:11-7, or a New Jersey State-approved alternative training program pursuant to N.J.A.C. 6:11-5.1 through 5.5, or a program at an out-of-State institution which is approved by the State Department of Education of the state in which the program is offered;

3. Pass a State test of subject matter knowledge in the appropriate subject teaching field(s) or a test of general knowledge for the elementary and nursery endorsements;

4. Commencing January 1, 1990, pass a State test of basic communication skills; and

5. Pursuant to N.J.S.A. 18A:40A-4, pass an examination or course in physiology, hygiene and substance abuse.

(c) Candidates for the bilingual/bicultural education endorsement shall, in addition to meeting the requirements in (b) above, achieve language proficiency score of at least four on a five-point scale (or an equivalent rating) in either English or the native language of students to be taught, and a score of three in the other of these two languages.

(d) Candidates for certification as teachers of English as a second language shall not be required to pass a subject test pursuant to (b) 3 above. Such candidates shall, in addition to meeting all other requirements in (b) above, achieve a score of at least four on a five-point scale (or an equivalent rating) on a standardized assessment of proficiency in the English language.

(e) State-approved alternative training programs are not authorized in the fields of teacher of the handicapped, teacher of the deaf and hard of hearing, teacher of the blind and partially sighted, and certain vocational fields (see N.J.A.C. 6:11-8.3(c)). The professional preparation of candidates in these fields shall be assessed on the basis of having completed an approved college program (see N.J.A.C. 6:11-7) or on the basis of transcript evaluation (see N.J.A.C. 6:11-8).

(f) Candidates who by September 1, 1990 are matriculated in a bilingual/bicultural or ESL certification program approved by the State Department of Education under standards existing prior to that date must complete that program by September 1, 1992 in order to meet requirement (b)2 above.

(g) Applicants for standard instructional certificates who received official transcript evaluations before September 1, 1985, shall be permitted to fulfill requirements by:

1. Taking the college courses indicated and passing the required State subject test; or

2. Completing an approved training program and passing the required State subject test.

(h) **No new transcript evaluations will be issued after September 1, 1985 in fields in which State-approved training programs are authorized.**

6:11-4.2 Provision certificate

(a) A provisional certificate is a substandard one-year certificate issued to [an applicant who is not eligible for a standard certificate. 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.] **candidates who do not meet all requirements for standard certification but who are eligible for employment under a program of training and supervision authorized by the State.**

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

1. (No change.)

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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. Commencing January 1, 1990, pass a State test of basic communications skills; and

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

(c) Persons who pass the appropriate tests as set forth in (b)2 and 3 above shall be granted a formal document which will enable them to seek employment as provisional teachers in the public schools.

(d) and (e) (No change.)

(f) To be eligible for the provisional certificate in the field of bilingual education, the applicant shall:

1. Hold a baccalaureate degree from an accredited college or university;

2. Possess or be eligible for a standard or provisional New Jersey certificate in the subject(s) that the applicant will teach;

3. Commencing January 1, 1990, pass a State test of basic communication skills;

4. Achieved a score of at least four on a five-point scale (or an equivalent rating) on a standardized assessment of proficiency in either English or the native language of the students to be taught;

5. Have achieved a score of at least two-plus on a five-point scale (or an equivalent rating) on a standardized assessment of proficiency in the applicant's secondary language. The applicant's secondary language is that in which a rating of four was not achieved pursuant to (f)3 above; and

6. Obtain an offer of employment in a position requiring the bilingual endorsement in a school or district approved by the Commissioner to offer a bilingual certification training program.

(g) Applicants who meet the requirements of (f) above shall receive an eligibility document which permits them to seek employment in positions that require the bilingual endorsement.

(h) To be eligible for the provisional certificate in the field of teaching English as a second language, the applicant shall:

1. Hold a baccalaureate degree from an accredited college or university;

2. Complete at least 30 semester hours in a coherent major;

3. Commencing January 1, 1990, pass a State test of communication skills;

4. Achieve a score of four on an assessment of proficiency in the English language; and

5. Obtain an offer of employment in a position requiring certification as a teacher of English as a second language.

(i) Applicants who meet the requirements of (h) above shall receive eligibility documents which permit them to seek employment in positions that require certification as teachers of English as a second language.

6:11-4.3 Emergency certificate

(a) An emergency certificate is a substandard one-year certificate issued only in the fields of educational services, teacher of the handicapped, teacher of the blind and partially sighted, teacher of the deaf and hard of hearing, [bilingual education, English as a Second Language] and certain technical fields (see N.J.A.C. 6:11-8.3). **Beginning September 1, 1990, no new emergency certificates shall be issued to teachers of bilingual/bicultural education or English as a second language. Emergency certificates issued to such teachers prior to that date may not be renewed after September 1, 1992.**

(b) (No change.)

6:11-[5.2]4.6 Reciprocity

(a) (No change in text.)

(b) All applicants who present satisfactory preparation, experience, or certificates from other states must also pass a State test of subject matter or a State test of general knowledge for elementary and nursery education in order to receive a standard New Jersey

certificate. All such applicants shall be eligible to take the test on the basis of preparation and experience accepted by another state. **Commencing January 1, 1990, all such applicants shall also be required to pass a State test of basic communication skills.**

SUBCHAPTER 5. [BASIC ISSUANCE OF STANDARD TEACHER CERTIFICATION] STATE APPROVED ALTERNATIVE TRAINING PROGRAMS

[6:11-5.1 General procedure

(a) New Jersey standard instructional certificates are issued to applicants who:

1. Possess a baccalaureate degree from an accredited institution, who have completed approved teacher education programs in New Jersey colleges and universities (see N.J.A.C. 6:11-7) or equivalent programs in out-of-State institutions approved for teacher education by the State Department of Education of the state in which the college is located and who have passed a test of subject matter knowledge in the appropriate subject teaching field(s) or a test of general knowledge for the elementary and nursery endorsements; or

2. Hold a Bachelor's degree from an accredited institution, have passed a State test of subject matter knowledge in the teaching field(s) or a State test of general knowledge for the elementary and nursery endorsements and have completed a State-approved alternative training program as described in N.J.A.C. 6:11-5.3 (except in fields as noted in N.J.A.C. 6:11-8.3(c)). 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 field.

(b) State-approved alternative training programs are not authorized in the fields of teacher of the handicapped, teacher of the deaf and hard of hearing, teacher of the blind and partially sighted, bilingual education, English as a second language and certain vocational fields (N.J.A.C. 6:11-8.3(c)). The professional preparation of candidates in these fields shall be assessed on the basis of having completed an approved college program (N.J.A.C. 6:11-7) or on the basis of transcript evaluation (N.J.A.C. 6:11-8.)]

6:11-[5.3] 5.1 [Requirements for provisional certification for State-approved alternative training programs] Definition and eligibility

(a) [The] State-approved **alternative** training programs [is an alternative to the college teacher preparation program as a means to acquire standard certification. These training programs] **are district-operated programs** that may be offered in all instructional fields except [bilingual education, English as a second language,] teacher of the handicapped, teacher of the deaf and hard of hearing, teacher of the blind and partially sighted, and certain vocational fields (see N.J.A.C. 6:11-8.3(c)). To participate in a State-approved alternative training program, the candidate shall [.] **be eligible for a provisional certificate as provided in N.J.A.C. 6:11-4.2.**

[1. Possess a Bachelor's degree (except as noted in N.J.A.C. 6:11-6.3(c));

2. Pass a State test of subject matter knowledge in the teaching field. For the elementary and nursery endorsements, the candidate shall pass a State test of general knowledge. 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 field; and

3. Have been offered employment in a school approved by the Commissioner of Education at the recommendation of the State Board of Examiners to offer a certification training program.]

(b) and (c) (No change.)

(d) Provisional certificates shall not be granted to teachers of [bilingual education, English as a second language,] the handicapped, deaf or hard of hearing, or blind or partially sighted.

6:11-[5.4] 5.2 Requirements for State-approved plans

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

(d) No public school district shall be authorized to employ a provisional teacher unless it has submitted a plan and received the

approval of the [commissioner] **Commissioner** at the recommendation of the State Board of Examiners.

6:11-[5.5] **5.3** Requirements for State-approved alternative training programs

(a) Each State-approved alternative training program shall provide essential knowledge and skills to provisional teachers through the following phases of training:

1. A full-time seminar/practicum of no less than 20 days duration which takes place prior to the time at which the provisional teacher takes full responsibility for a classroom. This seminar/practicum shall provide formal instruction in the essential areas for professional study listed in [N.J.A.C. 6:11-8.2] (b) **below**. It should introduce basic teaching skills through supervised teaching experiences with students. The seminar and practicum components of the experience shall be integrated and shall include an orientation to the policies, organization and curriculum of the employing district.

2. A period of intensive on-the-job supervision beginning the first day on which the provisional teacher assumes full responsibility for a classroom and continuing for a period of at least [ten] 10 weeks. During this time, the provisional teacher shall be visited and critiqued no less than one time per week by members of a Provisional Support Team (see [N.J.A.C. 6:11-5.5(b)] (e) **below**) and shall be observed and formally evaluated at the end of five weeks [at the end of five weeks] and at the end of [ten] 10 weeks by the appropriately certified members of the team. During this same period, formal instruction shall be continued in essential areas listed in [N.J.A.C. 6:11-8.2(a)] (b) **below** [and shall emphasize the topics of student assessment, development, and learning, curriculum and school/classroom organization]. At the end of the 10-week period, the provisional teacher shall receive a formal written progress report from the chairperson of the Support Team.

3. An additional period of continued supervision and evaluation of no less than 20 weeks duration. During this period, the provisional teacher shall be visited and critiqued at least once per month and shall be observed formally and evaluated at least twice. No more than two months shall pass without a formal observation. Formal instruction shall continue in the essential areas listed in [N.J.A.C. 6:11-8.2(a)] (b) **below**. Opportunities shall be provided for the provisional teacher to observe the teaching of experienced colleagues.

(b) Approximately 200 clock hours of formal instruction shall be provided in [all three phases of the program combined] **the following topics:**

1. **Curriculum:** Studies designed to foster an understanding of the curriculum taught and the assessment of learning, including topics such as the following: the organization and presentation of subject matter, the development and use of tests and other forms of assessment, the evaluation and selection of instructional materials and the appropriate use of textbooks and teachers' guides, the use and interpretation of standardized tests and teacher-developed instruments, the reading process and other language art skill development appropriate to the field of specialization and grade level, and a knowledge of techniques and materials for fostering the development of reading and language arts skills.

2. **Student Development and Learning:** Studies designed to foster an understanding of students, their characteristics as individuals, and the ways in which they learn, including topics such as: student interests, motivation, preventing classroom disruption, creating a healthy learning climate, individual and group learning, language development, individual differences, and the role of technology in early learning.

3. **The Classroom and the School:** Studies designed to foster an understanding of the school as a social unit and classroom management, including such topics as: the bureaucratic/social structure of public education, the making of teaching decisions, allocations of instructional time, setting of priorities, pacing of instruction, setting of goals, questioning techniques, student practice and independent work.

(c) Provisional teachers who are candidates for the bilingual education endorsement shall be provided 90 additional clock hours of instruction in the historical and cultural backgrounds of limited English proficient students, the specialized instructional content of bilingual education, and techniques of teaching bilingual students. For those provisional bilingual teachers who hold other standard certificates and who there-

fore have completed the required study in common topics (see (b) above), the State-approved training program will be a one-year program which shall include the approximately 90 clock hours of specialized study. All other provisional bilingual teachers shall complete the required study of common topics during their first year of provisional employment before undertaking the approximately 90 clock hours of specialized study during their second year of provisional employment.

(d) Provisional teachers who are candidates for certification to teach English as a second language shall be provided approximately 180 additional clock hours of instruction in the historical and cultural backgrounds of limited English proficient students, the specialized instructional content of ESL education, and techniques of teaching English as a second language. For those provisional ESL teachers who hold other standard certificates and who therefore have completed the required study in common topics (see (b) above), the State-approved training program will be a one-year program which shall include the approximately 180 clock hours of specialized study. All other provisional ESL teachers shall complete the required study of common topics during their first year of provisional employment before undertaking the approximately 180 clock hours of specialized study during their second year of provisional employment.

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

[(d)] In accordance with the provisions of N.J.S.A. 18A:26-8, all provisional teachers must pass an examination in physiology and hygiene in order to receive standard certification.]

[(e)] (f) The State Department of Education shall coordinate the training efforts of districts and shall establish regional programs for provisional teachers. The Department shall provide orientation programs for Support Team Members.

6:11-[5.6] **5.4** Requirements for the evaluation of provisional teachers

(a) Provisional teachers shall be observed and evaluated by appropriately certified Support Team Members as described in N.J.A.C. 6:11-[5.5] **5.3**.

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

6:11-[5.7] **5.5** Recommendation for certification of provisional teachers

(a) At the conclusion of the one-year 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)-(e) (No change in text.)

(f) The State-approved training program for certain provisional teachers of bilingual education and English as a second language will extend for two years (see N.J.A.C. 6:11-5.3(c) and (d)). The provisional certificates of these teachers shall be renewed at the request of the Support Team chairperson in order to allow their continued employment during the second year of the training program.

(g) Teachers whose provisional employment extends for a second year shall be supervised and evaluated during the second year pursuant to N.J.A.C. 6:11-5.3 and 5.4.

6:11-6.2 Endorsements and authorizations

(a) Teaching endorsements and authorizations are listed below:
1. and 2. (No change.)

3. Bilingual/bicultural education: This endorsement authorizes the holder to teach bilingual/bicultural [education] students in all public schools[.]. Each bilingual/bicultural teacher must also possess the appropriate subject matter or grade-level endorsement.

4.-30. (No change.)

6:11-6.3 [Endorsements: requirements] (Reserved)

[(a)] Holders of standard instructional certificates, except as noted in (b) below shall obtain additional instructional endorsements by:

1. Presenting evidence of having acquired a baccalaureate degree at an accredited institution (except as noted in N.J.A.C. 6:11-6.3(c)1; and

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2. Passing a State test in the subject field or a State test of general knowledge for an elementary or nursery endorsement. 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 field.

(b) The following subject field endorsements, while requiring a baccalaureate degree, constitute exceptions to the requirements in (a) above (see N.J.A.C. 6:11-8.3):

1. Typewriting endorsement applicants must hold a valid New Jersey instructional endorsement in business education and demonstrate proficiency in typing.

2. Driver education endorsement candidates shall hold a New Jersey instructional endorsement in another subject field and a current New Jersey driver's license. Also required are three years of automobile driving experience and evidence of a driver education training program approved by the New Jersey State Department of Education.

3. Military science endorsement requires official evidence of 20 years of military service and recommendation by the branch of service in which the applicant served a minimum of 20 years.

(c) Exceptions to the requirement of a baccalaureate degree (see N.J.A.C. 6:11-5.1(a)1 and 2):

1. In the following endorsement areas, work experience is accepted in lieu of the baccalaureate degree in accordance with N.J.A.C. 6:11-8.3(c).

- i. Agricultural occupations;
- ii. Skilled trades;
- iii. Personal production and service occupations;
- iv. Practical nursing;
- v. Technical occupations.

(d) Applicants who receive official transcript evaluations before September 1, 1985, shall be permitted to fulfill requirements by taking the college courses indicated or by taking the appropriate State test and State-approved training program where applicable. Such applicants who choose to complete college courses must do so by September 1, 1990, after which they must take the State test. No new transcript evaluations will be issued after September 1, 1985 in fields in which State-approved training programs are authorized.]

6:11-7.3 Curriculum

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

(d) For purposes of certification, a central focus of the undergraduate teacher education program is the professional component. This component must meet [all] standards and study requirements of the National Association of State Directors of Teacher Education and Certification. In addition, each approved undergraduate teacher preparation program shall provide study in the following essential behavioral/social science and professional education [areas listed in N.J.A.C. 6:11-8.2(a).] topics:

1. Curriculum: Studies designed to foster an understanding of the curriculum taught and the assessment of learning, including topics such as the following: the organization and presentation of subject matter, the development and use of tests and other forms of assessment, the evaluation and selection of instructional materials and the appropriate use of textbooks and teachers' guides, the use and interpretation of standardized tests and teacher-developed instruments, the reading process and other language art skill development appropriate to the field of specialization and grade level, and a knowledge of techniques and materials for fostering the development of reading and language arts skills.

2. Student Development and Learning: Studies designed to foster an understanding of students, their characteristics as individuals, and the ways in which they learn, including topics such as: student interests, motivation, preventing classroom disruption, creating a healthy learning climate, individual and group learning, language development, individual differences, and the role of technology in early learning.

3. The Classroom and the School: Studies designed to foster an understanding of the school as a social unit and classroom management, including such topics as: the bureaucratic/social structure of public education, the making of teaching decisions, allocations of instructional time, setting of priorities, pacing of instruction, setting of goals, questioning techniques, student practice and independent work.

(e) Approximately 30 credit hours of instruction shall be devoted to professional preparation; a minimum of nine credits must be devoted to study in the behavioral/social sciences, and may be included in the professional or liberal arts components of the program. The professional component of the undergraduate program shall provide students, normally beginning in the sophomore year, with practical experiences in an elementary or secondary school setting; these opportunities shall increase in intensity and duration as the student advances through the program and culminate with a student teaching experience.

[(e)] (f) The student teaching experience of each approved undergraduate program shall be the equivalent of a full-time experience of one semester's duration and shall be included within the professional component.

(g) Approved college programs leading to the bilingual teaching and endorsement must provide, in addition to or within the professional component, approximately six credit hours of study of the historical and cultural backgrounds of limited English proficient students, the specialized instructional content of bilingual education, and techniques of teaching bilingual students.

(h) Approved college programs leading to the endorsement, Teacher of English as a Second Language, must provide, in addition to or within the professional component, approximately 12 credits of study of the historical and cultural backgrounds of limited English proficient students, the specialized instructional content of ESL education, and techniques of teaching English as a second language.

SUBCHAPTER 8. [NEW JERSEY INSTRUCTIONAL SUPPLEMENT TO STANDARDS FOR STATE APPROVAL OF TEACHER EDUCATION] EXCEPTIONS TO REQUIREMENTS FOR STANDARD INSTRUCTIONAL CERTIFICATION

[6:11-8.1 Scope

(a) This subchapter will be used by the Bureau of Teacher Preparation and Certification in the following ways:

1. In defining the essential areas of study to be included in the professional component of approved college programs and the formal instruction component of State-approved alternative training programs.

2. As the basis for performing transcript evaluations and issuing certificates in fields in which State-approved training programs are not authorized; and

3. As the basis for issuing certificates in certain technical fields in which the baccalaureate degree is not required.]

[6:11-8.2 Common requirements; all college teacher education programs and State-approved alternative programs

(a) Approved college programs and State-approved alternative programs shall include study in the following areas of professional education:

1. Curriculum: Studies designed to foster an understanding of the curriculum taught and the assessment of learning, including topics such as the following: the organization and presentation of subject matter, the development and use of tests and other forms of assessment, the evaluation and selection of instruction materials and the appropriate use of textbooks and teacher's guides, the use and interpretation of standardized tests and teacher-developed instruments, the reading process and other language art skill development appropriate to the field of specialization and grade level, and a knowledge of techniques and materials for fostering the development of reading and language arts skills.

2. Student Development and Learning: studies designed to foster an understanding of students, their characteristics as individuals, and the ways in which they learn, including topics such as: student interests, motivation, preventing classroom disruption, creating a healthy learning climate, individual and group learning, language development, individual differences, and the role of technology in early learning.

3. The Classroom and the School: studies designed to foster an understanding of the school as a social unit and classroom management, including such topics as: the bureaucratic/social structure of public education, the making of teaching decisions, allocations of instructional time, setting of priorities, pacing of instruction, setting of goals, questioning techniques, student practice and independent work.

4. Physiology and Hygiene: In accordance with the provisions of N.J.S.A. 18A:26-8, candidates must pass an examination in physiology and hygiene, including the effects of narcotics and alcohol. In lieu of this examination, the applicant may present basic military training or study in areas such as biology, health or nutrition.]

6:11-[8.3] **8.1** [Exceptions to requirements for standard certification] **Vocational education**

(a) State-approved alternative training programs are not authorized in fields of vocational education. In addition, work experience may be substituted for the baccalaureate degree. Teachers in these fields may be employed on an emergency basis in accordance with N.J.A.C. 6:11-4.3. The emergency certificate is a one-year certificate which is renewable annually for an indefinite period.

(b) Candidates in the fields of vocational education may obtain a standard endorsement by meeting the following requirements.

1. Agricultural occupations: [(experience background)] (**Experience Background**). Applicants who present five years of experience in a particular area of agriculture, such as farm machinery repairman, nursery worker, greenhouse florist or poultryman, may receive this endorsement without the requirement of a bachelor's degree. They must present approved training for the agricultural occupation, and have completed an approved teacher education program. Instead of approximately 60 credit-hours in general education, the program must include [eighteen] 18 semester-hour credits in general background courses, including study in at least three of the following fields: English, social studies, fine arts, science, mathematics and foreign language. The 30 credit major field requirement does not apply to this endorsement.

2. Practical nursing: (Experience Background). Registered nurses who present three years of approved full-time nursing experience may receive this endorsement without the requirement of a bachelor's degree if they have completed an approved teacher education program. Instead of approximately 60 credit hours in general education, the program must include [eighteen] 18 semester-hour credits in general background courses, including study in at least three of the following fields: English, social studies, fine arts, science, mathematics, and foreign languages. The 30-credit field requirement does not apply to this endorsement.

i. A standard school nurse certificate or a bachelor's or higher degree in nursing education will be accepted as meeting the study requirement for the practical nursing teacher's certificate.

3.-4. (No change.)

5. Technical occupations: (Experience Background). Applicants who present approved training in technical occupations such as electronic technicians, chemical technicians, industrial drafting and design technicians, engineering aides, and metallurgical technicians may receive this endorsement without a bachelor's degree. Such applicants must present approved training and either:

i. A bachelor's degree and two years of experience[.]; or

ii. Four years experience without the bachelor's degree. Instead of approximately 60 credit-hours in general education, the program must include [eighteen] 18 semester-hour credits in background courses, including study in at least three of the following fields: English, social studies, fine arts, science, and mathematics. The 30-credit field requirement does not apply to this endorsement.

6. (No change.)

7. Vocational-technical; part-time teacher

i. (No change.)

ii. The applicant must have demonstrated evidence of practical experience to fit him or her for the particular position he or she is to fill. The adequacy will be evaluated by the particular supervisor

in whose field the teaching is to be done and will be approved by recommendation of the State Director of Vocational-Technical Teacher Training to the State Board of Examiners.

iii. (No change.)

6:11-8.2 Special education

[(b)] (a) State-approved alternative training programs are not authorized in fields of special education. Teachers in these fields may be employed on an emergency basis in accordance with N.J.A.C. 6:11-4.3. The emergency certificate is a one-year certificate which is renewable annually for an indefinite period.

(b) Candidates in the fields of special education may obtain an endorsement by completing an approved program at a college or university, or by meeting the following requirements as determined by an evaluation of transcripts or other official documents:

1. Handicapped: This endorsement authorizes teaching the physically limited, socially and emotionally maladjusted, mentally retarded (educable and trainable) children, or children with multiple handicaps. Candidates for this endorsement must complete [eighteen] 18 semester-hour credits in the education of handicapped, [twelve] 12 semester-hour credits in education electives, and student teaching. The [eighteen] 18 credits in education of the handicapped must include study in each of the following areas: nature and causes of disabilities, practices and materials in teaching the handicapped, and resources and community agencies available in teaching the handicapped.

2. Blind or partially sighted: Candidates for this endorsement must complete [eighteen] 18 semester-hour credits in education of the handicapped, [twelve] 12 semester-hour credits in education electives, and student teaching. The [eighteen] 18 credits in education of the handicapped must include study in each of the following areas: nature and causes of disabilities, curriculum and/or methods of teaching blind or partially sighted children, including typewriting and Braille, resources and community agencies available for teaching the handicapped.

3. Deaf or hard of hearing: Candidates for this endorsement must complete [eighteen] 18 semester-hour credits in the education of the handicapped, [twelve] 12 semester-hour credits in education electives, and student teaching. The [eighteen] 18 credits in education of the handicapped must include study in each of the following areas: nature and causes of disabilities, curriculum and/or methods of teaching speech, speech reading, and language to the deaf or hard of hearing, resources and community agencies available in teaching the handicapped.

(c) In accordance with N.J.A.C. 6:11-3.[16]23, applicants who have not completed the course study requirements in technical fields or the field of special education may have such requirements waived by presenting evidence of alternative education or experience. In addition, the student teaching requirements in these fields shall be waived for those candidates who:

1.-4. (No change.)

6:11-8.3 Typewriting

Requirements for the Teacher of Typewriting endorsement are a valid New Jersey instructional endorsement in business education and demonstrated proficiency in typing. Commencing January 1, 1990, candidates for this endorsement shall also be required to pass a State test of basic communication skills.

[6:11-8.4 Bilingual/bicultural education

(a) The bilingual/bicultural education endorsement requires prior completion of requirements for certification in another instructional field. Therefore, candidates will already have acquired essential knowledge and skills and shall not be required to complete student teaching or a State approved alternative. Teachers in the field of bilingual/ bicultural education may be hired on an emergency basis in accordance with N.J.A.C. 6:11-4.3. Applicants may obtain certificates by completing an approved college program or through a review of their college transcripts.

(b) The requirements are as follows:

1. A bachelor's degree based upon a four-year program in an accredited college;

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2. A standard New Jersey teaching certificate in another field;
3. Completion of 30 semester-hour credits in bilingual/bicultural education, including study in the following areas.

i. Cultural and cross-cultural studies: A minimum of 12 semester-hour credits, in separate or integrated courses, including study in each of areas (1), (2) and (3) below is required, each course should be designed to increase the understanding of cross-cultural variables affecting learning, and include such courses as the following:

(1) Social psychology and the bilingual child or Contemporary social problems (with emphasis on the bilingual/bicultural child); except

(A) An applicant who has completed a minimum of three full years of successful experience as a teacher of bilingual/bicultural and/or English as a second language education under a valid New Jersey standard or substandard certificate, or its equivalent, will be excused from completing three credits in this area;

(2) Language and culture, except an applicant who has completed a minimum of three full years of successful experience as a teacher of bilingual/bicultural and/or English as a second language education under a valid New Jersey standard or substandard certificate, or its equivalent, will be excused from completing three credits in this area;

(3) Bilingual/bicultural field experiences, except an applicant who has completed a minimum of one full year of successful experience as a teacher of bilingual/bicultural and/or English as a second language education under a valid New Jersey standard or substandard certificate, or its equivalent, will be excused from completing three credits in this area, and an applicant who has completed three or more years of successful experience will be excused from completing an additional three credits in this area;

(4) Cultural anthropology;

(5) Comparative cultures.

ii. Linguistics: Three credits in the area of study (1) below is required.

(1) Applied linguistics: Courses stressing techniques of second language skills development.

iii. Other areas: A minimum of nine semester-hour credits in separate or integrated courses. Areas of study (1), (2) and (3) below are required.

(1) Foundations of bilingual/multicultural education (rationale, history, survey of existing models);

(2) Theory and practice of teaching the bilingual child in content areas. If this requirement is fulfilled with coursework, then it should be taught in English and the other language being used as a medium of instruction, wherever possible, except an applicant who has completed a minimum of three full years of successful experience as a teacher of bilingual/bicultural education under a valid New Jersey standard or substandard certificate, or its equivalent, will be excused from completing three credits in this area;

(3) Theory and practice of teaching English as a second language, except an applicant who has completed a minimum of three full years of successful experience as a teacher of English as a second language education under a valid New Jersey standard or substandard certificate, or its equivalent, will be excused from completing three credits in this area.

iv. Demonstration of verbal and written proficiency in English and in one other language used also as a medium of instruction.

(c) All bilingual/bicultural certification programs to be offered at New Jersey colleges and universities must be reviewed by the Department of Higher Education and approved by the State Department of Education. Bilingual/bicultural programs shall be developed by institutions of higher education so that the requirements set forth in subsection (b) above of this section may be met in a variety of settings, including but not limited to specific courses.

(d) The participants in such approved programs shall acquire the skills and knowledge prescribed in these rules and regulations before the dean of education recommends the candidate to the Bureau of Teacher Preparation and Certification for a bilingual/bicultural certificate.]

6:11-8.4 Driver education

Requirements for the Teacher of Driver Education endorsement are any New Jersey instructional endorsement, a current New Jersey driver's license, three years of automobile driving experience and completion of a State-approved driver education training program. Commencing January 1, 1990, candidates for this endorsement shall also be required to pass a State test of basic communication skills.

[6:11-8.5 Teaching English as a second language

(a) Teachers of English as a second language may be hired on an emergency basis in accordance with N.J.A.C. 6:11-4.3. Applicants may obtain certification by completing an approved college program or through a review of their college transcripts.

(b) The requirements are as follows:

1. A bachelor's degree based upon a four-year curriculum in an accredited college;

2. Successful completion of a college curriculum approved by the State Department of Education as a basis for issuing this certificate; or

3. Successful completion of a program of college studies including the following.

i. A minimum of 45 semester-hour credits in general background courses distributed in at least four of the following fields:

- (1) English;
- (2) Social studies;
- (3) Science;
- (4) Fine arts;
- (5) Mathematics;
- (6) Foreign languages;
- (7) Philosophy and psychology;
- (8) Music.

ii. Fifteen credits in the field of professional education in accordance with New Jersey certification standards;

iii. Thirty credits, comprehensive field endorsement:

(1) Cultural and cross-cultural studies: A minimum of nine semester-hour credits in separate or integrated courses, including study in each of areas (A), (B), (C) and (D) below is required—designed to increase the understanding of cross-cultural variables affecting learning, including such courses as the following:

(A) Social psychology of the bilingual child; or

(B) Contemporary social problems (with emphasis on the bilingual/bicultural child), except an applicant who has completed a minimum of three full years of successful experience as a teacher of bilingual/bicultural and/or English as a second language education under a valid New Jersey standard or substandard certificate, or its equivalent, will be excused from completing three credits in this area;

(C) Language and culture;

(D) Bilingual/bicultural field experiences, except an applicant who has completed a minimum of one full year of successful experience as a teacher of bilingual/bicultural and/or English as a second language education under a valid New Jersey standard or substandard certificate, or its equivalent, will be excused from completing three credits in this area;

(E) Cultural anthropology;

(F) Comparative cultures.

(2) Linguistics: Twelve semester hours. Courses in areas (A), (B), and (C) below are required:

(A) General linguistics;

(B) Phonology and structure of American English;

(C) Applied linguistics (including problems of second language experience);

(D) Comparative linguistics;

(E) Semantics;

(F) Dialectology;

(G) Sociolinguistics;

(H) Psycholinguistics;

(I) Grammar systems;

(J) History and development of the English language, except an applicant who has completed a minimum of three full years of successful experience as a teacher of English as a second language under a valid New Jersey standard or substandard certificate, or its

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equivalent, will be excused from completing three credits in this area. "General linguistics", "Phonology and structure of American English", and "Applied linguistics" will not be excused.

(3) Theory and practice of teaching English as a second language: Six credits, except an applicant who has completed a minimum of three full years of successful experience as a teacher of English as a second language education under a valid New Jersey standard or substandard certificate, or its equivalent, will be excused from completing three credits in this area.

(4) Foreign language: Minimum of three credits, except applicants who have not completed coursework in a language foreign to their native tongue may be excused from completing this requirement if they have:

(A) Successfully completed a State Department of Education language proficiency interview; or

(B) Successfully completed a Thomas Edison College Examination Program (TECEP); or

(C) Successfully completed a College Level Examination Program (CLEP); or

(D) Presented official verification by a college or university that an applicant has fulfilled the requirement in a manner other than through the completion of a course; or

(E) Successfully completed any other oral language proficiency instrument approved by the State Board of Examiners.

(5) Evidence of native or near-native competency in English as determined by guidelines to be established by the State Department of Education.

iv. Approved student teaching in an English as a second language setting;

v. Physiology and hygiene.

(c) The holder of a standard New Jersey teacher's certificate may qualify for an endorsement to teach English as a second language by completing the 30-credit comprehensive field endorsement.

(d) All English as a second language certification programs to be offered at New Jersey colleges and universities must be reviewed by the Department of Higher Education and approved by the State Department of Education. English as a second language programs shall be developed by institutions of higher education so that the requirements set forth in (b) above may be met in a variety of settings, including but not limited to specific courses.

1. The participants in such approved programs shall acquire the skills and knowledge prescribed in these rules and regulations before the dean of education recommends the candidate to the Bureau of Teacher Preparation and Certification for an English as a second language certificate.]

6:11-8.5 Military science

Requirements for the Teacher of Military Science endorsement are official evidence of 20 years of military service and a recommendation by the branch of service in which the applicant served for a minimum of 20 years. Commencing January 1, 1990, candidates for this endorsement shall also be required to pass a State test of basic communication skills.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF REGULATORY AFFAIRS

Procedure for Filing a Rulemaking Petition

Proposed New Rule: N.J.A.C. 7:1-1.2

Authorized By: Christopher J. Daggett, Acting Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3 and 52:14B-4.

DEP Docket Number: 046-88-12.

Proposal Number: PRN 1989-27.

Submit comments by February 16, 1989 to:

Kevil Duhon
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

The Administrative Procedure Act ("the Act"), at N.J.S.A. 52:14B-4(f), authorizes interested persons to petition a State agency "to promulgate, amend or repeal any rule." The Act also directs State agencies to "prescribe the form for the petition and the procedure for the submission, consideration and disposition" of any such petition. N.J.A.C. 1:30-3.6(d) also requires that each agency prescribe by rule the form of a petition and the procedures for its submission. The Department proposes the following rulemaking petition procedures in order to satisfy this mandate.

The proposed new rule provides that all petitions must be in writing and contain the substance or nature of the rulemaking which is requested, the reasons for the request and the petitioner's interest in the request, and reference to the authority of the agency to take the requested action.

Within 15 days of receipt of a petition, the Department will file a notice, stating the name of the petitioner and the nature of the request, with the Office of Administrative Law for publication in the New Jersey Register.

The proposed new rule further requires that the agency take action on the petition within 30 days of its receipt. The action taken by the Department may consist of either a denial of the petition; action upon the petition, which may include the initiation of a formal rulemaking proceeding; or referral of the matter to the appropriate unit within the Department for further deliberation.

Social Impact

The proposed new rule will have a positive social impact on the public by establishing procedures for the filing and consideration of rulemaking petitions.

Economic Impact

No direct economic impact on the general public is expected to result.

Regulatory Flexibility Statement

This rule would apply to any member of the public seeking amendment, promulgation or repeal of Department rules, including "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Under the proposed rule, a small business will have to file rulemaking petitions in accordance with the requirements of this rule. The proposed new rule does not impose different or additional reporting, recordkeeping or other requirements.

Full text of the proposal follows:

7:1-1.2 Procedure to petition for a rule

(a) Unless otherwise provided in Title 7 of the New Jersey Administrative Code, this section shall constitute the Department of Environmental Protection's rules regarding the disposition of all requests for rulemaking pursuant to N.J.S.A. 52:14B-4(f).

(b) Any interested person may petition the Department of Environmental Protection to promulgate, amend or repeal any rule of the Department of Environmental Protection. Such petition must be in writing, signed by the petitioner, and must state clearly and concisely:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request;
4. The petitioner's interest in the request, including any relevant organization affiliation or economic interest;
5. The statutory authority under which the Department of Environmental Protection may take the requested action; and
6. Existing Federal or State statutes and rules which the petitioner believes may be pertinent to the request.

(c) Petitions for the promulgation, amendment or repeal of a rule by the Department of Environmental Protection shall be addressed to:

Department of Environmental Protection
 CN 402
 Trenton, New Jersey 08625
 Attention: Administrative Practice Officer
 Division of Regulatory Affairs

Rocco D. Ricci, P.E.
 Executive Director
 New Jersey Water Supply Authority
 P.O. Box 5196
 Clinton, New Jersey 08809

(d) Any document submitted to the Department of Environmental Protection that is not in substantial compliance with this section shall not be deemed to be a petition for rulemaking requiring further agency action.

(e) Upon receipt by the Department of a petition for rulemaking, the following shall occur:

1. The petition shall be dated, stamped and logged;
2. The petition shall be referred to the relevant Department division or other Department office, as appropriate; and
3. A notice of petition shall be prepared and filed within 15 days of receipt with the Office of Administrative Law in compliance with N.J.A.C. 1:30-3.6(a).

(f) Within 30 days following receipt of a petition, the Department shall mail to the petitioner and file with the Office of Administrative Law for publication in the New Jersey Register a notice of action on the petition which shall contain the information prescribed by N.J.A.C. 1:30-3.6(b).

(g) In accordance with N.J.A.C. 1:30-3.6(c), the Department's action on a petition may include:

1. Denial of the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referral of the matter for further deliberations, the nature of which shall be specified and which shall conclude upon a specified date. The results of these further deliberations shall be mailed to the petitioner and shall be submitted to the Office of Administrative Law for publication in the New Jersey Register.

(a)

**NEW JERSEY WATER SUPPLY AUTHORITY
 Schedule of Rates, Charges and Debt Service
 Assessments for the Sale of Water from the
 Delaware and Raritan Canal-Spruce Run/Round
 Valley Reservoirs System**

**Proposed Amendments: N.J.A.C. 7:11-2.1, 2.2, 2.3,
 2.4, 2.5, 2.8, 2.9, 2.10, 2.11, 2.12, 2.13, 2.14**

Authorized By: Christopher J. Daggett, Acting Chairman, New Jersey Water Supply Authority and Acting Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:1B-7.
 DEP Docket Number: 048-88-12.
 Proposal Number: PRN 1989-34.

A public hearing concerning these proposed amendments will be held at the following time and location:

February 17, 1989 at 9:30 A.M.
 Labor Education Center, Auditorium
 Rutgers University
 Ryders Lane and Clifton Avenue
 New Brunswick, New Jersey 08903

Submit written comments by March 24, 1989 to:
 Catherine A. Tormey, Esq.
 Division of Regulatory Affairs
 Department of Environmental Protection
 CN 402
 Trenton, New Jersey 08625; and
 Rocco D. Ricci, P.E.
 Executive Director
 New Jersey Water Supply Authority
 P.O. Box 5196
 Clinton, New Jersey 08809

The Basis and Background document, which is available from the Authority at the address given below, explains in detail the financial justification for the revised rate schedule proposed in N.J.A.C. 7:11-2.

The agency proposal follows:

Summary

The New Jersey Water Supply Authority ("Authority") is proposing to adjust its Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System ("System"), to cover operation and maintenance costs for the fiscal year ("FY") starting on July 1, 1989. The Authority is also proposing to adjust its existing annual debt service on outstanding loans and to establish a new debt service assessment for the 1988 water system revenue bonds starting on July 1, 1989.

The General Rate Schedule for Operations and Maintenance in N.J.A.C. 7:11-2.2, was last adjusted effective July 1, 1986 (increased from \$81.80 to \$94.64 per million gallons, hereinafter "MG") to cover the operation expenses of the System. Anticipated operational costs for Fiscal Year 1989 (which started July 1, 1988) indicated that an Operations and Maintenance rate component increase would be required unless Authority Reserve Funds could be utilized to cover projected FY89 Operational Shortages. Consistent with the requests of the major water users, the Authority decided to maintain the Operations and Maintenance Rate Component at the \$94.64 MG level through June 30, 1989 by transferring cash reserve funds to cover projected FY89 operations and maintenance requirements and to maintain all reserve funds at the levels required by Authority policies.

Projected operating costs for Fiscal Year 1990 now indicate that an Operations and Maintenance rate component of \$110.07 will be needed starting July 1, 1989. Most of the increased Operations and Maintenance expenses are due to the substantially increased cost of liability insurance coverage. Increased employee salary requirements since 1986, as a result of the existing three year labor contract, constitute a significant portion of the remaining additional expense items.

The debt service assessment rate for the 1969 bonds involved in the construction of Spruce Run/Round Valley Reservoir System outlet pipeline and dam rehabilitation projects was previously adjusted effective July 1, 1988 (FY89) based on a sales base of 152.587 million gallons per day (MGD). The Authority anticipates that the applicable sales base for FY90 will now be 151.768 MGD. Application of this new sales base results in a change in the per million gallons rate assessment from \$13.83 to \$13.92 per million gallons for the 1969 bonds.

The debt service assessment rate for the 1981 Water Supply Bond funds used to finance the removal of sediment from 32 miles of the Delaware and Raritan Canal was previously adjusted effective July 1, 1988 (FY89) based on a sales base of 153.745 MGD. The Authority anticipates that the applicable sales base for FY90 will be 152.926 MGD. Application of this new sales base results in a slight increase of \$0.07 in the per million gallons rate component from \$33.15 to \$33.22 per million gallons for the 1981 bonds.

The debt rate stabilization fund assessment of \$10.50 per million gallons, which was established effective July 1, 1988, will terminate on June 30, 1989 and will not be continued. The balance in this fund will be transferred to the Major Rehabilitation Fund which is used for improvements to the System.

A new debt service assessment rate for the 1988 Water System Revenue Bonds to be issued to finance the Authority's planned Capital Improvement Program will be based on a sales base of 152.926 MGD. Accordingly, the proposed assessment is \$37.64 per million gallons for the fiscal year starting July 1, 1989 (FY90). This Debt Service Assessment is also projected to increase to \$44.79 for FY91 and FY92, to \$54.82 in FY93 and to \$56.65 in FY94.

In addition to the adjustments set forth above, the proposed amendments make a number of other changes to N.J.A.C. 7:11-2. The proposed amendments state that the schedule of rates, charges and debt service assessments shall be known throughout the rule as the "Schedule". They also list in detail the items that comprise or may comprise the operations and maintenance expenses which form the basis for the General Rate Schedule for Operations and Maintenance. These detailed items are taken from and mirror the language of the 1988 Water Supply Revenue bonds, series 1988 and the authorizing bond resolution.

Under the existing language of N.J.A.C. 7:11-2.4, both "special water users" (as described at N.J.A.C. 7:11-2.12) and "short term users" (described at N.J.A.C. 7:11-2.13) were not required to pay the portion of

the daily allotment charge which was comprised of a debt service assessment. The Authority has determined that this exception from the payment of debt service assessments is appropriate for "special users" since these water users do not consume water but rather return all water used to the System. In contrast, short term users are consumptive users; that is, they use up the water taken and do not return it to the System. The Authority maintains that short term users should pay a share of the Authority's bonded indebtedness along with other consumptive users since the indebtedness allowed for the construction of the reservoirs system which, in turn, accommodates the short term user's water storage needs in the same way that other users' needs are accommodated.

As a result, the Authority, in the proposed amendments, deletes "short term users" from the exception in N.J.A.C. 7:11-2.4(a) and adds to N.J.A.C. 7:11-2.13 the requirement that short term users shall not only pay the applicable rate specified under the General Rate Schedule for Operations and Maintenance but also pay the applicable debt service assessments.

The proposed amendments expand and clarify the meaning of "standby service" as set forth in N.J.A.C. 7:11-2.8 and describe the appropriate charge to be assessed for standby service. That charge is being increased in N.J.A.C. 7:11-2.9 to \$110.07 per million gallons per day which is the same rate increase as that established in the General Rate Schedule for Operations and Maintenance.

The proposed amendment at N.J.A.C. 7:11-2.10 will allow the Authority the flexibility to review and revise not only the Schedule but also the sales bases "from time to time" in accordance with the Authority's rules regarding rate adjustments, rather than permitting such review and revision only on a rigid annual basis. The language of the rule regarding notice of such an adjustment to the Schedule has been amended to reflect the change from annual review while still providing "at least six months advance notice of the effective date of the revision . . . to all purchasers. . . ." In addition, the proposed rule states that any contracts for the sale of water entered into by the Authority are subject to this exercise of review "from time to time".

The proposed amendment to the rule also require that contracts for new or additional water sales after July 1, 1989 contain provisions requiring retroactive payment of a full proportionate share of the total annual debt service payments made by the Authority to its bondholders pursuant to the 1988 Water Supply System Revenue Bonds during the period from July 1, 1989 to the effective date of any new contract. Pre-existing users will be credited with a proportionate share of the retroactive payments made by new users. This retroactive payment arrangement is the same as that already required by the rule for the 1958, 1969 and 1981 bonds.

The proposed amendments also clarify the procedures which the Authority must follow when proposing rate adjustments set forth at N.J.A.C. 7:11-2.11. Specifically, the proposed amendment changes the timetable for meeting with contractual water customers and the Public Advocate by stating that after official notice of the proposed rate adjustment is sent, Authority staff will schedule a meeting to discuss the proposal, which meeting must occur within 45 days. In addition, the time frame in which questions must be received by the Authority prior to a public hearing in order for those questions to be answered at the hearing has been amended from "no later than 45 days" prior to the hearing to "no later than 15 days" prior to the hearing. This proposed change makes N.J.A.C. 7:11-2.11(a) internally consistent while allowing more time for pre-hearing questions to be submitted.

In addition, the proposed amendments define "short term service" at N.J.A.C. 7:11-2.13 and require that the short term user now pay, in addition to the rate set forth in the General Rate Schedule for Operations and Maintenance, the applicable debt service assessments set forth at N.J.A.C. 7:11-2.3.

Finally, the proposed amendments change the procedures for late payments at N.J.A.C. 7:11-2.14. Specifically, the amendment sets forth what interest rate will be applied to late payments and establishes the market indicator which will be used to set that interest rate.

Social Impact

The proposed amendments will have minimum social impact. The amendments represent the New Jersey Water Supply Authority's efforts to ensure that rates for raw water withdrawn, diverted or allocated from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir Complex are equitably assessed and sufficient to provide the revenues required by the New Jersey Water Supply Authority.

Economic Impact

The proposed adjustment to the rate schedule will result in a net increase ranging from \$42.73 in FY90 to \$61.74 in FY94 per million gallons of water supplied in the total charge for the raw water supplied from the System due to a \$15.43 increase in the Operations and Maintenance rate component and an increase of \$37.80 in the debt service assessments which is offset in part by the elimination of the \$10.50 debt rate stabilization fund assessment established effective July 1, 1988. It is estimated that the impact of the proposed wholesale water rate increase on the typical household will amount to \$4.27 in FY90 increasing to \$6.17 in FY94 provided these increased costs are passed through by the wholesale water customers without further fees.

Environmental Impact

The adequate financing of systems upkeep and operation, which is provided by the proposed amendments, will result in a positive environmental impact. Properly maintained Authority systems and operations protect not only the water users but also the surrounding environment of the Spruce Run/Round Valley Reservoirs and Delaware and Raritan Canal.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. (herein "the Act"), the Authority has determined that these amendments would not impose reporting, recordkeeping or other compliance requirements on small businesses because the amendments affect only the rate charged to users for water purchased from the Authority. The water companies which contract to purchase water from the Authority and which are impacted by these amendments do not qualify as "small businesses" pursuant to the Act.

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

7:11-2.1 General provisions

(a) **This Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System (hereafter "the System") shall be known and may hereafter be referred to in this subchapter as "the Schedule".**

[(a)] (b) The rates, charges and debt service assessments listed below shall be paid for raw water diverted, withdrawn or allocated from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System. These rates, charges and debt service assessments set forth in this subchapter shall be incorporated in all water use agreements.

(c) The total rate charged **under this Schedule** shall include the **General Rate Schedule** for Operations and Maintenance [rate] set forth at N.J.A.C. 7:11-2.2, and the Debt Service Assessments set forth at N.J.A.C. 7:11-2.3 (See N.J.A.C. 7:11-2.12, **Special user rates, for exception**).

7:11-2.2 General Rate Schedule for Operations and Maintenance

(a) The General Rate Schedule for Operations and Maintenance per million gallons listed at (b) below is based on estimated annual [primary costs, renewal and replacement reserve, pumping reserve, major rehabilitation reserve, and general reserve.] **operations and maintenance expenses consisting of all current costs, obligations and expenses of, or arising in connection with, the operation, maintenance and administration of the System, and minor additions or improvements thereof or thereto, or the performance of any water purchase contract, including, but not limited to, all of the following:**

1. All routine repairs and ordinary replacements and reconstruction of the System; all wages, salaries and other personnel costs, including costs of pension, retirement, health and other employee benefit programs; all fuel, utilities, supplies and equipment; and all supervisory, engineering, accounting, auditing, legal and financial advisory services;
2. All taxes and payments in lieu of taxes;
3. All costs of insurance for the System, including any form of self insurance (or self insurance reserves) maintained by the Authority and payment of all claims not covered by the Authority's insurance;
4. All fees and expenses incurred in connection with any Credit Facility, Reserve Account Credit Facility, the issuance of any bonds or the issuance of any other indebtedness of the Authority, and all fees and expenses of counsel, fiduciaries and others in connection with any

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such Credit Facility, Reserve Account Credit Facility, bonds or other indebtedness of the Authority to the extent not required to be paid out of the proceeds of such bonds or other indebtedness;

5. All amounts required to be deposited into the Rebate Fund, at the time and in the manner set forth in any investment rebate instructions or otherwise in accordance with the Internal Revenue Code;

6. All amounts required to be paid into any reserve fund established for operation and maintenance expenses;

7. Allowance for depreciation with respect to equipment and property having a depreciable life of greater than three years but less than 10 years; and

8. Any other current costs, expenses or obligations required to be paid by the Authority under the provision of any agreement or instrument relating to bonds, other indebtedness of the Authority or by law. The current sales base of [157.312] **152.966** million gallons per day has been used in setting the rate listed at (b) below.

[1.] (b) General Rate Schedule for Operations and Maintenance [Component]:

Allocation Million gallons per day [(mgd)] (MGD)	Rate/Million Gallons [\$94.64] \$110.07
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7:11-2.3 Debt Service Assessments

(a) The Debt Service Assessment rate per million gallons shall be based on the amounts and schedules of payments required [by] under a loan agreement between the Authority and the Treasurer of the State of New Jersey to pay for the bonds issued pursuant to the "Water Conservation Bond Act of 1969", P.L. 169, c.127 (the "1969 Water Conservation Bonds") for the construction of outlet pipeline and dam rehabilitation; and the bonds sold pursuant to the "Water Supply Bond Act of 1981", P.L. 1981, c. 261 (the "1981 Water Supply Bonds") for [the rehabilitation of] the Delaware and Raritan Canal Sediment Removal Project [; and the amount needed to implement the FY89 Debt Rate Stabilization Fund]. It also includes the debt service on the 1988 Water System Revenue Bonds issued by the Authority.

(b) The debt service assessment rate for the 1969 Water Conservation Bonds shall be based on a sales base of [152.587] **151.768** million gallons per day [excluding water users of the Delaware and Raritan Canal within the Delaware River Basin]. This debt service assessment rate does not apply to Delaware and Raritan Canal customers in the Delaware River Basin.

1. 1969 Water Conservation Bond Funds:

Period [7/1/88] 7/1/89 to 6/30/2002	Allocation Million Gallons [per day] per Day [(mgd)] (MGD)	Rate/Million Gallons [\$13.83] \$13.92
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(c) 1981 Water Supply Bond funds were borrowed from the State Treasurer to retire the tax exempt commercial paper used for temporary financing of the Delaware and Raritan Canal sediment removal program. The following debt service assessment rate, based on a sales base of [153.745] **152.926** million gallons per day, in addition to that included in (b) above, will be applied to all customers:

Period [7/1/88] 7/1/89 to 10/30/2006	Allocation Million Gallons [per day] per Day [(mgd)] (MGD)	Rate/Million Gallons [\$33.15] \$33.22
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[(d) The following Debt Stabilization Fund component to cover unforeseen capital expenses for repairs to the system facilities is based on a sales base of 153.745 million gallons per day. The Debt Rate Stabilization Fund component set forth below, in addition to the component described in (a) and (b) above, will be applied to all customers:

Period 7/11/88 to 6/30/89	Allocation Million Gallons per day (mgd)	Rate/Million Gallons \$10.50]
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(d) The following Debt Service Assessment rate for the 1988 Water System Revenue Bonds, based on a sales base of **152.926** million gallons per day, in addition to that included in (b) and (c) above, will be applied to all customers:

Period	Allocation	Rate/Million Gallons
7/1/89 to 6/30/90	Million Gallons per Day (MGD)	\$37.64
7/1/90 to 6/30/92	Million Gallons per Day (MGD)	\$44.79
7/1/92 to 6/30/93	Million Gallons per Day (MGD)	\$54.82
7/1/93 to 6/30/94	Million Gallons per Day (MGD)	\$56.65

7:11-2.4 Daily allotment charge

(a) Effective on the date of commencement of charges as specified in the water use agreement, and except for special use described in N.J.A.C. [7:11-2.11 and short term use described in] 7:11-2.12, the user shall pay a daily allotment charge amounting to 100 percent of the value of the quantity specified in the agreement for 24-hour withdrawal at the rates [prevailing in the agreement in effect at that time] **specified in this Schedule, as it may be amended from time to time.**

1. The total charge shall include the General Rate Schedule for Operations and Maintenance described in N.J.A.C. 7:11-2.2 and the applicable Debt Service Assessment as described in N.J.A.C. 7:11-2.3.

2. (No change.)

7:11-2.5 Equivalent sustained supply: Spruce Run/Round Valley Reservoirs System

(a) In operating the Spruce Run/Round Valley Reservoirs System to augment natural stream flow during a period of low runoff, optimum dependable supply is attained at the confluence of the Millstone River where the combined flow from the tributaries to the Raritan River above that point becomes effective.

(b) Each application for the diversion, withdrawal or allocation of water from the Raritan River Basin is, therefore, to be evaluated, and differentiation in rates, charges and assessments shall be made, on the basis of quantities of water to be supplied, distance between the facility and point of diversion, the cost in making such water available, the place where the water is to be used, and the character of such use.

7:11-2.8 Standby service

(a) [A user applying for water supply for occasional use only, such as fire protection, may be classified by the New Jersey Water Supply Authority as "standby service".] **"Standby service" means the supply of water from the System, to the extent from time to time available, in excess of aggregate uninterruptible service, for certain occasional uses, such as fire protection or other emergencies, natural or otherwise, which a System water user is authorized to withdraw pursuant to a contract. Such user shall pay a monthly standby charge instead of a demand charge, but shall in all other respects comply with the rules [and regulations] for the use of water from the Delaware and Raritan Canal-Spruce Run Round Valley Reservoirs System.**

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

7:11-2.9 Standby Charge

(a) A user classified under standby service, as provided in N.J.A.C. 7:11-2.8 above, shall pay a monthly minimum charge based on the capacity of his withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly Standby Charge, based on charges as set forth under N.J.A.C. 7:11-2.2 and 2.3.

NOTE: [Mgd] MGD = million gallons daily; [Gpm] GPM = gallons per minute.

1. For Delaware and Raritan Canal Standby Contracts within the Delaware River Basin:

Maximum withdrawal capacity Each 1 [mgd] MGD (700 [gpm] GPM) or fraction thereof.	Charge per month [\$94.64] \$110.07 plus annual debt service assessment rate for 1981 Water Supply Bonds and [FY89 Debt Rate Stabilization Fund] 1988 Water System Revenue Bonds.
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2. For Standby Contracts within the Raritan River Basin:

Maximum withdrawal capacity	Charge per month
Each 1 [mgd] MGD (700 [gpm] GPM) or fraction thereof.	[\$94.64] \$110.07 plus annual debt service assessment rates for 1969 Water Conservation Bonds , 1981 Water Supply Bonds and [FY89 Debt Rate Stabilization Fund] 1988 Water System Revenue Bonds .

7:11-2.10 Rate adjustment

(a) The New Jersey Water Supply Authority reserves the right to review and revise the [General Rate] Schedule from time to time by the establishment of a new [General Rate] Schedule promulgated pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and any [regulations] rules promulgated pursuant thereto.

1.-2. (No change.)

3. Any contract for the sale of water shall be subject to [the exercise of this power] **any adjustment resulting from this review.**

(b) The New Jersey Water Supply Authority reserves the right to [annually] review the sales bases **from time to time** to make adjustments, if necessary, in the [General Rate] Schedule [as set forth at N.J.A.C. 7:11-2.2 and the Debt Service Assessment Rate as set forth at N.J.A.C. 7:11-2.3]. Any such adjustments shall be promulgated pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and any [regulations] rules promulgated pursuant thereto.

1. If any adjustment is required, at least six months notice **in advance of the effective date of such revision** shall be provided [prior to the next fiscal year] to [a] all purchasers pursuant to N.J.A.C. 7:11-2.11.

2. (No change.)

3. **Any contract for the sale of water shall be subject to any adjustment resulting from this review.**

(c) Contracts for new or additional water sales after July 1, 1983 shall contain provisions requiring the retroactive payment of a full proportionate share of the total annual Debt Service Assessment payments made by the New Jersey Water Supply Authority to the State Treasurer **for the 1958 Bonds, the 1969 Bonds and the 1981 Bonds** during the period from July 1, 1983 to the effective date of any new contract.

1. [In addition to the adjusted Debt Service Assessment rate, resulting from new or additional sales, the] **The new contract shall require that the total retroactive amount is to be paid in equal monthly increments over at least a 10-year period, or until the [end of the State Treasurer's 1981 Bond, Delaware and Raritan Canal Rehabilitation Repayment Program] scheduled date by which the Authority will have completed payments to the State Treasurer with respect to the 1981 Water Supply Bonds, whichever is longer.**

2. (No change.)

(d) **Contracts for new or additional water sales after July 1, 1989 shall also contain provisions requiring the retroactive payment of a full proportionate share of the total annual Debt Service Assessment payments made by the New Jersey Water Supply Authority to its bond holders during the period from July 1, 1989 to the effective date of any new contract.**

1. **The new contract shall require that the total retroactive amount is to be paid in equal monthly increments over at least a 10-year period, or until the scheduled date by which the Authority will have completed payments to its bond holders with respect to the 1988 Water System Revenue Bonds, whichever is longer.**

2. **For each year after the date of a new contract, the New Jersey Water Supply Authority will credit pre-existing users with a proportionate share of the annual retroactive amount paid by any new user.**

7:11-2.11 Procedures for rate adjustments

(a) Prior to adopting an adjustment in the Schedule [of Rates, Charges and Debt Service Assessments] **or the Sales Bases** established in this subchapter, the Authority shall comply with the following ratemaking procedures and schedule:

1. Official notice: Official notice and an explanation outlining the need for the proposed [rate] adjustment **to the Schedule or the Sales Bases** shall be given to all contractual water customers; the Depart-

ment of the Public Advocate, Division of Rate Counsel; and other interested parties at least six months prior to the proposed effective date.

2.-3. (No change.)

4. Meeting with contractual customers and the Public Advocate, Division of Rate Counsel: [within 45 days after] **After** sending official notice to the contractual water customers and the Public Advocate, Division of Rate Counsel, regarding the proposed rate adjustment, Authority staff shall [meet] **schedule a meeting to occur within 45 days** with representatives from the contractual water customers and the Public Advocate's office in order to present and explain the proposal.

i. (No change.)

ii. In order to be answered at the public hearing, such questions must be received by the Authority no later than [45] **15 days** prior to the public hearing. The Authority staff will make every reasonable effort to answer those questions received later than 15 days prior to the public hearing at the time of the hearing. All questions will be answered as part of the hearing record at the time of the hearing or as indicated [under] **at** (a)5vi below.

5.-7. (No change.)

7:11-2.12 Special user rates: Spruce Run/Round Valley Reservoirs System

Where the water withdrawn within the Raritan River Basin, as supported by releases from Spruce Run and Round Valley Reservoirs, is returned to the stream channel at a point reasonably considered to be in the near vicinity of the point of withdrawal, substantially undiminished in quantity and not substantially degraded in quality, all as determined by the New Jersey Water Supply Authority, the purchaser shall only pay at the rate specified under the General Rate Schedule **for Operations and Maintenance** as set forth at N.J.A.C. 7:11-2.2, as applied to the daily allotment. The annual Demand Charge for such use shall be determined by multiplying the daily allotment charge by 365.

7:11-2.13 Short term user rate

[Until such time as the total water supply capacity of the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System is contracted for, interim short-term use of uncommitted capacity may be available on a non-guaranteed interruptible basis for a period of up to one year to support such uses as the growing of agricultural and horticultural products.] **"Short term service" means the supply of water from the System, to the extent from time to time available, in excess of aggregate uninterruptible service, for certain interim, interruptible, non-guaranteed or short-term uses, such as growing agricultural or horticultural products or meeting extraordinary requirements in consumer demand for potable or industrial water, which a System water purchaser is authorized to withdraw pursuant to a contract.** Such purchaser shall [only] pay at the rate specified under the General Rate Schedule **for Operations and Maintenance** as set forth at N.J.A.C. 7:11-2.2 and the applicable Debt Service Assessments as set forth at N.J.A.C. 7:11-2.3, as applied to the total water actually diverted during any month.

7:11-2.14 Late payment interest charge

Payments are due within 30 days of the billing date. [After the due date, late payments shall be assessed a late payment charge at the prime interest rate prevailing on the due date plus two percent, but not to exceed a total of 18 percent per annum.] **All payments for service which are not made by the due date therefor and any other sums required to be paid to the Authority pursuant to a contract shall bear interest at a per annum rate equal to the prime rate, as from time to time established by Citibank, N.A. as its prime rate (with any changes in such prime rate to be effective on any date that such rate is changed) plus two percent.** The late payment charge is to be calculated from the date when the bill is payable until the actual date of payment.

(a)

**DIVISION OF FISH, GAME AND WILDLIFE
MARINE FISHERIES**

Fishery Management/Menhaden

Proposed Amendments: N.J.A.C. 7:25-22.1 and 22.2

Proposed New Rules: N.J.A.C. 7:25-22.3 and 22.4

Authorized By: Christopher J. Daggett, Acting Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 23:2B-1 et seq., specifically 23:2B-6 and
23:B-14, and N.J.S.A. 23:3-51 and 23:5-28.

DEP Docket Number: 049-88-12.

Proposal Number: PRN 1989-43.

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

February 9, 1989 at 3:00 P.M.
Edwin B. Forsythe National Wildlife Refuge
Auditorium Headquarters Building
Great Creek Road
Oceanville, New Jersey

Submit written comments by February 16, 1989 to:

Martin McHugh, Esquire
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed amendments are to the rules governing the taking of Atlantic menhaden (*Brevoortia tyrannus*). Fishermen harvesting Atlantic menhaden for fish meal reduction purposes will be prohibited from conducting fishing activities within 1.2 nautical miles of the ocean shoreline. These fishermen will also be prohibited from fishing in the Delaware, Raritan and Sandy Hook Bays. The amendments also require that vessels operating in the fish meal reduction fishery shall report to the Department when they intend to initiate and terminate fishing activities in New Jersey waters.

A new rule is proposed at N.J.A.C. 7:25-22.3 to provide that fishermen with vessels less than 90 feet in length may be licensed to take menhaden, under limited conditions, for bait purposes only. Fishermen operating in this bait fishery are prohibited from fishing within 0.6 nautical miles of the shoreline in the Atlantic Ocean and 0.3 nautical miles of the shoreline in Raritan and Sandy Hook Bays and portions of Delaware Bay.

The proposed amendments and new rule set forth additional restrictions and requirements that apply to all Atlantic menhaden fishermen, whether they are harvesting menhaden for fish meal reduction purposes or for bait purposes. Included in these restrictions and requirements is a new provision prohibiting menhaden fishermen from taking other marine organisms while purse seining for Atlantic menhaden. A related new provision establishes that the simultaneous possession of a purse seine and marine organisms other than menhaden shall be considered evidence of a violation of the subchapter.

The proposed amendments and new rule N.J.A.C. 7:25-22.3 also provide that all Atlantic menhaden fishermen will be responsible for the costs associated with the cleanup of any refuse, garbage or dead fish and fish parts discharged as a result of their fishing operations. In addition, proposed new rule N.J.A.C. 7:25-22.4 provides for vessel inspection by law enforcement officers for the purpose of enforcing all rules concerning the harvest of menhaden.

Social Impact

The proposed amendments and new rules directly affect fishermen harvesting Atlantic menhaden for fish meal reduction purposes by prohibiting their fishing in an area within 1.2 nautical miles of the ocean shoreline. Fishermen harvesting menhaden for bait purposes are permitted to fish no closer than 0.6 miles from the ocean shoreline and no closer than 0.3 nautical miles from the shoreline in Raritan Bay and Sandy Hook Bay and portions of Delaware Bay.

One of the primary purposes of these amendments and rules is to lessen the conflict between large-size menhaden purse seining activities and recreational fishermen in the near-shore waters. The amendments and rules will have a very substantial positive social impact, since they will

remove large-scale vessels operating large nets from an already crowded near-shore fishing area. Spacial conflicts with coastal navigation will also be reduced.

Economic Impact

The proposed amendments and new rules will have a negative economic impact upon two companies currently operating menhaden vessels for fish meal reduction purposes by precluding them from fishing activities in an area formerly providing a significant portion of their catch. Although these large-scale vessels will have to move their operations offshore beyond 1.2 nautical miles, the same quantity of fish can still be caught, provided, however, that additional fishing time is expended. Offsetting this negative impact, however, there will be a positive economic impact on the suppliers of recreational fishing equipment and bait as conflict between recreational and large-scale vessels is mitigated. There will also be a positive economic impact on the many commercial crabbers and lobster fishermen who depend upon menhaden for bait. Allowing smaller vessels to seine for menhaden up to 0.6 nautical miles of the ocean shoreline and up to 0.3 nautical miles of northern coastal bays should eliminate the problems encountered over the past several years of obtaining low cost bait during the mid- and late-summer period when menhaden are found close to the beach.

Coastal communities should also experience a favorable economic impact in that the cost of cleaning up refuse deposited on the shoreline as a result of menhaden fishing activities will now be borne by the fishermen responsible for the discharges. A new provision in these amendments and rules establishes liability for those fishermen responsible for such discharges.

Environmental Impact

Prohibiting large-scale menhaden purse seine fishing within 1.2 nautical miles of the shoreline and within the State's coastal bays will provide additional protection to a portion of the menhaden stock from commercial exploitation and allow predatory fishes and birds to feed on the menhaden within this zone with less disturbance. The additional protection provided would be especially beneficial to juvenile menhaden which tend to remain in nearshore waters.

Regulatory Flexibility Statement

The proposed amendments and new rules require additional recordkeeping for commercial purse seine fishermen taking menhaden for bait purposes only. Of the estimated two or four vessels so impacted by these rules, the majority are "small businesses" as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is unlikely that these small businesses will need additional professional services or incur additional capital costs to comply with these amendments and rules. In developing these amendments and rules, the Department has balanced the need to monitor and protect the environment against the economic impact to small businesses and has determined that to minimize the impact of the amendments and rules would not promote the goals set forth by the New Jersey Legislature in the Marine Fisheries Management and Commercial Fisheries Act, P.L. 1979, c.199 (N.J.S.A. 23:2B-1 et seq.) and would, therefore, be detrimental to the environment, public health and public safety.

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

SUBCHAPTER 22. FISHERY MANAGEMENT IN NEW JERSEY

7:25-22.1 Menhaden season

The season for taking Atlantic menhaden (*Brevoortia tyrannus*) from the marine waters of the State of New Jersey by purse seine for fish meal reduction shall begin on the third Monday in May and end on the third Friday in October. This [regulation in no way restricts] **provision shall not impose a limited season** for the taking of menhaden for bait, chum or purposes other than for fish meal reduction.

7:25-22.2 Purse seine fishing of Atlantic menhaden

(a) Persons licensed to fish for Atlantic menhaden with a purse seine or shirred net in the marine waters of New Jersey pursuant to N.J.S.A. 23:3-51 and N.J.S.A. 23:3-52 **who are taking Atlantic menhaden for purposes other than bait, as provided in N.J.A.C. 7:25-22.3, shall [abide by] be subject to the following [rules]:**

1. (No change.)

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2. Fishing shall be restricted to the Atlantic Ocean, [and Delaware, Raritan and Sandy Hook Bays,] not closer than [0.6] 1.2 nautical miles of any point along the shore, jetties or [fishing] piers. It will be incumbent upon the captain of a purse seine vessel to determine the possibility of drifting inside the [0.6] 1.2 nautical mile limit while fishing, before setting his or her net. Drifting into the [0.6] 1.2 nautical mile restricted area along the shore, or around a jetty or pier, while fishing [will not be considered a viable defense] shall constitute a violation of this subchapter.

3. [No fishing shall be conducted] A person shall not fish on Saturdays, Sundays, and the days on which Memorial Day, Independence Day, [or] Labor Day and Columbus Day are officially observed by the State of New Jersey.

4.-6. (No change.)

7. The licensee is responsible for cleaning up any fish, fish-parts refuse, litter, or garbage of any kind which [are] is released [from split or torn nets] during any fishing operation or as a result of a fishing operation and must initiate such cleanup no later than 24 hours after the [incident] release begins. Upon the licensee's failure to initiate such cleanup within the 24 hour period, the Department may conduct the cleanup or arrange for the performance of the cleanup. In addition to any other penalties and remedies provided by law, the licensee shall be liable for all costs associated with such cleanup, including any administrative costs incurred by the Department. Such cleanup shall include, but not be limited to, the marine and estuarine waters of the State and adjacent beaches, shorelines and marshes.

8. No [stakes,] markers[,] or buoys designating channels, crab pots, lobster pots, fish pots, or traps [, or staked leased shellfish grounds, including, but not limited to that portion of Delaware Bay north and west of a line from Fourteen Foot light to Deadman Shoal light (Bug light) and thence to Dennis Creek light,] shall be disturbed by the act of fishing.

9. Persons subject to this subchapter shall notify the Division of Fish, Game and Wildlife's Marine Enforcement Office located at Nacote Creek, Star Route, Absecon, New Jersey when they intend to fish in State waters, by calling 609-441-3474. The notification shall be made both prior to and upon the completion of any fishing in State waters, by the Captain or his or her agent.

10. The possession of any fish, as defined at N.J.S.A. 23:2B-3e, other than Atlantic menhaden on a purse seine vessel harvesting menhaden is prohibited.

11. The simultaneous possession of any fish, as defined at N.J.S.A. 23:2B-3e, other than Atlantic menhaden and a purse seine, aboard a vessel of any person holding an Atlantic menhaden license or any vessel conducting menhaden fishing operations, shall constitute prima facie evidence of a violation of this subchapter.

7:25-22.3 Taking of Atlantic menhaden for bait

(a) Persons licensed to fish for Atlantic menhaden (*Brevoortia tyrannus*) with a purse seine or shirred net in the marine waters of New Jersey pursuant to N.J.S.A. 23:3-51 and N.J.S.A. 23:3-52, may apply between January 1 and March 1 for a permit for the purpose of taking Atlantic menhaden for bait purposes only.

1. All persons licensed to take Atlantic menhaden for bait purposes only shall keep, on forms furnished by the Division of Fish, Game and Wildlife's Bureau of Marine Fisheries, accurate records of the amount and location of Atlantic menhaden harvested. Forms are available from the Trenton Office of the Division of Fish, Game and Wildlife, Bureau of Marine Fisheries, 501 East State Street, Third Floor, Trenton, New Jersey 08625. These records shall be filed by the 10th day of each month with the Division of Fish, Game and Wildlife's Trenton office. If no Atlantic menhaden were harvested during the month, a report to that effect shall be provided to the Division of Fish, Game and Wildlife's Bureau of Marine Fisheries.

(b) Persons licensed to fish for Atlantic menhaden with a purse or shirred net in the marine waters of New Jersey, for the purpose of taking Atlantic menhaden for bait purposes only, shall be subject to the following:

1. Fishing, for the purpose of this section, shall be defined as having a purse seine in the marine waters of this State.

2. Fishing shall be restricted to the Atlantic Ocean, not closer than 0.6 nautical miles of any point along the shore, jetties or fishing piers

and to that portion of the Delaware Bay south and east of a line from Fourteen Foot light to Deadman Shoal light (Bug light) and thence to Dennis Creek light. Fishing shall be restricted in Raritan Bay and Sandy Hook Bay, not closer than 0.3 nautical miles of any point along the shore, jetties or piers. It will be incumbent upon the captain of a purse seine vessel to determine the possibility of drifting inside the limit while fishing, before setting his or her net. Drifting into the restricted area along the shore, or around a jetty or pier while fishing shall be considered a violation of this subchapter.

3. The maximum length overall of any vessel fishing under the provisions of this subchapter shall be 90 feet.

4. Purse seine or shirred nets shall not exceed 150 fathoms in length.

5. A person shall not fish on Saturdays, Sundays, and the days on which New Year's Day, Martin Luther King's Birthday, Lincoln's Birthday, Washington's Birthday, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veteran's Day, Thanksgiving Day, Christmas Day are officially observed by the State of New Jersey.

6. Fishing shall be conducted only during the hours between sunrise and sunset.

7. Removal of fish from the purse seine shall be by brailing or dip netting only.

8. The possession of any fish, as defined at N.J.S.A. 23:2B-3e, other than Atlantic menhaden on a purse seine vessel harvesting Atlantic menhaden for bait is prohibited.

9. The simultaneous possession of any fish, as defined at N.J.S.A. 23:2B-3e, other than Atlantic menhaden and a purse seine, aboard a vessel of any person holding an Atlantic menhaden bait license or any vessel conducting menhaden fishing operations, shall constitute prima facie evidence of the violation of this subchapter.

10. No refuse, litter or garbage of any kind, or any quantity of dead fish shall be thrown overboard or released from the vessel or its net(s).

11. The licensee is responsible for cleaning up any fish, fish-part, refuse, litter, garbage of any kind which is released during any fishing operation or as a result of a fishing operation and must initiate such cleanup no later than 24 hours after the release begins. Upon the licensee's failure to initiate such cleanup within the 24 hour period, the Department may conduct or arrange for the performance of the cleanup. In addition to any other penalties and remedies provided by law, the licensee shall be liable for all costs associated with such cleanup, including any administrative costs incurred by the Department. Such cleanup shall include, but not be limited to, the marine and estuarine waters of the State and adjacent beaches, shorelines and marshes.

12. No stakes, markers, or buoys designating channels, crab pots, lobster pots, fish pots, or traps, or staked leased shellfish grounds, shall be disturbed by the act of fishing.

13. Any vessel engaged in fishing for Atlantic menhaden for bait under the provisions of this section shall display, on both sides of the vessel amidship, a yellow capital letter "B" not less than five feet in height on a black square background not less than six feet on a side.

7:25-22.4 Vessel boarding

The operator of, or any other person on board, a fishing vessel subject to this subchapter, shall immediately comply with instructions and signals issued by any law enforcement officer and facilitate a safe boarding and inspection of the vessel, its gear, equipment, catch, and any area where fish may be stored, for the purpose of enforcement of this subchapter.

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT Standards Applicable to All Permits

Proposed Amendment: N.J.A.C. 7:26-12.4

Authorized By: Christopher J. Daggett, Acting Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq., specifically 13:1E-6.

DEP Docket Number: 050-88-12.

Proposal Number: PRN 1989-44.

Submit written comments by February 16, 1989 to:
 Daren R. Eppley, Esq.
 Division of Regulatory Affairs
 New Jersey Department of Environmental Protection
 CN 402
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection ("Department") is proposing to amend N.J.A.C. 7:26-12.4 in order to require a permittee to take all steps necessary to prevent adverse impacts on human health and the environment resulting from noncompliance with any permit conditions. To be consistent with the Department's overall hazardous waste remedial action programs, the Department is also proposing to delete the word "reasonable" as it relates to the steps to be taken to minimize or correct adverse impacts resulting from noncompliance with a permit so that all necessary measures must be taken. This amendment will bring the State's rules into equivalence with Federal regulations and will make them more stringent. The Department is required to promulgate equivalent amendments in order for the Department to retain authorization of its hazardous waste management program under the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. (1976).

Environmental Impact

The proposed amendment will have a positive environmental impact. It will clarify the scope of a permittee's obligations in the event of noncompliance with any permit conditions.

Economic Impact

The proposed amendment, by removal of the "reasonable" limitation on the steps a permittee must take to minimize adverse impact due to non-compliance with the permit, may increase the minimization costs incurred due to non-compliance. As these costs are event-specific, it is not possible to provide estimates of what the increased costs might be.

Social Impact

The proposed amendment may increase, beyond the present requirements, the responsibilities of a permittee in the event of non-compliance with a permit, and will afford greater protection to the environment and the populace by insuring that all remedial measures will be taken in such circumstances.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this amendment would not impose additional reporting, recordkeeping, or other compliance requirements on small businesses because it clarifies efforts to be taken by permittees in the event of noncompliance with a permit to include minimization or correction of adverse impact on human health and carry out all measures to prevent adverse impacts on human health and the environment.

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

7:26-12.4 Standards applicable to all permits

(a) The conditions in this section shall apply to all permits issued pursuant to this chapter. All conditions applicable to all permits shall be incorporated into the permit either expressly or by reference. If incorporated by reference, a specific citation to this subchapter shall be given in the permit.

1.-3. (No change.)

4. The permittee shall take all [reasonable] steps to minimize or correct any adverse impact on **human health and the environment and shall carry out all measures to prevent any adverse impacts on human health and the environment** resulting from noncompliance with this permit.

5.-17. (No change.)

(b)-(h) (No change.)

HIGHER EDUCATION

(a)

STUDENT ASSISTANCE BOARD

**Tuition Aid Grant Program
 1989-90 Award Table**

Proposed Amendment: N.J.A.C. 9:7-3.2

Authorized By: Student Assistance Board, M. Wilma Harris, Chairperson.

Authority: N.J.S.A. 18A:71-47(b) and 18A:71-48.

Proposal Number: PRN 1989-50.

Submit comments by February 16, 1989 to:

Grey J. Dimenna, Esq.
 Administrative Practice Officer
 Department of Higher Education
 20 West State Street
 CN 542
 Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment eliminates the 1987-88 Tuition Aid Grant (TAG) Award Table since it no longer represents current award payments to eligible students and adds a new TAG Award Table for payment of grants for the upcoming 1989-90 academic year. The proposed TAG Award Table for 1989-90 continues to provide percentages of tuition instead of actual award amounts. This format permits the Student Assistance Board and the Board of Higher Education to align award amounts for all New Jersey college sectors to those percentages when actual tuition levels and the program appropriation have been determined. The number of New Jersey Eligibility Index (NJEI) cells has been slightly expanded which will allow additional students to qualify for at least the minimum TAG award.

Social Impact

The proposed TAG Award Table provides for awards equal to full tuition for the neediest students at New Jersey public colleges and universities. Pursuant to N.J.S.A. 18A:71-47, the maximum award for students attending independent institutions of higher education is up to 50 percent of the average tuition normally charged students attending those institutions which has been recommended at \$3,700 for 1989-90. The awards to other students will reflect average tuition increases in the various sectors. The proposed Table also provides award eligibility to approximately 1,600 additional students throughout all the college sectors who will now be eligible for a minimum TAG award. The proposed TAG Award Table will allow the Student Assistance Board and the Board of Higher Education to assign award amounts in July immediately after the program appropriation and tuition levels for the various college sectors are known. This process will eliminate the necessity for emergency adoption of a revised TAG Award Table during the summer months. In addition, students will be notified promptly of the change in award values at a time when tuition payments are due.

Economic Impact

The proposed 1989-90 TAG Award Table continues to provide for the assignment of grant amounts in the various eligibility cells within the recommended appropriation in the Fiscal Year 1990 Budget Request and continued estimated funding through the Federal State Student Incentive Grant Program.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses. The proposed amendment provides Tuition Aid Grant awards to eligible students attending New Jersey colleges and universities for the 1989-90 academic year.

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

HIGHER EDUCATION

PROPOSALS

9:7-3.2 Tuition Aid Grant award table

(a) The value of the grant is related to the tuition charges of the various institutional sectors in New Jersey and the student's ability to pay for educational costs.

[1. TUITION AID GRANT (TAG) AWARD TABLE FOR 1987-88
APPROXIMATE TUITION AID GRANT VALUES¹
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ ²	NJ Inst. of Tech.
Under 950	100% of tuition	100% of tuition	40-50% ³	100% of tuition	100% of tuition
950-1349	80-99%	90-99%	91-99%	91-99%	91-99%
1350-1749	70-79%	80-89%	86-90%	86-90%	86-90%
1750-2149	60-69%	75-79%	81-85%	81-85%	81-85%
2150-2549	50-59%	68-74%	76-80%	76-80%	76-80%
2550-2949	40-49%	62-67%	71-75%	71-75%	71-75%
2950-3349	30-39%	55-61%	66-70%	66-70%	66-70%
3350-3749	Minimum	48-54%	61-65%	61-65%	61-65%
3750-4149	0	41-47%	56-60%	56-60%	56-60%
4150-4549	0	34-40%	51-55%	51-55%	51-55%
4550-4949	0	28-33%	46-50%	46-50%	46-50%
4950-5349	0	21-27%	41-45%	41-45%	41-45%
5350-5749	0	Minimum	36-40%	36-40%	36-40%
5750-6149	0	0	31-35%	31-35%	31-35%
6150-6549	0	0	26-30%	26-30%	26-30%
6550-6949	0	0	21-25%	21-25%	21-25%
6950-7349	0	0	16-20%	Minimum	Minimum
7350-7749	0	0	11-15%	0	0
7750-8149	0	0	5-10%	0	0
8150-8549	0	0	Minimum	0	0
Over 8549	0	0	0	0	0

¹In accordance with State guidelines, the value of the student's grant may decrease dependent upon appropriated funds, and the student's college budget, available resources, and estimated family contribution. The student shall be notified of any increase in his/her grant if additional funds become available. Additional eligibility (NJEI) cells may be added below the minimum award level dependent upon the current tuition charges and estimated family contribution. For purposes of N.J.A.C. 9:7-3.2, Tuition Aid Grant Award Table, the minimum award for all institutional sectors shall be \$200.00.

²Students enrolled in eligible programs at UMDNJ should contact the university's financial aid office for details.

³Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY88 Budget Request contains a recommended \$3,000.00 maximum award level in the independent sector for students with an NJEI under 950. Percentages listed for NJEI categories 950 and above represent percentages of the first cell award.]

[2.]1. TUITION AID GRANT (TAG) AWARD TABLE FOR 1988-89
APPROXIMATE TUITION AID GRANT VALUES¹
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ ²	NJ Inst. of Tech.
Under 1500	100% of tuition	100% of tuition	40-50% ¹	100% of tuition	100% of tuition
1500-2499	80-99%	80-99%	80-99%	85-99%	80-99%
2500-3499	50-79%	60-79%	70-79%	70-84%	70-79%
3500-4499	Minimum	50-59%	60-69%	60-69%	60-69%
4500-5499	0	30-49%	50-59%	50-59%	50-59%
5500-6499	0	Minimum	35-49%	35-49%	35-49%
6500-7499	0	0	25-34%	30-34%	30-34%
7500-8499	0	0	20-24%	Minimum	Minimum
8500-9499	0	0	Minimum	0	0
Over 9499	0	0	0	0	0

¹In accordance with State guidelines, the value of the student's grant may decrease dependent upon appropriated funds, the student's college budget and other financial aid. The student will be notified of any increase in his/her grant if additional funds become available. For purposes of N.J.A.C. 9:7-3.2, Tuition Aid Grant Award Table, the minimum grant for all institutional sectors shall not exceed \$400.00.

²Students enrolled in eligible programs at UMDNJ should contact the university's financial aid office for details.

³Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY1989 Budget Request contains a recommended \$3,300.00 maximum award level in the independent sector for students with an NJEI under 1500. Percentages listed for NJEI categories 1500 and above represent percentages of the first cell award.

2. TUITION AID GRANT (TAG) AWARD TABLE FOR 1989-90
APPROXIMATE TUITION AID GRANT VALUES¹
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ ²	NJ Inst. of Tech.
Under 1500	100% of tuition	100% of tuition	40-50% ¹	100% of tuition	100% of tuition
1500- 2499	85-99%	80-99%	85-99%	85-99%	85-99%
2500- 3499	70-84%	70-79%	75-84%	75-84%	75-84%
3500- 4499	50-69%	60-69%	65-74%	65-74%	65-74%
4500- 5499	Minimum	50-59%	55-64%	50-64%	50-64%
5500- 6499	0	30-49%	45-54%	40-49%	40-49%
6500- 7499	0	Minimum	35-44%	30-39%	30-39%
7500- 8499	0	0	25-34%	20-29%	20-29%
8500- 9499	0	0	15-24%	Minimum	Minimum
9500-10499	0	0	Minimum	0	0
Over 10499	0	0	0	0	0

¹In accordance with State guidelines, the value of the student's grant may decrease dependent upon appropriated funds, the student's college budget and other financial aid. The student will be notified of any increase in his/her grant if additional funds become available. Percentages listed for NJEI categories 1500 and above represent percentages of the first cell award. For purposes of N.J.A.C. 9:7-3.2, Tuition Aid Grant Award Table, the minimum grant for all institutional sectors shall not exceed \$400.00.

²Students enrolled in eligible programs at UMDNJ should contact the university's financial aid office for details.

³Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY1990 Budget Request contains a recommended \$3,700.00 maximum award level in the independent sector for students with an NJEI under 1500.

(a)

**STUDENT ASSISTANCE BOARD
Garden State Scholarships
Award Amounts**

Proposed Amendment: N.J.A.C. 9:7-4.4

Authorized By: Student Assistance Board, M. Wilma Harris, Chairperson.

Authority: N.J.S.A. 18A:71-26.8 and 18A:71-26.10.

Proposal Number: PRN 1989-49.

Submit comments by February 16, 1989 to:

Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment expands the New Jersey Eligibility Index (NJEI) table used in the determination of supplemental Garden State Scholars and Distinguished Scholars awards for students who demonstrate financial need. The NJEI is used in the determination of Tuition Aid Grant (TAG) awards and the proposed amendment will permit the Student Assistance Board to continue to award financial need scholarships corresponding to annual increases in the TAG NJEI, without changes in the scholarship rule every year.

Social Impact

The proposed amendment will automatically expand the eligibility of students to receive supplemental financial need scholarships as increases

are approved in the NJEI used to determine TAG awards. For the 1989-90 academic year, it is estimated that up to 200 additional students may also qualify for financial need scholarships. The proposed amendment will continue to provide greater opportunity for scholarship recipients to qualify for supplemental awards in order to further their post-secondary education at a New Jersey college or university.

Economic Impact

The proposed amendment will provide an additional \$250.00 per year to a greater number of students who will now qualify for at least the minimum financial need scholarship based on the expanded NJEI table. The Fiscal Year 1990 Budget Request includes sufficient funding for anticipated scholarship awards for the coming year.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses. The proposed amendment provides expanded eligibility for scholarship assistance to students who demonstrate financial need.

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

9:7-4.4 Award amounts

(a) Garden State Scholars shall receive annual awards of up to \$500.00 without regard to financial need based upon their academic performance as determined pursuant to N.J.A.C. 9:7-4.2(h). The award may be increased up to an additional \$500.00 based upon the student's New Jersey Eligibility Index pursuant to N.J.A.C. 9:7-3.1 and 3.2 according to the following formula:

New Jersey Eligibility Index (TAG Table)	Additional Amount of Grant
0-3499	\$500
3500-[9499] highest TAG NJEI eligible for an award [over 9499]	250
	[0]

(b) Distinguished Garden State Scholars shall receive annual awards of up to \$1,000 without regard to financial need based upon their academic performance as determined pursuant to N.J.A.C. 9:7-4.2(c), (d), and (e). The award may be increased up to an additional \$1,000 based upon the student's New Jersey Eligibility Index pursuant to N.J.A.C. 9:7-3.1 and 3.2 according to the following formula:

New Jersey Eligibility Index (TAG Table)	Additional Amount of Grant
0-3499	\$1,000
3500-6499	500
6500-[9499] highest TAG NJEI eligible for an award [over 9499]	250
	[0]

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

CORRECTIONS

(a)

THE COMMISSIONER

Medical and Health Services

Special Medical Units

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

10A:16-11

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1989-33.

Submit comments by February 16, 1989 to:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Corrections proposed and adopted N.J.A.C. 10A:16-11, Special Medical Unit, to provide guidelines specifically for the Special Medical Unit at the New Jersey State Prison. Subsequent to the adoption of this subchapter, a Special Medical Unit has been established at the Edna Mahan Correctional Facility for Women. The Department of Corrections presently has two Special Medical Units and other Special Medical Units may be established in the future. The Department of Corrections proposes the repeal of N.J.A.C. 10A:16-11, Special Medical Unit, and proposes new rules N.J.A.C. 10:16-11, Special Medical Units, which provide guidelines for the operation of all Special Medical Units.

Social Impact

The proposed repeal and new rules provide the guidelines and the administrative flexibility necessary to operate the current Special Medical Units and any additional units, should the need arise.

Economic Impact

The proposed repeal and new rules will have no significant economic impact because additional funding is not necessary to implement or maintain the new rules.

Regulatory Flexibility Statement

The proposed repeal and new rules impact on inmates and the Department of Corrections and do not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the rules proposed for repeal appears in the New Jersey Administrative Code at N.J.A.C. 10A:16-11.

Full text of the proposed new rules follows:

SUBCHAPTER 11. SPECIAL MEDICAL UNITS

10A:16-11.1 Applicability

This subchapter shall be applicable to all Special Medical Units within the New Jersey Department of Corrections.

10A:16-11.2 Criteria for admission to a Special Medical Unit (S.M.U.)

(a) Inmates shall be assigned to a Special Medical Unit (S.M.U.) when:

1. The chronic illness suffered does not require acute care hospitalization; but
2. The medical condition of the inmate precludes housing in other medical units within correctional facilities of the Department of Corrections; and
3. The Health Services Unit of the Office of Institutional Support Services (O.I.S.S.) authorizes placement in a S.M.U.

10A:16-11.3 Authority of the Inter-Institutional Classification Committee (I.I.C.C.)

Only inmates that have been diagnosed and found to have chronic illnesses shall be assigned by the Inter-Institutional Classification Committee (I.I.C.C.) to a Special Medical Unit (S.M.U.).

10A:16-11.4 Special Medical Unit Classification Committee (S.M.U.C.C.)

(a) The members of the Special Medical Unit Classification Committee (S.M.U.C.C.) shall include, but are not limited to:

1. The chairperson;
2. A representative from the custody staff;
3. A representative from the professional staff; and
4. A representative from the medical staff.

(b) The S.M.U.C.C. shall review the assignment of an inmate to a Special Medical Unit (S.M.U.) to determine the program to which the inmate will be assigned.

(c) The S.M.U.C.C. is authorized to monitor an inmate's program, and conduct case and in-person reviews.

CORRECTIONS**PROPOSALS**

(d) The S.M.U.C.C. may permit or preclude an inmate's participation in programs dependent upon the inmate's ability to participate without posing a security or clinical threat to the operation of a S.M.U.

(e) An inmate's case shall be reviewed:

1. At the completion of the period of orientation;
2. Every three months after orientation; or
3. More frequently than every three months, if deemed appropriate by a member of the S.M.U.C.C.

(f) Whenever necessary for appropriate decision making, the inmate will be required to appear before the S.M.U.C.C. unless the inmate refuses to appear without the use of force.

(g) Written decisions on all S.M.U.C.C. case reviews shall be placed in the inmate's classification folder and copies shall be forwarded to the inmate unless security considerations preclude such disclosures.

10A:16-11.5 Special Medical Unit (S.M.U.) staff

(a) The staff of a Special Medical Unit (S.M.U.) is comprised of:

1. The Supervisor of the S.M.U.;
2. The custody supervisor;
3. The custody staff; and
4. The professional services staff (for example, social workers, psychologists, chaplains and medical staff).

(b) The staff of a S.M.U. is responsible to the Special Medical Unit Classification Committee (S.M.U.C.C.) for program development, implementation and assessment.

(c) The concerns of both the custody and the professional services staff members shall be given equal consideration in decision making regarding the development of programs for a S.M.U.

10A:16-11.6 Orientation

(a) Upon assignment of an inmate to a Special Medical Unit (S.M.U.), the inmate shall begin a period of orientation and intense supervision which shall not exceed seven days. During this period the inmate shall be assessed to determine his or her:

1. Clinical condition;
2. Attitude;
3. Level of cooperation; and
4. Willingness to work and participate in program activities.

(b) The assessment of the inmate shall be accomplished by:

1. The submission of daily progress reports by custody staff members to the custody supervisor for submission to the Supervisor of the S.M.U.; and

2. The submission of a written evaluation of the inmate, by the social worker and other staff members, to the Special Medical Unit Classification Committee (S.M.U.C.C.) at the completion of the orientation period.

(c) Within 24 hours following an inmate's placement in a S.M.U., except when placement is made on a weekend or a holiday, the custody supervisor shall:

1. Familiarize the inmate with the rules of conduct within the S.M.U.;
2. Provide the inmate with a copy of the Institution's Inmate Handbook;
3. Provide the inmate with the written rules and regulations of the S.M.U.;
4. Determine if the inmate has any difficulties which require immediate referral for specialized services; and
5. Notify the social worker of the placement and convey any special instructions regarding the inmate.

(d) If an inmate is placed in a S.M.U. on a weekend or a holiday, the custody supervisor shall perform the tasks listed in (c) above within 24 hours following the weekend or holiday.

(e) Within 72 hours following an inmate's placement in a S.M.U., except when placement is made on a weekend or a holiday, the social worker shall review with the inmate the assignment of the inmate to the S.M.U. and any unique problems referred by the custody supervisor which require immediate attention.

(f) If an inmate is placed in a S.M.U. on a weekend or holiday, the social worker shall, within 72 hours following the weekend or holiday, review with the inmate the assignment of the inmate to the

S.M.U. and any unique problems referred by the custody supervisor which require immediate attention.

(g) The professional service staff shall be advised by the custody supervisor that an inmate has been assigned to the S.M.U. The social worker shall meet with the newly assigned inmate during orientation and advise the inmate of the programs and services available within the S.M.U.

(h) During orientation, the newly assigned inmate shall be permitted to participate in S.M.U. activities while his or her program is being developed. Any limitations determined at the time of the inmate's admission to the S.M.U., by the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services or his or her designee, shall be considered during the development of the inmate's program.

(i) At the completion of the inmate's orientation, the S.M.U.C.C. shall review and approve or disapprove the continuation of the program developed for the inmate upon admission to the S.M.U.

10A:16-11.7 Personal items

(a) During orientation all of the inmate's personal belongings shall be thoroughly searched and returned to the inmate within 24 hours unless extenuating circumstances exist (for example, transfers from another correctional facility, major disturbances, etc.).

(b) All contraband, including razors and spoons, shall be removed from the inmate's possession.

(c) Other items not permitted for retention within the Special Medical Unit (S.M.U.) shall be itemized and handled in accordance with N.J.A.C. 10A:1-11 PERSONAL PROPERTY OF INMATES.

10A:16-11.8 Work opportunities

(a) Each inmate shall be afforded an opportunity to participate in a work program designed to respond to the needs of the inmate and the Special Medical Unit (S.M.U.). The custody supervisor shall familiarize the inmate with the work program during the initial orientation interview.

(b) The Supervisor of the S.M.U. and/or the custody supervisor may at his or her discretion, devise other work opportunities in which the inmate may participate upon approval by the Special Medical Unit Classification Committee (S.M.U.C.C.).

(c) An inmate shall receive the work assignment of cell sanitation upon initial assignment to a S.M.U. Each inmate shall be responsible for the cleanliness of his or her cell. Cleaning equipment shall be provided for the inmate to clean his or cell at least once per week.

(d) Pay and work credits shall be commensurate with the skill level and nature of work responsibilities involved, as outlined in N.J.A.C. 10A:13 INMATE WORK PROGRAMS.

(e) At the beginning of each three months of assignment to a S.M.U., every inmate shall be given the opportunity to confirm his or her continuation in the work program via an in-person work review with the S.M.U.C.C.

(f) Removal and lay-in action from the work program may be initiated by the custody supervisor or by the S.M.U. officers. Removal and lay-in action from the work program shall be reviewed by the S.M.U.C.C. for appropriate confirmation.

10A:16-11.9 Disciplinary action within a Special Medical Unit (S.M.U.)

(a) The Department of Correction's Inmate Discipline Program shall be in full force and effect in a Special Medical Unit (S.M.U.). Any restrictions of privileges placed upon an inmate in a S.M.U. shall be in accordance with N.J.A.C. 10A:4 INMATE DISCIPLINE.

(b) Disciplinary action initiated by any staff member shall be referred to the Disciplinary Hearing Officer/Adjustment Committee and, where appropriate, to the Special Medical Unit Classification Committee (S.M.U.C.C.) for confirmation.

10A:16-11.10 Professional services

Professional services shall be provided to inmates assigned to a Special Medical Unit (S.M.U.) to the same extent as these services are available to the general inmate population of the correctional facility.

PROPOSALS**Interested Persons see Inside Front Cover****CORRECTIONS****10A:16-11.11 Psychological and social work services**

Crisis intervention, problem solving and short and long term counseling programs shall be provided within a Special Medical Unit (S.M.U.) on an individual and/or congregate level.

10A:16-11.12 Medical services

(a) The Office of Institutional Support Services (O.I.S.S.) Health Services Unit shall provide the following services to a Special Medical Unit (S.M.U.):

1. Medical examinations and treatment as prescribed by the consultant physician and approved by the O.I.S.S. Director of Medical Services;
2. Emergency medical support and medication dispensing by the Medical Department of the correctional facility;
3. Ancillary contract services as needed;
4. Liaison services between the O.I.S.S. Health Services Unit and the Medical Department of the correctional facility by the O.I.S.S. Health Services Unit Nursing Supervisor; and
5. Psychiatric and dental services by contracted consultants.

10A:16-11.13 Religion

Spiritual programs and counseling shall be provided to inmates in a Special Medical Unit (S.M.U.) on an individual and congregate basis.

10A:16-11.14 Legal activities

(a) Each inmate shall have access to a law library and to legal assistance consistent with the program needs of the Special Medical Unit (S.M.U.) to which he or she is assigned.

(b) The Education Department of the correctional facility shall coordinate the needs of inmates for legal materials with the paralegal representative (if assigned). The inmate paralegal shall conduct interviews with inmates in an appropriately suited area determined by the Supervisor of the S.M.U.

(c) Attorneys and court related personnel shall be granted contact visits within a S.M.U. Such visits must be approved and pre-scheduled by the Supervisor of the S.M.U. 24 hours in advance of the visit by calling the S.M.U. office Monday through Friday during regular working hours.

(d) Visits of attorneys and court related personnel shall be conducted in a room or area designated by the Supervisor of the S.M.U. No staff member shall monitor the conversations between an inmate and his or her attorney(s).

10A:16-11.15 Recreation

Inmates in a Special Medical Unit (S.M.U.) shall be permitted exercise and recreation activity to the extent of their physical abilities to participate, dependent upon medical factors as determined by the Director of Medical Services of the Department of Corrections and the attending physician(s).

10A:16-11.16 Correspondence, legal correspondence, publications and packages

All correspondence, publications and packages shall be handled in accordance with N.J.A.C. 10A:18-2 CORRESPONDENCE; N.J.A.C. 10A:18-3 LEGAL CORRESPONDENCE; N.J.A.C. 10A:18-4 PUBLICATIONS; and N.J.A.C. 10A:18-5 PACKAGES.

10A:16-11.17 Visits

(a) Special Medical Units provide for contact visits only.

(b) In the event that an inmate or a visitor violates the rules pertaining to visits as outlined in N.J.A.C. 10A:18-6 VISITS, or in the written regulations of a Special Medical Unit, the Supervisor of the Special Medical Unit (S.M.U.), the custody supervisor, or their designees may discontinue the visit and initiate disciplinary measures. The Special Medical Unit Classification Committee (S.M.U.C.C.) may approve, disapprove or restrict a visitor should either the inmate or the visitor fail to adhere to the rules of the visit program.

(c) Visits must be approved and pre-scheduled by the Supervisor of the S.M.U. 24 hours in advance of the visit by calling the S.M.U. office Monday through Friday, during regular working hours.

10A:16-11.18 Telephone calls

Telephone calls shall be handled in accordance with N.J.A.C. 10A:18-8 TELEPHONE and written regulations developed by the Special Medical Unit (S.M.U.).

10A:16-11.19 Congregate activities

(a) Congregate activities shall be developed during the inmate's orientation process with specific consideration for physical disabilities and infection control guidelines.

(b) The Special Medical Unit Classification Committee (S.M.U.C.C.) may, at its discretion, approve an inmate for participation in any one or all congregate activities.

(c) The S.M.U.C.C. may also rescind the inmate's participation in congregate activities should the inmate fail to cooperate in the program, or the S.M.U.C.C. may temporarily restrict the inmate's participation in congregate activities because of physical illness.

10A:16-11.20 Food

(a) All meals in a Special Medical Unit (S.M.U.) shall be prepared and served in accordance with the Food Service System of the correctional facility as approved by the Office of Institutional Support Services (O.I.S.S.).

(b) Inmates in a S.M.U. shall be served the normal correctional facility meals on the "Menu of the Day" or, such special diet as shall be prescribed.

(c) Disposable utensils shall be used when serving meals in a S.M.U.

10A:16-11.21 Showers

(a) Each inmate in the general population of a Special Medical Unit (S.M.U.) shall be permitted to shower once daily.

(b) Each inmate in Disciplinary Detention within a S.M.U. shall be permitted to shower once every other day.

10A:16-11.22 Haircuts

(a) Each inmate shall be afforded an opportunity to have a haircut once monthly. Each inmate desiring a haircut must place his or her name on the barber's list.

(b) All haircutting equipment shall be monitored while in use and secured when not in use.

10A:16-11.23 Reading material

(a) Reading material shall be made available for inmates assigned to a Special Medical Unit (S.M.U.).

(b) Inmates may obtain reading material by submitting their requests to the social worker.

10A:16-11.24 Infection control procedures

(a) All staff and inmates shall receive instructions concerning infection control and isolation precautions which include:

1. Use of protective garments;
2. Personal hygiene; and
3. Accident reporting.

(b) The Office of Institutional Support Services (O.I.S.S.) Director of Medical Services shall be responsible for providing the training in (a) above as needed.

10A:16-11.25 Program assessment reports

(a) The staff of a Special Medical Unit (S.M.U.) must submit to the Supervisor of the S.M.U. a progress report for each inmate assigned to the S.M.U.

(b) Shift officers designated by the custody supervisor shall complete a progress report on each inmate daily during the orientation period, and every three months for the remaining time the inmate is assigned in the S.M.U.

(c) The custody supervisor shall review the progress reports submitted by the correction officers and submit these reports to the Supervisor of the S.M.U. at the completion of the orientation period.

(d) The Supervisor of a S.M.U. shall make program assessment reports available to the Special Medical Unit Classification Committee (S.M.U.C.C.) for all scheduled routine reviews, which occur every three months after the period of orientation.

(e) The professional staff of a S.M.U. shall complete and forward to the S.M.U.C.C. a progress report on each inmate at the comple-

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tion of the orientation period, and every three months thereafter for the scheduled inmate routine review.

10A:16-11.26 Procedures and post orders

(a) Each correctional facility which has a Special Medical Unit (S.M.U.) shall develop written procedures and post orders for the S.M.U. that are consistent with this subchapter.

(b) S.M.U. procedures and post orders shall be reviewed and dated annually.

(c) Post orders shall be submitted before September 15 of each year to the appropriate Assistant Commissioner, and to the Office of the Deputy Commissioner for review and approval.

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

DIVISION OF TRAVEL AND TOURISM

Tourism Matching Grants

Proposed Amendment: N.J.A.C. 12A:12-3.9

Authorized By: Borden R. Putnam, Commissioner, Department of Commerce, Energy and Economic Development.

Authority: N.J.S.A. 52:27H-6.

Proposal Number: PRN 1989-31.

Submit comments by February 16, 1989 to:

Bernard McBride
Executive Assistant to Commissioner's Office
N.J. Department of Commerce,
Energy and Economic Development
20 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

An amendment to N.J.A.C. 12A:12-3.9 is proposed to modify and simplify procedures for purchases made by recipients from funds granted under the tourism matching grant program. Pursuant to existing rules, purchases in excess of \$1,000 are required to be bid in a public manner. Under this proposed amendment, the \$1,000 ceiling will be lifted and replaced with the same public bidding requirements which State departments and agencies are subject.

Social Impact

The social impact of this amendment should be positive. By making the existing rule more flexible, grant recipients should be more efficient in promoting tourism through use of State funds under this program.

Economic Impact

The economic impact of this amendment should be positive. Administrative cost associated with the receipt and expenditure of funds should decrease, therefore, allowing for greater actual program use of grant funds.

Regulatory Flexibility Statement

The proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, since eligible grant recipients under the program are regional tourism councils, counties, municipalities, and tourism promotion organizations. The proposed amendment does not change this eligibility in any manner.

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

12A:12-3.9 Reports and compliance

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

(d) By no later than June 15 of the grant program cycle a grantee shall submit a signed contract between DCEED/State and the grantee.

1. Failure to timely submit such contract shall result in forfeiture of the grant by the grantee.

(e) Failure of the grantee to timely file any report or document required by this subchapter may result in ineligibility for the tourism

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grant program for that grant program cycle, and/or grant payments may be suspended or rescinded.

1. The [commissioner] **Commissioner** may bar a grantee from receiving a grant under this program for a period of up to two grant program cycles.

(f) The Commissioner, upon award of a grant, shall specify the terms of compliance for the grant to the grantee. The terms of such an agreement shall include, but are not limited to, the following:

1. Any purchases made by the grantee in excess [of \$1,000.00 shall be competitively bid. For purposes of this section, competitively bid means that a bid request for the item or service has been published in a public manner and at least three bids have been received] **of amounts as established by N.J.S.A. 52:34-7 and 52:34-7.1 shall be subject to all of the bidding requirements under which State departments and agencies operate.**

2. No purchase made by the grantee for the project or event shall be made in a manner that provides exclusive contracting privileges to any one member or office of the grantee.

LAW AND PUBLIC SAFETY

(b)

STATE BOARD OF ARCHITECTS

Change of Address; Service of Process

Proposed New Rules: N.J.A.C. 13:27-8.16 and 9.5

Authorized By: New Jersey State Board of Architects,
George Waters, R.A., President.

Authority: N.J.S.A. 45:3-3.

Proposal Number: PRN 1989-24.

Submit comments by February 16, 1989 to:

Barbara Hall, Executive Director
State Board of Architects, Room 513
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The New Jersey State Board of Architects proposes to adopt two new rules. The proposed rules mirror each other, differing only in that one applies to architects and the other applies to certified landscape architects. The new rules establish a mandatory requirement that licensees notify the Board of any change in their address within 30 days of the change. Furthermore, the rules establish that the address of the licensee on file with the Board will be used for service of process for administrative complaints, as well as any other Board initiated actions. The Board has determined that using the licensee's address which appears in the file will be adequate notice for the purposes of N.J.A.C. 1:1-7.1.

Social Impact

In the past, many of the 6,500 individuals licensed by the New Jersey State Board of Architects have failed to keep the Board informed of changes in their address. Because the Board's information is not always current, this failure to inform has caused severe delays in processing both complaints and license renewals. The mandatory notification requirement will, therefore, have a positive effect on the Board's ability to communicate with its licensees by keeping the Board's information more current.

Economic Impact

Since the Board's information concerning licensee addresses is not always current, mailings are sent out and returned undelivered. During any given licensing period, over five percent of the mailings are returned undelivered unnecessarily wasting Board funds. The new mandatory notification will save the Board hundreds of dollars each year, and serves to codify Board policy. The added provisions designating the address on file with the Board as the licensee's residence for the purposes of service of process should act as an added incentive to encourage compliance with the notification requirement.

Regulatory Flexibility Statement

It is unclear whether the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., applies to licensed professionals; however, on the assumption it

does, the following statement applies. In all, the New Jersey State Board of Architects licenses and certifies over 6,500 architects and landscape architects. Many of these licensees fall under the broad definition of "small businesses" in the Regulatory Flexibility Act. While the proposed new rules establish a mandatory reporting requirement for all Board licensees, in reality, the rules merely codify the Board's policy that licensees should keep the Board apprised of any change in address. Thus, although the rules make the reporting of address changes mandatory as a practical matter, they impose no burden because most licensees already comply voluntarily with the Board policy. There are no other recordkeeping or compliance requirements in these rules, compliance with which shall require no additional administrative or professional costs to licensees.

Full text of the proposed new rules follows:

13:27-8.16 Notification of change of address; service of process

(a) Landscape architects shall notify the Board in writing of any change from the address currently registered with the Board and shown on the most recently issued certificate. Such notice shall be sent to the Board by certified mail, return receipt requested, no later than 30 days following the change of address. Failure to notify the Board of any change of address may result in disciplinary action in accordance with N.J.S.A. 45:1-21(h).

(b) Service of an administrative complaint or other Board-initiated action at a licensee's address currently on file with the Board shall be deemed adequate notice for the purposes of N.J.A.C. 1:1-7.1 and the commencement of any disciplinary proceedings.

13:27-9.5 Notification of change of address; service of process

(a) Licensed architects shall notify the Board in writing of any change from the address currently registered with the Board and shown on the most recently issued certificate. Such notice shall be sent to the Board by certified mail, return receipt requested, no later than 30 days following the change of address. Failure to notify the Board of any change of address may result in disciplinary action in accordance with N.J.S.A. 45:1-21(h).

(b) Service of an administrative complaint or other Board-initiated action at a licensee's address which is currently on file with the Board shall be deemed adequate notice for the purposes of N.J.A.C. 1:1-7.1 and the commencement of any disciplinary proceedings.

(a)

**DIVISION OF CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION**

Motor Vehicle Advertising Practices

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

13:45A-2

Authorized By: James J. Barry, Jr., Director, Division of Consumer Affairs.

Authority: N.J.S.A. 56:8-4.

Proposal Number: PRN 1989-42.

Submit comments by February 16, 1989 to:

James J. Barry, Jr., Director
Division of Consumer Affairs
Room 504
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

With the original promulgation of motor vehicle advertising rules in July of 1973, the Division of Consumer Affairs initiated an ongoing effort to protect consumers against deceptive and misleading automotive advertising, to reduce the unfair advantage enjoyed by unscrupulous advertisers, and to promote true competition and honest dealing in the automotive marketplace.

The rules were amended in November of 1976. Revised rules were proposed on December 2, 1985 at 17 N.J.R. 2861(a) and became effective on August 17, 1987 following some 20 months of further changes, reproposal and public comment.

Although the rules adopted in 1987 refined and updated advertising requirements, the Division has become aware of the need to clarify them further. To that end, the Division staff has pruned and restructured the material in light of its enforcement experience and reported difficulties with compliance. The Division now proposes to repeal the present rules and replace them with a simpler, more specific and better organized set of rules.

These are the major changes proposed from the present rules:

First, the subject matter has been reorganized into sections that fall within three general categories: mandatory disclosures, prohibited practices in all motor vehicle advertising, and prohibited "bait and switch" practices.

The mandatory disclosures are grouped so that they can be used by advertisers as a check list for each of the following categories:

1. Motor vehicles advertised for sale, new and used;
2. Motor vehicles advertised for lease, new and used;
3. On site (point of sale) disclosures;
4. Credit sale advertisements.

Prohibited practices are listed in a single group and apply to all motor vehicle advertisements. Prohibited "bait and switch" practices are listed as in the present rule, but the section has been consolidated into four subsections from the present eight.

Second, the language of the rules has been simplified wherever possible to do so without loss of legal impact or coverage. Where language mirrors a Federal regulation, however, it remains unchanged.

Third, two sections have been entirely eliminated. The price reduction advertisement section was stricken because the provisions proved to be cumbersome. The warranty advertisements section has been removed pending promulgation of a comprehensive rule on warranties. The provisions of a third section concerning guaranteed satisfaction, discount and quality claims, have been incorporated into the list of prohibited practices.

Fourth, various provisions which proved to be less protective of the consumer than anticipated have been stricken in the proposed new rules. An example is the present requirement that an advertiser must specify the exact number of models of advertised motor vehicles with the same manufacturer's suggested retail price on premises on the date the advertisement runs. Since advertisers are without exception stating only that they have "one in stock", the provision appears to be of no utility and the Division has eliminated it.

On the other hand, certain requirements have been added in the proposed rules to prohibit advertising practices that the Division believes to be inherently misleading. Examples are the use of asterisks, distant placement, or small type for limitations on an offer; the absence of a stated time period for a "sale" or "clearance"; and the use of such terms as "liquidation" when there is no impending cessation of the advertiser's business, either voluntary or involuntary. Also, in response to numerous consumer complaints, the advertising claim that "We'll beat any deal" is now prohibited if the advertiser requires as a condition of "beating the deal" that the consumer produce an executed contract with another dealer or lessor. Such a practice may make the consumer subject to a suit for breach of contract and, in fact, has resulted in consumers losing sizable deposits.

In the present rules, the time periods when an advertised motor vehicle must be on the advertiser's premises (or proof of its sale or lease maintained for inspection) relate to contracted advertising schedules. The references to contracted advertising schedules have been eliminated in the new rules and a more easily-ascertained "period of publication" substituted. The "period of publication" is defined as the period beginning 48 hours prior to first publication of an advertisement and ending at midnight of the third business day after final publication. In the case of a special offer, the period of publication terminates at midnight of the date the special offer ends.

The definition of "general availability advertising" and all references to that type of advertisement have been eliminated. The Division believes that the distinction is no longer necessary; new wording in the proposed rules should make it clear that the mandatory disclosures apply to any advertisement in which a motor vehicle is specifically identified by an advertised price.

Finally, the proposed rules require eight digits of the Vehicle Identification Number in advertising a motor vehicle, instead of six, so that the chain of title can be more easily traced.

In preparing these new rules, the Division has consulted with representatives of all affected classes and believes that the new rules will provide an exceptionally effective framework for the enforcement of honest motor

vehicle advertising practices as well as an easy-to-follow set of requirements for the preparers of such advertising.

N.J.A.C. 13:45A-2.1 describes the scope of the rules and N.J.A.C. 13:45A-2.2 sets forth the subject matter to which the rules apply. N.J.A.C. 13:45A-2.3 defines words and terms.

N.J.A.C. 13:45A-2.4 lists acts prohibited as "bait and switch" practices. Disclosure requirements follow, in N.J.A.C. 13:45A-2.5, for all advertisements for sale of a new or used motor vehicle. N.J.A.C. 13:45A-2.6 contains similar mandatory disclosures for lease advertisements.

N.J.A.C. 13:45A-2.7 sets forth prohibited practices in any type of motor vehicle advertising.

Credit and installment sale advertisements are treated in N.J.A.C. 13:45A-2.8; four mandatory disclosures are listed, followed by prohibited practices.

N.J.A.C. 13:45A-2.9 mandates certain on-site disclosures, with informational items to be displayed or made available at the point of sale of a motor vehicle.

N.J.A.C. 13:45A-2.10 requires the retention of records of the sale or lease of an advertised motor vehicle during the period of publication and notification of such sale or lease to any consumer who inquires about the vehicle.

Social Impact

The proposed new rules, in setting forth what information must be provided in advertisements directed toward consumers and prohibiting certain advertising practices, will have a clearly positive social impact. Their purpose is to curtail deception and promote fair dealing, objectives that are obviously beneficial to purchasers or lessees of cars. Besides the value to consumers of full and accurate disclosure and elimination of questionable advertising tactics, automobile dealers and others in the industry should benefit as well. Honest competition will be encouraged and, to some degree, mandated by these rules; any competitive edge achieved by that small number of motor vehicle advertisers who engage in deceptive practices will be diminished.

Economic Impact

The proposed new rules are not expected to result in significant economic impact upon advertisers, other than those dealers who have benefited competitively from misrepresenting the true price or availability of their merchandise. The disclosures may require slight additional expenditure for ad space to accommodate the details of each offering, and certain type size requirements must be met, as in the present motor vehicle advertising rules. The costs, however, are negligible compared to the benefit to the public. All other requirements for the advertiser relate to physical items available or retained in the ordinary course of business, such as records of sale, inventory details and copies of advertisements. There is no direct cost involved in refraining from the prohibited practices.

For the consumer, the proposed new rules should be economically beneficial in a general sense because of the enhancement of honest competition in the industry. There may be personal savings as well resulting from prohibition of "bait and switch" practices after a customer is attracted to the point of sale by an advertisement. Since the purpose of "bait and switch" is to sell a higher-priced motor vehicle than the one advertised, customers will not be lured into greater expenditure than planned. Consumers will also save time and money by not responding to deceptive claims.

Regulatory Flexibility Statement

There are 4,050 licensed motor vehicle dealers in New Jersey. Most of them are "small businesses" as defined in Section 2 of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., despite the fact that a number of dealers have facilities in several locations. The majority of the affected businesses are engaged in the retail sale or leasing of new and used cars; an unknown number of persons, however, arrange for the sale or lease of motor vehicles from the inventory of others.

Since the proposed rules concern ethical practices in advertising, any difference in compliance requirements for small businesses would defeat their purpose. All motor vehicle dealers, retail brokers, and independent leasing companies are affected equally by the mandated standard of performance and must comply equally. It is clear that no exemption is possible from a set of rules relating entirely to truthful advertising claims and fair dealing with consumers.

The compliance requirements in N.J.A.C. 13:45A-2.5, 2.6, 2.8 and 2.9 consist of disclosures which must be made, as applicable, in various types of automotive advertising and at the point of sale of an advertised vehicle. Businesses must also refrain from certain prohibited bait-and-switch prac-

tices following advertisement of a vehicle. There are no reporting requirements, however, and the records required in N.J.A.C. 13:45A-2.10 to be kept by the dealer are those maintained in the ordinary course of business copies of advertisements and sales or lease agreements executed during the period of publication. This documentation must be maintained for 180 days after the transaction and made available for inspection by the Division of Consumer Affairs. No additional professional services will be necessary nor will there be any initial capital costs in order to comply with the proposed rules.

The Division believes that the economic impact upon small businesses will be adverse only for those which presently profit from deceptive advertising.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 13:45A-2.

Full text of the proposed new rules follows:

SUBCHAPTER 2. MOTOR VEHICLE ADVERTISING PRACTICES

13:45A-2.1 Scope

Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., the rules contained in this subchapter set forth motor vehicle advertising practices which are prohibited as unlawful under the Consumer Fraud Act; the rules also include mandatory disclosure in advertisements of certain information relating to advertised motor vehicles as well as on-site disclosures relating to advertised motor vehicles.

13:45A-2.2 Application

(a) These rules shall apply to the following advertisements:

1. Any advertisement, including radio and television broadcasts, uttered, issued, printed, disseminated, published, circulated or distributed within this State concerning motor vehicles offered for sale or lease at locations exclusively within this State; and

2. Any advertisement, including radio and television broadcasts, uttered, issued, printed, disseminated, published, circulated or distributed to any substantial extent within this State concerning motor vehicles offered for sale or lease at locations within this State and outside this State, or at locations exclusively outside the State.

13:45A-2.3 Definitions

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

"Advertised motor vehicle" means any new or used motor vehicle offered for sale or lease and specifically identified by an advertised price.

"Advertised price" means the dollar amount required to purchase or lease a motor vehicle, advertised as:

1. The total price; or
2. The monthly payment price; or
3. The deferred payment price; or
4. A specific discount or savings on the manufacturer's suggested retail price.

"Advertisement" means any advertisement as defined by N.J.S.A. 56:8-1(a) of any motor vehicle including any statement appearing in a newspaper, periodical, pamphlet, circular, or other publication, paper, sign or radio or television broadcast which offers a motor vehicle for sale or lease at retail.

"Advertiser" means any person as defined by N.J.S.A. 56:8-1(d) who in the ordinary course of business is engaged in the sale, leasing or financing of motor vehicles at retail or who in the course of any 12 month period offers more than three motor vehicles for sale or lease or who is engaged in the brokerage of motor vehicles whether for sale or lease and who causes an advertisement to be made for the retail sale or lease of motor vehicles. An advertising agency and the owner or publisher of a newspaper, magazine, periodical, circular, billboard or radio or television station acting on behalf of an advertiser shall be deemed an advertiser within the meaning of this subchapter, when the agency or owner's or publisher's staff prepares and places an advertisement for publication. The agency, owner, or publisher shall not be liable for a violation of this subchapter when reasonably relying upon data, information or material supplied by

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the person for whom the advertisement is prepared or placed or when the violation is caused by an act, error or omission beyond the preparer's control, including but not limited to, the post-publication performance of the person on whose behalf such advertisement was placed.

"Dealer" means any person who in the ordinary course of business is engaged in the sale or leasing of motor vehicles at retail or who in the course of any 12-month period offers more than three motor vehicles for sale or lease at retail.

"Extra cost option" means optional equipment, the price of which would not be included in the manufacturer's suggested retail price for the basic vehicle.

"Independent leasing company" means a person who in the course of any 12 month period arranges or offers to arrange the retail lease of more than three motor vehicles from the inventory of other business entities.

"Lease" means a contract for the use of a motor vehicle for a period of time exceeding four months whether or not the lessee may become the owner of the motor vehicle at the expiration of the lease.

"Open-end lease" means a lease in which the lessee is required to pay additional amounts on account of the value of the motor vehicle at the end of the lease term.

"Closed-end lease" means a lease in which the lessee is not required to pay additional amounts on account of the value of the motor vehicle at the end of the lease term, but may have the option to pay additional amounts in order to purchase it at that time.

"Lessee" means a person as defined in the Consumer Fraud Act, N.J.S.A. 56:8-1(d), who leases a motor vehicle from a broker or dealer.

"Monroney label" is the label required by Section 3 of the Automobile Information Disclosure Act, 15 U.S.C. §§1231-1233.

"Motor vehicle" means any vehicle driven otherwise than by muscular power, excepting such vehicles as those which run only upon rails or tracks.

"MSRP" means the manufacturer's suggested retail price.

"Period of publication" means the time period between 48 hours prior to the date of first publication of an advertisement and midnight of the third business day following the date of final publication; in the case of a special offer, the period of publication shall extend until midnight of the date the special offer ends.

"Person" means a person as defined in the Consumer Fraud Act, N.J.S.A. 56:8-1(d).

"Rebate" means any payment of money by the manufacturer to or on behalf of a consumer who has bought or leased a motor vehicle, whether called "rebate", "factory rebate", "cash back", "money back", or a term of similar import.

"Retail broker" means a person who in the course of any 12 month period arranges or offers to arrange the retail sale of more than three motor vehicles from the inventory of other business entities.

"Sale" means a sale as defined by N.J.S.A. 56:8-1(e) of any motor vehicle.

"Special offer" means any advertisement of a reduction from the usual selling price for an applicable time period, whether called "sale", "sale days", "bargain", "bargain days", "special offer", "discount", "reduction", "clearance", "prices slashed", "special savings", or a term of similar import.

"Taxes, licensing costs and registration fees" means those usual taxes, charges and fees payable to or collected on behalf of governmental agencies and necessary for the transfer of any interest in a motor vehicle or for the use of a motor vehicle.

"Used motor vehicle" means any motor vehicle with an odometer reading of greater than 1,000 miles.

13:45A-2.4. Bait and switch

(a) The following motor vehicle advertising practices constitute "bait and switch" and are prohibited and unlawful:

1. The advertisement of a motor vehicle as part of a plan or scheme not to sell or lease it or not to sell or lease it at the advertised price.
2. Without limiting other means of proof, the following shall be prima facie evidence of a plan or scheme not to sell or lease a motor vehicle as advertised or not to sell or lease it at the advertised price:

- i. Refusal to show, display, sell, or lease the advertised motor vehicle in accordance with the terms of the advertisement, unless the vehicle has been actually sold or leased during the period of publication; in that case, the dealer shall retain records of that sale or lease for 180 days following the date of the transaction, and shall make them available for inspection by the Division of Consumer Affairs.

- ii. Accepting a deposit for an advertised motor vehicle, then switching the purchaser to a higher-priced motor vehicle, except when the purchaser has initiated the switch as evidenced by a writing to that effect signed by the purchaser.

- iii. The failure to make delivery of an advertised motor vehicle, then switching the purchaser to a higher-priced motor vehicle; except when the purchaser has initiated the switch as evidenced by a writing to that effect signed by the purchaser.

13:45A-2.5 Advertisements; mandatory disclosure requirements in all advertisements for sale.

(a) In any advertisement in which an advertiser offers a new motor vehicle for sale at an advertised price, the following information must be included:

1. The advertiser's true name and business address and the words "retail dealer"; if the advertiser is a broker, the words "retail broker" must appear adjacent to the name;

2. A statement that "price(s) include(s) freight, transportation, shipping, dealer preparation and any other costs to be borne by a consumer, except for licensing costs, registration fees, and taxes". If this statement appears as a footnote, it must be set forth in at least 10 point type;

3. The manufacturer's suggested retail price as it appears on the Monroney label, clearly denominated by using the abbreviation "MSRP".

4. The year, make, and model of the advertised motor vehicle.

5. The number of engine cylinders; whether the transmission is automatic or manual; whether the brakes and steering mechanism are power or manual; and whether the vehicle has air conditioning. This provision shall not apply to advertisements for motorcycles.

6. The last eight digits of the vehicle identification number, preceded by the letters "VIN". This provision shall not apply to radio and television broadcasts, or to advertisements for motorcycles.

7. A list of any extra cost options installed on the advertised motor vehicle and the retail price of each, as determined by the dealer.

(b) In any advertisement offering for sale a used motor vehicle, the information described in (a)1, 2, 4, 5 and 6 above must be included, as well as the following additional information:

1. The actual odometer reading as of the date the advertisement is placed for publication; and

2. The nature of prior use including lease history, if any, unless previously and exclusively owned by individuals for their personal use, when such prior use is known or should have been known by the advertiser.

(c) In any advertisement offering for sale a new or used motor vehicle, the advertised price shall be in type at least twice as large as that of any other dollar figure in the advertisement.

(d) It shall be an unlawful practice to fail to include the information required by this section.

13:45A-2.6 Advertisements; mandatory disclosure requirements in advertisements for lease

(a) In any advertisement offering a new motor vehicle for individual or business lease, at an advertised price, the following information must be included:

1. The advertiser's true name and business address and the words "leasing dealer" or "independent leasing company";

2. Identification of the transaction as a lease, with a statement to that effect or the word "lease" appearing immediately adjacent to the monthly payment price;

3. Whether the advertised price refers to a business or individual lease and whether it is an open-end or closed-end lease;

4. The monthly payment in type size at least twice as large as that of any other dollar figure pertaining to the advertised motor vehicle;

5. The number of required payments and the total cost of the lease; the total cost shall include all non-refundable payments (such as a

security deposit, a down payment or a capitalized cost reduction charge required at the beginning of the lease), which shall be itemized; if no non-refundable payments are required, that fact shall be stated;

6. The manufacturer's suggested retail price as it appears on the Monroney label, clearly denominated by using the abbreviation "MSRP";

7. A statement contained in the description of the motor vehicle or in a footnote that "Price(s) include(s) freight, transportation, shipping, dealer preparation; and any other additional costs to be borne by a consumer, except for licensing costs, registration fees, and taxes." If this statement appears as a footnote, it must be set forth in at least 10 point type;

8. Whether or not the lessee has the option to purchase the advertised motor vehicle and at what price and time; the method of determining the price may be substituted for disclosure of the price;

9. The amount (including termination charge, if any) or method of determining any liability imposed upon the lessee at the end of the term and a statement that the lessee shall be liable for the difference, if any, between the estimated value of the leased motor vehicle and its realized value at the end of the lease term, if the lessee has such liability;

10. The number of engine cylinders; whether the transmission is automatic or manual; whether the brakes and steering mechanism are power or manual, and whether the vehicle has air conditioning. This provision shall not apply to motorcycles;

11. The year, make, and model of the advertised motor vehicle; and

12. The last eight digits of the vehicle identification number, preceded by the letters "VIN". This provision shall not apply to radio and television broadcasts, or to advertisements for motorcycles.

(b) In any advertisement offering a used motor vehicle for lease, the information in (a)1 through 5, and 7 through 12 above shall be included as well as the following additional information:

1. The actual odometer reading as of the date of placing the advertisement for publication; and

2. The nature of prior use unless previously and exclusively owned by private individuals for their personal use, when such prior use is known or should have been known by the advertiser.

(c) All advertisements offering new or used motor vehicles for lease, even if they do not state an advertised price, shall contain the true name and business address of the advertiser and the words "leasing dealer" or "independent leasing company".

(d) It shall be an unlawful practice to fail to include the information required by this section.

13:45A-2.7 Unlawful advertising practices

(a) In any type of motor vehicle advertising, the following practices shall be unlawful:

1. The use of any type, size, location, lighting, illustration, graphic depiction or color so as to obscure or make misleading any material fact;

2. The setting forth of an advertised price which has been calculated by deducting a down payment, trade-in allowance or any deductions other than a manufacturer's rebate and dealer's discount;

3. The setting forth of an advertised price which fails to disclose, adjacent to the advertised price, that it has been calculated by deducting a manufacturer's rebate or dealer's discount;

4. The failure to state all disclaimers, qualifiers or limitations clearly and conspicuously, next to the terms they modify and not in a footnote identified by an asterisk; except for the price qualification statements required by N.J.A.C. 13:45A-2.5(a)2, which may appear as a footnote. Such disclosure shall be made verbally in a radio or television advertisement;

5. The failure to state the applicable time period of any special offer, in at least 10-point type immediately adjacent to the special offer;

6. The use of the word "free" when describing equipment or other item(s) to be given to the purchaser or lessee of a motor vehicle, if the "free" item has a value which has increased the usual selling price. In using the word "free" in advertising, the advertiser shall comply with the Federal Trade Commission Rule, 16 CFR §251, and any amendments thereto;

7. The failure to disclose that the motor vehicle had been previously damaged and that substantial repair or body work has been performed on it when such prior repair or body work is known or should have been known by the advertiser; for the purposes of this subsection, "substantial repair or body work" shall mean repair or body work having a retail value of \$1,000 or more;

8. The use of the terms "Public Notice", "Public Sale", "Liquidation", "Liquidation Sale", or terms of similar import, where such sale is not required by court order or by operation of law or by impending cessation of the advertiser's business;

9. The use of terms such as "Authorized Sale", "Authorized Distribution Center", "Factory Outlet", "Factory Authorized Sale", or other term(s) which imply that the advertiser has an exclusive or unique relationship with the manufacturer;

10. The use, directly or indirectly, of a comparison to the dealer's cost, inventory price, factory invoice, floor plan balance, tissue, or terms of similar import; or the claim that the advertised price is "wholesale" or "at no profit";

11. The use of the terms "guaranteed discount", "guaranteed lowest prices" or other term of similar import unless the advertiser clearly and conspicuously discloses the manner in which the guarantee will be performed and any conditions or limitations controlling such performance; this information shall be disclosed adjacent to the claim and not in a footnote;

12. The use of the statement "We will beat your best deal", or similar term or phrase if a consumer must produce a contract that the consumer has signed with another dealer or lessor in order to receive the "better" deal;

13. The use of such terms or phrases as "lowest prices", "lower prices than anyone else" or "our lowest prices of the year", or similar terms or phrases if such claim cannot be substantiated by the advertiser.

13:45A-2.8 Certain credit and installment sale advertisements

(a) The following information must be stated in any credit and installment sale advertising. It must appear adjacent to the description of the advertised motor vehicle and not in a footnote or headline unless the information is the same for all motor vehicles advertised. If in a footnote, it must be in at least 10-point type. Failure to include this information shall be an unlawful practice.

1. The total cost of the installment sale, which shall include the down payment or trade-in or rebate, if any, plus the total of the scheduled periodic payments;

2. The annual percentage rate;

3. The monthly payment figure and the number of required payments; and

4. The amount of any down payment or trade-in required or a statement that none is required.

(b) The following motor vehicle advertising practices concerning credit and installment sale advertisements shall be unlawful:

1. The advertising of credit, including but not limited to such terms as "easy credit" or "one-day credit", other than that actually provided by the advertiser on a regular basis in the ordinary course of business;

2. The use or statement of an installment payment on any basis other than a monthly basis.

13:45A-2.9 On-site disclosures

(a) The following information relating to an advertised motor vehicle must be provided at the main entrance(s) to the business premises where the motor vehicle is displayed or in proximity to the vehicle or on the vehicle itself:

1. A copy of any printed advertisement that quotes a price for the sale or lease of that vehicle; alternatively, a tag may be attached to the motor vehicle(s) stating the advertised price as well as the other information required in N.J.A.C. 13:45A-2.5 or 2.6;

2. A fuel economy label, if required by the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. §2006; and

3. The Used Car Buyers Guide, if required by the Federal Trade Commission's Used Car Rule, 16 C.F.R. Part 455.2.

(b) A dealer shall not advertise a new motor vehicle which does not have the Monroney label, if required by the Automobile Information Disclosure Act, 15 U.S.C. §§1231-1233.

PROPOSALS

Interested Persons see Inside Front Cover

TRANSPORTATION

(c) It shall be an unlawful practice to fail to comply with the disclosures required by this section.

13:45A-2.10 Record of transactions

(a) An advertiser shall have a motor vehicle advertised for sale on premises and available for sale at the advertised price during the period of publication, or a record of the sale of that vehicle at the advertised price or less during that period. An advertiser shall have a motor vehicle advertised for lease available for lease at the advertised price during the period of publication, or a record of the lease of that vehicle at the advertised price or less during that period. Such record shall consist of all applicable advertisements and a copy of the executed contract with the purchaser or lessee of the vehicle; this documentation shall be maintained for 180 days after the transaction and shall be made available for inspection by the Division of Consumer Affairs.

(b) If the motor vehicle is sold or leased during the period of publication, the advertiser must so notify consumers who inquire by telephone or in person.

(c) It shall be an unlawful practice to fail to comply with the requirements of this section.

TRANSPORTATION

TRANSPORTATION OPERATIONS

The following proposals are authorized by Hazel Frank Gluck, Commissioner, Department of Transportation.

Submit comments by February 16, 1989 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

(a)

Speed Limits

Route N.J. 147 in Cape May County.

Proposed Amendment: N.J.A.C. 16:28-1.17.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Proposal Number: PRN 1989-21.

The agency proposal follows:

Summary

The proposed amendment will establish "speed limit" zones along Route N.J. 147 in Middle Township and the City of North Wildwood, Cape May County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon a request from local officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of maximum speed limits along Route N.J. 147 in Cape May County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.17 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed amendment will establish maximum legal speed limits along Route N.J. 147 in Middle Township and the City of North Wildwood, Cape May County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zones signs. Motorists who violate the rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the

term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public.

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

16:28-1.17 Route 147

(a) The rate of speed designated for the certain parts of State highway Route 147 described in [(a) of this section] **this subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

[1. Thirty miles per hour from the southernmost end of the bridge at Beach Creek to 150 feet north of the northernmost end of the bridge at Beach Creek (milepost 0.00 to 0.13); thence

2. Forty-five mph to 150 feet south of the southernmost end of the bridge at Grassy Sound Channel (milepost 0.73); thence

3. Thirty-five mph to 150 feet north of the northernmost end of the bridge at Grassy Sound Channel (milepost 0.73); thence

4. Forty-five mph to 4,400 feet north of the northernmost end of the bridge at Grassy Sound Channel (milepost 1.7); thence

5. Fifty mph to 600 feet south of South Carolina Avenue (milepost 2.55); thence

6. Forty-five mph to Route U.S. 9 (milepost 3.3).]

1. For both directions of traffic in Middle Township, Cape May County:

i. Zone one: 40 miles per hour between Route U.S. 9 and 1000 feet east of South Carolina Avenue (mileposts 0.0 to 0.85); thence

ii. Zone two: 45 miles per hour between 1,000 feet east of South Carolina Avenue and 4,400 feet east of South Carolina Avenue (mileposts 0.85 to 1.50); thence

iii. Zone three: 40 miles per hour between 4,400 feet east of South Carolina Avenue and 150 feet west of the westernmost end of the bridge at Grassy Sound Channel (mileposts 1.50 to 2.37); thence

iv. Zone four: 25 miles per hour between 150 feet west of the westernmost end of the bridge at Grassy Sound Channel and 150 feet east of the easternmost end of the bridge at Grassy Sound Channel (mileposts 2.37 to 2.55); thence

v. Zone five: 40 miles per hour between 150 feet east of the easternmost end of the bridge at Grassy Sound Channel and 150 feet west of the westernmost end of the bridge at Beach Creek (mileposts 2.55 to 3.15); thence

vi. Zone six: 25 miles per hour between 150 feet west of the westernmost end of the bridge at Beach Creek and the Township of Middle-City of North Wildwood line (center of the bridge at Beach Creek) (mileposts 3.15 to 3.26).

2. For both directions of traffic in the City of North Wildwood, Cape May County:

i. 25 miles per hour between City of North Wildwood-Middle Township line (center of the bridge at Beach Creek) and New York Avenue (mileposts 3.26 to 4.20).

(b)

Speed Limits

Route N.J. 23 in Sussex County

Proposed Amendment: N.J.A.C. 16:28-1.25.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Proposal Number: PRN 1989-23.

The agency proposal follows:

Summary

The proposed amendment will establish "speed limit" zones along Route N.J. 23 in Hardyston Township, Sussex County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Additionally, the proposed amendment effects administrative changes wherein the speed limits are designated within the specific boroughs or townships by zones and locations.

Based upon a request from the local government in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "speed limit" zones in Hardyston Township, Sussex County, was warranted.

TRANSPORTATION

PROPOSALS

The Department therefore proposes to amend N.J.A.C. 16:28-1.25 based upon the request from the local government and the traffic investigation.

Social Impact

The proposed amendment will establish "speed limit" zones along Route N.J. 23 in Hardyston Township, Sussex County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Additionally, the proposed amendment effects administrative changes delineating the specific borough or township to which the speed limit applies and provides clarity within the rules. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendment primarily affects the motoring public.

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

16:28-1.25 Route 23

(a) The rate of speed designated for the certain parts of State highway Route 23 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1.-3. (No change.)

4. For both directions of traffic:

i. In Hardyston Township, Sussex County:

[i. Zone one: 50 mph from a point 1,300 feet south of the center line of Lake Stockholm Road in Hardyston Township (milepost 27.0) to a point 1,000 feet south of the center line of Silver Lake Road (milepost 28.8); thence

ii. Zone two: 45 mph into the Hardyston Township—southerly Franklin Borough corporate line (milepost 31.4); thence]

(1) Zone one: 50 miles per hour between 1,300 feet south of Lake Stockholm Road and 100 feet south of Lake Stockholm Road (mileposts 27.08 to 27.30); thence

(2) Zone two: 45 miles per hour between 100 feet south of Lake Stockholm Road and the road to Lake Summit (mileposts 27.30 to 28.59); thence

(3) Zone three: 50 miles per hour between the road to Lake Summit and 1,000 feet south of the northernmost intersection with County Road 625 (mileposts 28.59 to 28.95); thence

(4) Zone four: 45 miles per hour between 1,000 feet south of the northernmost intersection with County Road 625 and the Hardyston Township-Franklin Borough line (mileposts 28.95 to 31.40).

ii. In Franklin Borough, Sussex County:

[iii. Zone two: 40 mph to Mabie Street in Franklin Borough; except

(1) 30 mph for the Franklin High School zone, during recess or while children are going to or leaving school, during opening or closing hours; thence

iv. Zone two: 45 mph in Franklin Borough to the intersection of King Cole road (milepost 34.8); thence]

(1) Zone two:

(A) 40 miles per hour to Mabie Street, except

(B) 30 miles per hour for the Franklin High School zone during recess or while children are going to or leaving school, during opening or closing hours; thence

(C) 45 miles per hour to the intersection of King Cole Road (milepost 34.8); thence

iii. In Hamburg Borough, Sussex County:

[v. Zone three: 35 mph to a point 1,000 feet north of the center line of Cinderella Street (milepost 35.7); thence]

(1) Zone three: 35 miles per hour to a point 1,000 feet north of the center line of Cinderella Street (milepost 35.7); thence

(2) Zone four: 35 miles per hour between the Franklin Borough-Hamburg Borough line and the Hamburg Borough-Hardyston Township line (mileposts 34.30 to 35.97).

iv. In Wantage Township, Sussex County:

[vi.] **(1) Zone four: 50 [mph in Hardyston Township, Wantage Township] miles per hour** to the southerly intersection of Old Deckertown Road (Cemetery Road) [-] (milepost 37.2); thence

[(1) In Hamburg Borough, Sussex County, 35 mph between the Franklin Borough-Hamburg Borough line and the Hamburg Borough-Hardyston Township line (mileposts 34.30 to 35.97).]

[vii.] **(2) Zone five: (No change in text.)**

[viii.] **(3) Zone six: (No change in text.)**

[ix.] **(4) Zone seven: (No change in text.)**

[x.] **(5) Zone eight: 50 [mph] miles per hour in Sussex Borough, Wantage Township** to a point 1,350 feet north of the center line of the southerly intersection of County Road 519 (milepost 45.2); thence

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

[xi.] **(6) Zone nine: (No change in text.)**

[xii.] **(7) Zone [ten]10: 50 [mph] miles per hour** to a point 3,300 feet south of the center line of Colesville-New York State Line Road (milepost 46.5); thence

[xiii.] **(8) Zone 11: (No change in text.)**

[xiv.] **(9) Zone 12: (No change in text.)**

v. In Wayne Township, Passaic County:

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

(a)

**Restricted Parking and Stopping
Route N.J. 54 in Atlantic County
Proposed Amendment: N.J.A.C. 16:28A-1.105**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Proposal Number: PRN 1989-22.

The agency proposal follows:

Summary

The proposed amendment will establish "no parking bus stop" zones along Route N.J. 54 in Hammonton Town, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon a request from the local government in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no parking bus stop" zones along Route N.J. 54 in Hammonton Town, Atlantic County, was warranted.

The Department therefore proposes N.J.A.C. 16:28A-1.105(b) based upon the request from local government and the traffic investigation.

Social Impact

The proposed amendment will establish "no parking bus stop" zones along Route N.J. 54 in Hammonton Town, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The local government will bear the costs for "no parking bus stop" zones signs. Motorists who violate the rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendment primarily affects the motoring public.

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

PROPOSALS

Interested Persons see Inside Front Cover

TREASURY-GENERAL

16:28A-1.105 Route 54

(a) (No change.)

(b) The certain parts of State highway Route 54 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the southbound (westerly) side in Hammonton Town, Atlantic County:

i. Near side bus stops:

(1) Fourth Street—Beginning at the northerly curb line of Fourth Street and extending 105 feet northerly therefrom.

(2) Second Street—Beginning at the northerly curb line of Second Street and extending 105 feet northerly therefrom.

2. Along the northbound (easterly) side in Hammonton Town, Atlantic County:

i. Far side bus stop:

(1) Second Street—Beginning 39 feet from the northerly curb line of Second Street and extending 100 feet northerly therefrom.

ii. Near side bus stop:

(1) Liberty Street—Beginning 38 feet from the southerly curb line of Liberty Street and extending 105 feet southerly therefrom.

TREASURY-GENERAL

(a)

OFFICE OF THE STATE TREASURER

Catastrophic Illness in Children Relief Fund

Proposed New Rules: N.J.A.C. 17:33

Authorized By: Feather O'Connor, State Treasurer.

Authority: N.J.S.A. 26:2-148 et seq., specifically 26:2-158.

Proposal Number: PRN 1989-25.

Submit comments by February 16, 1989 to:

Laura Sanders
Assistant State Treasurer
Department of the Treasury
State House, CN 002
Trenton, N.J. 08625

The agency proposal follows:

Summary

N.J.S.A. 26:2-148 et seq. establishes a Catastrophic Illness in Children Relief Fund ("Fund"). The Fund is designed to provide financial assistance to families whose children suffer from an illness which is not otherwise covered by any state or Federal program or insurance contract, the expenses of which exceed 30 percent of the income of a family whose income is \$100,000 or less per year, or 40 percent of the income of a family whose income is over \$100,000 per year.

The Fund is to be administered by a nine-member commission, and is to be funded with monies received from an annual surcharge of \$1.00 per employee levied upon all employers who are subject to the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq. The money is to be collected by the Controller for the New Jersey Unemployment Compensation Fund, and paid to the State Treasurer for deposit in the Fund.

The proposed new rules establish a system by which the surcharge shall be collected.

N.J.A.C. 17:33.1 sets forth the purpose and scope of the proposed new rules.

N.J.A.C. 17:33.2 is a definitions section.

N.J.A.C. 17:33.3 sets forth the procedures to be followed by the Department of Labor and employers to determine the amount of total assessment which is due to the Fund.

N.J.A.C. 17:33.4 outlines the method of payment.

Social Impact

The proposed new rules will establish procedures for the collection of monies to be deposited in the Catastrophic Illness in Children Relief Fund, which will benefit families whose children are seriously ill. The Fund will help the families to concentrate on the emotional aspects of their children's illnesses, rather than on their financial burdens.

Economic Impact

The proposed new rules will impact on employers, in that a \$1.00 surcharge will be collected annually from each employer for each employee.

However, benefits provided by the Fund will help alleviate the financial burden on families whose children are seriously ill, and who would otherwise be unable to pay for treatment.

The Department of Labor will incur costs associated with establishing and operating the collection mechanism. This cost will be paid from the Fund, or from General Fund appropriations.

Regulatory Flexibility Statement

The proposed new rules will impose some reporting, recordkeeping and compliance requirements on businesses, some of which will be small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the reporting and compliance requirements are required by statute to be applied to all employers who are subject to the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq.

Full text of the proposed new rules follows.

CHAPTER 33

CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND; SURCHARGE COLLECTION

SUBCHAPTER 1. CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND; SURCHARGE COLLECTION

17:33.1 Purpose and scope

(a) The purpose of this subchapter is to establish procedures for the collection of an annual surcharge used to fund the Catastrophic Illness in Children Relief Fund.

(b) The procedures established shall be followed by the Controller for the New Jersey Unemployment Compensation Fund, and the surcharge shall be applicable to every employer subject to the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq.

17:33.2 Definitions

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

"Assessment Base Year" means the immediately preceding calendar year.

"Controller" means the Assistant Commissioner of Finance and Controller of the New Jersey Department of Labor.

"Department" means the New Jersey Department of Labor.

"Fund" means the Catastrophic Illness in Children Relief Fund.

"Surcharge" means an annual \$1.00 fee per employee for all employers who are subject to the New Jersey Unemployment Compensation Law.

17:33.3 Determination of Fund assessment

(a) The Labor Department shall review all employer information as contained in the Wage Reporting System database to determine which employers are subject to the annual surcharge.

(b) For each employer subject to the Unemployment Compensation Law for one or more quarters during the assessment base year, the Department will record:

1. The employer's New Jersey employer registration number;
2. The number of active quarters;
3. The number of active quarters for which required reports were filed during the assessment year; and
4. The number of unique Social Security numbers, representing individual employees, reported by that employer during all reported quarters.

(c) The Department will send an annual notice of assessment to each employer who is subject to this subchapter.

(d) The Department shall compute the exact amount due to the Fund according to one of the following methods:

1. If the employer has an equal number of active and reported quarters, the Fund assessment amount due is equal to \$1.00 multiplied by the number of unique Social Security numbers reported by that employer;

TREASURY-GENERAL

PROPOSALS

2. If the employer's number of active quarters is greater than the number of reported quarters, but the employer has at least one reported quarter:

- i. Divide the number of reported quarters by the number of active quarters;
- ii. Divide the number of unique social security numbers by the result in (d)2i above, rounding up to the nearest whole number; and
- iii. Record the Fund assessment amount due as equal to \$1.00 multiplied by the result in (d)2ii above; or

3. If the employer has no reported quarters, record the Fund assessment amount due as equal to \$100.00.

17:33.4 Method of payment

(a) Each employer shall forward the amount due to the Controller on or before the due date specified in the assessment notice.

(b) The Controller shall pay the amount received to the State Treasurer for deposit in the Fund as provided by the Catastrophic Relief Fund Commission.

TREASURY-TAXATION

DIVISION OF TAXATION

The following proposals are authorized by John R. Baldwin, Director, Division of Taxation.

Submit comments by February 16, 1989 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN-269
Trenton, NJ 08646

(a)

Alcoholic Beverage Tax State Licensees

Proposed Readoption with Amendments: N.J.A.C. 18:3

Authority: N.J.S.A. 54:42-1 and 54:50-1.

Proposal Number: PRN 1989-47.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 18:3 expires on April 23, 1989. 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 with changes to definitions and the certification requirements in conformity to legislative changes.

The Alcoholic Beverage Tax Law, N.J.S.A. 54:41-1 through 54:47-8 as amended and supplemented, was originally enacted as P.L. 1933, c.434 effective December 5, 1933. Subsequent amendments were chiefly in the area of modification of rates of tax.

The tax is applied to the first sale or delivery to retailers in New Jersey and is based upon the number of gallons sold or otherwise disposed of in the State. The tax is collected from licensed manufacturers, wholesalers, and State beverage distributors. The law provides tax exemptions for qualified sales for medicinal, dental, industrial and other non-beverage use (N.J.S.A. 54:43-2) as well as sales to Armed Forces or Coast Guard personnel (N.J.S.A. 54:43-2.1.)

The Alcoholic Beverage Tax rules, N.J.A.C. 18:3, have been updated and revised periodically through internal agency review as required by changes in legislation.

N.J.A.C. 18:3 is summarized as follows:

Subchapter 1, General Provisions, supplies definitions of particular words and phrases used in the chapter.

Subchapter 2, Description of Tax, Exemptions, Credits or Refunds, provides for certain methods of payments of tax, exempt transactions and tax credits and refunds.

Subchapter 3, Tax Rulings, offers guidance on tax treatment of certain beverages and mixes, sales to certain special groups and delivery to steamships.

Subchapter 4, Penalties, provides penalties for failure to file reports and pay the tax.

Subchapter 5, Bonds, provides for satisfactory bonds for applicants and licensees with certain exceptions.

Subchapter 6, Records, deals with persons required to keep receiving and sales records and records of accounts payable and receivable and supplies further details concerning maintenance of records.

Subchapter 7, Reports in General, supplies guidance for executing and filing reports and the manner in which certain items and transactions are to be reported.

Subchapter 8, Rules, Regulations and Instruction Concerning Manufacturers, concerns the information to be contained upon certain schedules for manufacturers.

Subchapter 9, Rules, Regulations and Instructions Concerning Wholesalers and State Beverage Distributors, describes the schedules and manner of required reporting for wholesalers and distributors.

Subchapter 10, Rules, Regulations and Instructions Concerning Alcoholic Beverage Warehouse Receipts Licensees, deals with the manner of reporting for warehouse receipts licensees, when purchasing or selling warehouse receipts given upon the storage of alcoholic beverages in New Jersey in a United States Internal Revenue or United States Custom warehouse under Federal bond.

Subchapter 11, Rules, Regulations and Instructions Concerning Public Warehouse Licensees, describes the manner of reporting transactions involving public warehouse licensees.

Subchapter 12, Rules, Regulations and Instructions Concerning Transportation Licensees and Special Permittees to Transport Alcoholic Beverages, deals with the manner of reporting transactions for transport licensees.

Subchapter 13, Rules, Regulations and Instructions Concerning Plenary Retail Transit Licensees, deals with the manner of reporting for transit licensees.

Subchapter 14, Rules and Regulations Concerning Special Permittees to sell Alcohol, contains rules dealing with reporting requirements for permittees.

Appendix A lists Beverage Tax Report forms prescribed by the Director.

Social Impact

The Alcoholic Beverage Tax rules were enacted to provide taxpayers, licensees, permittees and their attorneys and accountants with guidance and assistance in the administration of the Alcoholic Beverage Tax Act. These rules are also intended as guidelines to assist taxpayers and licensees in their preparation of various tax reports and records pursuant to that Act. The readoption of these rules will continue to provide taxpayers and those required to report under the Act with guidance in fulfilling their statutory obligations. It will also continue the orderly administration and collection of the tax for the State of New Jersey.

Economic Impact

The readoption of the Alcoholic Beverage Tax Rules will provide for continued accurate filing of the reports and maintenance of tax related schedules and records by licensees and for payment of the applicable tax. It will assist in supplying the anticipated revenue for State budgetary purposes and additionally provide mechanisms for refunds of tax in appropriate situations. In fiscal year 1986, the Alcoholic Beverage Tax Act generated \$58,562,564 in revenue and in 1987, \$57,886,041.

Regulatory Flexibility Statement

The rules apply to small businesses as well as to businesses employing more than 100 people. The reporting, recordkeeping and other compliance requirements in the Act are applied uniformly; any action to exempt taxpayers who may be small businesses as defined in 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. 18:3.

Full text of the proposed amendments follows (deletions indicated in brackets [thus]):

18:3-1.2 Definitions

... ["Manufacture" with respect to farm winery licenses and plenary wine licenses means the vinification, aging, storage, blending, clarification, stabilization and bottling of wine or juice from 100 percent New Jersey grown fruit.]

...

18:3-2.1 Tax rates on alcoholic beverages[; certification]

(a) (No change.)

[(b) Each person authorized to sign a certification must include the following language in such certification:

1. I certify under the penalties provided by law, including license suspension or revocation, that this report (including any accompanying schedules and statements) has been examined by me and is true, correct and complete, I also certify that I am the person authorized to certify this report. Further, all wine produced from grapes and/or fruit grown in the State of New Jersey, described in this report, and shown at the \$0.10 a gallon tax rate, has been produced from 100 percent New Jersey grown grapes or other fruit.

Signature & Title, if applicable Date

Witness to the signature of Date
licensee or person duly authorized
to certify this report.

(c) In all cases where the \$0.10 per gallon wine tax is claimed, the foregoing certification must be completed by every licensee and must accompany its bi-monthly tax report.]

(a)**Cigarette Tax****Proposed Readoption with Amendments: N.J.A.C.****18:5**

Authority: N.J.S.A. 54:40A-20.

Proposal Number: PRN 1989-48.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 18:5 expires on April 16, 1989. 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 proposed to readopt these rules with changes pertaining to penalties, appeals, refunds upon appeal and liens to conform to recent statutory amendments.

On July 1, 1948, cigarette taxation commenced in New Jersey under the provisions of the Cigarette Tax Act, which imposed a tax of \$0.03 per standard package of 20 cigarettes, with a discount of five percent allowed to defray the cost of affixing the stamps on the cigarettes by licensed distributors. The law provided for the licensing of all distributors, wholesale and retail dealers and vending machines operating in New Jersey (P.L. 1948, c.65). By amendment to the original Act, all manufacturers and manufacturer's representatives are required to be licensed (P.L. 1968, c.351). Other amendments to the statute followed, including an additional surtax (P.L. 1982, c.40) and (P.L. 1985, c.261), (P.L. 1985, c.341). The present rate at tax is 9½¢ for each 10 cigarettes or fraction thereof (19¢ per pack of 20 cigarettes) plus a surtax equal to the sales tax rate applied to the average wholesale price of cigarettes rounded up to the next highest cent but not less than 2½¢ per 10 cigarettes (8¢). For packs containing 25 cigarettes, the total tax and surtax is 125 percent of the tax and surtax on packs containing 20 cigarettes.

Subchapter 1 contains definitions. Imposition of the tax is set forth in subchapter 2. Subchapter 3 deals with revenue tax stamps. Refunds and redemption of stamps are covered in subchapter 4. Rules regarding required reports are found in subchapter 5. Subchapter 6 deals with the various licenses. Records to be kept are treated in subchapter 7. Subchapter 8 covers the subject of assessments. When the cigarette tax becomes a lien and its release is treated in subchapter 9. Treatment of cigarettes sold through vending machines is covered in subchapter 10. Subchapter 11 deals with transportation of unstamped cigarettes. Penalties are covered in subchapter 12.

Social Impact

These rules have a direct social impact on cigarette smokers. Due to the warning by the United States Surgeon General and other studies, cigarette taxes were increased with the hope that smoking and the number of cigarette smokers would decrease. The social policy is to benefit the health of New Jersey residents. The revenues from the tax are used partially for social programs as well as for other State programs and functions of government. This tax revenue benefits all New Jerseyans.

Economic Impact

State tax revenues from the cigarette tax were \$214,203,041 for fiscal year 1986 and \$210,954,509 for fiscal year 1987.

Regulatory Flexibility Statement

The rules proposed for readoption apply to small businesses as well as to businesses employing more than 100 people. The reporting, recordkeeping and other compliance requirements in the Act are applied uniformly; any action to exempt taxpayers who may be small businesses as defined in the Regulatory Flexibility Act would not be in compliance with applicable statutes.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:5.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]:

18:5-8.4 [Interest on delinquent taxes] **Penalties**

(a) [Any taxpayer who fails to pay any tax due under the Act on or before the day when the same is required is to be paid, is required to pay, in addition to the tax, interest at the rate of 1½ percent for each month or fraction thereof that the tax remains unpaid.] **Any taxpayer which shall fail to file its return when due or fail to pay any tax when due shall be subject to penalties and interest as provided for in the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1, et seq., and N.J.A.C. 18:2-2.**

[(b) The interest is to be calculated from the date the tax was originally due until the date of actual payment.]

18:5-8.7 Interest and penalties as tax

All penalties and interest imposed under the provisions of the Act **as well as the fee imposed for the cost of collection under N.J.S.A. 54:49-13** are payable to and recoverable by the Director in the same manner as if they were a part of the tax imposed.

18:5-8.8 Waiver of penalty and interest

If the failure by any taxpayer to pay any tax when due is explained to the satisfaction of the Director, he **or she** may remit or waive in whole or part the payment of any penalty, [and may remit or waive payment of any interest charge in excess of 3/4 of 1 percent per month] **in accordance with the terms of the State Tax Uniform Procedure Law.**

18:5-8.15 Appeals; [Division of Tax Appeals] **Tax Court**

(a) Any person aggrieved by any action, determination, decision, order, finding or assessment of the Director of the Division of Taxation or by a certification of debt to the Clerk of a Court, may appeal therefrom, within [three months] **90 days after the date of the action sought to be reviewed**, by filing a [petition of appeal in writing with the Division of Tax Appeals, and on giving security, in the form of a bond conditioned to pay the tax theretofore levied, with interests and costs, if the tax remains unpaid] **complaint with the New Jersey Tax Court in accordance with the terms of N.J.S.A. 54:51A-13 et seq., and with the applicable rules of court, R. 8:1 et seq. including the furnishing of property security for the tax to the Director.**

[(b) The petition shall briefly state the action, determination, decision, order, finding or assessment from which the appeal is made, and a clear, concise statement of the matter in controversy, the grounds of appeal, and the relief sought.

(c) The petition is to be signed by the appellant, or his agent or attorney and is to contain the post office address of the petitioner for the purpose of service of papers in connection with the appeal.

(d) A copy of the petition is to be served upon the Director prior to the taking of the appeal and proof or acknowledgement of service thereof attached to the petition.

(e) No such appeal may stay the collection of any tax payable or the enforcement of the same by entry as a judgment unless by order of the Division of Tax Appeals and then only after the security provided for herein has been furnished to the Director of the Division of Taxation.

(f) The judgment or order of the Division of Tax Appeals respecting any matter arising under the provisions of the act may within 45 days therefrom be reviewed by filing a notice of appeal with the Appellate Division of the Superior Court of New Jersey.]

18:5-8.16 [Refunds upon appeal] (Reserved)

[If a taxpayer is adjudged by a decision or order of the Division of Tax Appeals or any other court of competent jurisdiction within this State to be entitled to a refund, payment thereof shall be authorized by the State Treasurer from the proper appropriation for refunds upon presentation to him of a certified copy of such decision or order.]

18:5-9.2 Release of property from lien

(a) The Director, upon the written application of a taxpayer and the payment of [a fee of \$1.00] **an amount equal to the cost of collection**, may release any property from the lien of any tax, interest, fee, penalty, certificate, judgment or levy imposed in accordance with the Act, provided, either:

1.-5. (No change.)

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

(a)

Unfair Cigarette Sales Act

Proposed Readoption with Amendments: N.J.A.C.

18:6

Authority: N.J.S.A. 56:7-31.

Proposal Number: PRN 1989-29.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 18:6 expires on April 2, 1989. The Division of Taxation has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated as required by the Executive Order.

The wholesale and retail cigarette industry in New Jersey prior to the enactment of the New Jersey Cigarette Tax Act in 1948 was characterized by severe and intense price competition, and many unfair, dishonest, deceptive, destructive and fraudulent business practices which demoralized and disorganized the cigarette trade. Cigarettes were advertised, offered for sale or sold below cost with the intent of injuring competitors or destroying or substantially lessening competition.

The New Jersey Unfair Cigarette Sales Act was enacted as a companion law to the New Jersey Cigarette Tax Act. Its purpose is to prevent unfair competition and unfair trade practices in the sale of cigarettes in New Jersey which would adversely affect the prompt and efficient collection of taxes on the sale of cigarettes and the revenues and fees from licensing manufacturers, distributors, wholesalers, retailers, and other persons engaged in the sale of cigarettes in New Jersey.

The New Jersey Unfair Cigarette Sales Act declares it to be the policy of the State of New Jersey to promote the public welfare by prohibiting sales of cigarettes below cost and to provide a minimum percentage markup, and a minimum sales price for all cigarettes sold both at wholesale and retail in New Jersey.

The original New Jersey Unfair Cigarette Sales Act (P.L. 1948, c. 188) was found to be unconstitutional by the Supreme Court of New Jersey in 1951 (*Lane Distributors v. Tilton*, 7 N.J. 349, 81 A.2d 786 (1951)). The revised New Jersey Unfair Cigarette Sales Act (P.L. 1952, c. 247) reenacted the law to correct deficiencies in the original Act specified by the Supreme Court. The present law was not found unreasonable or unconstitutional by the Superior Court of New Jersey in upholding a license suspension of a wholesaler for giving a prohibited rebate in the sale of cigarettes (*In re Sanders*, 40 N.J. Super. 477, 123 A.2d 582 (App. Div. 1956)).

Subchapter 1 contains general provisions including definitions. Prohibitions of actions which lessen competition are found in subchapter 2.

Subchapter 3 deals with price lists. Rules relating to manufacturer's promotional sales plans are found in subchapter 4. Subchapter 5 deals with what reports are required. Remedies and penalties are contained in subchapter 6. Subchapter 7 contains miscellaneous provisions.

The definitions have been updated to take into account statutory changes. N.J.A.C. 18:6-6.6 is amended to reflect the hearing provision of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Social Impact

The regulated cigarette industry has severe and intense competition and had many unfair, dishonest, deceptive, destructive and fraudulent business practices. Each cigarette business generally, as well as the public, benefit socially from the Unfair Cigarette Sales Act and the implementing rules which addressed prior faults. In a broad sense, public welfare is involved and has been improved.

Economic Impact

The Act and the implementing rules provided for fairer business practices, a fair price for the product, a fair profit for the business and better trade and competition overall. Another economic gain was a more prompt and efficient collection of taxes and fees.

Regulatory Flexibility Statement

The rules apply to small businesses as well as to businesses employing more than 100 people. The reporting, recordkeeping and other compliance requirements in the Act are applied uniformly; any action to exempt taxpayers who may be small businesses as defined in the Regulatory Flexibility Act would not be in compliance with applicable statutes.

Full text of the readoption may found in the New Jersey Administrative code at N.J.A.C. 18:6

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

18:6-1.1 Definitions

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

"Basic cost of cigarettes" means the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower, less all trade discounts and [customary discounts] **the normal discount** for cash, **afforded for prompt payment, but excluding any special, extraordinary, or anticipatory discounts for payment within a shorter period of time than the prompt payment date required for eligibility for the normal discount for cash**, plus the total face value of any stamps required by the New Jersey Cigarette Tax Act and by any municipal ordinance now in effect or hereafter enacted, if not already included in the invoice or replacement cost. The trade discount and [customary] **normal discount for cash is deemed to be 3/4 percent of the invoice cost or replacement cost of cigarettes.**

18:6-6.6 Hearing of suspension or revocation of license

(a) Any person who has received a Notice of Hearing to suspend or revoke any license for a violation of the New Jersey Unfair Cigarette Sales Act, has the right[:

1. To be heard in person or by an attorney;
2. To offer evidence pertinent to the subject of the Hearing; and
3. To invoke the powers of the Director with respect to the compulsory attendance of witnesses and the production of books, papers, accounts, records, and other documents by subpoena.

(b) At a Hearing all evidence is taken before a court recorder and the parties are not bound by common law or statutory rules of evidence; all testimony having reasonable probative value is admitted, but immaterial, irrelevant or unduly cumulative testimony may be excluded. Every party has the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full, true disclosure of the facts.

(c) After all parties have been given the opportunity of presenting all the evidence in support of the issues, the Director shall take the

matter under advisement and reach a determination on the record and facts disclosed.

(d) Upon reaching a determination, the Director shall notify the licensee or other party in interest or his representative by mail of the determination made] to 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.

(a)

**Local Property Tax
Farmland Assessment Act
Woodland**

Proposed Amendment: N.J.A.C. 18:15-2.15

Authority: N.J.S.A. 54:4-23.1 et seq., specifically 54:4-23.21.

Proposal Number: PRN 1989-46.

The agency proposal follows:

Summary

This proposed amendment alters N.J.A.C. 18:15-2.15 by extending the date by which owners of woodland affected by the additional conditions imposed under N.J.S.A. 54:4-23.3 (P.L. 1986, c.201) have to meet such conditions in order to maintain farmland assessment status of their land in the tax year 1989. When adopted, the amendment would extend the date from March 1, 1989 to July 1, 1989. Submission of a woodland management plan to obtain farmland assessment is a primary requirement of the new conditions imposed on affected woodland owners. The limited number of foresters approved to prepare woodland management plans have been inundated with requests and are unable to fulfill all such requests by March 1, 1989, the date required for filing under the present rule. An extension to July 1, 1989 would provide sufficient time for the foresters to complete requests to develop woodland management plans and for owners to file said plans in order to maintain farmland assessment of their land. Unless the amendment is adopted, farmland assessment status will be jeopardized for many owners through no fault of their own.

Social Impact

The proposed amendment to N.J.A.C. 18:15-2.15 extends the date by which woodland owners subject to the additional conditions imposed under N.J.S.A. 54:4-23.3 (P.L. 1986, c.201) would have to comply with such conditions. Adoption of this amendment would grant an additional four months to affected woodland owners to obtain a woodland management plan, a primary condition required of such owners seeking farmland assessment qualification. An extension until July 1, 1989 is necessary for approved foresters to fulfill all requests which have been received from landowners seeking a woodland management plan. Unless the extension to July 1, 1989 is adopted, many owners of woodland will have farmland assessment status of their lands jeopardized, despite good faith attempts to comply with the additional conditions imposed.

Economic Impact

The proposed amendment will not require any expenditure by local or State government. Adoption of the amendment could save affected woodland owners from losing farmland assessment status and the preferential tax treatment afforded to such owners under the Farmland Assessment Act of 1964.

Regulatory Flexibility Statement

The proposed amendment will afford sufficient time to an anticipated 3,000 to 4,000 woodland owners to file and comply with the requirements as set forth in N.J.A.C. 18:15-2.7. The general timber and wood product industries in this State could be adversely affected if farmland assessment status is lost on woodlands which provide locally accessible raw material and products to the timber industry and general public. Satisfactory compliance with these conditions will result in substantial tax savings to a landowner since local property taxes will be based on such value the land has in agricultural use rather than its highest and best use. Consulting forestry firms are experiencing considerable increases in requests for their services since affected woodland owners are required to file a woodland management plan with their application for farmland assessment and annually obtain certification of compliance with the filed plan from the foresters approved by the Department of Environmental Protection. Although owners of woodland will incur a cost to obtain the services of an approved forester, the cost is minimal when compared with the local property tax savings resulting from an assessment placed on the

woodland property in accordance with its agricultural use value rather than the property's true value. Typically, a plan will be developed for a period of time not less than 10 years. The cost for most plans will range from \$200.00 to \$1,500.00. Annual costs for review and an approved forester's certification of compliance are expected to range from \$50.00 to \$500.00 for most landowners. Generally, costs incurred by owners of woodland for professional forestry services will be more than offset by the increases that will accrue in the value and quality of woodland yields attributable to improved forestry practices. Such increases will enhance the general timber and wood products industries in this State. The compliance requirements in the underlying statutes must apply uniformly; any action to exempt certain small businesses as defined by the Regulatory Flexibility Act would not be in compliance with the applicable statutes pertaining to the Farmland Assessment.

Environmental Impact

The extension of time to July 1, 1989, provided under this proposed amendment, will afford sufficient time to woodland owners to submit the additional information as set forth in N.J.A.C. 18:15-2.7 and therefore to maintain farmland assessment status. Land qualified for farmland assessment provides a mix of benefits, including preservation of open space, promoting wildlife, improving soil capabilities and maintenance of water quality.

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

18:15-2.15 Transition rule initiating filing time for beginning of application of new conditions

An owner of woodland filing an application for farmland assessment (Form FA-1) in 1988 for valuation, assessment and taxation of land in accordance with the provisions of the Farmland Assessment Act of 1964 during the 1989 tax year, but not fulfilling the additional conditions imposed on affected woodland owners as set forth in N.J.A.C. 18:15-2.7, shall be granted an extension of time to fulfill such conditions by filing the required additional information with the tax assessor and the Commissioner of the Department of Environmental Protection no later than [March 1,] **July 1, 1989**. The extension of time shall not relieve an applicant seeking farmland assessment qualification of his land in 1989 from submitting an application for farmland assessment (Form FA-1) in a timely manner during the 1988 pretax year.

(b)

Motor Fuels Tax

Proposed Readoption: N.J.A.C. 18:18

Authority: N.J.S.A. 54:39-10 and 54:50-1

Proposal Number: PRN 1989-30.

The agency proposal follows:

Summary

Pursuant to Executive Order No.66 (1978), N.J.A.C. 18:18 expires on April 2, 1989. 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. In order to continue the orderly administration of the New Jersey Motor Fuels Tax Act, the Division proposes to readopt these rules without change. It should be noted the Division is currently studying the possible proposal of certain changes and amendments to further update the rules.

The first gasoline tax law (P.L. 1924, c.334) became effective in New Jersey on July 1, 1927 at the rate of 2¢ per gallon. In 1934, a commission recommended repeal of use of exemption certificates and substitution of a system of refunds. The present Motor Fuels Tax Act providing for a system of refunds and a closer control of nontaxable sales of motor fuels was enacted as P.L. 1935, c.318 and became effective July 1, 1935.

The Motor Fuels Tax rules, N.J.A.C. 18:18, have been updated and revised periodically through internal agency review as required by changes in legislation and by changes in the regulatory environment. The revenue generated pursuant to the Motor Fuels Tax represents a large source of state tax collections following the Sales Tax, the Gross Income Tax, the Corporation Business Tax and the Public Utility Excise Tax.

N.J.A.C. 18:18 is summarized as follows:

Subchapter 1, Definitions, supplies definitions of particular words and phrases used in the chapter.

Subchapter 2, Licensing, provides for general powers of the Director with respect to the Motor Fuels Tax Act.

Subchapter 3, Distributor's and Jobber's License; Bonds Required; Records, deals with specific conditions for bonding and regulating distributors and gasoline jobbers.

Subchapter 4, Wholesale and Retail Dealers and Transport Licenses, outlines the conditions for regulation of wholesale and retail dealers and transport licenses.

Subchapter 5, Special Licensing, establishes procedures for implementing statutory requirements for licensing "Special License A" and "Special License B" holders.

Subchapter 6, Corporations, summarizes special provisions relating to corporate licensees or taxpayers.

Subchapter 7, Imposition of Tax and Tax Reporting, prescribes certain particular accounting and reporting requirements for fuels.

Subchapter 8, Fuel Carriers, establishes guidelines for fuel carrier reports and records.

Subchapter 9, Exports, supplies guidelines relating to exports of fuels from New Jersey.

Subchapter 10, Tax Paid in Error—Refund and Appeals, deals with refunds of tax paid in error.

Subchapter 11, Collection of Taxes, includes provisions with respect to suits by the Attorney General for Collection of Taxes.

Subchapter 12, Offenses, Fines and Penalties, describes the offenses, fines, and penalties to which violators of the law will be subjected.

Subchapter 13, Procedures for Collection of Fines and Penalties, relates to jurisdiction and procedures for collection of fines and penalties.

Subchapter 14, Exemptions, provides for exemption from the tax for sales to the Federal Government, State of New Jersey, any political subdivision of the State or to a department or agency of either.

Subchapter 15, Refunds, provides for refund procedures and documentation for certain purchasers and users of motor fuels and summarizes form numbers for administration of the tax.

Social Impact

The Motor Fuels Tax rules were enacted to provide taxpayers, and their attorneys and accountants, guidance and assistance in the administration of the Motor Fuels Tax Act, N.J.S.A. 54:39-1 et seq. These rules were also intended as guidelines to assist taxpayers and licensees in their preparation of various tax returns and records pursuant to that Act. The readoption of these rules will continue to provide taxpayers and those required to report under the Act with guidance in fulfilling their statutory obligation. It will also continue the orderly administration and collection of the tax for the State of New Jersey.

Economic Impact

The readoption of the Motor Fuels Tax rules will continue to provide for accurate filing of tax returns and maintenance of tax related reports and records by licensees and for payment of the applicable tax. It will assist in providing for the anticipated revenue for State budgetary purposes and additionally provide mechanisms for refunds of tax in appropriate situations.

The tax revenue generated has been referred to in the summary above, and under the readoption will continue to supply a projected source of revenue for the State. In fiscal year 1986, the tax revenue generated by the Motor Fuels Tax was \$318,198,986 and in 1987 was \$321,103,155.

Regulatory Flexibility Statement

The rules proposed for readoption apply to small businesses as well as to businesses employing more than 100 people. The reporting, recordkeeping and other compliance requirements in the Act are applied uniformly; any action to exempt taxpayers who may be small businesses as defined in 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. 18:18.

(a)

Motor Fuels Retail Sales

Proposed Readoption: N.J.A.C. 18:19

Authority: N.J.S.A. 56:6-6

Proposal Number: PRN 1989-45.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:19 expires on April 6, 1989. 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 Act to Regulate the Retail Sale of Motor Fuels was enacted into law as P.L. 1938, c.163 and became effective June 1, 1938. The statute protects the interest of motorists and of the retail dealers themselves in attempting to facilitate and safeguard the orderly distribution and marketing of motor fuels. The rules pursuant to the retail sales statute have been updated and revised periodically through internal agency review as required by changes in legislation and changes in the regulatory environment. N.J.A.C. 18:19 is summarized as follows:

Subchapter 1, General Provisions, supplies definitions of words and phrases used in the rules.

Subchapter 2, Posted Prices; Advertising; Rebates; Allowances and Prizes; Trademarks, provides guidelines for price signs, display of trade names, gifts, and certain advertising requirements.

Subchapter 3, Preparation of Fines, supplies guidelines concerning violations and penalties and procedure for collection of penalties.

Subchapter 4, Records Required, deals with records required to be kept by retail dealers.

Subchapter 5, Powers of the Director, deals with the authority of the Director to seek injunctions, conduct audits and investigations and otherwise enforce the statute.

Social Impact

The Motor Fuels Retail Sales rules were adopted to provide motorists, oil companies and retail dealers of motor fuels with guidance and assistance in the administration of the Act to Regulate Retail Sales of Motor Fuels. The statute and the rules pursuant to it reflect a balancing of various interests including the motorists' right to know the price of fuels available, and the prevention of potentially destructive competition between and among motor fuels dealers.

The marketing of motor fuels is highly price sensitive and patterns of demand change quickly after a change in price is made by a dealer. In this context, efforts have been made to maintain orderly sales practices.

Economic Impact

The readoption of the rules pursuant to the Act to Regulate the Retail Sale of Motor Fuels will continue to provide for the orderly marketing of motor fuels in New Jersey and thus directly affect the economy of the State and region. One consideration in formulating the rules has been to keep mandatory signage to the minimum consistent with the objective of providing clear price information to the motorist about the fuels available at a particular facility. Because the legislature has determined that regulation of the sale of motor fuels is in the public interest, these rules implement and carry out the legislative purpose in a manner consistent with such public purpose.

Regulatory Flexibility Statement

The rules apply to small businesses as well as to businesses employing more than 100 people. The reporting, recordkeeping and other compliance requirements in the Act are applied uniformly; any action to exempt taxpayers who may be small businesses as defined in 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. 18:19.

OTHER AGENCIES**(a)****NEW JERSEY HIGHWAY AUTHORITY****Garden State Parkway
Tolls****Proposed Amendments: N.J.A.C. 19:8-1.1 and
19:8-3.1**

Authorized By: New Jersey Highway Authority,
George P. Zilocchi, Executive Director.

Authority: N.J.S.A. 27:12B-5(j) and (t), 27:12B-14, 27:12B-14.1,
27:12B-14.2, 27:12B-18, and 27:12B-24.

Proposal Number: PRN 1989-36.

Three **public hearings** concerning these proposed amendments, notice of which was provided in accordance with N.J.S.A. 27:12B-14.2, were held on the following days at the indicated time and place:

January 9, 1989 at 8:00 P.M.

Middlesex County College

College Center Building

Woodbridge Avenue & Mill Road

Edison, New Jersey

January 10, 1989 at 8:00 P.M.

Bergen County Community College

400 Paramus Road

Paramus, New Jersey

January 11, 1989 at 8:00 P.M.

Stockton State College

Performing Arts Center

Jimmy Leeds Road

Pomona, New Jersey

Submit comments by February 16, 1989 to:

George P. Zilocchi, Executive Director

New Jersey Highway Authority

Garden State Parkway

Woodbridge, New Jersey 07095

The agency proposal follows:

Summary

In November, 1987, the New Jersey Highway Authority ("Authority") studied the possibility of increasing barrier and ramp tolls. After public hearings, the Commissioners decided to increase car ramp tolls to a uniform 25¢. Governor Thomas H. Kean directed the Authority to conduct a series of studies to examine, among the other issues, the need for capital improvements and, if necessary, funding thereof. Those studies have been completed and lead to the conclusion that it will be necessary to raise barrier car tolls to 35¢, five designated ramp tolls for cars from 25¢ to 35¢, and to establish an additional barrier toll in Atlantic County with up to four possible ramp tolls in the vicinity of Mileposts/Interchanges 40, 41 and/or 44 and 74.

The basic toll rates for cars at toll barriers will increase from 25¢ to 35¢. Tolls for cars towing trailers and campers will also be increased.

Ramp tolls which had been set at 25¢ prior to the ramp toll increase approved by the Commissioners in February of 1988 will also be increased to 35¢ with increases for cars towing trailers and campers. The toll at Somers Point, Atlantic County, will be established at the proposed barrier rate.

Barrier and certain ramp tolls for heavy trucks where allowed and designated will generally increase to a per-axle charge of 35¢.

Tolls for buses will be increased to \$2.00 per toll passage with the provision that regularly scheduled commuter buses will be permitted to purchase and use 50¢ discounted bus tokens and all other buses being afforded the opportunity to purchase and use bus tokens discounted to \$1.00 per bus token.

Tolls for cars with three-axle trailers will be increased from 50¢ to 60¢ at designated ramps.

The proposed amendments also contemplate a definitional change.

It is anticipated that the proposed increases and establishment of additional toll collection points will take effect on or about April 16, 1989.

The Authority's enabling act, at N.J.S.A. 27:12B-4, requires the prior approval in writing of the Governor and either the State Treasurer or the Comptroller of the Treasury before resolutions fixing, revising or

adjusting of tolls may be made effective by the Authority. The statute also requires a public hearing, N.J.S.A. 27:12B-14.1, at least 45 days prior to the date the Authority intends to increase tolls with public notice of such hearings in at least 10 newspapers with a daily circulation in the State pursuant to N.J.S.A. 27:12B-14.2. The authorization to initiate the administrative procedures has been adopted by the Authority with the additional requirement that following the required hearings, the members of the Authority shall review the information received at such hearings along with all other comments received and shall thereafter revise the proposed schedule of tolls if justified and may subsequently adopt a resolution subject to the prior written approval of the Governor and State Treasurer, adopting a schedule of tolls fixing, revising or adjusting tolls for the use of the Garden State Parkway or parts or sections thereof.

Social Impact

The proposed additional toll collection points and increase will permit the Authority to effectively maintain the roadway and will provide financing necessary to meet pressing capital improvement needs. The proposed capital improvement projects will provide a safe and less congested roadway particularly at rush hours and during other peak hours of travel. The capital improvements made possible by the proposed toll increase and additional toll collection points will provide users of the Garden State Parkway with continued safe and time saving journeys to homes, businesses and recreational areas in those portions of the State served by the Garden State Parkway. This result should substantially contribute to the enhancement of the quality of life presently enjoyed by the citizens of New Jersey and visitors to our State. By providing safer and more efficient access to many parts of the State, the Authority expects to continue to contribute to the enhancement of much residential and commercial development in the State including peripheral services required for these additional or new developments. The additional developments, both residential and commercial, and the capital improvement projects will also provide additional employment for New Jersey residents and thereby contribute to the enhancement of their social well-being.

Economic Impact

The proposed toll increase will increase the cost to all persons using the Garden State Parkway. This increased cost should be offset to some extent by the safer and more efficient roadway which should result from the capital improvements which will be financed by revenues generated by the toll increase and the establishment of additional toll collection points. The proposed amendments would also authorize an additional barrier toll plaza in Atlantic County and four new ramp toll plazas at Mileposts/Interchanges 40, 41 and/or 44 and at 74 which will impact on residents in adjacent areas. The additional toll collection points will provide a more equitable toll structure for the use of the Garden State Parkway consistent with the Authority's policy of user financing of costs to operate the roadway. This policy is supported by the proposed increase in toll charges for buses and heavy trucks. The revenues generated by the proposed toll increases and additional toll collection points will be used by the Authority to meet debt service obligations, the continuance of necessary maintenance of the Parkway, and the financing and generating of funds necessary for required capital improvements to the roadway, all of which should enhance the record and character of the Garden State Parkway as a safe, efficient roadway with a commensurate reduction of traffic congestion. The increase in usability of the roadway to patrons should lessen undue traffic delays and permit safe and efficient use of the roadway resulting in an economic benefit not only for Parkway patrons but for all citizens of the State of New Jersey.

The capital construction projects envisioned in this proposal will also result in additional jobs for the State's workforce and increased opportunities for small, minority and women's businesses to participate in the Authority's contract set-aside program for such businesses.

Regulatory Flexibility Statement

The proposed amendments to the Authority's toll rules do not adversely affect small businesses since they do not impose reporting, recordkeeping or other requirements on such businesses. The proposed amendments affect all members of the motoring public to the extent they use the Parkway in traveling between various locations along its route.

Although the proposed amendments do not adversely impact small businesses, such small businesses, as well as minority and women's businesses, will benefit from the proposed amendments since they will provide financing for capital construction which will permit the Authority to utilize those enterprises consistent with the Authority's contract set-aside program for small businesses, minority businesses and women's businesses.

OTHER AGENCIES

PROPOSALS

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

19:8-1.1 Definitions

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

"Car token" means the Authority's authorized car [discount] token for use by cars only at exact change [\$0.50] and/or "TOKEN ONLY" toll lanes.

19:8-3.1 Tolls

(a) (No change.)

(b) Tolls shall be paid by currency, coin or authorized Authority token or scrip for the passage of all vehicles on the Parkway in amounts and at the locations designated in the following schedule.

AGENCY NOTE: The following table of toll locations and rates is proposed to replace that table which presently appears at N.J.A.C. 19:8-3.1(b).

Toll Location	Barrier or Ramp	Car	Car with 1-axle Trailer; 2-axle, 6-Tire Camper; or 3-axle Camper	Car with 2-axle Trailer or 4-axle Camper	Car with 3-axle Trailer	Omnibus**	Heavy Truck***											
							2-axle, 4-tire truck 3½ tons or more	2-axle, 6-tire truck	3-axle Truck	4-axle Truck	5-axle Truck	6-axle Truck						
Hillsdale	B	.35*	.50	.70	.90	2.00	HEAVY TRUCKS PROHIBITED NORTH OF INTERCHANGE 105											
Paramus	R	.25	.35	.50	.60	2.00												
Bergen	B	.35*	.50	.70	.90	2.00												
Saddle Brook	R	.35*	.50	.70	.90	2.00												
Clifton	R	.25	.35	.50	.60	2.00												
Passaic	R	.25	.35	.50	.60	2.00												
Watchung	R	.35*	.50	.70	.90	2.00												
Essex	B	.35*	.50	.70	.90	2.00												
Bloomfield	R	.25	.35	.50	.60	2.00												
East Orange	R	.25	.35	.50	.60	2.00												
Irvington	R	.25	.35	.50	.60	2.00												
Union	R	.35*	.50	.70	.90	2.00												
Union	B	.35*	.50	.70	.90	2.00												
Raritan N & S	B	.35*	.50	.70	.90	2.00												
Matawan	R	.25	.35	.50	.60	2.00												
Keyport-Hazlet	R	.25	.35	.50	.60	2.00												
Holmdel	R	.25	.35	.50	.60	2.00												
Red Bank	R	.25	.35	.50	.60	2.00												
Eatontown	R	.35*	.50	.70	.90	2.00							.70	.70	1.05	1.40	1.75	2.10
Asbury Park	B	.35*	.50	.70	.90	2.00							.50	.50	.75	1.00	1.25	1.50
Belmar-Wall	R	.25	.35	.50	.60	2.00	.50	.50	.75	1.00	1.25	1.50						
Lakewood-Brick	R	.25	.35	.50	.60	2.00	.50	.50	.75	1.00	1.25	1.50						
Lakehurst	R	.25	.35	.50	.60	2.00	.50	.50	.75	1.00	1.25	1.50						
Toms River	B	.35*	.50	.70	.90	2.00	.70	.70	1.05	1.40	1.75	2.10						
Lacey	R	.25	.35	.50	.60	2.00	.50	.50	.75	1.00	1.25	1.50						
Barneгат	B	.35*	.50	.70	.90	2.00	.70	.70	1.05	1.40	1.75	2.10						
New Gretna	B	.35*	.50	.70	.90	2.00	.70	.70	1.05	1.40	1.75	2.10						
Interchange 44 +	R	.25	.35	.50	.60	2.00	.50	.50	.75	1.00	1.25	1.50						
Atlantic County +	B	.35*	.50	.70	.90	2.00	.70	.70	1.05	1.40	1.75	2.10						
Int. 40 and/or 41 +	R	.25	.35	.50	.60	2.00	.50	.50	.75	1.00	1.25	1.50						
Somers Point	R	.35*	.50	.70	.90	2.00	.70	.70	1.05	1.40	1.75	2.10						
Great Egg	B	.35*	.50	.70	.90	2.00	.70	.70	1.05	1.40	1.75	2.10						
Cape May	B	.35*	.50	.70	.90	2.00	.70	.70	1.05	1.40	1.75	2.10						
Wildwood	R	.25	.35	.50	.60	2.00	.50	.50	.75	1.00	1.25	1.50						

*Car tokens available for use by cars in exact change or token only lanes.

**\$.50 bus token available for regularly scheduled buses and \$1.00 bus token available for all other buses for use in designated lanes.

***Heavy trucks (3½ tons or more, 6 tires, or 3-or-more-axes) prohibited north of Interchange 105.

+To be designated.

(c)-(f) (No change.)

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

**Disqualification of Applicants and Debarment of Contractors
Conflict of Interest**

Proposed Amendment: N.J.A.C. 19:30-5.2

Authorized By: New Jersey Economic Development Authority,
James J. Hughes, Jr., Executive Director.
Authority: N.J.S.A. 34:1B-1 et seq., specifically 34:1B-5.1, and
Executive Order No. 189(1988).
Proposal Number: PRN 1989-35.

Submit comments by February 16, 1989 to:
Gary Nadler, Manager of Administration
New Jersey Economic Development Authority
CN 990
200 S. Warren St.
Trenton, New Jersey 08625

The agency proposal follows:

Summary

To comply with Executive Order No. 189(1988), the New Jersey Economic Development Authority has determined that the existing subchapter at N.J.A.C. 19:30-5 should be amended to include the provision as stated in Executive Order No. 189, informing vendors of the law and policy concerning conflict of interest. The Authority therefore proposes to set forth at N.J.A.C. 19:30-5.2(a)11 and 5.2(b) prohibited conflicts of interest between persons and Authority personnel.

Social Impact

The proposed amendment will benefit the public by ensuring that persons doing business with the Authority are informed of the appropriate provisions of Executive Order No. 189(1988), and are aware that the policy will be applied uniformly in all circumstances. It is thus anticipated that dealings between persons and Authority personnel will remain honest, without impropriety or the potential for conflict of interest.

Economic Impact

It is not anticipated that the proposed amendment will have an economic impact on the Authority or on persons doing business with it, with the exception that persons who are debarred under the proposed amendment may sustain a negative impact through their own misdeeds.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping or special compliance requirements on small businesses. It would be inappropriate to waive the conflict of interest provisions for small businesses in their dealings with the Authority. Thus, a regulatory flexibility analysis is not required.

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

19:30-5.2 Causes for disqualification/debarment of persons

(a) The Authority may decline to give financial assistance to any person or may debar a person from contracting with the Authority or may debar a person from Authority project contracting for the following causes:

1.-10. (No change.)

11. Violation of any of the following prohibitions on vendor activities representing a conflict of interest:

i. No person shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Authority officer or employee or special Authority officer or employee, as defined by N.J.S.A. 52:13D-13b and e, with which such person transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

ii. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any Authority officer or employee or special Authority officer or employee from any person shall be reported in writing by the person to the Attorney General and the Executive Commission on Ethical Standards.

iii. No person may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to, any Authority officer or employee or special Authority officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Authority, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this subsection shall be reported in writing to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the Authority officer or employee or special Authority officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

iv. No person shall influence, or attempt to influence or cause to be influenced, any Authority officer or employee or special Authority officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of the officer or employee.

v. No person shall cause or influence, or attempt to cause or influence, any Authority officer or employee or special Authority officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the person or any other person.

(b) The provisions in (a)11 above shall not be construed to prohibit an Authority officer or employee or special Authority officer or employee from receiving gifts from or contracting with persons under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

(b)

CASINO CONTROL COMMISSION

**Applications
Information; Initiation of Foreign Gaming Operations
Proposed New Rule: N.J.A.C. 19:41-7.2B**

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(b), and
5:12-80(b) and (d).

Proposal Number: PRN 1989-39.

Submit comments by February 16, 1989 to:

Mark Neary
Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposed new rule is being published as the result of a request for rulemaking filed by the Division of Gaming Enforcement (Division) pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6. The following summary statement was prepared by the Division:

The proposed rule requires that casino licensees and their holding and intermediary companies report to the Commission proposals relating to the conduct of new foreign gaming operations. Specifically, each casino licensee and its holding and intermediary companies will be required to report the nature of the gaming operation contemplated and other information thereupon requested by the Commission or Division.

Social Impact

The following social impact statement was prepared by the Division: From a social perspective, the proposed rule has a positive effect. The proposal will provide for notification and evaluation of gaming operations contemplated by a casino licensee or its holding and intermediary companies. The proposal thereby allows for timely and heightened scrutiny of activities outside this State which may impact upon the qualifications for casino licensure in this State with respect to casino licensees or their holding and intermediary companies, especially with regard to the criteria of (a) good character, honesty and integrity, (b) financial stability, integrity and responsibility and (c) business ability and casino experience. The proposal will enable the Division to investigate and the Commission to determine whether potential partners, joint venturers and other business associates of Atlantic City casino-related persons involved in such proposals are suitable and do not negatively affect the credentials of the subject licensee and its affiliates. It will also facilitate a review of whether a foreign gaming proposal will adversely impact upon the financial status of any Atlantic City casino operation or whether such proposal reflects negatively upon business ability and casino experience. Any such business transactions directly affect the criteria pertaining to casino licensees and their holding and intermediary companies. A review of such transactions, by virtue of their sensitive and elemental nature, is an absolute prerequisite to casino regulation in accordance with the requirements of the Casino Control Act, N.J.S.A. 5:12-1 et seq. Therefore, the proposal will further the public confidence and trust in the credibility and integrity of New Jersey's gaming industry and the regulatory process, thereby creating a positive social impact.

Economic Impact

The following economic impact statement was prepared by the Division:

From an economic standpoint, the rule would require that casino licensees and their holding and intermediary companies report certain information regarding proposed foreign gaming operations. This reporting obligation would apply only to casino licensees, their holding and intermediary companies. The additional time and expense required by each casino licensee in providing the requisite information would be minimal.

Regulatory Flexibility Statement

The following regulatory flexibility statement was prepared by the Division:

This proposed rule would affect the operations of casino licensees and, therefore, would not impact on any small businesses as defined under the Regulatory Flexibility Act.

Full text of the proposal follows.

19:41-7.2B Initiation of foreign gaming operations

(a) It shall be an affirmative responsibility of each casino licensee and each holding and intermediary company thereof which seeks directly or indirectly to participate in a new foreign gaming operation to submit to the Commission and the Division the following information:

1. The nature of the foreign gaming operation contemplated; and
2. Other information thereupon requested by the Commission and Division in connection with such notification.

(b) The information required in (a)1 above shall be furnished to the Commission and the Division within five business days of a written or oral agreement in principle relating thereto, such as, but not limited to, the execution of any letter of intent, any purchase or lease agreement, any partnership, joint venture or similar agreement, any contract for construction, architectural or related activities, any financing commitments or arrangements or underwriting agreement.

(c) For purposes of this section, "foreign gaming operation" is defined as any gaming operation conducted outside the State of New Jersey. "Directly or indirectly" is defined as by or through any intermediary, representative or agent, and it includes transactions by a subsidiary of any intermediary company or holding company of a casino licensee. All other words and terms shall have the meanings ascribed to them in the New Jersey Casino Control Act and the Commission's rules.

(a)

CASINO CONTROL COMMISSION**Applications; Withdrawal****Proposed Amendment: N.J.A.C. 19:41-8.6**

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69 and 5:12-70(a).

Proposal Number: PRN 1989-37.

Submit comments by February 16, 1989 to:

Mark Neary
Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposed amendment is being published as the result of a request for rulemaking filed by the Division of Gaming Enforcement (Division) pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6. The following summary statement was prepared by the Division:

The current version of N.J.A.C. 19:41-8.6(a) permits an applicant for licensure to withdraw its application if it can establish to the satisfaction of the Commission that the withdrawal would be consistent with the public interest and the policies of the Act. The rule further provides that the Commission shall have the authority to order such applicant to be ineligible to reapply for licensure, registration or approval until one year has elapsed from the date of withdrawal. Further, N.J.A.C. 19:41-8.6(b) provides that an applicant may only withdraw an application after the case has been converted into a contested matter if the Division consents and upon the demonstration of extraordinary circumstances. The Division proposes to modify the rule by empowering the Commission to impose, in addition to the temporal constraint on reapplication, such other conditions as may be appropriate including prohibiting the applicant or its principals from any subsequent participation in the casino industry unless specifically qualified therefore by the Commission. Such additional authority would, for example, provide the Commission with greater flexibility regarding the imposition of conditions upon entities about which Division investigation has revealed derogatory information.

Social Impact

The following social impact statement was prepared by the Division:

The proposed regulatory modifications would more effectively implement the legislative goal of strict regulation of the sensitive casino industry than does the current regulatory scheme. Under the modified rule, the Commission would be empowered to impose a wider variety of conditions upon individuals and entities which seek to withdraw their license applications. As a result, the Commission would be in a position to more effectively control the withdrawal process and the ability of withdrawing applicants to participate in the casino industry. Thus, the regulatory system would better preserve and protect the integrity of the industry. In addition, the codification of such a broad regulatory authority would provide notice to all applicants of the possible consequences of the submission of a withdrawal request.

Economic Impact

The following economic impact statement was prepared by the Division:

The proposed amendment authorizes the Commission to impose, as needed, conditions attendant to the withdrawal of a license application. Any necessary hearings attendant to the imposition or removal of said conditions may engender additional time and expense. However, the overall effect of the proposed regulatory revision will serve to increase the public confidence in the regulatory process with a nominal increase in regulatory expense.

Regulatory Flexibility Statement

The following regulatory flexibility statement was prepared by the Division:

This proposed amendment may impact on small businesses as defined by the Regulatory Flexibility Act but only to the extent that any such business is or may become subject to any extraordinary conditions on account of the withdrawal process.

PROPOSALS

Interested Persons see **Inside Front Cover**

HEALTH

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

19:41-8.6 **Withdrawal**

(a) Except as otherwise provided in (b) below, a written notice of withdrawal of application may be filed by an applicant at any time prior to final Commission action thereon. No application shall be permitted to be withdrawn, however, unless the applicant shall have first established to the satisfaction of the Commission that withdrawal of the application would be consistent with public interest and the policies of the Act. The Commission shall have the authority to direct that any applicant so permitted to withdraw his or her application shall not be eligible to apply again for licensure, registration or approval until after the expiration of one year from the date of such withdrawal **and, further, shall have the authority to impose such conditions, and issue such orders, as the Commission may deem appropriate including prohibiting such applicant and any person associated therewith from participating in or conducting any activity regulated by the Act until qualified therefor by the Commission.**

(b) (No change.)

(c) Notwithstanding the foregoing, the Commission may accept and consider a written notice of withdrawal after the time specified herein if the Division consents to the withdrawal and if the Commission is satisfied that there exist extraordinary circumstances justifying withdrawal. **The Commission shall have the authority to direct that any applicant shall not be eligible to apply again for licensure, registration or approval until after the expiration of one year from the date of such withdrawal and, further, shall have the authority to impose such conditions, and issue such orders, as the Commission may deem appropriate including prohibiting such applicant and any person associated therewith from participating in or conducting any activity regulated by the Act until qualified therefor by the Commission.**

(a)

CASINO CONTROL COMMISSION

Rules of the Games

Big Six Wheel; Minimum and Maximum Wagers

Proposed Amendment: N.J.A.C. 19:47-5.6

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-70(f) and 5:12-100(e).

Proposal Number: PRN 1989-38.

Submit comments by February 16, 1989 to:

Deno R. Marino
Deputy Director—Operations
Casino Control Commission
Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:47-5.6 is intended to provide guidelines for all casino licensees to follow concerning the rules of the game for Big Six. Specifically, the dealers will be required to announce "no more bets" prior to the spin of the wheel and subsequently spin the wheel so that it will complete a minimum of three revolutions. The licensees will also be required to post signage indicating that should the clapper come to rest between two numbers, whether the wheel will be respun or the previous number passed will be declared as the winner. Finally, the proposed amendment will require dealers to first collect all losing wagers before paying any winning wagers.

Social Impact

The social impact of the proposed amendment to N.J.A.C. 19:47-5.6 will affect Big Six players in several ways. First, by requiring the wheel to make a minimum of three revolutions per spin, the proposed amendment would promote consistency and equity within the game. Second, the dealer calling "no more bets" prior to the spin of the wheel increases the integrity of the game and helps prohibit patrons from placing late bets and possibly gaining an advantage. Also, the amendment would

require each casino to post a sign concerning the policy for a clapper coming to rest between two numbers. As a result, patrons would be clearly informed of this policy prior to play and thus patron disputes would be alleviated. Finally, by requiring the dealer to first collect all losing wagers, the integrity of the game will be increased and the possibility of patron disputes will be decreased.

Economic Impact

The economic impact of the proposed amendment to N.J.A.C. 19:47-5.6 should be negligible. Most casino licensees already have similar procedures and policies consistent with those proposed; however, by providing consistency throughout the industry, patron disputes at the game should be reduced, thus producing more spins of the wheel for the casinos, and therefore, more revenue.

Regulatory Flexibility Statement

This proposed amendment will only affect the operation of casino licensees and will not impact on any small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

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

19:47-5.6 **Big Six Wheel; [minimum and maximum wagers] wagers and rotation of the wheel**

(a) Each casino licensee shall submit to the Commission for review and approval the minimum wagers permitted at each Big Six Wheel in the casino. The minimum wagers as approved by the Commission and the maximums as established by the casino licensee shall be and remain conspicuously posted on a sign at each Big Six Table.

(b) **Prior to the spin of the wheel, the dealer shall call "No More Bets".**

(c) **The Big Six Wheel shall be spun by the dealer in either direction and shall complete at least three revolutions to constitute a valid spin.**

(d) **If the clapper comes to rest between two numbers upon completion of the spin of the Big Six Wheel, the casino licensee has the option to do one of the following:**

1. **Declare the winning number to be that number previously passed;**
- or
2. **Declare the spin void and re-spin the wheel.**

(e) **Upon a casino licensee choosing one of the options as outlined in (d) above, it shall conspicuously post a sign at each table stating which option is in effect.**

(f) **Upon completion of the spin, the dealer shall first collect all losing wagers and then pay off all winning wagers.**

HEALTH

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

(b)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations Appeals

Proposed New Rule: N.J.A.C. 8:31B-3.59

Proposed Repeal and New Rule: N.J.A.C. 8:31B-3.58

Proposed Amendments: N.J.A.C. 8:31B-3.51, 3.52, and 3.55

Proposed Repeals: N.J.A.C. 8:31B-3.53 and 3.54

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

Proposal Number: PRN 1989-56.

Submit written comments by February 16, 1989 to:

Alan N. Rosenberg, Director
Hospital Reimbursement
New Jersey State Department of Health
CN 360, Room 601
Trenton, New Jersey 08625-0360

HEALTH

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The agency proposal follows:

Summary

These proposed amendments and repeals will restructure the appeals options and streamline the appeals process. The intent is to include in the Accept option sufficient prospective reimbursement so that only those hospitals with significant rate insufficiencies need to choose the Not Accept option. In addition to the one percent of all direct patient care costs presently awarded to hospitals accepting their rates, companion amendments to N.J.A.C. 8:31B-3.26 and 3.38 proposed elsewhere in this issue of the New Jersey Register will provide additional prospective rate adjustments.

Currently, there are three appeal options with specific issues open to appeal under each. These amendments propose two appeal options:

1. **Accept:** Rates accepted will include an operating margin as described in the amendment to N.J.A.C. 8:31B-3.38, plus an additional one percent of all direct patient care costs. Accepted rates will also be increased annually by the technology factor as presented in the companion amendment to N.J.A.C. 8:31B-3.26. Under this option, a hospital retains the right to appeal certain costs associated with changes in the number of residents, capital and major moveable equipment costs related to certificates of need, and Statewide clinical and legal issues. Each type of appeal under this option will be subject to specific criteria.

2. **Not Accept:** A hospital choosing this option forfeits the technology factor and the one percent Accept increase in direct patient care rates but retains full rights of appeal with the exception of indirect costs reimbursed on a volume-variable basis.

Further, a minor change will make N.J.A.C. 8:31B-3.51 consistent with N.J.A.C. 8:31B-3.43 by changing the time frame for notification of appeal and review from "within 45 days" to "within 30 days" of receipt of the Proposed Schedule of Rates.

Social Impact

These proposed amendments and repeals are consistent with the original intent of the Chapter 83 system: that New Jersey have a prospective system of hospital reimbursement. With companion amendments designed to provide prospective adjustments, these amendments will make the flow of funds within the system more predictable. By reducing the time spent in adjudication of numerous small appeals, the reimbursement process will become more timely and the Hospital Rate Setting Commission and the Department of Health will have the opportunity to focus on the other goals established by the Chapter 83 legislation.

Economic Impact

The expected impact of more prospective funding is a more predictable flow of funds for hospital operation and development, and reduced risk for payers who must set premiums in advance. Another expected system-wide impact is conservation of the administrative resources currently expended by all parties in preparing appeal documents and in participating in the appeals process.

Regulatory Flexibility Statement

The proposed amendments apply only to the hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees and therefore do not fall into the category of small businesses as defined in Section 2 of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

8:31B-3.51 Notification appeal and review

(a) (No change.)

(b) Notification by hospitals: within [45] **30** working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing of their decision to:

1. **Accept the Certified Revenue Base or Preliminary Cost Base whichever is appropriate:** Acceptance is contingent upon approval by the Commission of the Schedule of Rates. Following Commission approval, rates accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. Rates accepted shall include an additional one percent of all direct patient care costs. The amount will be fixed and included as an indirect cost in the mark-up factor. **Rates accepted will also include an increase to direct patient care and indirect costs equal to the technology factor as described in N.J.A.C. 8:31B-3.26. [A] Prior to obtaining a Certified Revenue Base, a hospital with an overall**

direct patient care disincentive will be required to present to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the [hospital's] **hospital** being allowed to accept the Certified Revenue Base. The reduction in its rates will reflect the hospital's plans to eliminate inefficiencies. [Subject to approval, acceptance provides the right of the hospital to appeals set forth under N.J.A.C. 8:31B-3.55 through 3.58 and, in 1988 only, 8:31B-3.24.] **A hospital accepting the Schedule of Rates may appeal only the costs associated with the following:**

i. **Changes in the number of residents:**

(1) **An increase in the number of residents that does not exceed the Statewide number approved by the Commissioner for the 12 month period beginning July 1, 1985, and is offset by corresponding decreases in resident costs in other New Jersey hospitals;**

(2) **A decrease in the number of approved residency positions caused by the hospital's inability to meet accreditation requirements as specified in N.J.A.C. 8:31B-3.22(b) 1 through 3, its inability to hire residents meeting the criteria specified in N.J.A.C. 8:31B-3.22(b)6, or its voluntary reduction of its number of residency positions. In such cases the hospital must demonstrate that a decline in the services needed by the area population will occur as the result of such reductions. In no case may the amount of revenue appealed for or the amount approved by the Hospital Rate Setting Commission exceed the costs associated with residency positions that were lost. Adjustments will be limited to a maximum of two rate years.**

ii. **Statewide legal and clinical appeals as defined in N.J.A.C. 8:31B-3.58.**

iii. **Capital and MME projects subject to the requirements and limits as defined in N.J.A.C. 8:31B-3.27 and meeting all the following criteria:**

(1) **The costs result from approved certificates of need;**

(2) **Capital costs of the hospital do not exceed the applicable statewide limit as defined in N.J.A.C. 8:31B-3.27(a)1 vii and viii; and**

(3) **Major Moveable equipment costs satisfying the Certificate of Need application and review process as defined in N.J.A.C. 8:33-27(a)1 through 3 and the definitions of "major moveable equipment", and "equipment unit" or "equipment systems" as defined in N.J.A.C. 8:33-1.6. Adjustments will be net of any disincentive. No more than the total disincentive will be removed for all appeals granted while rates are calculated using the same base-year. Replacement equipment costs are excluded from appeal under this option.**

iv. **Mergers, acquisitions or consolidations, provided that projected cost savings exceeding the appealed dollars can be demonstrated for one or more subsequent rate years or the Commission determines there is a quantifiable economic benefit to the system as a whole. If required, certificate of need approval must be granted. Adjustments will be limited to operating costs for a maximum of two rate years.**

v. **Capital Facilities Formula Allowance as defined in N.J.A.C. 8:31B-3.55(b).**

vi. **Revenue adjustments as defined in N.J.A.C. 8:31B-3.56.**

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

i. **Changes in Scope of Teaching which is defined as:**

(1) **The case where a hospital did not meet the Department criteria for classification as a Teaching Institution (major, minor) in the current cost base year, but satisfies the criteria for the rate year; or**

(2) **A 20 percent or greater increase in the number of third and fourth year medical students having clinical training in the hospital; or**

(3) An increase in the number of LCGME or AOA accredited residencies with at least five FTE residents participating in each additional program; or

(4) The case where a hospital has had its number of approved residency positions reduced as a result of its inability to hire residents meeting the criteria specified in N.J.A.C. 8:31B-3.22(b)6 and the hospital can demonstrate that a decline in the services needed by the area population will occur as the result of such reductions. In this case the hospital must present a plan to sustain the needed services and may appeal for the revenue necessary to implement the plan. In no case may the amount of revenue appealed for or the amount of revenue approved by the Hospital Rate Setting Commission exceed the amount of excluded costs due to a decrease in the number of approved residency positions.

ii. Physician Compensation Arrangements which are defined as a change in the method of reimbursement of physicians from/to hospital compensation basis to/from a direct billing basis. Changes in compensation due to salary or fee increases and/or the addition of personnel is not appealable for a hospital which has accepted its proposed Schedule of Rates. Resident costs associated with a change in teaching status (see (a)2i(2) above) may be considered in this area.

iii. Approved certificates of need which are defined as capital and patient care costs arising from projects for which certificate of need has been granted; except for certificate of need projects approved on or after September 1, 1986 which will only be appealable in accordance with N.J.A.C. 8:31B-3.27(a)1vii. Adjustments in Patient Care Costs in excess of that which would otherwise be deemed reasonable under N.J.A.C. 8:31B-3.20 through 3.36 shall be permitted by the Commissioner acting under this Section only when:

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

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

NOTE: In evaluating appeals for (b)2iii above, the Commission shall give emphasis to any cost savings projected by the hospital in its application for such a Certificate of Need to any existing debt obligations on existing equipment.

iv. Revisions to payment rates for Same Day Surgical Units as defined in N.J.A.C. 8:31B-3.11.]

[3.] 2. Not Accept the Certified Revenue Base or Preliminary Cost Base whichever is appropriate: [A hospital may elect to remain on the Preliminary Cost Base by not accepting the Proposed Schedule of Rates.] A hospital not accepting the Proposed Schedule of Rates or adjusted Rate Order retains the right to appeal. [shall submit exceptions, within 60 working days of receipt of the Proposed Schedule of Rates. Any hospital not accepting the Proposed Schedule of Rates will be issued a revised Proposed Schedule of Rates based upon the efficiency standard and will be subject to review of the entire Preliminary Cost Base, and thus at risk for all operating costs and revenue adjustments.] Rates not accepted shall not include the additional one percent of all direct patient care costs or the technology factor component of the update factor as described in N.J.A.C. 8:31B-3.26(b)2. Also, the revised Proposed Schedule of Rates will [have] remove the costs identified in the overspending challenge [amount] as described in N.J.A.C. 8:31B-3.32 [removed]. In subsequent years, [a hospital may elect to obtain a Certified Revenue Base which will be calculated from the hospital's approved PCB adjusted by an appropriate economic factor as set forth in N.J.A.C. 8:31B-3.26. Should a hospital continue not to accept the Certified Revenue Base, in future years the hospital's Preliminary Cost Base will be recalculated using the efficiency standard from the latest available data across all hospitals then on the Certified Revenue Base in its peer group (major, minor, non-teaching). The] the overspending challenge will continue to be removed from the revised proposed schedule of rates.

i. In evaluating appeals brought under this section, the Commission shall consider the relative efficiency of the hospital in the Current Cost Base year. The Commission will examine in detail the degree to which cost increases between the Current Cost Base year and rate year can be attributed to activities intended to be covered by the update factors.

ii. A hospital not accepting its Proposed Schedule of Rates will retain the operating margin and economic factor components of the rates. The one percent Accept option bonus and the technology factor will not be included in the rates. If a hospital chooses the Accept option in years subsequent to not accepting its rates, the technology factor for the year not accepted shall be excluded from future compounding.

iii. Under this option:

(1) Hospitals may not appeal indirect costs that are reimbursed on a volume-variable basis as described in N.J.A.C. 8:31B-3.24.

(2) Appeals of issues described in sections 8:31B-3.55 through 3.59 are also subject to the criteria described in those sections.

8:31B-3.52 Submission of exceptions

(a) Within 60 working days of receipt of the Proposed Schedule of Rates, hospitals shall submit in writing one copy to the Commission and two copies to the Commissioner, a list of exceptions, including Statewide appeals as defined in N.J.A.C. 8:31B-3.58, organized pursuant to the subsections immediately below, together with written documentation concerning all exceptions. Unless otherwise directed by the Commission, the Commissioner shall schedule a detailed review to be conducted by the Department not more than 45 working days following receipt of exceptions and documentation. [This documentation will specify each exception, the costs associated with each exception, and the hospital's rationale for the request. Should the hospital fail to submit within the allotted time or fail to appear on the established date, it shall have forfeited its right of appeal and the Commissioner's Proposed Schedule of Rates will have been accepted by the hospital.]

(b) Exceptions under either option shall be justified by a full presentation of the dollar value of the cost, the dollar value of the benefits and a complete explanation of any other benefits which cannot be given a dollar value. This documentation will specify each exception, the costs associated with each exception, and the hospital's rationale for the request. Should the hospital fail to submit its appeal document within the allotted time or fail to appear at the scheduled detailed review on the established date, it shall have forfeited its right of appeal and the Commissioner's Proposed Schedule of Rates will have been accepted by the hospital.

[(b)](c) At the detailed review, the Analyst shall indicate which exceptions are not supported by sufficient documentation to permit a resolution, and the hospital shall be permitted 10 working days in which to submit such documentation. [Following receipt of this documentation, the Department shall neither request nor require further documentation.] Any adjustments to the Proposed Schedule of Rates shall be proposed to the Commission within 30 working days. The Analyst may give consideration only to documentation submitted pursuant to the deadline set forth immediately above in deciding upon any proposed exceptions. Should the hospital pursue any further appeal, the hospital may not submit documentation other than that provided to the Analyst unless the hospital can demonstrate to the satisfaction of the Commission the existence of good cause for failure to provide the documentation to the Analyst within the deadline set forth above.

[(c)](d) Any changes to the Proposed Schedule of Rates which may be approved by the Commission shall be implemented in accordance with N.J.A.C. 8:31B-3.63 through 3.70, and are subject to the procedures set forth in N.J.A.C. 8:31B-3.71 through 3.86.

8:31B-3.53 [Operating costs: Retrospective exceptions] (Reserved)

[Exceptions may be addressed to matters not adequately accounted for by using audited actual costs from the current cost base year to determine an institution's Current Costs, Preliminary Cost Base, or Schedule of Rates. Except for changes in an institution's teaching classification or changes in employee health insurance coverage to or from self-insurance which are supported by adequate documentation, all such exceptions shall be justified by a full presentation of the dollar value of the cost, the dollar value of the benefits and a complete explanation of any other benefits resulting from the program which cannot be given a dollar value, as appropriate except where palpable injustice would result due to existing contractual arrangements, lack of adequate notice, pending appeals, and the like. However, start-up costs for approved Certificates of Need may be

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evaluated in accordance with N.J.A.C. 8:31-3.5 and 3.54 (a) 1-3, or evaluated in accordance with N.J.A.C. 8:31B-3.63 through 3.70 as appropriate.]

8:31B-3.54 [Operating costs: Prospective exceptions] (Reserved)

[(a) Issues concerning intensity and management changes proposed for the initial rate period shall be grouped according to the subsections set forth below and evaluated as follows:

1. Upon application to the Commission by any party, or upon the Commission's own motion, any requested management or intensity changes related to direct non-physician patient care costs, may be treated as a Clinical Rate Appeal if the following criteria are met:

i. The issue directly affects a Diagnosis Related Group or group of Diagnosis Related Groups set forth in N.J.A.C. 8:31B-5 which accounts for 10 percent or more of the admissions or patient care costs at a given institution; or

ii. The issue concerns medical practice; or effectiveness and efficiency with respect to health care system, taken as a whole; or is otherwise DRG related; and is likely to significantly affect one or more institutions other than the appellant;

iii. The issue can be supported with DRG case-mix management profiles based on the institution's actual experience.

2. A clinical investigation of all issues treated as Clinical Rate Appeals will be performed by the Commissioner's Physician Advisory Committee (CPAC). The applicability of this section to any hospital appeal shall be made by the Commission.

3. All proposed management or intensity changes other than those considered in (a) above, and any other exceptions not considered in N.J.A.C. 8:31B-3.53 through 3.57, shall be justified by a full presentation of the dollar value of the cost, the dollar value of the benefits and a complete explanation of any benefit resulting from the program which cannot be given a dollar value. With respect to any detailed review, appeal or application arising under this paragraph, the entire Preliminary Cost Base shall be reviewed, and case-mix material developed in accordance with N.J.A.C. 8:31B-3.5, including but not limited to the lowest cost per case. Efficiency Standard (median cost per case) and mean cost per case and shall be made available upon request to all parties directly affected by these regulations in order to, among other things: rebut or support presumptions of reasonableness set forth in these regulations; rebut or support an appellant's exceptions; and to judge effectiveness and efficiency with respect to the health care delivery system, taken as a whole. In such cases the Commission shall determine whether or not it is appropriate that proposed management or intensity changes be financed out of an adjustment to the Schedule of Rates, or out of incentive monies in excess of cost, the development of potential efficiencies at the given institution, or from other sources.]

8:31B-3.55 Capital facilities

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

(d) [Pursuant to N.J.A.C. 8:31B-4.66(e) of the 1983 Financial Elements a hospital under] **Under** the ["Conditional Accept" or] "Not Accept" option[s] (N.J.A.C. 8:31B-3.51(b)2[,3]), **a hospital** may petition the Commission [for the inclusion] **to include** in [their] **its Certified Revenue Base or Preliminary Cost Base, whichever is appropriate,** [of] the interest expense associated with the purchase of major movable equipment [and/or an adjustment to working capital provided for in N.J.A.C. 8:31B-3.40] **as set forth in N.J.A.C. 8:31B-4.66(e).**

[8:31B-3.58 Statewide adjustments]

[(a) Legal Changes: The Commission may sit en banc and may hear testimony from interested parties to determine whether or not statutes and regulations which are enacted into law significantly affect the cost of delivering health care at New Jersey acute general hospitals, and determine an adjustment to reasonable operating costs by type of hospital including reasonable costs of reporting fees related to these regulations.]

[(b) Clinical rate appeals

1. Any issue concerning differences in an institutional course of action or in pattern of medical practice, affecting a given Diagnosis Related Group or group of Diagnosis Related Groups, which is likely to significantly affect one or more institutions, shall be considered

a Clinical Rate appeal pursuant to this subsection. New Medical Practice Appeal is a retrospective determination of changes in medical practice indicative of improvements on the standards of quality care, supported by DRG case-mix management profiles. Increased Utilization Appeal is any issue concerning a reimbursement adjustment for inadequacies reflected in the base year, that is a result of increased utilization of an established medical practice. A clinical rate appeal is a retrospective determination of an increase in utilization of an established medical practice; supported by DRG case-mix management profiles.

2. Application to be so considered may be made by any party, including the Commission on its own motion; however, final determination with respect to the applicability of this subsection shall be made by the Commission. Following determination that an issue is to be treated as a Clinical Rate appeal, all appeal documentation will be reviewed by the Commissioner's Physician Advisory Committee (CPAC) who as technical advisors to the Commissioner shall determine the clinical appropriateness of the issue. Concurrently, notice shall be made to all New Jersey acute care general hospitals, Professional Standards Review Organizations, the Medical Society of New Jersey, Osteopathic Society of New Jersey, affected planning and licensing authorities, major third party payors and the Public Advocate, and the Health Care Financing Administration, which, at the direction of the Commission, shall be permitted to submit such evidence as may be appropriate. Except where otherwise directed by the Commission, the burden of proof shall be on the appellant, and appeals resolved as follows:

i. Claim unsubstantiated; no further adjustment in the rates.

ii. Claims substantiated, however, course of action is not clearly the only alternative; appropriate individual variation in the Schedule of Rates may be permitted and other variations, for similar reasons may be considered in the DRG rate for the year the appeal was initiated and any subsequent rates based on cost effectiveness.

iii. Claim proven conclusively; as appropriate, the course of action may become the standard for the DRG in the year the appeal was initiated and any subsequent years for certified revenue bases.

iv. Determination inconclusive; the appellant will be permitted 30 working days to respond to the determination with further supporting documentation. The appellant may be requested to conduct an appropriate study over a measured period of time to prove the claim conclusively, until final determination on appropriate variation may be made.

3. In all appeals conducted pursuant to (b) of this section, the Commission shall consider the effectiveness and efficiency, or other significant patient benefit, likely to result from the appealed medical or institutional course of action, with respect to the health care delivery system, taken as a whole. All issues considered by the Commission shall be consistent with the Principles of Reimbursement in effect under the DRG case-mix experiment.

4. Case-mix material shall include but not be limited to:

i. Identification of the DRGs affected;

ii. Indications/contraindications for use or provision of service/procedure;

iii. Implications for use in one or more acute care hospitals;

iv. Patient population (for example, LOS, inlier/outlier ratio);

v. Costs

vi. Alternatives;

vii. Economic benefit; and

viii. Evaluation criteria, and shall be available to all parties.

5. Except for example (b) 2iii above and except where inappropriate, with respect to all proposed rate variations, a determination shall be made by the Commission as to whether or not the appealed medical or institutional course of action ought to be financed out of a variation in the Schedule of Rates; or out of incentive monies in excess of cost or the development of new efficiencies philanthropy, grant funds or other sources.

6. Also, the Commission may consider evidence with respect to the appropriateness of a Diagnosis Related Group.]

8:31B-3.58 Statewide legal and clinical appeals

(a) A Statewide appeal is either a legal appeal or a clinical appeal as defined below:

1. A legal appeal is a request for an adjustment in reimbursement for costs associated with changes in statutes and regulations since the base year. Under the accept option, a hospital must demonstrate that each statutory or regulatory change affects the cost of delivering health care, including reasonable costs of reporting fees related to these statutes or rules, and it must meet a materiality standard of \$10,000 per issue. Hospital-specific adjustments will be considered if the hospital submitted the issue in its rate appeal document and demonstrated reasonable costs meeting the materiality standard. For each rate year, the hospital accepting its rates will receive a legal appeals adjustment for only those dollars exceeding .1 percent of its direct patient care rates.

2. A clinical rate appeal is a request for adjustment in the non-physician patient care costs resulting from a change in the treatment program or the relative frequency of a medical practice, or the use of new technologies defined as scientific advances in drugs, devices and medical and surgical procedures used in medical care. A Statewide clinical appeal must at a minimum be raised by 35 percent of the hospitals or apply to 35 percent of the patients within the affected DRGs. It may be raised under the Accept or Not Accept options in accordance with N.J.A.C. 8:31B-3.51 and 3.52. If the Statewide clinical appeal relates to a new technology, it must:

i. Not be addressed in the technology-specific portion of the technology factor.

ii. Exceed in aggregate the portion of the technology factor that accounts for technologies not included in the technology-specific projections of the Prospective Payment Assessment Commission (ProPAC).

(b) A Statewide legal or clinical appeal that meets the criteria in (a) above will be submitted by individual hospitals as discrete parts of their rate appeal documents. Additionally, a Statewide clinical appeal may be raised by the Commission on its own motion, the Department of Health or another interested party. Interested parties must raise these issues in writing to the Department and the Hospital Rate Setting Commission within 60 days of issuance of the rates.

(c) With recommendations from the Department, the Hospital Rate Setting Commission will determine which appeals merit consideration as the rate year's statewide legal and clinical appeals. A Statewide clinical appeal will be evaluated in accordance with N.J.A.C. 8:31B-3.59(b), (c) and (d).

8:31B-3.59 [through 8:31B-3.62 (Reserved)] **Hospital-specific clinical rate appeals**

(a) A hospital-specific clinical rate appeal must meet the definitional criteria in N.J.A.C. 8:31B-3.58(a)2 except for the Statewide impact requirements. It may be submitted by a single hospital as part of its rate appeal under the Not Accept option in accordance with N.J.A.C. 8:31B-3.51 and 3.52.

(b) Evaluation of all clinical rate appeals shall consider but not be limited to the following types of information:

1. The DRGs affected;
2. Volume of patients and changes in the frequency of specific procedures or medical practices;
3. Percent of total hospital admissions or patient care costs;
4. Length of stay and inlier/outlier statistics;
5. Patient care costs by cost center;
6. Type of patient population and areas served by the institution;
7. UB-PS patient-specific data for the affected Diagnosis Related Groups;
8. Positive and negative effects of the appeal issues as well as quality outcome measures with justification referenced in the medical literature;
9. Whether the medical practice is experimental or research in nature; and
10. In cases involving new technologies, indications for use; comparative analyses with old procedures; cost per procedure; length of stay impact; cost/benefit report if applicable; institutional resource requirements; and evaluation of patient outcomes.

(c) As part of the evaluation of any clinical rate appeal, the Department of Health may request further study by a qualified Utilization Review Organization in accordance with N.J.A.C. 8:31B-3.78(a)1iv.

(d) As part of the evaluation of any clinical rate appeal, the Department of Health may request a recommendation by the Commissioner's Physician Advisory Committee (CPAC) or another appropriate medical group.

8:31B-3.60 through 8:31B-3.62 (Reserved)

(a)

Hospital Reimbursement

Procedural and Methodological Regulations Cost Base; Standard Costs Per Case; Reasonable Indirect Patient Care Costs; Update Factors; Derivation from Preliminary Cost Base; Reconciliation; Hospitals.

**Proposed Amendments: N.J.A.C. 8:31B-3.16, 3.22,
3.24, 3.26, 3.38, 3.73 and Appendix II.**

Proposed Repeal: N.J.A.C. 8:31-B Appendix IX

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

Proposal Number: PRN 1989-53.

Submit written comments by February 16, 1989 to:

Alan N. Rosenberg, Director
Hospital Reimbursement
New Jersey State Department of Health
CN 360, Room 601
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

These amendments and repeal concerning the Procedural and Methodological Regulations are in response to expressed concerns regarding the adequacy of the rates subsequent to rebasing and the methods for annual updating of the rates. These changes will:

1. Expand the base-year cost data base by including Commission-approved reimbursement for costs related to waste disposal.
2. Retain the Labor Market Areas recognized in 1988 rate setting for the purpose of setting 1989 rates.
3. Move from 25 percent standard to 100 percent standard reimbursement for the following cost centers: A&G/Fiscal, Plant, Patient Care Coordination (Non-Physician) and Utilities; reimburse Patient Care Coordination (Physician) and Other General Services at reasonable costs not subject to screening or volume variability; and add Education and Research (non-Physician) to the indirect cost centers not subject to screening.
4. For 1989 rate setting, the labor proxy used to increase base-year costs will be changed from the Bureau of Labor Statistics National Index of Average Hourly Earnings for Nonsupervisory Hospital Workers to a 50/50 blend of that index with the Northeast Regional component of the same index, and a New Jersey-specific index devised to account for increases in contracted labor.
5. Add a technology update factor that will provide prospective funds for the adoption of new, quality-enhancing technologies.
6. Provide an operating margin based on a one percent increase to the statewide portion of direct and indirect rates reimbursed at standard costs. The operating margin is a new financial element that is not currently included in the Chapter 83 rates.
7. Eliminate the volume variability adjustment so that reimbursement for inpatient direct patient care costs reflects only volume, and not fixed costs.
8. Change the economic factor proxy for the contracted services category of expense for Delivery Room and Operating and Recovery Room from the Consumer Price Index to the Labor proxy for salaries.

The financial impact of these amendments will be viewed for rate setting purposes as applicable for the entire year 1989.

Social Impact

Providing New Jersey Chapter 83 hospitals with sufficient reimbursement to meet rising waste disposal costs will permit them to dispose of their waste in the most appropriate and environmentally sound manner. Individual hospitals will no longer be penalized for recent increases in

the cost of waste disposal, which may not have been recognized through the reimbursement system.

Retaining existing Labor Market Areas for 1989 rate setting will have no Statewide impact.

Hospitals with declining volumes will no longer be guaranteed their total indirect costs while hospitals with increasing volume will be provided the revenue to facilitate provision of care for additional patients. Adding Education and Research (non-Physician) will provide regulatory consistency with reimbursement practice.

Changing the labor proxy from a national index to a blend of regional and state indexes will provide a better approximation and forecast of labor cost inflation in New Jersey.

Adding a technology factor provides a method to adjust base-year costs to reflect scientific advances since the base year in the drugs, devices, and medical and surgical procedures used in medical care. The amendments will provide funds prospectively for hospitals to use in adopting new, quality-enhancing technologies. Currently, there is no formal mechanism for recognizing the operating costs associated with technological advancements. Hospitals either absorb these costs or appeal to the Hospital Rate Setting Commission to have these costs added to their rates. These amendments are expected to promote timely adoption of quality-enhancing technologies by providing funds prospectively rather than through a retrospective adjustment.

Incorporating the potential for an operating margin is based on the concept that the average hospital, performing at standard costs, should be able to generate a positive bottom line. It is expected that this change will have a positive impact on quality of care and the healthcare system as a whole by providing a mechanism by which efficient hospitals may generate income to support development and to carry them through the temporary downturns in the business cycle. It is not, however, a guarantee that all hospitals will generate an operating margin.

Eliminating the volume variability adjustment removes the existing corridors and conditions under which hospitals are limited and protected in their experience of revenue gains and losses. The result will be that more reimbursement dollars will be directed to hospitals gaining in volume/intensity and away from hospital losing in volume/intensity. Further, a complex methodology resulting in retroactive changes in revenue will be eliminated, making the reimbursement system simpler and more prospective.

In the Delivery Room and Operating and Recovery Room cost centers, labor is the major contracted service. However, the current proxy is the Consumer Price Index. Changing to the labor proxy would provide consistency with the other patient care cost centers in which labor is the major contracted services component.

Economic Impact

The most recent costs for waste disposal will be incorporated into the base-year costs. The Department recognizes that these costs, which provide for appropriate disposal of hazardous waste, are significant items in hospital budgets. The impact of this change will be to increase 1989 rates by approximately \$10 million.

Retaining the current Labor Market Areas will have no economic impact to patients, Chapter 83 hospitals or payers because the proposed amendment will make the Procedural and Methodological Regulations consistent with current reimbursement methodology and practice.

Reimbursement of selected indirects at a standard peer group cost will redistribute revenue to hospitals with growing volumes from hospitals with declining volumes. Hospitals gaining volume will have comparatively lower unit prices for indirect costs. This redistribution of revenue based on volume will result in providing the largest margins to hospitals with the highest volumes and lowest costs per inpatient. Data from 1986 indicate that about 64 percent of all indirect costs would fall under standard pricing. Statewide, the economic impact is negligible because all hospitals will be reimbursed at the average peer group rate.

Changing from the current labor proxy to the proposed labor proxy is estimated to result in 87 million additional dollars for hospitals in 1989.

Updating the 1986 base year to the 1989 rate year to account for technological advancements will have a Statewide impact of approximately \$54 million in 1989. In future years, the technology factor is projected to increase rates Statewide by \$15 to \$20 million per year.

The proposed operating margin will enhance the ability of hospitals to accumulate funds to be used for unanticipated expenditures, thus decreasing the need for retroactive rate adjustments. Accumulated funds also could be used by hospitals to provide greater equity contributions toward debt financing, which will lower the cost of borrowing. In 1989, approximately 64 percent of the indirect costs will be reimbursed at full

standard. The standard indirect payment will be increased to reflect a one percent operating margin. The standard amount in each DRG rate will be increased by one percent. Assuming DRG rates reflect a 50-50 blend of standard and hospital-specific costs, the operating margin added to DRG rates will be .5 percent. The operating margin will add to the rates approximately \$20 million Statewide in 1989.

To calculate the volume variability adjustment, a hospital's actual volume and case-mix must be known. Therefore, the economic impact of this adjustment is not known until after the rate year. However, the Department can estimate the impact from reviewing systemwide impacts in the past. In 1986, the most recent year for which volume variability adjustment data are available, this methodology had a Statewide impact of \$18 million. Preliminary data from 87 hospitals show no volume variability adjustment for 51 hospitals. Nine hospitals lost approximately \$9 million that would otherwise have been gained from volume/intensity increases. Twenty-seven hospitals gained approximately \$27 million that would otherwise have been lost due to volume/intensity declines. It is expected that the aggregate adjustment for 1989 using the 1986 base would decline significantly or possibly become negative since volume and case-mix appear to have stabilized or increased slightly over this period.

The contracted services in Delivery Room and Operating and Recovery Room are currently included in the cost components of other services and use the Bureau of Labor Statistics Consumer Price Index (CPI) as a proxy. The economic impact is the percentage difference between the CPI and the labor proxy, which was 4.2 percent in 1986. Applying this differential to 1986 aggregate costs yields an increase in reimbursement of approximately \$79,000 in 1989.

Regulatory Flexibility Statement

The proposed amendments apply only to the hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees and therefore do not fall into the category of small business as defined in Section 2 of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:31B Appendix IX.

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

8:31B-3.16 Current [cost base] **Cost Base**

(a) A hospital's Current Cost Base is defined as the [identified and quantification of the Financial Elements in terms of] actual costs [last reported to the New Jersey State Department of Health] and revenue[s] **as identified in the Financial Elements in the [same] base reporting period as recognized by the New Jersey Department of Health for purposes of rate-setting.**

(b) The Current Cost Base is used to develop the Preliminary Cost Base and Schedule of Rates through:

1.-2. (No change.)

3. Calculation of the [economic factor cost components] **operating margin as described in N.J.A.C. 8:31B-3.26(a);**

4. Addition of the 1988 rate year adjustments approved by the Commission for expenditures related to waste disposal. These adjustments will be made only to the 1986 cost base;

5. Calculation of the economic factor cost component as defined in N.J.A.C. 8:31B-3.26(a);

6. Calculation of the technology factor as described in N.J.A.C. 8:31B-3.26(b).

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

8:31B-3.22 Standard costs per case

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

(c) Determination of labor equalization factor to calculate [statewide] **Statewide** standard costs per case:

1. (No change.)

2. [Labor Market Areas shall be those determined by the U.S. Department of Labor, except as modified for the combination of areas due to insufficient hospitals (i.e., less than five hospitals) in an area to make valid comparisons and for the definition of separate Labor Market Areas for adjoining central cities of Labor Market Areas where sufficient hospitals exist for valid comparison (i.e., at least five hospitals in adjoining central cities and the remainder of the Labor Market Area, respectively).] **For 1989 rate setting purposes, the Labor Market areas recognized in 1988 rate setting will be used.**

3.-7. (No change.)
 (d) (No change.)

8:31B-3.24 Reasonable indirect patient care costs

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

(c) The reasonable amount of indirect costs (exclusive of skilled nursing apportionment) will be determined for those hospitals that will receive an initial PCB. Disincentive amounts will be calculated in the Physician and Teaching Related Centers. The screening methodology will compare base year actual cost data. Screens will not be applied to sales and real estate taxes, outside collection costs, employee health insurance, [and] malpractice insurance, **PCC (Phy), EDR (Non-Phy) and OGS**. The above indirect costs are not considered volume variable and are therefore included in the Preliminary Cost Base spread to all rates through the use of the overhead mark-up factor.

1. The following indirect costs [A&G/FIS, PLT, PCC (non-physician) and OGS,] will be equalized and then totaled by peer group: **A&G/FIS, PLT and PCC (non-physician)**. This total cost will be divided by the peer group adjusted admissions to create the equalized peer group standard unit cost. An adjusted admission is defined as admissions multiplied by total gross revenue divided by inpatient gross revenue. **This standard unit cost will be multiplied by the operating margin of 1.01 as set forth in N.J.A.C. 8:31B-3.38(a)3.**

2. The UTC [and PCC (Physician)] indirect costs are totaled (but not equalized) by peer group, and divided by adjusted admissions to create a peer group (unequalized) standard unit cost. **This standard unit cost will be multiplied by the operating margin of 1.01 as set forth in N.J.A.C. 8:31B-3.38(a)3.**

3. The costs used to calculate these peer group indirect standards will be the [1985 approved indirect costs plus 1986 Commission-approved indirect costs which are approved as continuous adjust-

ments. The imputed value of pending 1986 appeals are included in the calculation of the standard unit cost] **actual base-year costs**. The standard will not be recalculated except for the inclusion of [statewide] **Statewide** generic issues affecting one or more peer groups. [The hospitals will receive the Commission-approved 1986 indirect costs, as it affects the hospital specific portion of the blended rate, at Final Reconciliation.]

4. and 5. (No change.)

6. Inpatient indirect costs are volume variable **with the exception of those cost centers described in this subsection**. Hospitals will be reconciled to inpatient discharges multiplied by the [blended] **standard** rate. Projected total indirect costs will be collected during the year through the use of the overhead mark-up factor. Outpatient indirect costs will remain fixed except for same-day surgery patients. Same day surgery indirect costs will be volume variable, subject to a unit cost which represents the pro rata portion of outpatient indirect costs which were attributable to same day surgery in [1986] **the base year**.

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

(d) Non-Physician salaries will be equalized based upon the 11 labor market areas as defined in N.J.A.C. 8:31B-3.22 for the purpose of grouping the following indirect cost centers in the peer group standard calculations:

1. A&G/FIS;
2. PLT; and
3. PCC (non-phy) [; and]
- [4. OGS.]

(e) Cost centers subject to screening:

Cost Centers	Peer Group	Unit of Service	Reasonable Cost Limit
(RSD) Residents Non-Phy	teaching/minor teaching non-teaching	Full time Equivalent RSD	1.1
(PHY) Physicians Non-Phy	teaching/minor teaching non-teaching	Full time Equivalent PHY	1.1
(RSD) Residents Physician	teaching/minor teaching non-teaching	Full time Equivalent RSD	1.1
(PHY) Phys. & Physician	teaching/minor teaching non-teaching	Full time Equivalents in PHY and EDR	1.1
(PHY) Educ. and Research	teaching non-teaching	PHY	

8:31B-3.26 [Economic factor] Update Factors

(a) **Economic Factor:** An economic factor shall be calculated for each hospital. It shall take into account the level of hospital expenses and replacement cost of major moveable equipment, using the cost components reported to the New Jersey State Department of Health. The economic factor is the measure of the change in the prices of goods and services used by New Jersey hospitals. It is to be based, as far as possible, on recorded price changes. For that part of the period covered by the economic factor for which recorded price changes are unavailable, the economic factor shall be based on the best available forecast of price trends.

[(b)]1. The cost components of the economic factor are shown in Appendix II. [The proxy used for labor costs will change in 1983 and subsequent years to the Bureau of Labor Statistics series "Average Hourly Wages Hospital Workers (US)."] The labor proxy for the 1982 rate year will remain the Employment Cost Index Northeast. **The proxy used for labor costs in calculating rates in 1983 through 1988 will remain the Bureau of Labor Statistics series Average Hourly Earnings for Non-Supervisory Hospital Workers (U.S.). Rates set for**

1989 forward, will multiply base-year costs by labor proxy composition as described below:

i. **For 1989 rates, the 1987 Statewide proportion of contracted services labor costs to total labor costs in the Labor 1 component (three percent) will be increased by the percentage change in the cost of contracted services as measured between June 1986 and June 1988 and projected forward for 1989.**

ii. **The remaining proportion of labor cost in the Labor 1 component (97 percent) will be multiplied by the Bureau of Labor Statistics, Average Hourly Earnings for Nonsupervisory Hospital Workers (Northeast).**

[(c)]2. The hospital-specific economic factor is the weighted average of the recorded and projected change in the value of its components. The weight given to each component is its share of that hospital's total expenditure as described in Appendix II. The projection of individual components shall be based, where appropriate, on legal or regulatory charges which fix the future value of a proxy [i.e.] that is, FICA). Components which are of particular importance may

be projected through the use of time series analysis on other relevant indicators.

[Note:] 3. See Appendix II for Cost Components and Proxies for the Economic Factor.

(b) **Technology Factor:** Base-year direct patient care and indirect rates shall be multiplied in succeeding years by a technology factor to provide prospective funds to support hospital adoption of quality-enhancing technologies. The technology factor shall be based on the Scientific and Technological Advancement Allowance recommended annually to the Secretary of the United States Department of Health and Human Services by the Prospective Payment Assessment Commission (ProPAC). The factor shall be composed of the proportion of incremental operating costs associated with ProPAC's identified cost-increasing technologies, and ProPAC's allowance for technologies not included in the technology-specific projections, less the proportion of incremental operating costs of cost-decreasing technologies identified by ProPAC.

1. For the initial rate year after the base year, base-year direct patient care and indirect rates will be multiplied by the product of the technology factors calculated for interim years between the base year and the rate year.

2. For each year that a hospital accepts its rates, the rates will be updated prospectively by the technology factor calculated for that rate year.

8:31B-3.38 Derivation from Preliminary Cost Base

(a) Apportionment of full financial elements based on direct costs shall be as follows:

1.-2. (No change.)

3. An operating margin will be calculated and added to hospital rates as follows:

i. Standard per unit indirect reimbursement as defined in N.J.A.C. 8:31B-3.24 will be multiplied by 1.01.

ii. The standard amount in each DRG will be multiplied by 1.01. (b)-(d) (No change.)

8:31B-3.73 Reconciliation: Hospitals

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

1. Variable financial elements:

i. (No change.)

ii. At reconciliation, adjustment will be made to the marginal revenue associated with increase and decreases in volume and case-mix according to the methodology detailed in Appendix IX.]

Renumber existing iii. and iv. as ii. and iii. (No change in text.) 2.-4. (No change.)

APPENDIX II COST COMPONENTS PROXIES FOR THE ECONOMIC FACTOR

LABOR 1

COST COMPONENT: Non-physician Salaries. Physicians' Salaries and Fees

SHARE COST CENTER: All Cost Centers for which employee salaries are reported; contracted services in MSA, OBS, PED, ICU, CCU, NNI, NBN, EMR, CLN, DEL, ORR and OHS Cost [centers] Centers; physicians' salaries and fees for all Cost Centers except RSD; and physicians' fees for RSD Cost Center.

PROXIES: [BLS, Average Hourly Wages—Hospital Workers (U.S.)]

BLS, Average Hourly Earnings for Nonsupervisory Hospital Workers, Northeast (97 percent)

Percentage change in New Jersey contracted services hourly wage (3 percent)

SOURCE: Bureau of Labor Statistics (BLS), Employment Cost Index New Jersey Department of Health survey of contracted services labor costs for 1986 through 1988.

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

SUPPLIES 1.-SUPPLIES 10. (No change.)

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

OTHER 6.

COST COMPONENT: Other Services

SHARE COST CENTER: Other expenses reported in all cost centers except INT, PLT, OGS, MAL, UTC, LFB, PFB, and PEN; other expenses in A & G Cost Center not classified above; contracted service costs in Ancillaries **exclusive of DEL, ORR, DTY, HKP, MRD, PCC, EDR, A&G and FIS Cost Centers.**

PROXIES: Service less rent and medical care

SOURCE: BLS, Consumer Price Index

APPENDIX IX

[Volume Variability Adjustment] (RESERVED)

OAL NOTE: Full text of this appendix proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:31B Appendix IX.

(a)

HOSPITAL REIMBURSEMENT

Diagnostic Related Groups

DRG Lists

Proposed Amendments: N.J.A.C. 8:31B-5.1, 5.2 and 5.3

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

Proposal Number: PRN 1989-52.

Submit written comments by February 16, 1989 to:

Alan N. Rosenberg, Director
Hospital Reimbursement
New Jersey State Department of Health
CN 360, Room 601
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

In accordance with the Health Care Financing Administration (HCFA) rules, the Department is planning to implement the newest version of the Grouper for Diagnostic Related Group (DRG) assignment. New Jersey has been on Version 2 Grouper since 1982 and will now utilize Version 6 New York Grouper on April 1, 1989. This Grouper will meet the requirements of HCFA and will also incorporate two new Major Diagnostic Categories (MDCs) which are MDC 24—Human Immunodeficiency Virus (HIV) Infections and MDC 25—Multiple Significant Trauma. The MDC 15—Newborns and other neonates with conditions originating in the perinatal period has been completely revised to capture newborns in various weight categories.

MDC 24 will provide for the appropriate collection of patient data for Acquired Immune Deficiency Syndrome and HIV Infections and the assignment of patients to proper DRGs for this illness.

MDC 25 will refine the appropriate placement of multiple trauma patients into the DRGs which more closely reflect their condition.

MDC 15 will now enable the more accurate reflection of the newborn and related problems that will allow an improved classification system by weight in grams and a more appropriate rate structure to be utilized.

Additional DRGs have been added to many of the MDCs to enable a more appropriate classification of patients having an operating room procedure unrelated to the principal diagnosis. This will allow the patient to maintain the link to the proper MDC rather than being placed in a general, unrelated category.

The requirement for the collection of Severity of Illness (S.O.I.) indicators is being included in the amendment to N.J.A.C. 8:31B-5.1; however, this data will not be required until such time as a patient severity measurement system is implemented. A demonstration project is presently in process in 25 acute care hospitals in New Jersey.

Data collection has been completed and a final analysis is forthcoming. The financial impact of these amendments will be viewed for rate setting purposes as applicable for the entire year 1989.

The elimination of the definition of outliers in N.J.A.C. 8:31B-5.2 is also proposed. To ensure consistency in the rules, the definitions of the five categories of outliers have been proposed for inclusion in N.J.A.C. 8:31B-3.38 (see 20 N.J.R. 3057(b)), where the payment rate methodology is also included in the text.

The complete list of Major Diagnostic Categories (MDCs) and the Diagnosis Related Groups (DRGs) under Version 6 New York Grouper, is included in these amendments. With the exception of the two new MDCs (24 and 25), the titles are essentially unchanged. The English descriptors of the DRGs have been greatly revised.

The high and low length of stay trim points have been set statistically, using length of stay histograms for each DRG, and are included in these proposed amendments.

Social Impact

Since New Jersey has been under an all payer DRG prospective reimbursement system since 1982, there should be no social impact for the consumer, provider, payer or Department. The concept of DRG classification and the associated length of stay for each DRG has been the basis for rate payment and, therefore, these amendments are only a further refinement of the system.

Economic Impact

The economic impact of the utilization of Version 6 New York Grouper as opposed to the present Version 2 Grouper is difficult to determine. The addition of new MDCs and DRGs with their associated rate structure should more accurately reflect the resources consumed.

A significant shifting of dollars will most likely be noted with the use of new trim points and the revised DRGs for newborns and other neonates with certain conditions originating in the perinatal period. The birthweight will be collected in grams and the newborn will be assigned a DRG recognizing the weight and related conditions. A more accurate payment rate should result in recognition of the resources consumed.

The Severity of Illness (S.O.I.) indicator should recognize the resources consumed by patients displaying different levels of illness severity and be reflected in the DRG payment rate. Hospitals having a case mix with a high severity rating would be reimbursed accordingly. Since this is presently a demonstration study, implementation will be considered following a detailed analysis with results accounting for a significant variance of resources in the DRG.

Regulatory Flexibility Statement

These proposed amendments apply to hospitals which have rates established by the Hospital Rate Setting Commission. Each of these hospitals employ more than 100 full-time employees and therefore are not considered in the small business category, as defined in N.J.S.A. 52:14B-16 et seq.

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

8:31B-5.1 Diagnosis Related Groups

(a) Diagnosis Related Groups represent categories of hospital inpatients with similar clinical characteristics; and, except for outliers [defined below], patients in each DRG can be expected to consume similar amounts of hospital resources. Assignment of a patient to a DRG requires the following information:

1.-6. (No change.)

7. Birthweight (Newborn); and

8. Severity of Illness (S.O.I.) indicators (upon implementation of methodology).

(b) Each of these data items is defined in the Rules on Hospital Reporting of Uniform Bill-Patient Summaries (N.J.A.C. 8:31B-2) and/or the Uniform Hospital Discharge Data Set developed by the U.S. Department of Health and Human Services. The appropriate definitions are reported here and these are the only definitions allowable for DRG assignment.

1.-6. (No change.)

7. Birthweight: A newborn's weight in grams at birth.

8. Severity of Illness (S.O.I.) indicators: A patient-specific level of illness rating within the DRG which may indicate a more appropriate rate of reimbursement to the provider for resources utilized.

(c) (No change.)

8:31B-5.2 Outliers

(a) Outliers are patients displaying atypical characteristics relative to other patients in a DRG. [Payment for outliers is based on] The

five categories of outliers are defined and the methodology for outlier payment is established in the Procedural and Methodological Regulations (N.J.A.C. 8:31B-3.38).

(b) Outliers are defined as:

1. Patients assigned to a DRG but whose Length of Stay (LOS) is beyond the trim points established for the DRG (shorter than the low LOS trim point or longer than the high LOS trim point);

2. Patients admitted and discharged on the same date; exclusive of Same Day Surgery as defined in N.J.A.C. 8:31B-3.11.

3. Patients assigned to DRGs defined as "clinical outlier" DRGs in N.J.A.C. 8:31B-5.3. Clinical outlier DRGs are DRGs with poorly defined clinical characteristics precluding valid comparison of patients within the DRG. Clinical outlier DRGs are generally those reserved for patients whose clinical characteristics are not comparable to any other established DRGs. Patients identified as having unrelated surgery are also considered clinical outliers.

4. As stated in the Procedural and Methodological Regulations (N.J.A.C. 8:31B-3.38), DRGs with five or fewer merged cases in the base year for a hospital will not have a hospital-specific payment rate in that hospital. Patients in such DRGs are billed and reconciled to the standard rate per case.

5. Transfer Patients: The circumstances under medical advice in which a patient needing continued acute care is transferred from one Acute Care Facility to another Acute Care Facility for diagnostic and/or therapeutic reasons. Patients transferred out of an Acute Care Facility will be considered outliers and billed a per diem rate by the transferring facility. Transferred patients received by an Acute Care Facility will be considered the same as non-transferred patients and billed the price per case by the receiving facility.]

8:31B-5.3 List of Diagnosis Related Groups

(a) The following are [major diagnostic categories] **Major Diagnostic Categories** (Organ System Approach):

1. Diseases and Disorders of the Nervous System.
 2. Diseases and Disorders of the Eye.
 3. Diseases and Disorders of the Ear, Nose, **Mouth** and Throat.
 4. Diseases and Disorders of the Respiratory System.
 5. Diseases and Disorders of the Circulatory System.
 6. Diseases and Disorders of the Digestive System.
 7. Diseases and Disorders of the Hepatobiliary System and Pancreas.
 8. Diseases and Disorders of the Musculoskeletal System and Connective Tissue.
 9. Diseases and Disorders of the Skin, Subcutaneous **Tissue** and Breast.
 10. Endocrine, Nutritional and Metabolic Diseases **and Disorders**.
 11. Diseases and Disorders of the Kidney and Urinary Tract.
 12. Diseases and Disorders of the Male Reproductive System.
 13. Diseases and Disorders of the Female Reproductive System.
 14. Pregnancy, Childbirth and the Puerperium.
 15. Normal Newborns and Other Neonates with Certain Conditions Originating in the Perinatal Period.
 16. Diseases and Disorders of Blood and Blood Forming Organs and [Immunity] Immunological **Disorders**.
 17. Myeloproliferative **Diseases and Disorders**, and Poorly Differentiated [Malignancy, and other] Neoplasms [NEC].
 18. Infectious and Parasitic Diseases (Systemic **or Unspecified Sites**).
 19. Mental **Diseases and Disorders**.
 - [20. Substance Use Disorders and Substance Induced Organic Disorders.]
 - 20. Alcohol/Drug Use and Alcohol/Drug Induced Organic Mental Disorders.**
 21. [Injury, Poisoning,] **Injuries, Poisonings** and Toxic Effects of Drugs.
 22. Burns.
 23. [Selected] Factors Influencing Health Status and **Other Contacts with Health Services.**
 - 24. Human Immunodeficiency Virus (HIV) Infections.**
 - 25. Multiple Significant Trauma.**
- (b) (No change.)
- (c) A table of Diagnosis Related Groups follows:

HEALTH

PROPOSALS

OAL NOTE: The tables of Diagnostic Related Groups, Major Diagnostic Categories 01 through 23, currently in the New Jersey Administrative Code, are proposed for deletion by the Department

of Health. The tables are not reproduced in this notice of proposal, but may be found in the Code at N.J.A.C. 8:31B-5.3(c). The following tables are proposed to replace the current tables:

MAJOR DIAGNOSTIC CATEGORY 01: DISEASES AND DISORDERS OF THE NERVOUS SYSTEM

	OUTLIER TRIM POINT	
	LOW	HIGH
(001) CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	5	65
(002) CRANIOTOMY AGE FOR TRAUMA AGE >17	3	61
(004) SPINAL PROCEDURES	4	62
(005) EXTRACRANIAL VASCULAR PROCEDURES	2	31
(006) CARPAL TUNNEL RELEASE	1	8
(007) PERIPH & CRANIAL NERVE & OTHER NERVOUS SYSTEM PROC W CC	4	79
(008) PERIPH & CRANIAL NERVE & OTHER NERVOUS SYSTEM PROC W/O CC	2	13
(009) SPINAL DISORDERS & INJURIES	2	29
(010) NERVOUS SYSTEM NEOPLASMS W CC	3	47
(011) NERVOUS SYSTEM NEOPLASMS W/O CC	2	24
(012) DEGENERATIVE NERVOUS SYSTEM DISORDERS	2	40
(013) MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	2	27
(014) SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	3	45
(015) TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	2	24
(016) NON-SPECIFIC CEREBROVASCULAR DISORDERS W CC	3	38
(017) NON-SPECIFIC CEREBROVASCULAR DISORDERS W/O CC	2	22
(018) CRANIAL & PERIPHERAL NERVE DISORDERS W CC	2	30
(019) CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	2	18
(020) NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	3	37
(021) VIRAL MENINGITIS	2	16
(022) HYPERTENSIVE ENCEPHALOPATHY	2	23
(023) NON-TRAUMATIC STUPOR & COMA	2	25
(024) SEIZURE & HEADACHE AGE >17 W CC	2	26
(025) SEIZURE & HEADACHE AGE >17 W/O CC	2	13
(026) SEIZURE & HEADACHE AGE <18	1	9
(027) TRAUMATIC STUPOR & COMA, COMA >1 HR.	2	30
(028) TRAUMATIC STUPOR & COMA, COMA <1 HR. AGE >17 W CC	2	36
(029) TRAUMATIC STUPOR & COMA, COMA <1 HR. AGE >17 W/O CC	2	14
(030) TRAUMATIC STUPOR & COMA, COMA <1 HR. AGE <18	1	9
(031) CONCUSSION AGE >17 W CC	2	20
(032) CONCUSSION AGE >17 W/O CC	1	9
(033) CONCUSSION AGE <18	1	5
(034) OTHER DISORDERS OF NERVOUS SYSTEM W CC	2	38
(035) OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	2	14
(468) EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476) PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477) NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736) TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(737) VENTRICULAR SHUNT REVISION AGE <18	2	24
(738) CRANIOTOMY AGE <18 W CC	4	50
(739) CRANIOTOMY AGE <18 W/O CC	2	27

MAJOR DIAGNOSTIC CATEGORY 02: DISEASES AND DISORDERS OF THE EYE

	OUTLIER TRIM POINT	
	LOW	HIGH
(036) RETINAL PROCEDURES	2	7
(037) ORBITAL PROCEDURES	2	14
(038) PRIMARY IRIS PROCEDURES	1	8
(039) LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	1	6
(040) EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	1	8
(041) EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE <18	1	5
(042) INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	1	10
(043) HYPHEMA	2	9
(044) ACUTE MAJOR EYE INFECTIONS	2	13
(045) NEUROLOGICAL EYE DISORDERS	2	13
(046) OTHER DISORDERS OF THE EYE AGE >17 W CC	2	22
(047) OTHER DISORDERS OF THE EYE AGE >17 W/O CC	2	13
(048) OTHER DISORDERS OF THE EYE AGE <18	1	8
(468) EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476) PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477) NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736) TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 03: DISEASES AND DISORDERS OF THE EAR, NOSE, MOUTH, AND THROAT

	OUTLIER TRIM POINT	
	LOW	HIGH
(049) MAJOR HEAD & NECK PROCEDURES	3	48
(050) SIALOADENECTOMY	1	7
(051) SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	1	7
(052) CLEFT LIP & PALATE REPAIR	2	9
(053) SINUS & MASTOID PROCEDURES AGE >17	1	8
(054) SINUS & MASTOID PROCEDURES AGE <18	1	7
(055) MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	1	6
(056) RHINOPLASTY	1	4
(057) T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY AGE >17	1	15
(058) T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY AGE <18	1	4
(059) TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	1	3
(060) TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE <18	1	2
(061) MYRINGOTOMY W TUBE INSERTION >17	1	7
(062) MYRINGOTOMY W TUBE INSERTION <18	1	8
(063) OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	2	17
(064) EAR, NOSE, MOUTH & THROAT MALIGNANCY	2	42
(065) DYSEQUILIBRIUM	2	15
(066) EPISTAXIS	2	12
(067) EPIGLOTTITIS	2	12
(068) OTITIS MEDIA & URI AGE >17 W CC	2	20
(069) OTITIS MEDIA & URI AGE >17 W/O CC	2	12
(070) OTITIS MEDIA & URI AGE <18	2	8
(071) LARYNGOTRACHEITIS	1	9
(072) NASAL TRAUMA & DEFORMITY	1	15
(073) OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSIS AGE >17	2	15
(074) OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSIS AGE <18	1	10
(468) EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476) PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477) NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(735) MOUTH, LARYNX OR PHARYNX DISORDERS WITH TRACHEOSTOMY	4	71
(736) TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 04: DISEASES AND DISORDERS OF THE RESPIRATORY SYSTEM

	OUTLIER TRIM POINT	
	LOW	HIGH
(075) MAJOR CHEST PROCEDURES	4	45
(076) OTHER RESP SYSTEM O.R. PROCEDURES W CC	4	55
(077) OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	2	24
(078) PULMONARY EMBOLISM	3	28
(079) RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	4	50
(080) RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	2	31
(081) RESPIRATORY INFECTIONS & INFLAMMATIONS AGE <18	2	22
(082) RESPIRATORY NEOPLASMS	2	32
(083) MAJOR CHEST TRAUMA W CC	2	26
(084) MAJOR CHEST TRAUMA W/O CC	2	11
(085) PLEURAL EFFUSION W CC	2	30
(086) PLEURAL EFFUSION W/O CC	2	15
(087) PULMONARY EDEMA & RESPIRATORY FAILURE	2	23
(088) CHRONIC OBSTRUCTIVE PULMONARY DISEASE	2	31
(089) SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	3	32
(090) SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	2	17
(091) SIMPLE PNEUMONIA & PLEURISY AGE <18	2	12
(092) INTERSTITIAL LUNG DISEASE W CC	2	28
(093) INTERSTITIAL LUNG DISEASE W/O CC	2	17
(094) PNEUMOTHORAX W CC	2	25
(095) PNEUMOTHORAX W/O CC	2	12
(096) BRONCHITIS & ASTHMA AGE >17 W CC	2	24
(097) BRONCHITIS & ASTHMA AGE >17 W/O CC	2	12
(098) BRONCHITIS & ASTHMA AGE <18	2	8
(099) RESPIRATORY SIGNS & SYMPTOMS W CC	2	21
(100) RESPIRATORY SIGNS & SYMPTOMS W/O CC	2	9
(101) OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	2	29
(102) OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	2	11
(468) EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(475) RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3	46
(476) PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58

HEALTH

PROPOSALS

(477) NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(631) BPD AND OTHER CHRONIC RESPIRATORY DISEASES ARISING IN PERINATAL PERIOD	2	39
(632) OTHER RESPIRATORY PROBLEMS AFTER BIRTH	2	25
(736) TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(740) CYSTIC FIBROSIS	2	23

MAJOR DIAGNOSTIC CATEGORY 05: DISEASES AND DISORDERS OF THE CIRCULATORY SYSTEM

	OUTLIER TRIM POINT	
	LOW	HIGH
(103) HEART TRANSPLANT	6	69
(104) CARDIAC VALVE PROCEDURE W PUMP & W CARDIAC CATH	5	58
(105) CARDIAC VALVE PROCEDURE W PUMP & W/O CARDIAC CATH	3	43
(106) CORONARY BYPASS W CARDIAC CATH	4	40
(107) CORONARY BYPASS W/O CARDIAC CATH	3	31
(108) OTHER CARDIOTHORACIC OR VASCULAR PROCEDURES, W PUMP	4	47
(109) OTHER CARDIOTHORACIC PROCEDURES W/O PUMP	3	41
(110) MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W CC	4	60
(111) MAJOR RECONSTRUCTIVE VASCULAR PROC W/O PUMP W/O CC	2	21
(112) VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION W/O PUMP	2	31
(113) AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	6	86
(114) UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	4	54
(115) PERM CARDIAC PACEMAKER IMPL W AMI, HEART FAILURE OR SHOCK	4	37
(116) PERM CARDIAC PACEMAKER IMPL W/O AMI, HEART FAILURE OR SHOCK	2	34
(117) CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	3	33
(118) CARDIAC PACEMAKER DEVICE REPLACEMENT	2	27
(119) VEIN LIGATION & STRIPPING	2	18
(120) OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	4	62
(121) CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	3	31
(122) CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	2	20
(123) CIRCULATORY DISORDERS W AMI EXPIRED	2	25
(124) CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	2	19
(125) CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	1	8
(126) ACUTE & SUBACUTE ENDOCARDITIS	6	63
(127) HEART FAILURE & SHOCK	2	30
(128) DEEP VEIN THROMBOPHLEBITIS	2	25
(129) CARDIAC ARREST, UNEXPLAINED	2	27
(130) PERIPHERAL VASCULAR DISORDERS W CC	2	29
(131) PERIPHERAL VASCULAR DISORDERS W/O CC	2	17
(132) ATHEROSCLEROSIS W CC	2	24
(133) ATHEROSCLEROSIS W/O CC	2	14
(134) HYPERTENSION	2	19
(135) CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	2	26
(136) CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	2	14
(137) CARDIAC CONGENITAL & VALVULAR DISORDERS AGE <18	2	19
(138) CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	2	22
(139) CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	2	14
(140) ANGINA PECTORIS	2	16
(141) SYNCOPE & COLLAPSE W CC	2	20
(142) SYNCOPE & COLLAPSE W/O CC	2	13
(143) CHEST PAIN	2	10
(144) OTHER CIRCULATORY SYSTEM DIAGNOSIS W CC	2	29
(145) OTHER CIRCULATORY SYSTEM DIAGNOSIS W/O CC	2	13
(468) EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476) PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477) NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736) TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 06: DISEASES AND DISORDERS OF THE DIGESTIVE SYSTEM

	OUTLIER TRIM POINT	
	LOW	HIGH
(146) RECTAL RESECTION W CC	4	41
(147) RECTAL RESECTION W/O CC	3	21
(148) MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	4	52
(149) MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	3	23
(150) PERITONEAL ADHESIOLYSIS W CC	3	38
(151) PERITONEAL ADHESIOLYSIS W/O CC	2	18
(152) MINOR SMALL & LARGE BOWEL PROCEDURES W CC	2	33
(153) MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	2	15

PROPOSALS

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HEALTH

(154)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	3	45
(155)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	2	19
(156)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE <18	2	27
(157)	ANAL & STOMAL PROCEDURES W CC	2	22
(158)	ANAL & STOMAL PROCEDURES W/O CC	1	8
(159)	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	2	23
(160)	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	2	9
(161)	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	2	17
(162)	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	1	5
(163)	HERNIA PROCEDURES AGE <18	1	5
(164)	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	3	26
(165)	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	2	13
(166)	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	2	19
(167)	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	2	7
(168)	MOUTH PROCEDURES W CC	2	23
(169)	MOUTH PROCEDURES W/O CC	1	11
(170)	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	4	60
(171)	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	2	19
(172)	DIGESTIVE MALIGNANCY W CC	3	38
(173)	DIGESTIVE MALIGNANCY W/O CC	2	18
(174)	GASTROINTESTINAL HEMORRHAGE W CC	2	24
(175)	GASTROINTESTINAL HEMORRHAGE W/O CC	2	12
(176)	COMPLICATED PEPTIC ULCER	2	24
(177)	UNCOMPLICATED PEPTIC ULCER W CC	2	17
(178)	UNCOMPLICATED PEPTIC ULCER W/O CC	2	10
(179)	INFLAMMATORY BOWEL DISEASE	2	25
(180)	GASTROINTESTINAL OBSTRUCTION W CC	2	28
(181)	GASTROINTESTINAL OBSTRUCTION W/O CC	2	13
(182)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE >17 W CC	2	20
(183)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE >17 W/O CC	2	11
(184)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE <18	2	9
(185)	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS AGE >17	2	21
(186)	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS AGE <18	2	11
(187)	DENTAL EXTRACTIONS & RESTORATIONS	1	8
(188)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	2	22
(189)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	1	12
(190)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE <18	1	7
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 07: DISEASES AND DISORDERS OF THE HEPATOBILIARY SYSTEM AND PANCREAS

	OUTLIER TRIM POINT		
	LOW	HIGH	
(191)	PANCREAS, LIVER & SHUNT PROCEDURES W CC	5	63
(192)	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	2	25
(193)	BILIARY TRACT PROC W CC EXCEPT ONLY TOTAL CHOLECYST W OR W/O C.D.E.	4	51
(194)	BILIARY TRACT PROC W/O CC EXCEPT ONLY TOTAL CHOLECYSTECTOMY W OR W/O C.D.E. (COMMON DUCT EXPLORATION)	3	30
(195)	TOTAL CHOLECYSTECTOMY W C.D.E. W CC	3	36
(196)	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	2	20
(197)	TOTAL CHOLECYSTECTOMY W/O C.D.E. W CC	2	26
(198)	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	2	12
(199)	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	4	54
(200)	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	3	42
(201)	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2	36
(202)	CIRRHOSIS & ALCOHOLIC HEPATITIS	3	34
(203)	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	2	31
(204)	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	2	25
(205)	DISORDERS OF LIVER EXCEPT MALIG, CIRRHOSIS, ALC HEPATITIS W CC	2	32
(206)	DISORDERS OF LIVER EXCEPT MALIG, CIRRHOSIS, ALC HEPATITIS W/O CC	2	16
(207)	DISORDERS OF THE BILIARY TRACT W CC	2	24
(208)	DISORDERS OF THE BILIARY TRACT W/O CC	2	11
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(741)	LIVER TRANSPLANT	NA	NA

HEALTH

PROPOSALS

MAJOR DIAGNOSTIC CATEGORY 08: DISEASES OF MUSCULOSKELETAL SYSTEM AND CONNECTIVE TISSUE

	OUTLIER TRIM POINT	
	LOW	HIGH
(209) MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	4	42
(210) HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	5	59
(211) HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	3	38
(212) HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE <18	3	36
(213) AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	4	53
(214) BACK & NECK PROCEDURES W CC	4	48
(215) BACK & NECK PROCEDURES W/O CC	2	23
(216) BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	3	46
(217) WOUND DEBRID & SKIN GRAFT EXC HAND, FOR MUSCULOSKEL & CONN TISS DIS	3	59
(218) LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE >17 W CC	3	46
(219) LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE >17 W/O CC	2	20
(220) LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE <18	2	17
(221) KNEE PROCEDURES W CC	2	32
(222) KNEE PROCEDURES W/O CC	1	9
(223) MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	2	19
(224) SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC	1	8
(225) FOOT PROCEDURES	1	13
(226) SOFT TISSUE PROCEDURES W CC	2	29
(227) SOFT TISSUE PROCEDURES W/O CC	1	10
(228) MAJOR THUMB OR JOINT PROC, OR OTHER HAND OR WRIST PROC W CC	2	16
(229) HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	1	7
(230) LOCAL EXCISION & REMOVAL OF INT FIXATION DEVICES OF HIP & FEMUR	2	20
(231) LOCAL EXCISION & REMOVAL OF INT FIXATION DEVICES EXCEPT HIP & FEMUR	1	17
(232) ARTHROSCOPY	1	14
(233) OTHER MUSCULOSKELETAL SYSTEM & CONN TISSUE O.R. PROC W CC	3	42
(234) OTHER MUSCULOSKELETAL SYSTEM & CONN TISSUE O.R. PROC W/O CC	2	14
(235) FRACTURES OF FEMUR	4	56
(236) FRACTURES OF HIP & PELVIS	3	39
(237) SPRAINS, STRAINS & DISLOCATIONS OF HIP, PELVIS & THIGH	2	24
(238) OSTEOMYELITIS	4	47
(239) PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISSUE MALIGNANCY	3	38
(240) CONNECTIVE TISSUE DISORDERS W CC	2	33
(241) CONNECTIVE TISSUE DISORDERS W/OCC	2	20
(242) SEPTIC ARTHRITIS	3	34
(243) MEDICAL BACK PROBLEMS	2	20
(244) BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	2	30
(245) BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	2	19
(246) NON-SPECIFIC ARTHROPATHIES	2	21
(247) SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDER	2	17
(248) TENDONITIS, MYOSITIS & BURSITIS	2	18
(249) AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	2	23
(250) FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE >17 W CC	2	27
(251) FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE >17 W/O CC	1	12
(252) FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE <18	1	5
(253) FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE >17 W CC	2	34
(254) FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE >17 W/O CC	2	15
(255) FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE <18	1	11
(256) OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	2	15
(468) EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(471) BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	6	68
(476) PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477) NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736) TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 09: DISEASES OF THE SKIN, SUBCUTANEOUS TISSUE AND BREAST

	OUTLIER TRIM POINT	
	LOW	HIGH
(257) TOTAL MASTECTOMY FOR MALIGNANCY W CC	2	24
(258) TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	2	11
(259) SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	2	29
(260) SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	1	9
(261) BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	1	7
(262) BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	1	12
(263) SKIN GRAFT &/OR DEBRIDEMENT FOR SKIN ULCER, CELLULITIS W CC	5	76
(264) SKIN GRAFT &/OR DEBRIDEMENT FOR SKIN ULCER, CELLULITIS W/O CC	3	38
(265) SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER, CELLULITIS W CC	2	37

PROPOSALS

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HEALTH

(266)	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER, CELLULITIS W/O CC	2	14
(267)	PERIANAL & PILONIDAL PROCEDURES	1	6
(268)	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1	11
(269)	OTHER SKIN, SUBCUT TISSUE & BREAST PROC W CC	2	39
(270)	OTHER SKIN, SUBCUT TISSUE & BREAST PROC W/O CC	2	12
(271)	SKIN ULCERS	3	43
(272)	MAJOR SKIN DISORDERS W CC	2	36
(273)	MAJOR SKIN DISORDERS W/O CC	2	18
(274)	MALIGNANT BREAST DISORDERS W CC	3	39
(275)	MALIGNANT BREAST DISORDERS W/O CC	2	13
(276)	NON-MALIGNANT BREAST DISORDERS	2	12
(277)	CELLULITIS AGE >17 W CC	2	28
(278)	CELLULITIS AGE >17 W/O CC	2	17
(279)	CELLULITIS AGE <18	2	11
(280)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE >17 W CC	2	26
(281)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE >17 W/O CC	1	10
(282)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE <18	1	8
(283)	MINOR SKIN DISORDERS W CC	2	33
(284)	MINOR SKIN DISORDERS W/O CC	2	12
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 10: ENDOCRINE, NUTRITIONAL, AND METABOLIC DISEASES

		OUTLIER TRIM POINT	
		LOW	HIGH
(285)	AMPUTATION OF LOW LIMB FOR ENDOCRINE, NUTRIT, & METABOLIC DISORDERS	6	88
(286)	ADRENAL & PITUITARY PROCEDURES	3	41
(287)	SKIN GRAFT & WOUND DEBRID FOR ENDOC, NUTRIT & METABOLIC DISORDERS	5	76
(288)	O.R. PROCEDURES FOR OBESITY	2	17
(289)	PARATHYROID PROCEDURES	2	19
(290)	THYROID PROCEDURES	2	15
(291)	THYROGLOSSAL PROCEDURES	1	6
(292)	OTHER ENDOCRINE, NUTRITIONAL & METABOLIC O.R. PROC W CC	4	59
(293)	OTHER ENDOCRINE, NUTRITIONAL & METABOLIC O.R. PROC W/O CC	2	19
(294)	DIABETES AGE >35	2	28
(295)	DIABETES AGE <36	2	15
(296)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	2	35
(297)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	2	19
(298)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE <18	2	19
(299)	INBORN ERRORS OF METABOLISM	2	17
(300)	ENDOCRINE DISORDERS W CC	2	31
(301)	ENDOCRINE DISORDERS W/O CC	2	14
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(735)	MOUTH, LARYNX OR PHARYNX DISORDER WITH TRACHEOSTOMY	4	71
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(740)	CYSTIC FIBROSIS	2	23

MAJOR DIAGNOSTIC CATEGORY 11: DISEASES AND DISORDERS OF THE KIDNEY AND URINARY TRACT

		OUTLIER TRIM POINT	
		LOW	HIGH
(302)	KIDNEY TRANSPLANT	4	48
(303)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NEOPLASM	3	40
(304)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPLASM W CC	3	39
(305)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPLASM W/O CC	2	18
(306)	PROSTATECTOMY W CC	3	39
(307)	PROSTATECTOMY W/O CC	2	21
(308)	MINOR BLADDER PROCEDURES W CC	2	32
(309)	MINOR BLADDER PROCEDURES W/O CC	2	15
(310)	TRANSURETHRAL PROCEDURES W CC	2	19
(311)	TRANSURETHRAL PROCEDURES W/O CC	2	9
(312)	URETHRAL PROCEDURES AGE >17 W CC	2	21
(313)	URETHRAL PROCEDURES AGE >17 W/O CC	1	10
(314)	URETHRAL PROCEDURES AGE <18	1	11
(315)	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	4	58
(316)	RENAL FAILURE	2	31

HEALTH

PROPOSALS

(317)	ADMIT FOR RENAL DIALYSIS	1	10
(318)	KIDNEY & URINARY TRACT NEOPLASMS W CC	2	32
(319)	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	1	11
(320)	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	2	32
(321)	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	2	14
(322)	KIDNEY & URINARY TRACT INFECTIONS AGE <18	2	11
(323)	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	2	11
(324)	URINARY STONES W/O CC	1	7
(325)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	2	22
(326)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	2	12
(327)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE <18	1	11
(328)	URETHRAL STRICTURE AGE >17 W CC	2	19
(329)	URETHRAL STRICTURE AGE >17 W/O CC	1	7
(330)	URETHRAL STRICTURE AGE <18	1	5
(331)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	2	27
(332)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	2	15
(333)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE <18	2	13
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 12: DISEASES AND DISORDERS OF THE MALE REPRODUCTIVE SYSTEM

		OUTLIER TRIM POINT	
		LOW	HIGH
(334)	MAJOR MALE PELVIC PROCEDURES W CC	3	28
(335)	MAJOR MALE PELVIC PROCEDURES W/O CC	3	18
(336)	TRANSURETHRAL PROSTATECTOMY W CC	2	27
(337)	TRANSURETHRAL PROSTATECTOMY W/O CC	2	12
(338)	TESTES PROCEDURES, FOR MALIGNANCY	2	25
(339)	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1	10
(340)	TESTES PROCEDURES, NON-MALIGNANCY AGE <18	1	5
(341)	PENIS PROCEDURES	2	18
(342)	CIRCUMCISION AGE >17	1	11
(343)	CIRCUMCISION AGE <18	1	3
(344)	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC FOR MALIGNANCY	2	28
(345)	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	2	17
(346)	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	2	32
(347)	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	1	7
(348)	BENIGN PROSTATIC HYPERTROPHY W CC	2	19
(349)	BENIGN PROSTATIC HYPERTROPHY W/O CC	1	8
(350)	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	2	14
(351)	STERILIZATION, MALE	1	3
(352)	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	1	10
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX, OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 13: DISEASES AND DISORDERS OF THE FEMALE REPRODUCTIVE SYSTEM

		OUTLIER TRIM POINT	
		LOW	HIGH
(353)	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	3	37
(354)	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGNANCY W CC	2	28
(355)	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGNANCY W/O CC	2	11
(356)	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	2	13
(357)	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	3	32
(358)	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	2	18
(359)	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	2	10
(360)	VAGINA, CERVIX & VULVA PROCEDURES	1	14
(361)	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1	8
(362)	ENDOSCOPIC TUBAL INTERRUPTION	1	5
(363)	D&C CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	2	24
(364)	D&C CONIZATION EXCEPT FOR MALIGNANCY	1	7
(365)	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	2	32
(366)	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	3	37
(367)	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM, W/O CC	2	11
(368)	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	2	10
(369)	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	1	10

PROPOSALS

Interested Persons see Inside Front Cover

HEALTH

(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 14: PREGNANCY, CHILDBIRTH, AND THE PUERPERIUM

	OUTLIER TRIM POINT		
	LOW	HIGH	
(370)	CESAREAN SECTION W CC	2	14
(371)	CESAREAN SECTION W/O CC	2	9
(372)	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	2	9
(373)	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	1	5
(374)	VAGINAL DELIVERY W STERILIZATION &/OR D&C	2	7
(375)	VAGINAL DELIVERY W O.R. PROC EXCEPT STERILIZATION &/OR D&C	2	10
(376)	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	2	10
(377)	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	1	9
(378)	ECTOPIC PREGNANCY	2	8
(379)	THREATENED ABORTION	1	9
(380)	ABORTION W/O D&C	1	5
(381)	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	1	4
(382)	FALSE LABOR	1	3
(383)	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	2	11
(384)	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	1	8
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 15: NORMAL NEWBORN AND OTHER NEONATES WITH CERTAIN CONDITIONS ORIGINATING IN THE PERINATAL PERIOD

	OUTLIER TRIM POINT		
	LOW	HIGH	
(600)	NEONATE, DIED WITHIN ONE DAY OF BIRTH	1	1
(601)	NEONATE, TRANSFERRED <5 DAYS OLD	1	4
(602)	NEONATE, BIRTH WT <750G, DISCHARGED ALIVE	3	46
(603)	NEONATE, BIRTH WT <750G, DIED	3	48
(604)	NEONATE, BIRTH WT 750-999G, DISCHARGED ALIVE	11	73
(605)	NEONATE, BIRTH WT 750-999G, DIED	5	53
(606)	NEONATE, BIRTH WT 1000-1499G, W SIGNIF O.R. PROC, DISCHARGED ALIVE	17	105
(607)	NEONATE, BIRTH WT 1000-1499G, W/O SIGNIF O.R. PROC, DISCHARGED ALIVE	9	73
(608)	NEONATE, BIRTH WT 1000-1499G, DIED	3	46
(609)	NEONATE, BIRTH WT 1500-1999G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	9	68
(610)	NEONATE, BIRTH WT 1500-1999G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	11	81
(611)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	7	69
(612)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	5	58
(613)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	5	60
(614)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	4	53
(615)	NEONATE, BIRTH WT 2000-2499G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	11	85
(616)	NEONATE, BIRTH WT 2000-2499G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	5	56
(617)	NEONATE, BIRTH WT 2000-2499 G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	5	56
(618)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	3	49
(619)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	3	48
(620)	NEONATE, BWT 2000-2499G, W/O SIGNIF O.R. PROC, W ONLY NORM NEWBORN DIAG.	2	10
(621)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	2	24
(622)	NEONATE BIRTH >2499G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	6	61
(623)	NEONATE BIRTH WT >2499G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	2	46
(624)	NEONATE, BIRTH WT >2499G, W MINOR ABDOMINAL PROCEDURE	2	9
(625)	NOT VALID	NA	NA
(626)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	3	48
(627)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	2	22
(628)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	2	22
(629)	NEONATE, BWT >2499G, W/O SIGNIF O.R. PROC, W ONLY NORMAL NEWBORN DIAG.	1	6
(630)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	2	12

**MAJOR DIAGNOSTIC CATEGORY 16: DISEASES AND DISORDERS OF THE BLOOD AND
BLOOD-FORMING ORGANS AND IMMUNITY**

	OUTLIER TRIM POINT	
	LOW	HIGH
(392) SPLENECTOMY AGE >17	3	39
(393) SPLENECTOMY AGE <18	2	17
(394) OTHER O.R. PROCEDURES OF BLOOD AND BLOOD FORMING ORGANS	2	43
(395) RED BLOOD CELL DISORDERS AGE >17	2	22
(396) RED BLOOD CELL DISORDERS AGE <18	2	12
(397) COAGULATION DISORDERS	2	20
(398) RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	3	45
(399) RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	2	14
(468) EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476) PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477) NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736) TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(742) BONE MARROW TRANSPLANT	11	81

**MAJOR DIAGNOSTIC CATEGORY 17: MYELOPROLIFERATIVE DISORDERS AND POORLY
DIFFERENTIATED MALIGNANCY, AND OTHER NEOPLASMS NEC**

	OUTLIER TRIM POINT	
	LOW	HIGH
(400) LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	3	48
(401) LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	4	51
(402) LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	2	17
(403) LYMPHOMA & NON-ACUTE LEUKEMIA W CC	3	41
(404) LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	2	18
(405) ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE <18	2	30
(406) MYELOPROLIF DISORD OR POOR DIFF NEOPL W MAJOR O.R. PROC. W CC	4	52
(407) MYELOPROLIF DISORD OR POOR DIFF NEOPL W MAJOR O.R. PROC. W/O CC	2	20
(408) MYELOPROLIF DISORD OR POOR DIFF NEOPL W OTHER O.R. PROC.	2	30
(409) RADIOTHERAPY	3	40
(410) CHEMOTHERAPY	1	9
(411) HISTORY OF MALIGNANCY W/O ENDOSCOPY	1	7
(412) HISTORY OF MALIGNANCY W ENDOSCOPY	1	5
(413) OTHER MYELOPROLIF DISORDER OR POORLY DIFF NEOPL DIAG W CC	3	39
(414) OTHER MYELOPROLIF DISORDER OR POORLY DIFF NEOPL DIAG W/O CC	2	21
(473) ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3	48
(735) MOUTH, LARYNX OR PHARYNX DISORDER WITH TRACHEOSTOMY	4	71
(736) TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(742) BONE MARROW TRANSPLANT	11	81

MAJOR DIAGNOSTIC CATEGORY 18: INFECTIOUS AND PARASITIC DISEASES (SYSTEMIC)

	OUTLIER TRIM POINT	
	LOW	HIGH
(415) O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	5	72
(416) SEPTICEMIA AGE >17	3	38
(417) SEPTICEMIA AGE <18	2	15
(418) POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	2	24
(419) FEVER OF UNKNOWN ORIGIN AGE >17 W CC	2	27
(420) FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	2	13
(421) VIRAL ILLNESS AGE >17	2	14
(422) VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE <18	2	8
(423) OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	2	38
(736) TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(742) BONE MARROW TRANSPLANT	11	81

MAJOR DIAGNOSTIC CATEGORY 19: MENTAL ILLNESS

	OUTLIER TRIM POINT	
	LOW	HIGH
(424) O.R. PROCEDURE W PRINCIPAL DIAGNOSIS OF MENTAL ILLNESS	5	84
(425) ACUTE ADJUST REACTION & DISTURBANCE OF PSYCHOSOCIAL DYSFUNCTION	2	24
(426) DEPRESSIVE NEUROSES	2	26
(427) NEUROSES EXCEPT DEPRESSIVE	2	28
(428) DISORDERS OF PERSONALITY & IMPULSE CONTROL	2	47
(429) ORGANIC DISTURBANCES & MENTAL RETARDATION	3	52

PROPOSALS

Interested Persons see Inside Front Cover

HEALTH

(430) PSYCHOSES	3	40
(431) CHILDHOOD MENTAL DISORDERS	3	49
(432) OTHER MENTAL DISORDER DIAGNOSES	5	69
(736) TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 20: SUBSTANCE USE DISORDERS AND SUBSTANCE INDUCED ORGANIC DISORDERS

	OUTLIER TRIM POINT	
	LOW	HIGH
(736) TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(743) OPIOID ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	11
(744) OPIOID ABUSE OR DEPENDENCE W CC	2	26
(745) OPIOID ABUSE OR DEPENDENCE W/O CC	2	23
(746) COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	10
(747) COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE W CC	2	30
(748) COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE W/O CC	2	22
(749) ALCOHOL ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	9
(750) ALCOHOL ABUSE OR DEPENDENCE, W CC	2	24
(751) ALCOHOL ABUSE OR DEPENDENCE, W/O CC	2	19

MAJOR DIAGNOSTIC CATEGORY 21: INJURY, POISONING, AND TOXIC EFFECTS OF DRUGS

	OUTLIER TRIM POINT	
	LOW	HIGH
(439) SKIN GRAFTS FOR INJURIES	2	39
(440) WOUND DEBRIDEMENTS FOR INJURIES	2	43
(441) HAND PROCEDURES FOR INJURIES	2	14
(442) OTHER O.R. PROCEDURES FOR INJURIES W CC	3	43
(443) OTHER O.R. PROCEDURES FOR INJURIES W/O CC	2	21
(444) INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE >17 W CC	2	22
(445) INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE >17 W/O CC	2	11
(446) INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE <18	1	9
(447) ALLERGIC REACTIONS AGE >17	2	9
(448) ALLERGIC REACTIONS AGE <18	1	5
(449) POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	2	21
(450) POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	1	12
(451) POISONING & TOXIC EFFECTS OF DRUGS AGE <18	1	11
(452) COMPLICATION OF TREATMENT W CC	2	23
(453) COMPLICATION OF TREATMENT W/O CC	2	11
(454) OTHER INJURY, POISONING & TOXIC EFFECT DIAGNOSIS W CC	2	29
(455) OTHER INJURY, POISONING & TOXIC EFFECT DIAGNOSIS W/O CC	1	10
(468) EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	48
(476) PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(477) NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736) TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125
(752) LEAD POISONING	2	11

MAJOR DIAGNOSTIC CATEGORY 22: BURNS

	OUTLIER TRIM POINT	
	LOW	HIGH
(456) BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	2	51
(457) EXTENSIVE BURNS W/O O.R. PROCEDURE	2	42
(458) NON-EXTENSIVE BURNS W SKIN GRAFT	4	56
(459) NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	2	32
(460) NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	2	17
(468) EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	48
(472) EXTENSIVE BURNS W O.R. PROCEDURE	7	94
(476) PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(477) NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38
(736) TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 23: SELECTED FACTORS INFLUENCING HEALTH STATUS AND CONTACT WITH HEALTH SERVICES

	OUTLIER TRIM POINT	
	LOW	HIGH
(461) O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	2	33
(462) REHABILITATION	5	61
(463) SIGNS & SYMPTOMS W CC	2	28

HEALTH

PROPOSALS

(464)	SIGNS & SYMPTOMS W/O CC	2	12
(465)	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1	10
(466)	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1	16
(467)	OTHER FACTORS INFLUENCING HEALTH STATUS	1	16
(633)	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W CC	2	12
(634)	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W/O CC	2	8
(635)	NEONATAL AFTERCARE FOR WEIGHT GAIN	3	34
(736)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	125

MAJOR DIAGNOSTIC CATEGORY 24: HUMAN IMMUNODEFICIENCY VIRUS (HIV) INFECTIONS

	OUTLIER TRIM POINT	
	LOW	HIGH
(700) HIV WITH SPECIFIED RELATED CONDITION, AGE <13	3	47
(701) HIV RELATED CENTRAL NERVOUS SYSTEM DISEASE, W OPIOID USE, AGE >12	4	51
(702) HIV RELATED CENTRAL NERVOUS SYSTEM DISEASE, W/O OPIOID USE, AGE >12	5	54
(703) (NOT VALID)	NA	NA
(704) HIV RELATED MALIGNANCY, W OPIOID USE, AGE >12	5	58
(705) HIV RELATED MALIGNANCY, W/O OPIOID USE, AGE >12	4	49
(706) (NOT VALID)	NA	NA
(707) HIV RELATED INFECTION, W OPIOID USE, AGE >12	4	51
(708) HIV RELATED INFECTION, W/O OPIOID USE, AGE >12	4	54
(709) (NOT VALID)	NA	NA
(710) HIV WITH OTHER RELATED CONDITION, W OPIOID USE, AGE >12	4	52
(711) HIV WITH OTHER RELATED CONDITION, W/O OPIOID USE, AGE >12	2	43
(712) HIV W/O SPECIFIED RELATED CONDITION, AGE <13	1	3
(713) HIV W/O SPECIFIED RELATED CONDITION, W OPIOID USE, AGE >12	7	65
(714) HIV W/O SPECIFIED RELATED CONDITION, W/O OPIOID USE, AGE >12	3	46

MAJOR DIAGNOSTIC CATEGORY 25: MULTIPLE SIGNIFICANT TRAUMA

	OUTLIER TRIM POINT	
	LOW	HIGH
(730) CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	6	95
(731) HIP, FEMUR AND LIMB REATTACHMENT PROC FOR MULTIPLE SIGNIFICANT TRAUMA	6	83
(732) OTHER O.R. PROCEDURE FOR MULTIPLE SIGNIFICANT TRAUMA	4	61
(733) HEAD, CHEST AND LOWER LIMB DIAGNOSES OF MULTIPLE SIGNIFICANT TRAUMA	3	45
(734) OTHER DIAGNOSES OF MULTIPLE SIGNIFICANT TRAUMA	2	25
(468) EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476) PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	58
(477) NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3	38

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Residential Alcoholism Treatment Bed Standards.

Proposed Readoption: 8:33K.

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

Proposal Number: PRN 1989-51.

Submit comments by February 16, 1989 to:

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

The agency proposal follows:

Summary

The 1971 Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., as amended requires the Department to assure that New Jersey's hospital and related health care services are of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost. To implement this public policy, the Act gave the Department of Health broad responsibilities in regulating the health care system through authorization of the Certificate of Need Program.

The Department initially adopted Residential Alcoholism Treatment Bed Standards, N.J.A.C. 8:33K, on March 15, 1984, effective April 16, 1984. The intent of these rules was to identify standards and criteria to be used by the Department of Health, the Statewide Health Coordinating Council, and the Health Systems Agencies to effectively judge applications for Residential Alcoholism beds. Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:33K expires on April 16, 1989.

Many changes have occurred in health care within the past five years. The Department has reviewed the present rules and determined that major revisions are necessary to reflect changes in the availability of beds and treatment settings. The Department is therefore developing proposed new rules for Residential Alcoholism Treatment Bed Standards. The Department recognizes, however, that the effective date of the new rules (and the concurrent repeal of N.J.A.C. 8:33K) cannot occur prior to expiration of N.J.A.C. 8:33K on April 16, 1989. In order to avoid expiration of these rules pursuant to Executive Order No. 66(1978) and to maintain continuity in the certificate of need process for Residential Alcoholism Treatment Bed Standards, the readoption of these rules without change is now being proposed.

Social Impact

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facili-

ties and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs. . ."

The New Jersey State Health Plan recognizes the underutilization of specialty services as an important factor contributing to the rapidly escalating cost of health care. Regionalization of specialty services is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered, by improving the solvency of facilities offering these services, and by containing the rising costs of health care services.

The rules are intended to promote the provision of alcoholism residential treatment services in a cost-effective manner at a level appropriate to the needs of the patient. However, one of the primary objectives the rules address is to maximize the utilization of treatment facilities by assuring that providers develop and deliver services as part of a comprehensive system of alcoholism treatment. Formal transfer and program linkage agreements with hospitals, alcoholism service providers and other community agencies are encouraged, while planning and program development with State and Local Advisory Committees on Alcoholism are promoted.

Economic Impact

Only a small percentage of patients needing alcoholism treatment today require the level of service associated with acute hospital care. While the general hospital has a clear responsibility to provide acute care for the stabilization of life-threatening conditions, the evidence indicates that the level of care and costs associated with acute hospitalization are not generally necessary to provide the alcoholic with the specific counseling,

group techniques, and supportive social services that are recognized as essential for this non-acute phase of the recovery process. Treatment for this phase of alcoholism is more appropriately offered in non-hospital, residential settings.

Third party reimbursement has stimulated a surge in the development of relatively low-cost licensed residential alcoholism care facilities offering an average 28-day treatment program which may, in addition, include five to seven day initial detoxification. These residential programs complement existing prevention, training, outpatient, day-care, halfway and extended care programs, and can be offered for a fraction of the cost of comparable care provided on an inpatient hospital basis.

Extension of existing rules for a brief period while new rules are promulgated will have little or no economic impact.

Regulatory Flexibility Statement

The Department has determined that these rules affect only the 26 facilities providing residential alcoholism treatment. Fifteen of these facilities employ more than 100 full-time employees and do not fall into the category of small business as defined in N.J.S.A. 52:14B-16 et seq. (the New Jersey Regulatory Flexibility Act). The 11 other facilities covered by the rules will not be required to alter any of their present reporting requirements by this proposed re adoption.

The rules are necessary to preserve the public health by ensuring that capital expenditures are made only for needed health care facilities and resources. Varying the compliance requirements of these rules based solely upon facility size would be at odds with this statutory purpose.

Full text of the proposed re adoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33K.

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(a)

OFFICE OF ADMINISTRATIVE LAW

Notice of Proposed Rule

Regulatory Flexibility Analysis

Adopted Amendment: N.J.A.C. 1:30-3.1

Proposed: March 21, 1988 at 20 N.J.R. 573(a).

Adopted: December 8, 1988 by Ronald I. Parker, Acting
Director, Office of Administrative Law.

Filed: December 8, 1988 as R.1989 d.20, 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. 52:14F-5(f),(h),(i).

Effective Date: January 17, 1989.

Expiration Date: February 14, 1991.

Summary of Public Comments and Agency Responses:

The Office of Administrative Law (OAL) received comments on this proposed amendment from six agencies. A summary of comments and responses follows:

COMMENT: The Departments of Environmental Protection, Personnel and Transportation indicated that the proposed amendment to N.J.A.C. 1:30-3.1(d), which requires a citation to the specific public law, as well as the N.J.S.A. citation, is unnecessary.

RESPONSE: The OAL agrees with the comments. The adopted amendment has been changed to require only the N.J.S.A. citation. The Public Law citation should be provided only when the law has not yet been codified and therefore an N.J.S.A. citation is unavailable.

COMMENT: The Department of Environmental Protection suggested that the 30-day additional notice requirement be clarified to indicate that the additional notice period must be provided prior to the close of the comment period.

RESPONSE: The OAL agrees with this comment. The additional notice should be disseminated at or about the same time as the proposal notice is published in the New Jersey Register.

COMMENT: The Department of Human Services inquired whether non-profit businesses and single practitioners are subject to the regulatory flexibility rule.

RESPONSE: The OAL considers both non-profit businesses and single practitioners to be subject to the regulatory flexibility analysis requirements.

COMMENT: The Department of Human Services requested that the OAL provide examples of performance and design standards as discussed in N.J.A.C. 1:30-3.1(f)4v(2).

RESPONSE: The OAL will provide such examples in the next update to the OAL Rulemaking Manual.

COMMENT: The Department of Human Services inquired whether a regulatory flexibility analysis would be applicable when all of the regulated public is comprised of small businesses, or whether the analysis is applicable only when there is a differential impact on small businesses.

RESPONSE: The OAL has determined that a regulatory flexibility analysis is applicable whenever small businesses comprise all, or part of, the entire regulated group.

COMMENT: The Department of Human Services requested clarification of the concept of "other compliance requirements", as found at N.J.A.C. 1:30-3.1(f)4.

RESPONSE: This is a catch-all phrase, taken directly from the enabling legislation, which covers obligations other than reporting and recordkeeping, which are imposed on small businesses.

COMMENT: The Department of Commerce suggested several changes to N.J.A.C. 1:30-3(f) to strengthen and clarify the proposed amendment. Specifically, the Department suggested amendments to N.J.A.C. 1:30-3.1(f)4v(3)-(5). N.J.A.C. 1:30-3.1(f)4v(3) would include administrative and operating costs, and finance and maintenance costs. A new N.J.A.C. 1:30-3.1(f)4v(4) would require an "indication of the potential adverse economic impacts of the rule on small businesses, including

effects on employment, clientele and overall ability to provide goods and/or services." Proposed N.J.A.C. 1:30-3.1(f)4v(4) would be recodified as (5).

RESPONSE: The OAL has adopted the amendment as proposed without the suggested changes, which are of too substantive a nature to be incorporated upon adoption. However, the OAL will review these suggestions and consider amendments at a later date.

COMMENT: The Department of Commerce suggested that the OAL propose more detailed rules for economic and social impact statements.

RESPONSE: The scope and content of economic and social impact statements have most recently been reviewed by the Study Commission on Regulatory Efficiency (SCORE). The OAL will study the Commission's report and any legislative activity before proceeding to amend these rules.

COMMENT: The Department of Insurance commented that the proposed requirement that agencies file with the OAL a regulatory flexibility analysis with reasons for including or excluding methods to minimize the adverse impact of the rule on small businesses is *ultra vires*.

RESPONSE: The OAL disagrees. The OAL at N.J.S.A. 52:14F-5(b) is authorized to promulgate all rules that may be required or appropriate for the prompt implementation and coordinated administration of the Administrative Procedure Act. Pursuant to this authorization, and the language and intent of the regulatory flexibility initiative, the OAL believes it is well within its statutory authority to require the filing of this information. The OAL believes that the disclosure of an agency's reasons for including or excluding methods designed to minimize adverse economic impact on small businesses facilitates the public's ability to assess fully the accuracy and completeness of the agency's analysis.

COMMENT: The Department of Insurance commented that agencies can utilize more general descriptive statements rather than quantification, as required by N.J.A.C. 1:30-3.1(f)4v.

RESPONSE: The proposed language requires "as much quantification as is practical or reliable". General descriptive statements pursuant to the APA are certainly acceptable when quantification is not practical or reliable. The statute, however, does not provide a blanket authority to utilize narrative explanations in lieu of hard data.

COMMENT: The Department of Insurance commented that the phrase "shall be provided" in N.J.A.C. 1:30-3.1(f)4 is superfluous and should be deleted.

RESPONSE: The Office of Administrative Law agrees. The phrase has been deleted upon adoption.

The Office of Administrative Law has made several codification changes to the proposed amendment. These changes make clear that the various approaches specified in the rule that are designed to minimize adverse economic impact on small businesses must be considered by agencies when formulating a rule proposal which imposes reporting, recordkeeping or other compliance requirements on small businesses. These changes also clarify the intent of the rule that such agencies must also disclose in the regulatory flexibility analysis the reasons for including or excluding each of the specified approaches to minimize adverse economic impact on small businesses. Accordingly, the provisions of proposed N.J.A.C. 1:30-3.1(f)4v(1)-(3) have been recodified to N.J.A.C. 1:30-3.1(f)4v. Proposed N.J.A.C. 1:30-3.1(f)4v(4) was deleted as superfluous in light of the recodification to N.J.A.C. 1:30-3.17(f)4v, and the word "also" was deleted from the text of proposed N.J.A.C. 1:30-3.1(f)4v as surplusage. The conjunctive "and" was added to N.J.A.C. 1:30-3.1(f)3 to correct a grammatical error.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

1:30-3.1 Notice of proposed rule

(a) Where the law requires that an agency give notice of its rulemaking proceedings, the agency shall prepare a "notice of proposed rule" and submit the notice to the OAL. The notice of proposed rule shall comply with the requirements of this section.

(b) The notice of proposed rule shall include a proposed N.J.A.C. citation of the new rule amendment, repeal or readoption.

(c) The notice of proposed rule shall include the name of the adopting agency head and agency and the signature of the adopting

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agency head or other authorized signatory as provided in N.J.A.C. 1:30-2.4.

(d) The notice of proposed rule shall include a citation to the specific [Public Law and] N.J.S.A. statutory authority for the proposed rule **or the Public Law number if an N.J.S.A. citation is unavailable**. An agency may not cite its general statutory authority unless specific legal authority is unavailable and the agency is relying on its general or residual powers, in which case a statement to that effect shall be made in the summary.

(e) The notice of proposed rule shall include an announcement of the public's opportunity to be heard regarding the proposed rule, which shall include:

1. When, where, and how persons may present their views orally or in writing[.] *; and*
2. When and where persons may attend any formal rule adoption proceeding.

(f) The notice of proposed rule shall include a brief statement for the proposed rule, which shall include:

1. A summary statement of the proposed rulemaking with a clear and concise explanation of its purpose and effect. The summary shall describe, detail and identify:

- i. Who and what will be affected by the proposal; [and]*
- ii. How, when and where the effect will occur; [and]*
- iii. What the proposal prescribes, proscribes or otherwise mandates; [and]*
- iv. What enforcement mechanisms and sanctions may be involved; and
- v. Any other relevant or pertinent information.

2. A social impact statement which describes the expected social impact of the proposed rulemaking on the public, particularly on any segments of the public proposed to be regulated, and including any proposed or expected differential impact on different segments of the public, including the rulemaking action, and justification therefor.

3. An economic impact statement which describes the expected costs, revenues, and other economic impact upon governmental bodies of the State, **and** particularly any segments of the public proposed to be regulated.

4. A regulatory flexibility analysis or statement [shall be provided]*.

i. All rules which impose reporting, recordkeeping or other compliance requirements on small businesses shall include a regulatory flexibility analysis which describes the methods utilized to minimize any adverse economic impact on small businesses.

ii. "Small business" means any business which is resident in New Jersey, independently owned and operated, not dominant in its field, and which employs fewer than 100 full time employees.

iii. Rules which do not impose reporting, recordkeeping or other compliance requirements on small businesses shall be accompanied by a regulatory flexibility statement which indicates that no such requirements are imposed, and the basis for that finding.

[iv. Rules which impose reporting, recordkeeping or other compliance requirements on small businesses shall include a regulatory flexibility analysis which addresses the following methods, and the reasons for including or excluding these methods in the rules:

(1) Establishment of differing compliance or reporting requirements or timetables that take into account resources available to small businesses;

(2) Use of performance rather than design standards;

(3) Exemption from coverage by all or part of the rule, provided that the public health, safety or general welfare is not endangered. A finding of endangerment shall explain the relationship between the regulatory requirement that cannot be exempted and the public health, safety or general welfare; and

(4) Such other appropriate methods which minimize any adverse economic impact on small businesses.]*

[v.]* **iv.** Rules which impose reporting, recordkeeping or other compliance requirements on small businesses shall [also]* include in the regulatory flexibility analysis **with** as much quantification as is practical or reliable, [of]* the following [factors]*:

(1) [D]* **A d**escription of the types and an estimate of the number of small businesses to which the rule will apply.

(2) [D]* **A d**escription of the reporting, recordkeeping and other compliance requirements, and the kinds of professional services likely to be needed to comply with the requirements.

(3) [E]* **An e**stimate of the initial capital costs, and an estimate of the annual compliance costs, with an indication of any likely variation on small businesses of differing types and sizes.

(4) [I]* **An i**ndication of how the rule is designed to minimize any adverse economic impact on small businesses.

v. To indicate how the rule is designed to minimize any adverse economic impact on small businesses, the following approaches shall be considered in the regulatory flexibility analysis:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account resources available to small businesses;

(2) The use of performance rather than design standards; and/or

(3) An exemption from coverage by all or part of the rule, provided that the public health, safety or general welfare is not endangered. A finding of endangerment shall explain the relationship between the regulatory requirement that cannot be exempted and the public health, safety or general welfare.*

vi. The regulatory flexibility analysis in (f)4iv and v above shall be required whenever small businesses comprise part of, or the entire regulated group on which reporting, recordkeeping or other compliance requirements are imposed.

(g) The notice of proposed rule shall include the full text of the proposed new rule, amendment, repeal or readoption, specifically indicating additions and/or deletions of any rule being repealed or renumbered.

(h) Upon receipt of the proposal notice which conforms to these requirements:

1. The OAL shall submit the notice, other than a notice of a Federally required rule (see N.J.A.C. 1:30-3.7), to the Senate and the General Assembly;

2. The OAL shall publish the notice of proposed rule in the next available issue of the New Jersey Register. Pursuant to N.J.S.A. 52:14B-7(c), any proposal notice which would be cumbersome, or unduly expensive to publish,* shall not be printed in full. Instead, such proposals shall be summarized in the Register. The proposing agency shall make available the proposed rule and provide **in** the notice the manner in which, and from where, copies may be obtained.

3. The agency shall mail the notice of proposed rule, as filed, to those persons who have made timely request of the agency for notice of its rulemaking actions; and

4. The agency shall undertake an additional method of publicity other than publication in the Register, reasonably calculated to inform those persons most likely to be affected by or interested in the proposed rule:

i. The additional method of publicity shall include information on the time, place, and manner in which interested persons may present comments and either of the following:

(1) The full text of the proposed rule; or

(2) A statement of the substance of the proposed action; or

(3) A description of the subject and issues involved.

ii. The additional method of publicity may be by:

(1) Notice in a newspaper of general circulation;

(2) Trade, industry, government or professional publications;

(3) Distribution of a press release to the news media;

(4) Posting of a notice in an appropriate location(s);

(5) Mailing to a distribution list; or

(6) Any other manner reasonably calculated to inform those persons most likely to be affected by or interested in the intended action.

iii. The additional method of publicity [shall provide at least 30 days notice of the intended action]* **shall be provided at least 30 days prior to the close of the public comment period**.*

(i) Any proposal notice which does not meet the requirements in (c)*[-]* **through** (g), (h)3 or (h)4 above may be subject to the provisions of N.J.A.C. 1:30-1.12.

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(a)

DIVISION OF ANIMAL HEALTH

Disease Control Program

Adopted New Rules: N.J.A.C. 2:2

Proposed: October 3, 1988 at 20 N.J.R. 2419(a).

Adopted: December 12, 1988 by Arthur R. Brown, Jr., Secretary, Department of Agriculture; and State Board of Agriculture.

Filed: December 14, 1988 as R.1989 d.30, **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. 4:5-1 through 4:5-106.20.

Effective Date: January 17, 1989.

Expiration Date: January 17, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: A comment was received on N.J.A.C. 2:2-3.5, outlining a method of setting fees to private veterinarians.

RESPONSE: The Division of Animal Health will negotiate and set fees for private veterinary practitioners to tuberculosis test animals according to standards prevalent at the time such services are required. The Department cannot at this time predict what they will be.

COMMENT: Two comments were made regarding N.J.A.C. 2:2-4.19. It is not the intent of the Department to set rules regarding waste disposal beyond areas inhabited by swine nor is it the intent of the Department to cause practices that would be in conflict with any local or state ordinances. In the event conflict on either side should occur, a possible resolution would be through the Right-to-Farm Act and/or Agricultural Management Practices.

RESPONSE: The Department agrees, and has changed N.J.A.C. 2:2-4.19(a) upon adoption to reflect that disposal of solid waste shall be in compliance with State and local ordinances and/or Agricultural Management Practices.

COMMENT: A comment was received on N.J.A.C. 2:2-4.31 regarding indemnities for swine destroyed by hog cholera and the possibility of USDA paying full indemnity because hog cholera is a foreign animal disease.

RESPONSE: Payment of indemnification for foreign animal disease is not automatically USDA's responsibility and is frequently a cooperative arrangement between USDA and state agencies. No changes are recommended.

While these rules were proposed for re-adoption with amendments, they expired on October 18, 1988, pursuant to Executive Order No. 66(1978), and are now adopted as new rules in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the new rules appears in the New Jersey Administrative Code at N.J.A.C. 2:2.

Full text of the new rules proposed as re-adoption amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

CHAPTER 2 DISEASE CONTROL PROGRAM

SUBCHAPTER 1. REPORTABLE DISEASES

2:2-1.1 Enumeration of diseases dangerous to animal health

(a) The following diseases are designated as a particular and dangerous menace to animal health of the State:

- i. Livestock:
 - i. Anaplasmosis;
 - ii. Antrax;
 - iii. Cattle tick fever;
 - iv. Contagious equine metritis;
 - v. Equine viral encephalitis;
 - vi. Equine infectious anemia;
 - vii. Mucosal disease complex;
 - viii. Paratuberculosis;
 - ix. Pseudorabies;

- x. Rabies;
- xi. Swine erysipelas;
- xii. Tuberculosis;
- xiii. Vesicular exanthema;
- xiv. Vesicular stomatitis;
- xv. All foreign diseases that pose a threat to the health of livestock in the State as designated by USDA APHIS Title 9 CFR or USDA APHIS emergency declarations.

2. Poultry:

- i. Avian influenza;
- ii. Fowl typhoid;
- iii. Paracolon infestation;
- iv. Paratyphoid infection;
- v. Psittacosis or ornithosis;
- vi. Pullorum;
- vii. Erysipelas in poultry;
- viii. All foreign animal diseases.

2:2-1.2 Provision for Statement of Imminent Peril

Whenever a disease outbreak occurs in New Jersey or in neighboring states that has all the symptoms of being severely devastating by contagious or infectious properties, the Secretary of Agriculture may immediately issue a Statement of Imminent Peril and take necessary steps to prevent spread of the disease to New Jersey livestock and poultry.

2:2-1.3 Provision for epidemic of emergent proportion

Whenever a disease outbreak occurs in New Jersey that appears severely devastating and contagious, the Secretary of Agriculture may declare an epidemic of emergent proportion exists and take whatever steps may be necessary to prevent its spread even before the causative agent may be identified.

2:2-1.4 Indemnification

The Division of Animal Health shall have the authority to destroy or order sent to slaughter any animals it deems necessary to prevent the spread of the diseases that threaten the viability of the industry. For each animal slaughtered to prevent the spread of disease, the owner shall receive the net proceeds, if any, of the sale of the animal and in addition, if funds are available shall be paid an indemnity not to exceed the market value of the animal, if funds for such indemnity are provided.

2:2-1.5 Notice of existence of dangerous diseases

Any veterinarian or other person (including but not limited to any auctioneer, broker, dealer, licensed swine farmer, racing commission official, extension agent, etc.) who shall gain knowledge of the existence or suspected existence of such diseases, as set forth in N.J.A.C. 2:2-1.1, within the State shall notify the Department of Agriculture without delay, and in any case within 48 hours.

SUBCHAPTER 2. BRUCELLOSIS CONTROL AND ERADICATION

2:2-2.1 Scope

This subchapter concerns vaccination, testing, quarantine, disposition of reactors, and indemnification of brucellosis reactors. All rules apply to bovine animals. Milk-producing goats and swine are exempt from the requirements for official vaccination, but all other rules must be met. Except as otherwise indicated, swine are subject to all rules in this subchapter.

2:2-2.2 Official calfhood Brucella vaccination

Only USDA approved Brucella vaccine shall be used for official calfhood Brucella vaccination. Such dosage shall be administered in conformity with the uniform methods and rules of the bovine brucellosis eradication program as published by the United States Department of Agriculture APHIS-91-1.

2:2-2.3 Vaccination of female bovine animals

(a) All female cattle brought into the State under 239 days of age, that are not officially vaccinated, shall be vaccinated against brucellosis between the ages of 120 and 239 days, if they are to be sold for purposes other than immediate slaughter. This shall not be

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construed to prohibit the sale of any female calf under the age of 120 days.

(b) Female bovine animals will be considered to be officially calfhooed *Brucella* vaccinated only when all of the requirements below are met.

1. Approved *Brucella abortus* vaccine shall be properly injected before the expiration date of the vaccine.

2. The calves shall be four through eight months of age or from 120 to 239 days when vaccinated.

3. The vaccinated calves shall be identified by an ear tag or tattoo and marked as officially calfhooed *Brucella* vaccinated animals by a special tattoo as prescribed by the New Jersey Department of Agriculture.

4. A vaccination report shall be submitted within 15 days of vaccination to the New Jersey Department of Agriculture on forms provided by it.

(c) The New Jersey Department of Agriculture is not responsible for an unfavorable effect that might be attributed to or resulting from the vaccination.

(d) The New Jersey Department of Agriculture shall provide vaccine to accredited private veterinary practitioners to conduct official calfhooed *Brucella* vaccination, provided all laws, regulations, and policies are complied with and reports are submitted within the prescribed period.

2:2-2.4 Conformity of brucellosis tests with Federal methods

The official brucellosis tests shall be conducted in conformity with the uniform methods and rules of the bovine brucellosis eradication program as published by the United States Department of Agriculture APHIS-91-1, as revised.¹

¹Copies are filed with and may be received by writing to: Director, Division of Animal Health, N.J. Department of Agriculture, Health-Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625.

2:2-2.5 Tests conducted by the New Jersey Department of Agriculture

(a) Official tests for brucellosis shall be conducted only by the New Jersey Department of Agriculture or other officially appointed personnel under the Department's supervision.

(b) No brucellosis test shall be conducted without written permission of the New Jersey Department of Agriculture.

2:2-2.6 Department or accredited veterinarians to draw blood samples

Blood samples for official brucellosis tests shall be drawn by New Jersey Department of Agriculture personnel or by accredited veterinarians under its supervision.

2:2-2.7 Herd owner responsibilities: employing private veterinarian

(a) The owner or custodian of any herd shall stable all animals eligible for test and shall provide proper restraint for the collection of blood samples by the veterinarian.

(b) If the owner refuses to permit an authorized veterinarian to draw blood samples for an official brucellosis test, he or she may employ an accredited private veterinary practitioner to draw the blood samples within a specified time. This testing shall be accomplished at no cost to the State of New Jersey.

2:2-2.8 (No change in text.)

2:2-2.9 Times established for brucellosis tests

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

(d) All MCI test eligible cattle as defined in the USDA, APHIS-91-1 are to be back tagged when presented to any auction market. The Department shall supply the necessary tags and glue. Auction markets shall be responsible for correlation in their market records of back tag numbers with their market method of identifying individual cattle. Back tags may be applied at locations other than auction markets when the Department deems its advisable.

(e) Market swine for slaughter: All breeding swine, sows, and boars over six months of age shall be individually identified as to herd of origin before mixing with other swine. Such identification shall be by either slap tattoo, official ear tags or other approved identification. The auction market shall be responsible for correlation

in their market records of tattoos, individual ear tags or other approved identification with their market method of identification. The market shall be responsible for recording the farm or herd of origin of all swine so identified and shall be responsible for maintenance of these records.

(f) (No change.)

2:2-2.10 (No change in text.)

2:2-2.11 Quarantine on disclosure of brucellosis reactor

Any herd in which a brucellosis reactor or reactors are disclosed shall be quarantined. Any brucellosis suspect shall be quarantined until epidemiology or further testing determines the status of the individual animal.

2:2-2.12 Conditions for quarantine release

(a) (No change.)

(b) Cattle or swine herds quarantined for brucellosis are to remain under quarantine until conditions are as stated in the Brucellosis Eradication Recommended Uniform Methods and Rules, USDA, APHIS-91-1. These rules can be obtained from the Division of Animal Health, CN 330, Trenton, New Jersey 08625.

2:2-2.13 Tagging, segregation and slaughter of brucellosis reactors

(a) All cattle, goats, and swine positive to an official brucellosis test shall not again be presented for test, but shall be immediately identified as set forth in the recommended rules and regulations in USDA, APHIS-91-1 (see N.J.A.C. 2:2-2.12(b)).

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

2:2-2.14 Brucellosis reactor eligible for indemnification

(a) To be eligible for indemnity, a brucellosis reactor must meet all the requirements of this subchapter, including the following conditions:

1. Have previously been tested in New Jersey without positive reaction; have been born in New Jersey and was not previously old enough to be subjected to a brucellosis test; or have been officially calfhooed *brucella* vaccinated and was not previously old enough to be subjected to brucellosis test.

2.-7. (No change.)

8. All female cattle are to have been officially calfhooed *brucella* vaccinated and bear proof of such vaccination. The following items shall constitute proof of vaccination.

i.-iv. (No change.)

(b) For each bovine animal slaughtered to prevent the spread of brucellosis, the owner shall receive the net proceeds, if any, of the sale of the animal and in addition thereto, shall, subject to the provisions of N.J.S.A. 4:5-93.32, be paid an indemnity not to exceed \$1,000 for a purebred animal and \$750.00 for a grade animal. Nonregistered or grade bulls or animals considered by the Department to be of no breeding value shall be appraised at slaughter prices. In the case of registered animals, the owner shall furnish the certificate of registration to the Department. The indemnity paid by the Federal government plus the indemnity of the State plus the salvage, if any, shall not exceed the appraised value of the animal. The cost of disposal of animals destroyed because of brucellosis shall be borne by the owner.

(c) (No change.)

2:2-2.15 Market cattle and goats to go to immediate slaughter

All cattle not born in New Jersey and exceeding 500 pounds in weight and all goats delivered to any regularly established auction market shall be consigned for immediate slaughter purposes only. The buyer will keep the above mentioned animals isolated from all other farm stock and will slaughter or present for slaughter at a recognized slaughter establishment within 15 days of the purchase date.

2:2-2.16 Swine brucellosis

Eradication of brucellosis from swine breeding herds in New Jersey shall be conducted by the swine owner in conformity with the recommended uniform methods and rules in USDA, APHIS-91-1, Chapter II, with the cooperation and supervision of the New Jersey Department of Agriculture (see N.J.A.C. 2:2-2.12(b)).

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2:2-2.17 Swine brucellosis: testing of swine moved intrastate

Swine moved intrastate for breeding or exhibition purposes must be tested negative to a brucellosis test within 30 days prior to movement. Swine originating from a Brucellosis Validated Free herd are exempt from this requirement. Form DAH 111 or a Certificate of Veterinary Inspection must accompany swine for movement intrastate with the test dates or validation dates stated on the certificate. These forms can be obtained from the Division of Animal Health, CN 330, Trenton, New Jersey 08625.

2:2-2.18 Brucellosis testing for intrastate movement

(No change in text.)

SUBCHAPTER 3. TUBERCULOSIS CONTROL AND ERADICATION

2:2-3.1 to 3.3 (No change.)

2:2-3.4 Quarantine of herd during tests

(a) (No change.)

(b) Herds in which reaction occurs shall remain in quarantine until released by the Secretary of Agriculture.

2:2-3.5 Fees to private veterinarians

The New Jersey Department of Agriculture shall be authorized to engage private veterinary practitioners to tuberculin test animals which cannot be tested by its regularly employed staff.

2:2-3.6 Indemnification

(a) For each bovine animal slaughtered to prevent the spread of tuberculosis, the owner shall receive the net proceeds, if any, of the sale of the animal and in addition thereto, shall, subject to the provisions of N.J.S.A. 4:5-27, be paid an indemnity not to exceed \$1,000 for a purebred animal and \$750.00 for a grade animal.

(b) The indemnity paid by the Federal government plus the indemnity of the State plus the salvage, if any, shall not exceed the value of the animal. The cost of disposal of animals destroyed because of tuberculosis shall be borne by the owner.

SUBCHAPTER 4. SWINE DISEASE CONTROL

2:2-4.1 USDA Swine Health Protection Act adopted, supplemented

(a) The New Jersey Department of Agriculture adopts the rules and regulations of the Swine Health Protection Act, Title 9 CFR 166.1-166.15 APHIS, USDA as the official rules and regulations of the New Jersey Program.

(b) In addition, the State Board of Agriculture promulgates the rules found in this subchapter.

2:2-4.2 Compliance with statute and rules for license issuance

Licenses shall be issued to any persons who comply with all provisions of the statute and all provisions of this subchapter.

2:2-4.3 and 4.4 (No change.)

2:2-4.5 Facilities for out-of-State animal shipments

(a) There shall be reasonable facilities for holding out-of-state shipments separate for a period of 30 days.

(b) These facilities shall be adequately cleaned and disinfected before the introduction of new animals.

2:2-4.6 Water supply

(a) There shall be a sufficient supply of water for cleaning.

(b) There shall be a sufficient supply of clean water available for all swine to drink at all times.

2:2-4.7 through 4.10 (No change.)

2:2-4.11 Period for accomplishing heat treatment of garbage

Heat treatment of all garbage shall be accomplished within 48 hours of receipt of that garbage on the premises and must be fed or otherwise disposed of within 72 hours of cooking. Exception to this requirement may be made by the Secretary of Agriculture on the recommendation of the inspector.

2:2-4.12 Holding areas/containers for untreated garbage

Untreated garbage shall be stored in covered, leakproof containers until treated. The covers shall be constructed so as to prohibit ro-

dents, other wild animals, birds, and any escaped swine from access to the garbage or any drainage associated.

2:2-4.13 (No change in text.)

Re-number existing 4.16 through 4.20 as 4.14 through 4.18 (No change in text.)

2:2-4.19 Solid waste disposal

(a) Solid wastes, such as residual garbage and manure removed from pens, feeding platforms and buildings, shall be disposed of by any method that is in compliance with State and local ordinances ***and/or Agricultural Management Practices***.

2:2-4.20 (No change in text.)

2:2-4.21 Dead animal removal

Dead animals shall be removed immediately and held in covered rat proof containers until final disposition in accordance with local ordinances.

2:2-4.22 (No change in text.)

2:2-4.23 (Reserved)

2:2-4.24 (Reserved)

2:2-4.25 Premises concentrating swine for public sales construed as livestock market

Any farm or premises where swine are concentrated for public sale shall be considered a livestock market under this subchapter, except where only the swine raised on the premises are offered for sale.

2:2-4.26 (No change in text.)

2:2-4.27 Notice of hog cholera illness

(a) Swine owners shall promptly report to their accredited veterinarians or to an agent of the New Jersey Department of Agriculture any illness in their herd suggestive of hog cholera.

(b) The accredited veterinarian shall promptly notify an agent of the Division of Animal Health of the State Department of Agriculture or the office of Veterinary Services, United States Department of Agriculture.

Re-number existing 4.31 through 4.33 as 4.28 through 4.30 (No change in text.)

2:2-4.31 Indemnity for swine destroyed by hog cholera

(a) Once official confirmation has been had of hog cholera in a herd of swine, the following measures shall apply as long as funds are available:

1. All infected and exposed swine on the premises alive at the time initial notification of the disease was made to the official cooperating agencies shall be appraised under the following rules:

i. The schedule as set forth below shall apply in respect to appraisal of swine for meat, feeding, or breeding, but in no instance shall the appraisal exceed the actual value of the animal. The basis for appraisal will be established by averaging the quotations from three of the major quality feeder and slaughter swine markets in the United States. Swine may be appraised in groups provided they are of the same type or of the same value per pound. Swine shall be appraised at their actual value for meat, feeding or breeding purposes except that in the case of grade animals only females shall be eligible for appraisal based on breeding values and that no such appraisal shall exceed three times the animal's meat or feeding value. Swine presented for appraisal as purebreds shall be accompanied by their certificate of pure breeding.

ii. Expenses for the care and feeding of swine held for destruction and the expense of destruction, burial, incineration and/or transportation and other expenses incidental to their slaughter will be the responsibility of the owner of the swine.

iii. Any indemnity claim for swine destroyed shall contain owner certification that the swine were, or were not, covered by a mortgage. If the owner states that there is a mortgage, forms furnished by the cooperating agencies shall be signed by the owner and by each person holding a mortgage on the swine consenting to the payment of any indemnity allowed to the person specified thereon.

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iv. The New Jersey Department of Agriculture agrees to pay the owner of swine destroyed for hog cholera not to exceed 50 percent of the difference between the appraised value of each swine so destroyed and the net salvage received by the owner thereof. State indemnity shall not exceed \$100.00 per head for purebred, inbred or hybrid swine and for breeding swine, or \$50.00 for all other swine and in no case shall State indemnity exceed 50 percent of the difference between the appraised value of each swine so destroyed and the net salvage, if any, received by the owner.

v. No indemnity will be paid until the premises and associated vehicles are cleaned and disinfected in a manner approved by the cooperating agencies.

vi. Following disclosure of hog cholera infection on a premises, prompt depopulation of all swine, indemnity payments by the cooperating agencies and premises disinfection, restocking of such premises with swine will be permitted provided owners and/or operators of such a swine farm follow recommendations of the cooperating agencies for the prevention of hog cholera. Failure to follow such agencies shall render owners and/or operators ineligible for indemnity should hog cholera reinfection occur on such premises.

vii. Any swine owner who has willfully violated any rules of the Department, that would result in the herd, will be ineligible for indemnity.

viii. Feeder swine moving intra-State must be ear tagged by the owner with tags supplied by the Department and recorded in triplicate on an owner's certificate, one copy of which must accompany the swine to destination, one copy to be forwarded to the Division of Animal Health, and one copy to be retained by the owner.

2:2-4.32 Swine consigned to livestock markets

(a) Swine offered for sale at livestock markets for other than immediate slaughter shall be individually identified by ear tag, tattoo or other approved individual identification, and shall be so recorded on the market records as to farm of origin.

(b) Swine for immediate slaughter shall also be identified either by slap tattoo, individual ear tag or other approved individual identification and recorded in the market records as to the farm of origin.

Renumber existing 4.36 through 4.38 as 4.33 through 4.35 (No change in text.)

2:2-4.36 Authority of Secretary of Agriculture or his or her agents

The Secretary of Agriculture or his or her authorized agent shall have the authority to enter any premises on which swine are kept, and have the power to have appraisal and order the disposal of any and all swine that have been exposed to hog cholera.

2:2-4.37 Swine pseudorabies vaccination

(a) No person shall vaccinate swine for pseudorabies unless a permit has been issued by the Department. Permits may be granted only to veterinarians licensed in the State.

(b) No person or firm shall sell, distribute or give away any pseudorabies vaccine unless they have received permission from the Department.

(c) All premises at which garbage has been fed to swine in violation of this subchapter shall be quarantined for a minimum of 30 days during which time no garbage cooked or uncooked may be fed. The 30-day period commences after cleanup and disinfection is approved by Department personnel. The quarantine may be released by testing negative of all or a statistically significant amount of swine for hog cholera and African swine fever or observation and examination of all swine by veterinarians of the Department or USDA and found to be disease free. The selection of the release method shall be at the discretion of the State veterinarian.

(d) All waste feeding swine farms or suspected waste feeding swine farms shall be inspected regularly to assure compliance with garbage feeding rules.

(e) A licensee shall notify an inspector or veterinarian immediately upon detection of illness or death not normally associated with the licensee's operation in animal species on the licensee's premises.

SUBCHAPTER 5. BOVINE LEUCOSIS PROGRAM

2:2-5.1 Scope and authority

The Division of Animal Health shall make rules and conduct a voluntary program leading to the eradication of the bovine leucosis virus from individual herds and may designate the animals in those herds as New Jersey Bovine Leucosis Free.

2:2-5.2 Definitions

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

"Bovine leucosis" means a disease of cattle caused by the bovine leukemia virus which is of economic significance.

"Infected animal" means an animal examined by the recognized testing method and found to be infected with the bovine leucosis virus.

"Official test" means the bovine leukemia agar gel immunodiffusion procedure recognized by the United States Department of Agriculture.

2:2-5.3 Procedures

(a) To be eligible for the bovine leucosis program, the following requirements shall be met:

1. All animals in a herd shall be included in an initial test.
2. Owners shall actively implement a culling program of animals found to be infected.
3. Owners shall practice those husbandry methods which reduce the spread of infection.
4. Owners will conduct retests according to a schedule to be cooperatively developed between the owner and the Division of Animal Health based upon the findings. Failure to follow the agreed upon schedule will exclude the herd from the official program.
5. Herds that have had at least one completely negative free herd test, and any additional testing that is required if they comply with (a)3 and 4 above, shall be designated "Leucosis Free" for a period of one year.

6. A "Leucosis Free" status shall be maintained by retesting all cattle over seven months between 340 and 390 days after the date of achieving "Leucosis Free Status". The results of such retesting must be negative for all cattle in the herd to be identified as Leucosis Free for another year.

2:2-5.3 Costs and fees

(a) Cattle owners will enter into a Memorandum of Agreement with the Division of Animal Health containing the following:

1. All costs shall be borne by the owner.
2. The owner agrees to comply with the rules of the program, but is free to withdraw at any time.
3. Accredited veterinarians will sample and identify animals and counsel owners.
4. The Division of Animal Health will provide information to accredited veterinarians, laboratory services, and interpretive and planning assistance.
5. The Division of Animal Health will provide information regarding the disease and program to the owners.

(b) The Division of Animal Health is authorized to establish the following fee schedule for laboratory services:

1. Herds (per animal) in the official program: \$6.00 for the first sample, \$1.75 thereafter.
2. Herds (per animal) not in the official program: \$6.00 per sample.

SUBCHAPTER 6. SWINE PSEUDORABIES VIRUS

2:2-6.1 Adoption of USDA Rules

The New Jersey Department of Agriculture adopts the rules and regulations of Title 9 CFR 85.1-85.13 APHIS, USDA as the official rules and regulations of the New Jersey Swine Pseudorabies program. Copies of these regulations may be obtained by writing the New Jersey Department of Agriculture, Division of Animal Health, CN 330, Trenton, NJ. 08625.

SUBCHAPTER 7. POULTRY DISEASE CONTROL

2:2-7.1 National Plan adopted, supplemented

(a) The State Board of Agriculture adopts the rules and regulations of the National Poultry and Turkey Improvement Plans of the United States Department of Agriculture as the official rules and regulations of the New Jersey Program.

(b) In addition, the State Board of Agriculture promulgates the rules and regulations found in the following sections of this chapter.

2:2-7.2 General regulations

(a) All poultry hatcheries and flocks within New Jersey must qualify as National Plan hatcheries. All hatcheries and flocks shipping to New Jersey must qualify as United States pullorum-typhoid clean; or they must meet equivalent requirements for pullorum-typhoid control under official supervision.

(b) All shipments of products, other than United States pullorum-typhoid clean or the equivalent, into the state are prohibited except for immediate slaughter.

(c) All poultry, except water fowl, shown in public exhibitions in New Jersey must originate from United States pullorum-typhoid clean or equivalent flocks, or have a negative pullorum-typhoid test within 90 days of the movement to the public exhibition.

2:2-7.3 Pullorum-typhoid disease testing and testing agents

(a) All breeding birds to be tested shall be selected and banded by a veterinarian or inspector of the New Jersey Department of Agriculture or by qualified testing agents under Department supervision.

(b) The pullorum-typhoid test shall be done by representatives of the New Jersey Department of Agriculture or qualified testing agents under Department supervision.

(c) Testing agents shall take a minimum one-day course of training as prescribed by the New Jersey Department of Agriculture and shall pass a written examination on National Poultry Improvement Plan (NPIP) rules and sanitation and a practical test to prove their ability to select and test birds for pullorum-typhoid diseases before being certified. A refresher training course shall be required annually for recertification.

(d) Applications for certification shall be made in writing, sufficiently in advance to permit the early scheduling of work by the Department of Agriculture.

(e) Certification or recertification will be denied pursuant to provisions of NPIP or violation of these rules.

(f) Any reactors must be submitted for bacteriological examination for pullorum-typhoid disease. The bacteriological examination must be done in one of the following laboratories:

1. New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625; or
2. Poultry Pathology, Department of Animal Science, Cook College/New Jersey Experiment Station, Rutgers, the State University, New Brunswick, New Jersey 08903.

2:2-7.4 Reporting and quarantine provisions

(a) Pullorum-typhoid diseases are reportable diseases under N.J.A.C. 2:2-1.1 and must be reported by any veterinarian or other person to the New Jersey Department of Agriculture.

(b) Upon receipt of a report of pullorum-typhoid, the Division of Animal Health shall direct the immediate investigation by an authorized representative to determine the origin and avenue of transmission of the infection.

(c) The flocks or hatching eggs deemed to be infected with pullorum-typhoid shall be quarantined. Quarantined flocks or any portion thereof shall not be removed from the premises where the infection was detected or disposed of except in accordance with the written permission of the Department of Agriculture.

SUBCHAPTER 8. (No Change.)

DIVISION OF RURAL RESOURCES

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Acquisition of Development Easements

Residual Dwelling Site Opportunities

Adopted New Rule: N.J.A.C. 2:76-6.17

Adopted Amendments: N.J.A.C. 2:76-6.2, 6.5, 6.6, 6.9 and 6.15

Proposed: August 1, 1988 at 20 N.J.R. 1761(a).

Adopted: December 22, 1988, by the State Agriculture

Development Committee, Arthur R. Brown, Jr., Chairman.

Filed: December 22, 1988 as R.1989 d.49, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 4:1C-5f.

Effective Date: January 17, 1989.

Expiration Date: August 29, 1989.

The changes upon adoption clarify the intent of N.J.S.A. 4:1C-32(b), which expressly states that when development easements are purchased, the restrictions and conditions in the deed "shall state that any development for non-agricultural purposes is expressly prohibited". The changes also clarify the intent of the original rule proposal, which states in its Social Impact Statement that the new rule and amendments will provide flexibility to the "future structural organization or economic viability of subsequent agricultural uses and operations" of deed-restricted land. Consequently, the changes upon adoption place no additional burden on affected parties. The proposed new rule has been recodified as N.J.A.C. 2:76-6.17 due to the prior adoption of a new rule at N.J.A.C. 2:76-6.16 (see 20 N.J.R. 2565(a)).

Summary of Public Comments and Agency Responses:

COMMENT: The State Board of Agriculture commented in support of the proposed rule, citing in particular the intent to tie any exercise of residual dwelling site opportunities to an agricultural purpose.

RESPONSE: The Committee notes the support of the State Board of Agriculture and concurs with the importance of a determination of "agricultural use" in the exercise of any residual dwelling site opportunity.

COMMENT: The Burlington County Farmland Preservation Advisory Committee expressed its support of the proposed new rule and amendments, finding a residual dwelling site opportunity integral to the success of an easement purchase program which recognizes the need to provide future flexibility to agricultural operations.

RESPONSE: The Committee agrees in recognizing the necessity to provide the easement purchase program with the residual dwelling site ability.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

2:76-6.2 Definitions

...

"Municipal planning review body" means the municipal planning board or zoning board of adjustment.

...

"Residual dwelling site opportunity" means the right to construct a residential unit and other appurtenant structures within a residual dwelling site in accordance with N.J.A.C. 2:76-6.16.

"Residual dwelling site" means a contiguous area, two acres in size and identified by a legal metes and bounds description, within which a residential unit and other appurtenant structures may be constructed.

...

"Residential unit" means the residential building located within the residual dwelling site to be used for single family residential housing and its appurtenant uses. *The construction and use of the unit shall be for agricultural purposes.*

...

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2:76-6.5 Preliminary board review

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

(c) The board shall review the application pursuant to N.J.A.C. 2:76-6.16(a) and determine the number of residual dwelling site opportunities to be allocated to the premises.

(d) The board shall inform the landowner of the number of residual dwelling site opportunities allocated to the premises.

(e) The board shall, concerning an application submitted in accordance with N.J.A.C. 2:76-6.4(b)1 and which has received preliminary board approval, enter into an option agreement with the landowner. The option agreement shall:

1. Contain the deed restrictions identified in N.J.A.C. 2:76-6.15.
2. Identify the number of dwelling site opportunities permitted pursuant to N.J.A.C. 2:76-6.16(a); and

3. Contain the deed restriction identified in N.J.A.C. 2:76-6.16(h).

(f) (No change in text.)

2:76-6.6 Preliminary committee review

(a) (No change.)

(b) The Committee shall review the application to ensure that residual dwelling site opportunities have been allocated in accordance with the provisions of N.J.A.C. 2:76-6.16(a).

(c) The Committee may remand the application to the board if the number of allocated residual dwelling site opportunities appears excessive in view of factors listed in N.J.A.C. 2:76-6.16(a)1i through iii.

(d) (No change in text.)

2:76-6.9 Final board review

(a) The board shall inform the landowner of the fair market value certification and shall proceed to negotiate a purchase price of the development easement with the landowner. In no case shall the committee make a grant to the board for more than 50 percent of the fair market certification.

1. The purchase price of the development easement shall be adjusted according to the landowner's acceptance or rejection of any residual dwelling site opportunities permitted pursuant to N.J.A.C. 2:76-6.16.

2:76-6.15 Deed restrictions

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

(d) The deed restriction contained in N.J.A.C. 2:76-6.16(h) shall be incorporated in the deed of easement when there has been an award of one or more residual dwelling site opportunities.

2:76-6.*[16]**17* Residual dwelling site opportunity

(a) Residual dwelling site opportunities may be allocated to the premises by the board pursuant to the following conditions:

1. The number of residual dwelling site opportunities may be allocated at an overall gross density not to exceed one residential unit per 50 acres, including existing residential buildings located on the premises. The board may decrease this density in consideration of the following conditions:

i. Proposed residential units which have received preliminary or final approval from a municipal planning review body on the premises at the time of the landowner's submission of an application to sell a development easement;

ii. Exceptions of tracts of land from the application to sell a development easement; and

iii. Related situations not otherwise listed above.

2. A landowner may reject the allocation of one or more residual dwelling site opportunities.

(b) Residual dwelling sites and residential units shall be located in accordance with the following standards established by the Committee:

1. The boundaries and configuration of a residual dwelling site shall minimize the adverse impact on the agricultural operation; *[and]*

2. The location of a residential unit within a residual dwelling site shall provide for a minimum of 100 foot setback from lands currently under agricultural production*[*]**; and*

3. The Committee and the Board shall certify that the construction and use of any residential unit shall be for agricultural purposes. No other residences shall be permitted.

(c) Upon the intent of the landowner to exercise a residual dwelling site opportunity, the board shall be notified by the landowner of the following:

1. The intent to exercise a residual dwelling site opportunity; and

2. The proposed location of the residual dwelling site.

(d) The board may review the proposed location of the residual dwelling site and submit comments to the landowner and the municipal planning review body regarding the impact of the proposed location of the residual dwelling site on the continued viability of the agricultural operation.

(e) Approval of the location of the residual dwelling site and the residential unit shall be made by the municipal planning review body.

(f) Upon approval of the location of the residual dwelling site by the municipal planning review body, the landowner shall:

1. Prepare, or cause to be prepared, a legal metes and bounds description of the location of the residual dwelling site*[*]. The area occupied by the residual dwelling site and further described by the legal metes and bounds description shall be exempt from the terms and conditions of the deed of easement]*; ***and***

[2. Appropriately record the legal metes and bounds description as an addendum to the deed of easement; and]

*[3.]**2.* Submit a copy of the legal metes and bounds description to the board and the Committee for general recordkeeping purposes.

(g) In the event a subdivision of the premises occurs in compliance with N.J.A.C. 2:76-6.15(a)13, any unexercised residual dwelling site opportunities shall be reallocated to the subdivided tracts as determined by the landowner.

(h) The following restriction shall be incorporated in the easement when there has been an award of one or more residual dwelling site opportunities:

() residual dwelling site opportunities have been allocated to the Premises pursuant to the provisions of N.J.A.C. 2:76-6.16. Upon the intent of the Grantor to exercise a residual dwelling site opportunity, the Grantee shall be notified of the intent to exercise a residual dwelling site opportunity and the proposed location of the residual dwelling site. The Grantee may review the proposed location and submit comments to the Grantor and the municipal planning review body regarding the impact of the proposed location of the residual dwelling site on the farm operation. Approval of the location of the residual dwelling site shall be made by the municipal planning review body and meet the following standards established by the Committee:

1. The boundaries and configuration of the residual dwelling site shall minimize the adverse impact on the agricultural operation; *[and]*

2. The location of the residential unit within the residual dwelling site shall provide for a minimum of 100 foot setback from lands currently under agricultural production*[*]**; and*

3. The construction and use of a residential unit shall not be permitted unless the Grantee and Committee certify that the construction and use of the residential unit shall be for agricultural purposes. No other residences shall be permitted.

Upon approval of the location of the residual dwelling site by the municipal planning review body, the landowner shall:

1. Prepare, or cause to be prepared, a legal metes and bounds description of the location of the residual dwelling site*[*]. The area occupied by the residual dwelling site and further described by the legal metes and bounds description shall be exempt from the terms and conditions of this easement;

2. Appropriately record the legal metes and bounds description as an addendum to this easement]*; and

*[3.]**2.* Submit a copy of the legal metes and bounds description to the Grantor and the Committee for general recordkeeping purposes.

In the event a subdivision of the premises occurs in compliance with deed restriction No. 13 above, any unex-

exercised residual dwelling site opportunities shall be re-allocated to the subdivided tracts as determined by the Grantor.

For the purpose of this easement, a **“residual dwelling site”** means a contiguous area, two acres in size and identified by a legal metes and bounds description, within which a residential unit and other appurtenant structures may be constructed.

For the purpose of this easement, “residential unit” means the residential building located within the residual dwelling site to be used for single family residential housing and its appurtenant uses. The construction and use of the unit shall be for agricultural purposes.

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Acquisition of Farmland in Fee Simple

Adopted New Rule: N.J.A.C. 2:76-8

Proposed: October 17, 1988 at 20 N.J.R. 2501(a).

Adopted: December 22, 1988, by the State Agriculture

Development Committee, Arthur R. Brown, Jr., Chairman.

Filed: December 22, 1988 as R.1989 d.48, **without change.**

Authority: N.J.S.A. 4:1C-5f.

Effective Date: January 17, 1989.

Expiration Date: August 29, 1989.

Summary of Public Comment and Agency Response:

COMMENT: The New Jersey Department of Transportation (“NJDOT”), Division of Project Development, commented neutrally on the proposed rules, noting NJDOT’s belief that the proposed rules would have no impact on that agency’s procedures regarding farmland impacts related to roadway improvement projects. NJDOT also noted that the likelihood of expanded deed-restricted farmland acreage resulting from the proposed rules could increase the possibility of conflict with NJDOT projects.

RESPONSE: The Committee agrees that any increase in agriculturally deed-restricted acreage, in accordance with the express intent of statutory authority, limits the availability of that land for other public purposes. The Committee also notes that its increased communication with NJDOT now reduces the likelihood of such conflict and promotes mutual awareness of each agency’s projects.

Full text of the adoptin follows.

SUBCHAPTER 8. ACQUISITION OF FARMLAND IN FEE SIMPLE

2:76-8.1 Applicability

This subchapter applies to all transactions in which the State Agriculture Development Committee purchases real property pursuant to P.L.1988, c.4, N.J.S.A. 4:1C-31-1 and N.J.S.A. 4:1C-31.2 and all other relevant provisions of the Agriculture Retention and Development Act.

2:76-8.2 Definitions

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

“Agricultural Development Area(s) (ADA)” means area(s) identified by a county agriculture development board pursuant to the provisions of N.J.S.A. 4:1C-18 and certified by the State Agricultural Development Committee (SADC).

“Board” means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

“Committee” means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

“Agricultural deed restrictions for farmland preservation purposes” means a statement containing the conditions of the conveyances and the terms of the restrictions set forth in P.L. 1983, c.32 and as additionally determined by the committee on the use and

development of the land which shall be recorded with the deed in the same manner as originally recorded.

2:76-8.3 Landowner offer

(a) An owner of farmland within an agricultural development area may offer to sell to the Committee the fee simple absolute title to the farmland at a price which, in the opinion of the landowner, represents the fair market value of the property.

(b) The Committee shall forward copies of the offer to the respective board and municipality.

2:76-8.4 Board and municipal comments

The respective board and municipality may submit comments regarding the pending offer to the Committee within 30 days of the date of application.

2:76-8.5 Committee evaluation

(a) In determining the suitability of the purchase of farmland, the committee shall consider the criteria set forth in N.J.S.A. 4:1C-31.1 and any comments of the respective board and municipality.

(b) In addition to the factors set forth in (a) above, the committee shall evaluate the same criteria utilized for the evaluation of applications for development easement purchase set forth in N.J.A.C. 2:76-6.16.

2:76-8.6 Appraisals

(a) If the Committee grants preliminary approval of the offer for fee simple purchase, it shall select two independent professional appraisers from among members of recognized organizations of real estate appraisers to perform appraisals on the offered farmland.

(b) Upon completion of the appraisals, the appraisers shall forward the appraisal reports to the Committee.

(c) The Committee shall appoint a review appraiser to evaluate the two appraisals and establish a recommended fair market value for the property.

2:76-8.7 Final Committee action

(a) Upon receipt of the fair market value determination, the Committee shall either:

1. Approve the purchase of the parcel at a maximum purchase price; or

2. Disapprove the application and state the reasons for the denial.

(b) The Committee may authorize staff to negotiate with the landowner for a purchase price less than the appraised fair market value.

COMMUNITY AFFAIRS

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

(b)

Procedural Rules

Petitions for Substantive Certification

Adopted Amendment: N.J.A.C. 5:91-4.1

Proposed: November 7, 1988 at 20 N.J.R. 2613(b).

Adopted: December 19, 1988 by the New Jersey Council on

Affordable Housing, James L. Logue, III, Chairman.

Filed: December 21, 1988 as R.1989 d.41, **without change.**

Authority: N.J.S.A. 52:27D-301 et seq.

Effective Date: January 17, 1989.

Expiration Date: June 16, 1991.

Summary of Public Comments and Agency Responses:

No comment received.

Full text of the adoption follows.

ADOPTIONS

COMMUNITY AFFAIRS

5:91-4.1 Petition

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

(c) The housing element shall be duly adopted by the municipal planning board in accordance with N.J.S.A. 40:55D-1 et seq. at the time it is filed with the Council. Proof of adoption by the municipal planning board shall be filed with the housing element.

(a)

Procedural Rules**Amendment of Substantive Certification****Adopted New Rules: N.J.A.C. 5:91-14.**

Proposed: November 7, 1988 at 20 N.J.R. 2613(c).

Adopted: December 19, 1988 by the New Jersey Council on Affordable Housing, James L. Logue, III, Chairman.

Filed: December 21, 1988 as R.1989 d.42, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-301 et seq.

Effective Date: January 17, 1989.

Expiration Date: June 16, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: A petition to amend by other than the municipality should first include proof that the petitioner has contacted the municipality and requested that it amend substantive certification. A petitioner should exhaust all local remedies before petitioning the Council.

RESPONSE: The Council encourages any party who is considering an amendment motion to work with the municipality regarding the proposed amendment. However, requiring that a petitioner exhaust all local remedies before filing a motion may unnecessarily delay the amendment process.

COMMENT: In N.J.A.C. 5:91-14.1, the Council should include some standard of review in evaluating amendments to a certified housing element. "Sole discretion" sets no standard for review.

RESPONSE: The standard of review for a proposed amendment is the same as for any aspect of a municipal housing element and fair share plan—consistency with the Fair Housing Act and the Council's rules and provision of a realistic opportunity for low and moderate income housing. It is the Council's responsibility to review the proposed amendment as a component of an overall housing element and fair share plan. Further, the party requesting an amendment to a certified plan must demonstrate to the Council's satisfaction, the necessity or rationale for the proposed amendment consistent with N.J.A.C. 5:91-14.3(a). Thus, the Council's discretion must be exercised within this framework.

COMMENT: In N.J.A.C. 5:91-14.3(d), all parties to the original mediation should not be required to endorse the proposed amendment. There may be business and self interests that would preclude such an endorsement.

RESPONSE: If the proposed amendment involves changing the zoning on a site that has been included in a certified housing element or if the proposed amendment affects a signed mediation agreement, then the Council will require, in most cases, that all parties to the original mediation endorse the proposed amendment before Council consideration. The Council respects the integrity of the mediation process and will, in most cases, only consider an amendment if there is such agreement and endorsement.

However, as outlined in N.J.A.C. 5:91-14.3(d), there are cases where the Council will not require such endorsements. For example, in the event of the discovery of circumstances unknown to the Council at the time of certification of the plan, or changed circumstances occurring post-certification, and potentially affecting realistic opportunity, the Council will not require endorsement by all parties, but will instead consider an amendment at the request of any party. Additionally, if the proposed amendment involves a Regional Contribution Agreement that would result in a zoning change on a certified and/or mediated site, only the owner of the site in question need endorse the proposed amendment before the Council considers the request.

COMMENT: Regarding proof of service on all objectors, interested parties and owners of sites contained in both the certified and proposed plans, the mechanism of service should be certified mail, with return receipt requested.

RESPONSE: The Council agrees and will incorporate this recommendation in the rule.

COMMENT: Objections to a proposed amendment should be filed and served upon the petitioning municipality as well as the Council.

RESPONSE: The Council agrees and will incorporate this recommendation in the rules.

Full text of the adoption follows (additions to proposal are indicated in boldface with asterisks *thus*).

SUBCHAPTER 14. AMENDMENT OF SUBSTANTIVE CERTIFICATION

5:91-14.1 Amendment of substantive certification; general

Amendments to the terms of a housing element and fair share plan that have received substantive certification may be approved by the Council at any time following the granting of certification. Approval of any such amendment shall be solely at the discretion of the Council.

5:91-14.2 Form of amendment

(a) A municipality that has received substantive certification may request an amendment of the terms of that certification by filing with the Council a petition for amendment, containing all of the information required by this subchapter.

(b) Requests for amendments of the terms of the certification may be made by any party, by filing with the Council a motion containing the information required by this subchapter.

5:91-14.3 Municipal petition

(a) A municipal petition to amend the terms of its certification shall include, at a minimum, the following information, as well as such other information as the Council may request:

1. A summary of, and detailed reasons for, the proposed amendment;
2. Evidence that the amendment was previously presented to, and endorsed by, the municipal planning board;
3. A duly adopted resolution of the municipal governing body requesting Council approval of the petition to amend;
4. Proof of service ***by certified mail, return receipt requested,*** of the petition on all objectors, interested parties, and owners of sites contained in both the certified and proposed fair share plans; and
5. Proof of public notice in conformity with the requirements of N.J.A.C. 5:91-14.5.

(b) All of the information required by (a)1 through 4 above shall be filed with the Council by the municipality at the time of filing of its petition for amendment. The information required by (a)5 above shall be filed with the Council within seven days of the date of the municipality's filing of its petition.

(c) In the event a proposed amendment involves changing the zoning on a site that is a component of a certified housing element and fair share plan, for the purpose of entering into a RCA, the municipality shall provide the Council with a signed agreement between itself and the owner of the site in question, indicating the owner's endorsement of the proposed amendment. A copy of the agreement shall be filed with the Council at the time the municipality files its petition.

(d) In the event a proposed amendment involves changing the zoning on a site that is a component of a certified housing element and fair share plan, or affects any signed mediation agreement, and the amendment is not the result of changed circumstances or the addition of a Regional Contribution Agreement, the municipality shall provide the Council with an agreement signed by all parties to the original mediation, including the owner of the site in question, indicating endorsement of the proposed amendment.

5:91-14.4 Amendment by motion

(a) A motion to amend the terms of a certification shall include, at a minimum, the following information, as well as such other information as the Council may request:

1. A summary of, and detailed reasons for, the proposed amendment; and
2. Proof of service ***by certified mail, return receipt requested,*** of the motion on all objectors, interested parties, and owners of sites contained in both the certified and proposed fair share plans.

5:91-14.5 Notice of amendment petitions and motions

(a) A municipality which has petitioned to amend its substantive certification shall publish notice of said petition in a newspaper of general circulation within the municipality and the county.

(b) The municipality shall make available for public inspection copies of the petition and supporting documentation within the municipality and during business hours. The public notice required by this section shall include a statement of this fact, as well as the times and places at which the petition will be made available for public inspection.

(c) Where a party has filed with the Council a motion to amend the terms of a certification, the Council shall direct that the municipality publish notice pursuant to this section. The municipality shall file with the Council proof of publication within seven days of its receipt of notification from the Council of the necessity of publishing notice.

(d) The Council shall publish a list of all petitions and motions for amendments to certifications it has received monthly, in newspapers of general circulation within the State.

5:91-14.6 Objection(s) to amendments

(a) Within 30 days of publication of notice of a petition or motion to amend the terms of a certification, any person objecting to the terms of the proposed amendment shall file objections with the Council, ***and with the municipality***. These objections shall be in a form as may be determined by the Council and shall include, at a minimum, the following:

1. A statement as to each and every aspect of the proposed amendment which the objector disputes, and the reasons therefore;

2. An explanation of the basis for each objection including, where appropriate, copies of expert reports, studies, or other data relied upon;

3. Any proposed modifications, changes or other measures that will resolve the objection in a manner consistent with the Council's regulations; and

4. A statement documenting all efforts at resolving the objection.

(b) An objection shall constitute as completely as possible a full statement of all issues, or matters, contained in the proposed amendment, with which the objector is in dispute.

(c) In the event the Council receives valid objections in a timely manner, it shall initiate the mediation process contained in N.J.A.C. 5:91-7.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Independent Clinic Services Manual

Readoption: N.J.A.C. 10:66

Proposed: October 17, 1988 at 20 N.J.R. 2562(a).

Adopted: December 14, 1988 by Drew Altman, Commissioner, Department of Human Services.

Filed: December 15, 1988 as R.1989 d.33, **without change**.

Authority: N.J.S.A. 30:4D-6b(3); 30:4D-7, 7a, b, c; 30:4D-12; 42 CFR 440.90.

Effective Date: December 15, 1988.

Expiration Date: December 15, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:66.

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Standards for Shelters Accepting Juveniles

Notice of Correction

Notice of Administrative Correction

N.J.A.C. 10:124-1.2, 1.3 and 5.2

Take notice that the Office of Administrative Law has detected errors in the text of N.J.A.C. 10:124-1.2, 1.3 and 5.2 presently appearing in the New Jersey Administrative Code. The purpose of this notice is to conform the text of the Code with the language adopted by the Division of Youth and Family Services (DYFS), Department of Human Services.

In addition, the Office of Administrative Law and DYFS have agreed, pursuant to N.J.A.C. 1:30-2.7, to correct the reference to the New Jersey Barrier Free Design Regulations (N.J.A.C. 17:19A) appearing at N.J.A.C. 10:124-5.2(d)4iii. The cited rules have been repealed, and the governing rules are now contained in the Barrier Free Subcode, N.J.A.C. 5:23-7.

Full text of the corrected rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10:124-1.2 Definitions

The following words and terms, when used in this chapter, have the following meanings:

...
 "Children's shelter home" or "shelter home" or "**juvenile-family in crisis home**" means any public or private residence that provides 24-hour-a-day residential care to five or fewer children in a non-physically restrictive environment for a period of time usually not exceeding 30 days. Shelter homes shall not include the Division of Youth and Family Services emergency foster shelter homes.
 ...

10:124-1.3 Population served by shelter facilities and homes

(a) A shelter facility or home provides care for children who are:
 1.-6. (No change.)

7. Charged as a juvenile delinquent, pursuant to State law, [but who would otherwise be released, except that a suitable parent, guardian or adult custodian cannot be located to accept custody,] and who would not be a threat to the physical, social or emotional well-being of the other children in the shelter facility or home.

10:124-5.2 State government physical facility requirements for shelter facilities

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

(d) Exit requirements:

1.-2. (No change.)

3. Stairways:

i.-ii. (No change.)

iii. Exterior stairways:

(1) (No change.)

(2) Exterior stairways shall be constructed of noncombustible materials or of wood not less than two inches thick.

iv. (No change.)

4. Special requirements for shelter facilities serving nonambulatory children: The following special requirements shall be met by shelter facilities serving nonambulatory children:

i.-ii. (No change.)

iii. Shelter facilities serving primarily children with physical limitations or handicaps or having a unit serving such children shall comply with the New Jersey Barrier Free [Design Regulations] **Subcode** (N.J.A.C. [17:19A] 5:23-7).

(e)-(q) (No change.)

CORRECTIONS

THE COMMISSIONER

(a)

**Administration, Organization and Management
Personal Property of Inmates**

Adopted Amendments: N.J.A.C. 10A:1-11.3 and 11.8

Proposed: November 7, 1988, at 20 N.J.R. 2746(a).
Adopted: December 22, 1988 by William H. Fauver,
Commissioner, Department of Corrections.
Filed: December 22, 1988 as R.1989 d.45, **without change**.
Authority: N.J.S.A. 30:1B-6 and 30:1B-10.
Effective Date: January 17, 1989.
Expiration Date: July 6, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10A:1-11.3 Non-permissible personal property

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

(e) If the inmate or his or her designee fails to respond to a second written notification within 30 days, the correctional facility may dispose of the non-permissible personal property by:

1. Donating the non-permissible personal property to any recognized public charitable organization;
2. Retaining the non-permissible personal property for use by the general inmate population, such as a typewriter for use in the Inmate Law Library; or
3. Completely destroying the non-permissible personal property within the correctional facility.

(f) Copies of written notices to the inmate about his or her non-permissible personal property shall become a permanent part of the inmate's classification folder (see N.J.A.C. 10A:1-11.9).

10A:1-11.8 Responsibility for personal property when inmate is released

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

(c) If the inmate or his or her designee fails to respond to the written notification within 30 days, the correctional facility may dispose of the personal property by:

1. Donating the personal property to any recognized public charitable organization;
2. Retaining the personal property for use by the general inmate population, such as a typewriter for use in the Inmate Law Library; or
3. Completely destroying the personal property within the correctional facility.

(d) 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).

(b)

**Close Custody Units
Hearing Procedure for Involuntary Placement to
Protective Custody**

Adopted Amendment: N.J.A.C. 10A:5-5.2

Proposed: November 7, 1988, at 20 N.J.R. 2746(b)
Adopted: December 22, 1988 by William H. Fauver,
Commissioner, Department of Corrections.
Filed: December 22, 1988 as R.1989 d.46, **without change**.
Authority: N.J.S.A. 30:1B-6 and 30:1B-10.
Effective Date: January 17, 1989.
Expiration Date: October 6, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10A:5-5.2 Hearing procedure for involuntary placement to Protective Custody

(a)-(k) (No change.)

(l) When reviewing confidential informant information, the Disciplinary Hearing Officer/Adjustment Committee shall inquire into the reliability of the informant and the information, and shall utilize such information only after satisfied that it is reasonably reliable. Whenever informant information is used, the inmate shall be informed of the general character of the information, if practicable. The details of informant information shall be withheld on grounds of confidentiality.

1. In any case in which the Disciplinary Hearing Officer or Adjustment Committee's decision is based on evidence which includes confidential information, adjudication shall contain:

i.-ii. (No change.)

(m) (No change.)

(c)

**Juvenile Detention Facilities
Log for the Temporary Restriction of Juveniles
Adopted Amendment: N.J.A.C. 10A:32-6.5**

Proposed: October 3, 1988 at 20 N.J.R. 2442(a).
Adopted: December 14, 1988 by William H. Fauver,
Commissioner, Department of Corrections.
Filed: December 15, 1988 as R.1989 d.32, **without change**.
Authority: N.J.S.A. 2A:4A-37 and 30:1B-10.
Effective Date: January 17, 1989.
Expiration Date: March 4, 1990.

Summary of Public Comments and Agency Responses:

The Department received two comments from interested persons. One comment did not recommend any changes to the proposed amendment. The other comment suggesting a change in the proposed amendment is addressed below.

COMMENT: A commenter suggested that N.J.A.C. 10A:32-6.5(a) be expanded to include the recording of information on the frequency of visual observations by staff members, the frequency of the use of bathroom facilities permitted and the frequency and length of recreation periods provided to juveniles who are temporarily restricted.

RESPONSE: The Department of Corrections believes the items of information listed in N.J.A.C. 10A:32-6.5(a) and in the proposed amendment include the basic types of information necessary to be recorded in the log to monitor the temporary restriction of a juvenile. The Department of Corrections considers the types of information, suggested by the commenter, as material which may be considered for use in a future amendment of N.J.A.C. 10A:32-6.5(a). The rule listing the items to be recorded in the log will be adopted as initially proposed.

Full text of the adoption follows.

10A:32-6.5 Log for the temporary restriction of juveniles

(a) In accordance with the provisions of N.J.A.C. 10A:32-7.4, Temporary restriction, whenever a juvenile is removed from the group or ongoing program and temporarily restricted to his or her sleeping room, or an isolation room, the following information shall be recorded in a log maintained for that purpose:

1. (No change.)
2. Date and time of juvenile's restriction;
3. Name of staff member requesting restriction;
4. Name of supervisor authorizing restriction;
5. Reason for juvenile's temporary restriction; and
6. Date and time of juvenile's release from the restricted quarters.

INSURANCE**(a)****DIVISION OF ACTUARIAL SERVICES****Homeowners Insurance Price Comparison****Adopted New Rules: N.J.A.C. 11:4-29****Proposed: September 6, 1988 at 20 N.J.R. 2181(a).**

Adopted: December 21, 1988 by Kenneth D. Merin,

Commissioner, Department of Insurance.

Filed: December 22, 1988 as R. 1989 d.50, 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. 17:1C-6(e), 17:23-4 and 17:29A-1.

Effective Date: January 17, 1989.

Expiration Date: December 2, 1990.

Summary of Public Comments and Agency Responses

COMMENT: Two commenters expressed concern that the price comparison survey fails to take into account varying degrees of competitiveness.

The first commenter stated that the rating details asked for by the survey pertain to only one given dwelling or contents limit in each category. Different levels of dwelling or contents coverage will indicate varying degrees of competitiveness. This commenter stated that a company competitive at the \$110,000 level may not be at the \$200,000 level or \$75,000 level. This commenter recommended that several different limit levels be tested.

The second commenter expressed similar concerns as the first commenter. This commenter, however, recommended that the guide should tell consumers that prices may vary because of this.

Related to this issue, the first commenter stated that there are differences in the degree of coverage provided by the various companies' forms. If one coverage is broader, this would mitigate the effect of a higher premium. This commenter suggested that the Department consider this but made no specific recommendation.

RESPONSE: The Department does not agree with the first commenter's suggestion that several different limit levels be tested. It is felt that the testing of too many limit levels is superfluous. Furthermore, the data collected is to enable the Department to produce a simple comparison. It is not the aim of these proposed rules to produce a guide that encompasses every small detail of every insurance company's policies. As to the first commenter's statement pertaining to policy forms, the Department feels that every situation cannot be covered in the simple comparison guide to be produced from the data. It should be noted, however, that qualifying statements as to degree of coverage are included in the guide where possible.

In response to the second commenter's recommendation, it should be noted that the guide does inform consumers that prices may vary.

COMMENT: One commenter suggested that since many companies use rates filed by either MSO, ISO, or AAIS, it might save the Department time in reviewing the surveys, if it would allow those companies to specify which rating bureau they use and then ask each rating bureau to calculate its premiums.

RESPONSE: The Department does not agree with this comment. There can be deviations from the ISO, MSO or AAIS rates that companies charge. It is more accurate and less difficult to obtain the information directly from each company. Furthermore, the Department wants the rates on record from each company.

COMMENT: Three commenters recommended that the rules or forms should provide a mechanism whereby companies that offer a different deductible and medical payment from the \$250.00 deductible and \$1,000 medical payment stated in the forms, may indicate this exception or difference (for example, providing an area on the forms for notes or comments).

RESPONSE: The Department agrees with these commenters. A place to indicate differences from the stated example will be provided on Appendices A, B, and C.

COMMENT: Three commenters noted that there are no personal liability or medical payments limits for the tenant or condominium coverages (Appendices B and C). One commenter is presuming that these limits are the same limits used in the homeowner risk description (Appendix A).

RESPONSE: The answer to these commenters' questions is that the personal liability and medical payments limits for the tenant or condominium coverages are the same as those used in the homeowner risk description (Appendix A). In order to clarify this, these limits shall be added to Appendices B and C.

COMMENT: Two commenters suggest that there be clarification of Appendix A requiring coverage on a replacement cost basis in order to show whether this applies to building coverage, contents coverage, or both.

One commenter also suggests clarification to show whether coverage under Appendices B and C is replacement cost coverage.

RESPONSE: The Department agrees that clarification is necessary. The replacement cost applies to both building and contents coverage. (Only Appendix A has building coverage.) Appendices A, B and C will be changed to reflect this clarification.

COMMENT: Two commenters suggest that insurance companies need only provide premiums when they differ from the prior survey.

One commenter stated that there is a question as to whether all premiums are to be as of December 31, 1987 as specified in Appendices A, B, and C, or current with each survey as of June 30 and December 31 of any given year. If premiums are current with each survey date, this commenter suggests that companies provide premiums only when they differ from the prior survey rather than reported each time.

The second commenter recommended that the Department should allow a company to respond "No Change in Rates Since Previous Report" since most companies change rates infrequently.

RESPONSE: The Department disagrees with these two commenters. In answer to the first commenter as to whether all premiums are to be as of December 31, 1987 or current with each survey, the premiums are to be current with each survey.

The Department disagrees that rates need only be submitted when they differ from the prior survey. It is less difficult for the Department to have companies report their data each time. This assures accuracy. Furthermore, the Department will not have to concern itself as to ascertaining if the rates did in fact change. The Department feels that it will not be a great burden for companies to simply reprint the rates if there was in fact no change.

COMMENT: One commenter suggested that the price should be as of June 30 and December 31 of the current year, not just December 31, 1987 as requested in Appendices A, B, and C, in order to capture intervening rate changes.

RESPONSE: The Department agrees that it should not say just December 31, 1987. The Department feels that it should say "December 31 of the reporting year." Appendices A, B, and C, will be changed to reflect this clarification.

COMMENT: One commenter stated that the Homeowner coverage example is for a structure built in 1980. Many companies offer a new home discount which often varies from each year up to 10 years old. This commenter suggested that the age should be stated as five years old or eight years old in order to be consistent year to year so as not to change the comparison each year.

RESPONSE: The Department agrees. Appendix A will be changed to say "a frame structure built five years ago as of December 31 of the reporting year." This should pose no additional burden on any companies and should aid many companies. In fact this will lend itself to more accurate data because the age of the structure will now be a constant. It will not change year to year. This will lead itself to gathering more credible year to year rate comparisons and thus better effectuate the goal that the rule was designed to achieve. The gathering of more accurate data cannot be said to create a burden on companies.

COMMENT: Two commenters suggest that the fill in date at the end of the form of January 1 should be June 30 in order to be consistent with N.J.A.C. 11:4-29.3.

RESPONSE: The Department disagrees with this recommendation. The fill in date of January 1 is to enable the Department to determine how market share has changed during the calendar year. January 1 to December 31 of the same year is needed to calculate this data. This is not used for rate data.

COMMENT: Two commenters suggested clarification as to price data comparisons by location since some cities and all counties have more than one fire protection class and thus differing rates.

One commenter recommended class-4 unless the Department was seeking a contrast with the city premiums; in this case the commenter recommended class 9. These recommendations applied to Homeowners, Tenant, and Condominium coverages.

ADOPTIONS

RESPONSE: The Department disagrees with these comments. The Department feels that the information given in the example in the Appendices is sufficient. As was stated earlier, the data to be collected is to enable the Department to produce a basic comparison guide. Every detail that can affect rates cannot be addressed in these forms. Again this is not the purpose of the rules.

COMMENT: One commenter stated that a survey that fails to indicate its dividend payments would not reflect the true cost of coverage to its policyholders. This commenter suggested that these dividends be indicated by footnote or other designation in the survey.

RESPONSE: The Department disagrees that this is a problem. Dividends are not guaranteed and therefore do not definitely affect the true cost of coverage. Furthermore, the guide states that prices do not reflect dividends. Nevertheless, the Department has decided to permit companies to list dividends in a footnote on the form.

COMMENT: One commenter states that since the term "insurer" is defined as "Company" (not group or fleet of companies), a group of companies will provide comparisons for each company offering the homeowners line of products in New Jersey. This commenter is also concerned that the proposed rules do not address the single company with multiple programs. This commenter suggested clarification of the rule to require that the comparison be completed based on the rates in the program or company in the group with the largest volume.

RESPONSE: The Department disagrees. The Department wants data on a company basis not a group basis. The Department also disagrees with the commenter's recommendation that the comparison be completed based on the rates in the program or company in the group with the largest volume. The Department wants rates for all of the programs. This is so that all the different programs and prices will be reflected and not just one program which may have a lower rate than other programs offered. As for the commenter's concern that the rules do not address the single company with multiple programs, it should be noted that in the past companies were permitted to submit surveys for preferred, gold, or other premium plans, and are encouraged to continue to do so.

COMMENT: One commenter suggested that the rules be clarified to prevent a company from applying other optional discounts or credits which would make comparisons misleading. Companies, however, should be able to note discounts that may be available.

RESPONSE: There is nothing in the rules to suggest that companies may apply optional discounts or credits. The companies are only responding to the example given in the forms. The Department also disagrees that companies should be able to note discounts that may be available. The Department is interested in the companies' flat rates and not discounts which are not guaranteed, or given to everybody (that is, only senior citizens).

COMMENT: One commenter suggested that the final published comparison include either some financial stability and consumer complaint information or an indication that price is not the only factor in one's decision to purchase insurance, and in some cases may not be the most important one. The commenter states that this would allow the consumer to more accurately judge the ability of an insurer to carry through at the time of the loss on the promises contained in the insurance contract.

RESPONSE: The final published guide does and will state that price is not the only factor in one's decision to purchase insurance. This should alleviate this commenter's concerns.

COMMENT: One commenter suggests clarification as to whether \$110,000 in the homeowners coverage is the replacement cost as well as the policy amount. In other words, what insurance to value relationship is intended, 100 percent, 80 percent, etc.

RESPONSE: The insurance to value relationship intended is 100 percent. The \$110,000 in the homeowners coverage is the replacement cost and the policy amount as well. The Department feels that no clarification of the forms is necessary.

COMMENT: One commenter suggested clarification as to which section II limit is included for homeowners, tenant, and condominium coverages. This commenter recommended specifying \$100,000 liability and \$1,000 medical payments limits for all three coverages.

RESPONSE: The Department agrees. This comment is similar to an earlier comment pointing out that there are no personal liability or medical payments limits for the tenant or condominium coverages in Appendices B and C. The response is the same in that these limits will be the same as the limits used in the homeowner risk description (Appendix A) (\$100,000 liability and \$1,000 medical payments). As was stated earlier, these limits will be added to Appendices B and C for clarification.

COMMENT: One commenter stated that the policy amounts of \$110,000 for the homeowners and \$15,000 for tenant and condominium

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coverages seem low for New Jersey. The commenter recommended amounts of at least \$20,000 for tenant and \$30,000 for condominium coverages with the policy amounts for all coverages being adjusted according to inflationary changes for each survey.

RESPONSE: The Department disagrees. The amounts are simply arbitrary amounts selected on which to base the comparison. Furthermore, these amounts may be high or low depending on the location in the state. The Department also disagrees that coverage amounts be adjusted according to inflation. This is a simple comparison that should remain static year to year so as to give a comparison of rates based on the same criteria from year to year.

COMMENT: One commenter stated that as to tenant and condominium coverages, in order to properly rate, the number of units within a fire division is needed. This commenter recommended using three for the purpose of the comparison.

RESPONSE: The Department disagrees that this information is needed. As was stated earlier, the data collected is to be used to produce a simple comparison guide. Every detail that affects rates is not necessary for the purpose of the regulation.

COMMENT: One commenter stated that for the condominium coverage, rating varies by number of days per year that a unit is rented or held for rental. This commenter recommended specifying that the unit be full-time occupancy by the owner/insured with no rental for purposes of this comparison.

RESPONSE: The Department agrees. The condominium coverage will be for owner occupied only. The Department feels this is a clarification measure and creates no disadvantage or burden for the companies submitting forms since this is the information companies were going to submit anyway. Appendix C will be changed to reflect this clarification.

COMMENT: One commenter stated that since the price comparison is to be conducted and results published once a year, requiring the submission of rate quotations semi-annually is unnecessary. This commenter suggested that the submission of rate quotations be only once a year.

RESPONSE: The Department agrees. The submission of reports will be once a year with the reporting year ending December 31 and the report date as January 31 of the following year. N.J.A.C. 11:29.3 and the forms will be changed to indicate this clarification.

COMMENT: One commenter recommended, as to the reporting of in-force policy counts, the allowance of an additional 30 days between the end of the report period and the report due date. The commenter stated that it (and presumably other companies) finalize the policy count for a certain date, approximately 30-45 days after that date. The commenter stated this allows a more accurate policy count by netting out late registrations of new policies, flat cancellations backdated into report period, and receipt or non-receipt of overdue premium for renewals effective during the report period.

For this reason, the commenter recommended that the report dates be amended to August 31 for the June 30 premium quotes and in-force counts and February 28 for the December 31 report.

RESPONSE: The Department disagrees. One month is sufficient time for companies to submit their data, especially once they know that they will have to respond by this date. The Department fails to see a problem with the reporting date remaining as proposed. Therefore, the January 31 reporting date will remain.

COMMENT: One commenter suggested that in Appendices B and C, description of the risk should include specific construction material and occupancy (number of families) since many carriers vary premium charges depending on construction and occupancy.

RESPONSE: The Department disagrees. As was stated earlier, this is a simple comparison. Every detail that can affect rates is not needed to effectuate the goal of the proposed rules.

COMMENT: One commenter stated that as to Appendices A, B, and C, it is assuming the risk description statement "Price as of December 31, 1987", will be a variable date, and mid-year reports displaying "Price of June 30, 198__".

RESPONSE: Since the companies will only have to submit their rates once a year, the forms will be changed to say "Price as of December 31 of the reporting year" and only require this information once a year.

Changes Made by the Department on Its Own Initiative

1. In Appendices A, B, and C, the list of cities and counties will be double spaced rather than single spaced, and blank spaces added in which the companies shall write the premium information. This is to aid the Department in reading the forms.

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ADOPTIONS

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

SUBCHAPTER 29. HOMEOWNERS COMPARISON SURVEY

11:4-29.1 Purpose and scope

(a) This subchapter requires the submission of data by insurers concerning premiums on personal homeowners, tenant and/or condominium coverage to enable the Department to compile an annual Homeowners Insurance Price Comparison Guide for use by the general public.

(b) This subchapter applies to every insurer authorized to provide and sell personal homeowners, tenant and/or condominium coverage insurance in the State of New Jersey.

11:4-29.2 Definitions

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

"Commissioner" means the Commissioner of the Department of Insurance of the State of New Jersey.

"Department" means the Department of Insurance of the State of New Jersey.

"Insurer" means a company writing homeowners, tenants and/or condominium policies in the State of New Jersey.

"Personal homeowners, tenant and/or condominium coverage" means a policy insuring the dwelling structure, contents, personal liability and medical payments in kinds and amounts set forth by the Commissioner.

11:4-29.3 Coverage option survey requirements

(a) Every insurer shall prepare and file with the Commissioner a premium survey concerning premiums charged on personal homeowners, tenant and/or condominium coverage in the following manner:

1. The survey shall reflect the total number of homeowners, tenant and/or condominium policies issued by each insurer as of *[June 30 and]* December 31 of the *[given]* **reporting** year.

2. Survey forms reflecting premiums for homeowners, tenants and/or condominium policies as of *[June 30 and]* December 31 of *[any given]* **the reporting** year shall be filed with the Commissioner on or before *[July 31 of that year and]* January 31 of the following year.

3. Completed coverage option survey forms shall be submitted to:

Director of Consumer Affairs
State of New Jersey
Department of Insurance
20 West State Street
CN-325
Trenton, New Jersey 08625-0325

4. In the preparation and filing of the information required by this subchapter, insurers shall use forms prescribed and provided by the Commissioner. These forms appear in Appendices A, B and C of this subchapter, which are hereby incorporated by reference as part of this subchapter.

APPENDIX A

Company Name: _____

Affiliated with Group (name): _____

Price Comparison Survey

Period Ending: _____

A. Homeowners Coverage: Policy Form HO-3, frame structure built *[in 1980]* **five years ago as of December 31 of the reporting year** with a smoke detector, dwelling amount \$110,000, personal liability \$100,000, medical payments \$1,000, \$250.00 deductible, five miles or less to a fire station and within 1,000 feet of a hydrant or usable suction point and **both dwelling and contents amounts** written on a replacement cost basis. Price as of December 31, *[1987]* **of the reporting year**. All surcharges should be included in premium price.

If Your Policy Differs From Above, Please Explain: _____

List Any Dividends Your Company Offers: _____

Table with columns: Location, County of, Annual Premium. Lists various cities and counties with corresponding premium fields.

As of January 1, 19__, _____ (company name) had _____ New Jersey homeowners policies in force.

As of December 31, 19__, _____ (company name) had _____ New Jersey homeowners policies in force.

Signature of Officer or Senior Manager
Phone Number: _____

APPENDIX B

Company Name: _____

Affiliated with Group (name): _____

Price Comparison Survey

Period Ending: _____

B. Tenant Coverage: Policy Form HO-4, contents amount \$15,000, **personal liability \$100,000, medical payments \$1,000** smoke detector, \$250.00 deductible and five miles or less to a fire station and within 1,000 feet of a hydrant or useable suction point **with contents amount written on a replacement cost basis**. Price as of December 31, *[1987]* **of the reporting year**. All surcharges should be included in premium price.

If Your Policy Differs From Above Please Explain: _____

List Any Dividends Your Company Offers: _____

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Table with columns: Location, County of, Annual Premium. Includes categories for Cities and Other than Cities with various county listings and premium fields.

As of January 1, 19__, (company name) had _____ New Jersey tenant policies in force.

As of December 31, 19__, (company name) had _____ New Jersey tenant policies in force.

Signature of Officer or Senior Manager
Phone Number: _____

APPENDIX C

Company Name: _____
Affiliated with Group (name): _____
Price Comparison Survey
Period Ending: _____

C. Condominium Coverage: Policy Form HO-6, *owner occupied only,* contents amount \$15,000, *personal liability \$100,000, medical payments \$1,000,* smoke detector, \$250.00 deductible and five miles or less to a fire station and within 1,000 feet of a hydrant or useable suction point *with contents amount written on a replacement cost basis*. Price as of December 31, *[1987]* *of the reporting year*.

If Your Policy Differs From Above, Please Explain:

List Any Dividends Your Company Offers:

Table with columns: Location, County of, Annual Premium. Includes categories for Cities and Other than Cities with various county listings and premium fields.

As of January 1, 19__, (company name) had _____ New Jersey condominium policies in force.

As of December 31, 19__, (company name) had _____ New Jersey condominium policies in force.

Signature of Officer or Senior Manager
Phone Number: _____

LABOR

(a)

DIVISION OF EMPLOYMENT SECURITY
Contributions, Records and Reports
Zip Code Reporting

Adopted New Rules: N.J.A.C. 12:16-21

Proposed: November 7, 1988 at 20 N.J.R. 2625(b).
Adopted: December 22, 1988 by Charles Serraino,
Commissioner, Department of Labor.

Filed: December 22, 1988 as R.1989 d.39, without change.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 43:21-11, 43:21-14,
43:21-14(a), 43:21-14(b) (P.L. 1987 c.450).

Effective Date: January 17, 1989.

Expiration Date: April 1, 1990.

Summary of Public Comments and Agency Responses:

The Department received one comment from the Department of Transportation (DOT) addressing the proposed new rules N.J.A.C. 12:16-21 concerning Zip Code Reporting.

COMMENT: The economic impact statement for the proposed rule provides that DOT "will be responsible for processing . . . the data received from employers." DOT believes that the statute requires data to be compiled by the Department of Labor and sent to DOT.

RESPONSE: The Department disagrees with DOT's interpretation of the statute.

N.J.S.A. 43:21-14(a) provides:

" . . . every employer shall, in accordance with regulations established by the Commissioner of Labor, report, on an annual basis, the zip code of the residence of each full-time employee and regularly employed part-time employee of the employer, and the zip code of the location where the employee regularly works."

N.J.S.A. 43:21-14(b) provides:

"The Commissioner of Labor shall transmit the information received from employers as provided in section 1 of this Act (N.J.S.A. 43:21-14(a)) to the Commissioner of Transportation, who shall utilize the information in developing plans and programs for traffic control, highway, maintenance and construction, and mass transit."

The statute clearly provides that the Department of Labor's only responsibility is to "transmit the information received", which consists of employee zip codes, to the DOT. There is no language, either express or implied, that would require the Department to "compile" the data prior to transmission to the DOT.

Full text of the adoption follows.

SUBCHAPTER 21. ZIP CODE REPORTING

12:16-21.1 Scope

This subchapter is applicable to all employers subject to the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq.

12:16-21.2 Definitions

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

"Commissioner" means the Commissioner of the New Jersey Department of Labor.

"Department" means the New Jersey Department of Labor.

"Employee" means any individual who performs services as defined at N.J.S.A. 43:21-19(i), for an employer, whether on a full-time or regular part-time basis.

"Employer" means employer as defined at N.J.S.A. 43:21-19(h) or 43:21-8(c).

12:16-21.3 Reporting requirement

(a) Every employer shall report, on an annual basis, the Zip Code of the following:

1. The residence of each employee; and
2. The location where the employee regularly works.

(b) The information specified in (a) above is required only for employees who are employed by the employer at the time of receipt of the report form.

(c) The employer shall submit the information required under this section, on a form prescribed by the Commissioner, to the Department of Transportation. An envelope imprinted with the address of the Department of Transportation shall be provided to the employer with the information form.

(d) Any questions concerning the provisions of this subchapter may be addressed to:

Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625-0600

(a)

DIVISION OF EMPLOYMENT AND TRAINING

**Job Training Partnership Act
Non-Criminal Complaint/Grievance, Hearing and
Review Procedures at the Employer, SDA, State
and Federal Level**

Adopted New Rules: N.J.A.C. 12:41-1

Proposed: November 7, 1988 at 20 N.J.R. 2626(a).

Adopted: December 22, 1988 by Charles Serraino,
Commissioner, Department of Labor.

Filed: December 22, 1988 as R.1989 d.38, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 29 U.S.C.A. §1554 and 20 CFR §629.51 et seq.

Effective Date: January 17, 1989.

Expiration Date: January 17, 1994.

Summary of Public Comments and Agency Responses:

The Department of Labor (Department) received one comment on the proposed new rules. The commenter, an SDA, supports the proposed new rules and believes that they "clearly serve to ensure the fair execution of the Act and the firm resolution of any grievances".

The Department has made one minor change to the scope of the rules. Under N.J.A.C. 12:41-1.2(b)3, "consultants" have been added to the type of subgrantee complaints as consultants may also conduct JTPA programs.

Full text of the adoption follows (additions indicated in boldface with asterisks *thus*; deletions indicated in brackets with asterisks *[thus]*):

CHAPTER 41

DIVISION OF EMPLOYMENT AND TRAINING

SUBCHAPTER 1. JOB TRAINING PARTNERSHIP ACT
(JTPA): NON-CRIMINAL
COMPLAINT/GRIEVANCE, HEARING
AND REVIEW PROCEDURES AT
EMPLOYER, SDA, STATE AND FEDERAL
LEVEL

12:41-1.1 Purpose

The purpose of this subchapter is to set forth the grievance, hearing and review procedures required under the Job Training Partnership Act (JTPA) at 29 U.S.C.A. §1554 and the regulations that implement the JTPA at 20 CFR §629.51 et seq.

12:41-1.2 Scope

(a) Employers of JTPA participants shall follow the grievance and hearing requirements set forth at N.J.A.C. 12:41-1.5. The employer grievance and hearing procedures shall apply to any JTPA participant aggrieved by his or her employer.

(b) Each SDA shall follow, at a minimum, the grievance and hearing requirements set forth at N.J.A.C. 12:41-1.6. The SDA grievance and hearing procedures shall apply to the following:

1. JTPA participant appeals from decisions at the employer level;
2. JTPA participant complaints;
3. Subgrantee complaints (schools; *[and]* employers with on*-*the*-*job training contracts*; and consultants*); and
4. Complaints from other interested persons.

(c) The State review procedures set forth at N.J.A.C. 12:41-1.7 shall apply to the following:

1. JTPA participant appeals from decisions at the SDA level;
2. Subgrantee appeals from decisions at the SDA level; and
3. Appeals by other interested persons from decisions at the SDA level.

(d) The State hearing procedures set forth at N.J.A.C. 12:41-1.8 shall apply to subrecipients adversely affected by the results of monitoring and/or investigations and to any other complainants who must seek resolution initially at the State level (complaint not subject

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to review at the SDA level), and any other participant, subcontractor or other interested party aggrieved by a subrecipient.

1. Each subrecipient shall provide its participants, upon their enrollment in the subrecipient's program, with a copy of the State hearing procedures.

2. Each subrecipient shall also provide subcontractors and subgrantees with a copy of the State hearing procedures no later than the date of the contract between the subrecipient and the subcontractor or subgrantee.

(e) The audit resolution procedures set forth at N.J.A.C. 12:5-1 shall apply to subrecipients adversely affected by the results of an audit.

(f) The Federal review procedures set forth at N.J.A.C. 12:41-1.9 shall apply to appeals from complainants who did not receive a decision at the State level.

12:41-1.3 Definitions

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

"Commissioner" means the Commissioner, New Jersey Department of Labor.

"Director" means the Director of the Division of Employment and Training, New Jersey Department of Labor.

"Grantee/contractor/subrecipient" means any person or government department, agency or establishment (private-for-profit/non-profit) that receives Federal JTPA funds to carry out JTPA programs through a State or local government but does not include an individual who is a beneficiary of such a program.

"JTPA" means Job Training Partnership Act, 29 U.S.C.A. §1501 et seq.

"Participant" means any individual who has been determined eligible for participation upon intake, and has started receiving employment, training, or services (except post-termination services) funded under the JTPA, following intake. Individuals who receive only outreach and/or intake and assessment services or postprogram followup are excluded.

"Recipient" means the State of New Jersey.

"SDA" means Service Delivery Area as defined in 29 U.S.C.A. §1511.

"SDA grant recipient" means the entity that receives JTPA funds for a SDA directly from the State.

"Secretary" means the United States Secretary of Labor.

12:41-1.4 Deadline for filing complaints

The deadline for filing non-criminal complaints at the employer, SDA and State level shall be one year from the date of the alleged occurrence.

12:41-1.5 Grievance and hearing procedures at the employer level

(a) Each employer, including private-for-profit employers under the JTPA, shall maintain a grievance and hearing procedure relating to the terms and conditions of employment available to its participants.

1. Each employer may operate its own grievance and hearing system or may utilize the grievance and hearing system established by the SDA or the Department at N.J.A.C. 12:41-1.6.

(b) Each employer system shall provide for, upon request of the complainant, a review of an employer's decision by the SDA and the Director, if necessary, in accordance with N.J.A.C. 12:41-1.6 and 1.7, respectively.

12:41-1.6 Grievance and hearing procedures at the SDA level

(a) Each SDA shall establish and maintain grievance and hearing procedures for grievances or complaints about its programs and activities from participants, subgrantees, subcontractors and other interested persons. The procedures shall include the resolution of complaints alleging a violation of the JTPA, regulations, grant or other agreements under the JTPA.

(b) The grievance and hearing procedures shall contain, at a minimum, the following requirements:

1. Upon enrollment into a JTPA program, the SDA shall provide participants with a written description of the grievance procedures which shall include the requirements set forth in (b)4 through 7

below. The SDA shall also provide subcontractors and subgrantees with these procedures no later than the date of execution of the contract between the SDA and the subcontractor.

2. The SDA shall maintain evidence that the grievance and hearing procedures have been provided to participants and to subcontractors.

3. The grievance and hearing procedures shall provide that the identity of any person who has furnished information relating to, or assisting in, an investigation of a possible violation of the JTPA shall be kept confidential to the extent possible, consistent with a fair determination of the issues.

4. The SDA may provide for an informal resolution of a complaint/grievance which, if provided, shall be completed prior to the hearing date.

5. The SDA shall provide for a hearing on a complaint/grievance to be conducted in the locale of the complainant within 30 days of the filing of the complaint or grievance and a written decision shall be provided not later than 60 days after the filing of a complaint/grievance.

6. The SDA shall provide participants and subcontractors with the name, address and telephone number of the local official to whom complaints and grievances can be directed.

7. At a minimum, the SDA shall also provide participants and subcontractors with the following:

i. A written notice of the date, time and place of the hearing;

ii. An opportunity to be represented by an attorney or other representative of the complainant's choice;

iii. An opportunity to bring witnesses and documentary evidence (SDA recipients or other subrecipients shall cooperate in making available any persons under their control or employ to testify, if such persons are requested to testify by the complainant, and to release requested documents unless privacy laws or other laws intervene to take precedence);

iv. An opportunity to question any witnesses or parties;

v. An impartial hearing;

vi. A verbatim or tape recording of the hearing;

vii. Written notice that the complainant is entitled to a hearing within 30 days of filing the written grievance and that a written decision shall be made by the hearing officer or designated representative of the SDA grant recipient within 60 days of the filing of the complaint/grievance;

viii. Written notice that the complainant has a right of appeal to the Director if the decision is adverse or is not made within 60 days of the filing of the complaint;

ix. The name and address of the State agency to whom the appeal is to be addressed and other information needed to file an appeal to the State;

x. Written notice that the complainant must file the appeal to the Director within 10 days of receiving the adverse decision or within 10 days of the date the decision should have been made by the SDA, and that the decision of the Director shall be final;

xi. Written notice that the complainant has one year to submit a complaint after the date of the occurrence (except for complaints regarding discrimination, which have a 180 day limitation);

xii. Written notice that the complainant has a right to request a review by the Secretary if the State does not render a decision, and that the Federal review is confined to allegations of violations of law under the JTPA; and

xiii. Written notice that the complainant must exhaust the remedies at each level prior to making an appeal to the next higher level.

8. The SDA may require the complainant to notify the SDA when an appeal is made to the State or to the United States Department of Labor.

12:41-1.7 Review procedures at the State level

(a) If a participant, subgrantee, or other interested person does not receive a decision at the SDA level within 60 days of filing the complaint or receives a decision unsatisfactory to the complainant, the complainant may file a written request for a review at the State level.

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1. The request for a review shall be filed within 10 days of receipt of the adverse decision or 10 days from the date on which the complainant should have received a decision.

(b) Each request for a review shall be submitted to:

New Jersey Department of Labor
 Director, Division of Employment and Training
 CN 055
 Trenton, New Jersey 08625-0055

(c) Upon filing the request for review, the complainant shall simultaneously submit the following:

1. The full name, address and phone number of person(s) making the complaint/grievance;
2. The full name and address of the respondent (if any) against whom the complaint or grievance was made;
3. A clear and concise statement of the facts of the grievance;
4. Pertinent dates including the date the grievance was filed at the local level, the date of the alleged occurrence or act for which the complaint was filed and the date a written decision was reached or should have been reached;
5. If applicable, citations to the provisions of the JTPA or other agreements under the Act believed to have been violated;
6. A statement disclosing other steps pursued at any level regarding the complaint/grievance in question; and
7. A copy of the local written decision if such was rendered.

(d) The Director shall issue a written decision within 30 days. The Director's decision is final.

(e) If the complaint or grievance is based upon alleged discrimination regarding handicapped status, the appeal shall be submitted to:

New Jersey Department of Labor
 Office of Monitor Advocate and
 Affirmative Action Programs
 John Fitch Plaza—Room 1309
 Trenton, New Jersey 08625
 Attention: Director, Monitor Advocate and EEO Programs

1. The Office shall assist the complainant in his or her appeal.

(f) If the Director fails to issue a decision at the State level, the complainant or appellant may request a review at the Federal level.

12:41-1.8 Hearing procedures at the State level

(a) Any subrecipient adversely affected by the results of monitoring and/or investigations, or any other complainant who must seek resolution initially at the State level, having a complaint not subject to review at the SDA level, may submit to the Commissioner a written request for a hearing.

1. Any participant, subcontractor or other interested party aggrieved by a subrecipient may submit to the Commissioner a written request for a hearing.

(b) Upon receipt of the written request for a hearing, the Commissioner shall provide the complainant or respondent with written notice of the time, date and place of the hearing. The written notice shall also set forth the following, that:

1. The complainant or respondent has the right to be represented by an attorney or a representative of his or her choosing;
2. The complainant or respondent may bring witnesses and documentary evidence;
3. The complainant or respondent has the right to question any witness;
4. The complainant or respondent has the right to an impartial hearing; and
5. A verbatim or tape recording of the hearing will be made.

(c) The hearing shall be conducted within 30 days from the date the Commissioner received the written request for a hearing. The hearing officer shall issue a written decision in the matter within 60 days of the receipt of the written request for a hearing.

1. The Commissioner shall attempt to resolve the complaint informally prior to the hearing date.

2. The Commissioner may, upon agreement of both parties, extend the time period for the hearing by 15 days if an informal resolution seems imminent.

(d) If the decision of the hearing officer is adverse to either party or the decision is not made within 60 days, the complainant or respondent may request an independent review.

1. The request for an independent review shall be submitted to the Commissioner within 10 days of the receipt of the adverse decision or 10 days from the date on which the complainant should have received a decision.

(e) The Commissioner shall issue a written decision within 30 days of the hearing. The Commissioner's decision shall be final.

(f) If the Commissioner fails to issue a written decision within 30 days of the hearing, the complainant or respondent may appeal to the Secretary utilizing the procedures set forth in N.J.A.C. 12:41-1.9.

(g) If the complaint or grievance is based upon alleged discrimination regarding handicapped status, the complaint/grievance shall be submitted to:

New Jersey Department of Labor
 Office of Monitor Advocate and
 Affirmative Action Programs
 John Fitch Plaza—Room 1309
 Trenton, New Jersey 08625
 Attention: Director, Monitor Advocate and EEO Programs

1. The office shall assist the complainant in his or her appeal.

12:41-1.9 Federal review procedures

(a) If the Director or Commissioner fails to issue a decision as required by N.J.A.C. 12:41-1.7 and 1.8, respectively, the complainant or respondent may request a determination from the United States Secretary of Labor whether reasonable cause exists to believe that the JTPA or its regulations have been violated.

(b) A complainant or respondent making a request to the Secretary due to non-decision by the Director or Commissioner on a grievance shall use the following procedures and submit the following information when filing the appeal:

1. The request shall be filed no later than 10 days from the date on which the complainant should have received a decision. Appeals shall be submitted to:

Secretary of Labor
 United States Department of Labor
 Washington, D.C. 20210

2. The full name, address and telephone number of the person making the complaint;

3. The full name and address of the respondent against whom the complaint is made;

4. A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation;

5. Citations to the provisions of the Act, regulations, grant or other agreements under the Act believed to have been violated;

6. A statement disclosing whether proceedings involving the subject of the request have been commenced or concluded before any Federal, State or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority and the style of the case; and

7. A statement of the date the complaint was filed with the Director or Commissioner, the date on which the Director or Commissioner should have issued a decision, and an attestation that no decision was issued.

(c) A request shall be considered filed when the Secretary receives from the complainant or respondent a written statement sufficiently precise to evaluate the complaint and the grievance procedure used by the State and SDA grant recipient.

(d) The Secretary shall act within 90 days of the receipt of the request. When there is cause to believe that the JTPA or regulations have been violated, the Secretary shall direct the Department to issue a decision to adjudicate the dispute pursuant to State and local procedures. The Commissioner or his or her designee shall issue a decision within 60 days of the Secretary's order.

(e) A complainant or respondent shall notify the Commissioner if he or she plans to submit an appeal to the United States Department of Labor. Any subrecipient or SDA upon learning of a complainant's or respondent's intention of filing an appeal to the United States Department of Labor shall inform the Commissioner.

12:41-1.10 Protection of complainants

(a) Pursuant to 29 U.S.C.A. §1574(g), no recipient shall discriminate against or unlawfully deny JTPA benefits to any participant or individual connected with the administration of the program

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who has filed a complaint or instituted or caused to be instituted any proceeding related to the JTPA, or has testified or is about to testify in any such proceeding or investigation under or related to the JTPA.

(b) The Secretary shall, within 30 days, take such action or order such corrective measures, as necessary, with respect to the recipient or the aggrieved individual, or both.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

Board of Architects

Landscape Architects

Examination and Evaluation Committee

Fee; Examinations; Certification

Adopted New Rule: N.J.A.C. 13:27-8.15

Adopted Amendments: N.J.A.C. 13:27-5.8, 8.7 and 8.8

Proposed: September 19, 1988 at 20 N.J.R. 2359(a).

Adopted: December 8, 1988 by the Board of Architects,
George C. Waters, R.A., President.

Filed: December 22, 1988 as R.1989 d.40, **without change.**

Authority: N.J.S.A. 45:3A-10.

Effective Date: January 17, 1989.

Expiration Date: April 1, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of adoption follows.

13:27-5.8 Fees

(a)-(k) (No change.)

13:27-8.7 Examination

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

(c) In addition to the Uniform National Examination, all applicants for certification as landscape architects in New Jersey shall take and pass a 50 question multiple-choice examination on New Jersey plant materials and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

13:27-8.8 Certification of persons holding certification from another state or authority

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

(c) In addition to the Uniform National Examination, all applicants for certification as landscape architects in New Jersey shall take and pass a 50 question multiple-choice examination on New Jersey plant materials and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

13:27-8.15 Fees

(a) The following fees shall be charged by the Board of Architects for Landscape Architect Certification matters. Unless otherwise provided herein, all fees are non-refundable.

1. Application for certification under the grandfather clause of L. 1983, c.337, §17 (N.J.S.A. 45:3A-14): \$50.00. If an applicant under the grandfather clause is found not qualified for certification under that provision, the \$50.00 fee may be applied toward the examination fee in (a)3 below.

2. Application to sit for examination: \$100.00.

3. Examination fee: Such fee as is charged by the Council of Landscape Architectural Review Boards (CLARB) for the Uniform National Examination.

i. The fee for the local portion of the examination, as established by the Board, shall be \$5.00.

4. License fee for newly certified landscape architects (New Jersey residents), including seal and certificate: \$140.00.

LAW AND PUBLIC SAFETY

5. License fee for newly certified landscape architects (non-New Jersey residents), including seal and certificates: \$140.00.

i. For those seeking reciprocity, the fee for the local portion of the examination, as established by the Board, shall be \$5.00.

6. The fee for biennial renewal of certification shall be \$100.00.

7. The fee for reinstatement of certification shall be \$50.00 in addition to the fee for biennial renewal of certification.

8. A fee for late registration: \$10.00.

9. The fee for reissuing a certificate to any certified landscape architect who attests that the original certificate has been lost, mislaid or destroyed shall be \$15.00.

10. The fee for reissuing a seal to any certified landscape architect who attests that the original has been lost, mislaid or destroyed shall be \$25.00.

11. The fee for transmittal of an applicant or certificate holder's examination grades to another state shall be \$15.00.

12. The fee for a roster of certified landscape architects shall be \$8.00.

(b)

DIVISION OF CRIMINAL JUSTICE

Office of the State Medical Examiner

State Medical Examiner Rules

Readoption: N.J.A.C. 13:49

Proposed: November 7, 1988 at 20 N.J.R. 2687(a).

Adopted: December 13, 1988 by Robert Goode, M.D., State Medical Examiner.

Filed: December 16, 1988 as R.1989 d.35, **without change.**

Authority: N.J.S.A. 52:17B-78 et seq., specifically 52:17B-80.

Effective Date: December 16, 1988.

Expiration Date: December 16, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:49.

(c)

ATTORNEY GENERAL

State Police

Chemical Breath Testing

Notice of Correction: N.J.A.C. 13:51-3.6

Take notice that an error appears in the New Jersey Administrative Code at N.J.A.C. 13:51-3.6 concerning Approved methods for performing chemical analysis of a person's breath utilizing an approved instrument. N.J.A.C. 13:51-3.6 should read as follows:

13:51-3.6 Approved methods for performing chemical analysis of a person's breath utilizing an approved instrument

(a) Breathalyzer, Model 900 and Model 900A;

1. (No change in text.)

2. A Breathalyzer check off list may be used with this device and may be prepared by either the manufacturer of the Breathalyzer or the organization using the Breathalyzer. The check off list, if used, shall contain at least the following items:

i. Preparation:

(1) Turn Switch to "on"; wait until thermometer shows 50 degrees Centigrade plus or minus three degrees;

(2) Gauge reference ampoule and place in left hand holder;

(3) Gauge test ampoule; **open**; insert bubbler and connect to outlet.

ii.-iii. (No change in text.)

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

TRANSPORTATION

TRANSPORTATION OPERATIONS

(a)

Speed Limits

Route U.S. 206 in Sussex County.

Adopted Amendment: N.J.A.C. 16:28-1.72

Proposed: November 21, 1988 at 20 N.J.R. 2862(a).

Adopted: December 22, 1988 by John F. Dunn, Jr., Director,
Division of Traffic Engineering and Local Aid.

Filed: December 22, 1988 as R.1989 d.51, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: January 17, 1989.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.72 Route U.S. 206 including U.S. 206 and U.S. 130

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

(e) The rate of speed designated for the certain parts of State highway Route U.S. 206 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-xii. (No change.)

xiii. 40 mph to the northerly end of Route U.S. 206 in Montaque Township, Sussex County, except a 25 mph School Speed Limit within the Montaque Elementary School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours;

xiv. (No change.)

(b)

Restricted Parking and Stopping

Routes N.J. 4 in Bergen County, N.J. 21 in Passaic County, U.S. 30 in Camden County, and N.J. 71 in Monmouth County.

Adopted Amendments: N.J.A.C. 16:28A-1.4, 1.11, 1.21 and 1.38

Proposed: November 21, 1988 at 20 N.J.R. 2862(b).

Adopted: December 22, 1988 by John F. Dunn, Director,
Division of Traffic Engineering and Local Aid.

Filed: December 22, 1988 as R.1989 d.52, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-138.1, 39:4-139 and 39:4-199.

Effective Date: January 17, 1989.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.4 Route 4

(a) The certain parts of State highway Route 4 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-4. (No change.)

(b) The certain parts of State highway Route 4 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-6. (No change.)

7. Along the eastbound (southerly) side in the Borough of Paramus, Bergen County:

i. (No change.)

8. Along the westbound (northerly) side in the Borough of Paramus, Bergen County:

i. (No change.)

ii. Mid-block bus stops:

(1) Forest Avenue and Main Street (at cut-out in front of "The Mall at IV."), beginning 1360 feet east of the easterly curb line of Route 4 exit ramp to Forest Avenue and extending 260 feet easterly therefrom;

(2) Spring Valley Road and Fairview Avenue (at cut-out in front of C.P.I.), beginning 582 feet west of the westerly curb line of the Spring Valley Road Entrance Ramp to State highway Route 4 and extending 190 feet westerly therefrom.

9.-18. (No change.)

(c) (No change.)

16:28A-1.11 Route 21 including Old Route 21 (Passaic Place)

(a) The certain parts of State highway Route 21 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1. (No change.)

2. No stopping or standing in the City of Clifton, Passaic County, along both sides, for the entire length within the corporate limits of the City of Clifton, including all ramps, service roads, and connections thereto which are under the jurisdiction of the Commissioner of Transportation.

3. (No change.)

16:28A-1.21 Route U.S. 30

(a) The certain parts of State highway Route U.S. 30 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-6. (No change.)

(b) The certain parts of State highway Route U.S. 30 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-22. (No change.)

23. Along the eastbound (southerly) side in Waterford Township, Camden County:

i. Near side bus stops:

(1) Pinehurst Drive—Beginning at the westerly curb line of Pinehurst Drive and extending 120 feet westerly therefrom.

(2) Cooper Folly Road—Beginning at the westerly curb line of Cooper Folly Road and extending 105 feet westerly therefrom.

(3) Norris Street—Beginning at the westerly prolonged curb line of Norris Street and extending 135 feet westerly therefrom.

ii. Far side bus stop: Atco Avenue—Beginning at the easterly curb line of Atco Avenue and extending 137 feet easterly therefrom.

24. Along the westbound (northerly) side in Waterford Township, Camden County:

i. Far side bus stops:

(1) Norris Street—Beginning at the westerly curb line of Norris Street and extending 100 feet westerly therefrom.

(2) Bartram Avenue—Beginning at the westerly curb line of Bartram Avenue and extending 120 feet westerly therefrom.

ii. Near side bus stops:

(1) Atco Avenue—Beginning at the easterly curb line of Atco Avenue and extending 120 feet easterly therefrom.

(2) Pinehurst Drive—Beginning at the easterly prolonged curb line of Pinehurst Drive and extending 105 feet easterly therefrom.

16:28A-1.38 Route 71

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

(d) The certain parts of State highway Route 71 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

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- 1.-2. (No change.)
- 3. Along the southbound (westerly) side in the Borough of Spring Lake Heights, Monmouth County:
 - i. Mid-block bus stop: Between Synder Avenue and 2nd Street—Beginning 268 feet north of the northerly curb line of Snyder Avenue and extending 135 feet northerly therefrom.
 - ii. Near side bus stop: Wall Road—Beginning at the southerly curb line of Wall Road and extending 105 feet southerly therefrom.

(a)

DIVISION OF AERONAUTICS
Licensing of Aeronautical Facilities
General Requirements for Licensing

Adopted Amendment: N.J.A.C. 16:54-1.4.

Proposed: November 7, 1988 at 20 N.J.R. 2638(a).
 Adopted: December 8, 1988, James A. Crawford, Assistant Commissioner for Policy and Planning.
 Filed: December 14, 1988 as R.1989 d.31, **without change.**
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29 and 6:1-44.
 Effective Date: January 17, 1989.
 Expiration Date: April 7, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 16:54-1.4 General requirements for licensing
- (a) All persons proposing to operate a new aeronautical facility or demolish and/or modify an existing facility listed in N.J.A.C. 16:54-1.2(a)1, 2, 3, and 4 shall:
- 1.-6. (No change.)
 - 7. Publish a legal notice, when required by the Office of Aviation, the text of which will be provided by the Office of Aviation, in at least two newspapers serving the city, township, municipality, county or other political subdivision.
 - i. One of the papers shall be the primary one designated by the political subdivision for public notices and the second shall be the newspaper designated as secondary, or, if not so designated, shall be a newspaper circulated widely in that community.
 - ii. The notice shall contain the text prepared by the Department and shall provide a 30-day period for public comment and response, after which the Office of Aviation may take further action as necessary to license the facility or to continue processing the application.
 - iii. The applicant shall submit certified proof of publication in at least two newspapers to the Office of Aviation. Where the publication dates differ, the later publication date will be used by the Division in determining the public's opportunity to comment on the proposed construction, demolition or modification.
 - 8. Be prepared to provide relevant data and information regarding the application at a public hearing or at any proceeding requested by the Office of Aviation.

OAL NOTE: Paragraph 8, above, is missing from the New Jersey Administrative Code. The text has been proposed at 12 N.J.R. 289(a) and adopted at 13 N.J.R. 374(c).

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS
Administration
Disbursement Limitations

Adopted Amendment: N.J.A.C. 17:1-1.8

Proposed: November 7, 1988, at 20 N.J.R. 2639(a).
 Adopted: December 12, 1988, by Douglas R. Forrester, Director, Division of Pensions.
 Filed: December 20, 1988 as R.1989 d.37, **without change.**

Authority: N.J.S.A. 52:18A-96 et seq.
 Effective Date: January 17, 1989.
 Expiration Date: May 6, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

17:1-1.8 Disbursement; limitations

All disbursements returned by the Federal post office as "undelivered" shall be redeposited promptly. Disbursements shall be made by check, delivered by the Federal post office or as provided by the Director of the Division of Pensions.

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(c)

NEW JERSEY HIGHWAY AUTHORITY
Garden State Parkway
Pre-Employment Screening

Adopted New Rule: N.J.A.C. 19:8-10.1

Proposed: November 21, 1988, at 20 N.J.R. 2864(a).
 Adopted: December 22, 1988, by the New Jersey Highway Authority, George P. Zilocchi, Executive Director.
 Filed: December 22, 1988 as R.1989 d.44, **without change.**
 Authority: N.J.S.A. 27:12B-5(j) and (s), 27:12B-18, and 27:12B-24.

Effective Date: January 17, 1989.
 Expiration Date: July 5, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 10. PRE-EMPLOYMENT SCREENING

19:8-10.1 Pre-employment screening

(a) Applicants for employment with the New Jersey Highway Authority shall be of good moral character and shall not have been convicted of any crime, the nature of which would indicate that employment would not be in the best interests of Authority patrons and the general public.

(b) The New Jersey Highway Authority shall submit requests for any Criminal History Record Information (CHRI) from the New Jersey State Police regarding any applicant for employment with the New Jersey Highway Authority.

(c) The Director of Personnel or his or her designee shall consider any Criminal History Record Information in connection with other background information when making recommendations for employment. A record of a conviction of a crime in and of itself shall not be sufficient to deny employment.

(d)

ELECTION LAW ENFORCEMENT COMMISSION
Public Financing of General Election for Governor
Adopted Repeals and New Rules: N.J.A.C.

19:25-15.4 and 15.5

Adopted Amendments: N.J.A.C. 19:25-15.14, 15.16, 15.17, 15.20, 15.26 and 15.46.

Proposed: November 7, 1988 at 20 N.J.R. 2642(a).
 Adopted: December 21, 1988 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.
 Filed: December 22, 1988 as R.1989 d.43, **without change.**

OTHER AGENCIES

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Authority: N.J.S.A. 19:44A-38.

Effective Date: January 17, 1989.

Expiration Date: January 9, 1991.

Summary of Public Comments and Agency Responses:

On November 7, 1988 the Election Law Enforcement Commission (hereafter, the Commission) proposed new rule and amendments to its rules concerning public financing of general elections for Governor. The new provisions are substantively similar to the amendments previously proposed and adopted for the rules concerning public financing of primary elections for Governor (see 20 N.J.R. 1339(a) and 20 N.J.R. 2395(a)). A public hearing was conducted on November 15, 1988 at which no testimony was offered. A written comment was received from Assemblyman Anthony J. "Skip" Cimino (D-14th Legislative District).

COMMENT: The commenter objected to the proposed provision at N.J.A.C. 19:25-15.20(d) which would make the publicly-funded candidates' reports of disbursements from the public fund account unavailable for public inspection. He observed that the distribution of public money to gubernatorial candidates should be subject to the same public scrutiny applied to spending activity by the Legislature and Governor and that the public "should be allowed to see an accounting of the disbursements."

RESPONSE: The Commission believes that the reports of disbursements from the public fund account should remain non-public.

In its gubernatorial primary election rule proposal, the Commission treated the reports of disbursements from the public fund accounts as available for public inspection. One commenter responding to the primary election proposal objected to public availability of such information because it would have the effect of placing publicly-financed candidates at a strategic disadvantage vis-a-vis non-participating candidates. The difficulty was that publicly-funded candidates would be compelled to disclose publicly their campaign disbursements and the purposes of the disbursements at the time they applied for public funds, which could be as early as January 23, 1989. Candidates not participating in public financing are not required to disclose publicly their campaign disbursements until 29 days before the primary election (May 8, 1989). In considering the primary election rules, the Commission, therefore, specifically excluded the public fund account expenditure reports from the public and this general election proposal paralleled that decision. All expenditure information, including expenditures from public fund accounts, is ultimately required to be disclosed and is therefore made public on the pre-election and postelection campaign finance reports filed by gubernatorial candidates. The Commission, therefore, believes the only effect of this rule as proposed is, therefore, to maintain uniform public availability of disbursement information until 29 days before the election.

Full text of the adoption follows.

19:25-15.4 Appointment of treasurers and depositories

(a) Each candidate in a general election, whether or not publicly declared and whether or not intending to participate in public funding, shall on or before the first Monday following the date of the primary election for nomination for the office of Governor designate to the Commission the name and address of his or her principal campaign committee for the general election. A candidate may designate as his or her principal campaign committee a committee which has engaged in campaign activity prior to the designation date specified in this subsection.

(b) Each candidate in a general election, whether or not publicly declared and whether or not intending to participate in public funding, shall appoint a campaign treasurer and designate a depository bank account and shall notify the Commission pursuant to N.J.A.C. 19:25-5.2, Appointment by candidates, of such appointment and designation no later than the tenth day after receipt of any contribution or after incurring or making any expenditure, whichever comes first.

(c) No political committee, other than the principal campaign committee designated pursuant to (a) above, may contribute to any candidate or expend on behalf of such candidate more than \$800.00.

19:25-15.5 Pre-candidacy activity

(a) All funds received by an individual, or a committee in his or her behalf, solely for the purpose of determining whether that individual should become a candidate (for example, "testing the waters")

shall be deposited in a separate depository established solely for that purpose.

(b) An individual, or a committee on that individual's behalf, shall file with the Commission a notice containing the name, address and account number of the depository established pursuant to N.J.A.C. 19:25-15.5(a) above not later than 10 days after the receipt of funds for the purpose of determining whether that individual should become a candidate.

(c) In the event the individual on whose behalf funds are received and payments made solely for the purpose of determining whether the individual should become a candidate does in fact become a candidate, the separate depository established pursuant to N.J.A.C. 19:25-15.5(a) above may be designated by that individual as or incorporated with the matching fund account under N.J.A.C. 19:25-15.17(b), provided that the account and all of the contributions deposited in it meet all of the requirements of N.J.A.C. 19:25-15.17(b).

19:25-15.14 Contributions eligible for match; generally

(a) To be eligible for matching with public funds for a gubernatorial general election, a contribution must have been received by a candidate at a time when that candidate was seeking or had sought election for the office of Governor, except that a contribution received and deposited pursuant to N.J.A.C. 19:25-15.7, Separately maintained primary and general bank accounts, or pursuant to N.J.A.C. 19:25-15.5, Pre-candidacy activity, for the purpose of determining whether an individual should become a candidate for election for the office of Governor shall be eligible. Any funds received prior to the inception of such a candidacy, or prior to the inception of fund raising activity to determine whether an individual should become a candidate for election for the office of Governor and not deposited pursuant to N.J.A.C. 19:25-15.5 or pursuant to N.J.A.C. 19:25-7(a) shall not be eligible for match.

(b) (No change in text.)

(c) (No change in text.)

(d) Every contribution eligible for match must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, the amount and date of the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of a check, money order or other negotiable instrument payable on demand and to the order of, or specially endorsed without qualification to, the candidate or to his or her campaign committee, if such check, money order or instrument contains all of the foregoing information.

(e) A contribution received from a contributing member of a political committee which has made a prior contribution to the candidate shall be eligible for matching funds, provided that the political committee is a bona fide political entity with at least 15 contributing members and was not created to circumvent the contribution limit contained in the act.

19:25-15.16 Limitation on contributions eligible for match

(a) Any contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value (such as a watch) shall be eligible for match only to the extent the purchase price exceeds the fair market value of the item or benefit conferred on the contributor, and only the excess will be included in calculating the \$800.00 contribution limit.

(b) A contribution in the form of the purchase price paid for admission to a testimonial affair as defined in N.J.A.C. 19:25-1.7 shall be a contribution eligible for match and for purposes of the \$800.00 limitation.

(c) The purchase price paid to a candidate for a fund raising event, lottery, raffle, or admission to any activity that primarily confers private benefits to the contributor in the form of entertainment (such as a concert, motion picture or theatrical performance) shall be deemed the amount of the contribution made to such candidate. The tickets for such an event or lottery and the promotional materials shall state that the purchase price represents a political contribution to the candidate.

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(a)-(h) (No change.)

(i) Any statement or list submitted pursuant to this section cannot be handwritten.

19:25-15.20 Special account for public funds

(a) The Commission shall maintain for each qualified candidate a separate segregated public fund account for deposit of public funds. All public funds received by the Commission from the General Treasury of the State shall be promptly deposited by the Commission into such separate segregated public fund account. No funds other than such public funds shall be deposited in such separate segregated public fund account, and all expenditures from such account shall be separately identified in reports filed with the Commission.

(b) The campaign treasurer of a candidate on whose behalf a public fund account has been established shall file with the Commission on each date upon which a submission for public matching funds has been made pursuant to N.J.A.C. 19:25-15.17, Matching of funds, and N.J.A.C. 19:25-15.18, Date of submission, and for as long as said public fund account is open and such submissions are being made, a report identifying each disbursement made out of the public fund account since the last such submission for public matching funds. The initial report shall identify all such disbursements. The identification of each disbursement from the public fund account shall include the check number, date of payment, amount of payment, full name of payee, full payee mailing address and a complete statement of purpose of the expenditure indicating which of the permitted purposes set forth in N.J.A.C. 19:25-15.24, Use of public funds, is applicable. Failure to file any such report, failure to provide the identification information required in such report, or failure to expend public funds in compliance with N.J.A.C. 19:25-15.24 may result in immediate cessation of public fund deposits by the Commission.

(c) Any report filed pursuant to this section disclosing an expenditure in an aggregate sum exceeding \$5,000 for the purpose of purchase of media consultant services or other services shall be accompanied by a certification from the payee categorizing media advertising purchases or other services provided, incurred or contemplated, and certifying that such funds have been or will be expended in compliance with N.J.A.C. 19:25-15.24.

(d) The reports of disbursements made from the public fund account submitted pursuant to this section shall not be available for public inspection.

19:25-15.26 Expenses not subject to expenditure limits

(a) The following expenditures by a qualified candidate shall not be subject to the expenditure limit described in N.J.A.C. 19:25-15.11(a)3:

1.-3. (No change.)

4. Election night celebration or event expenses as defined in N.J.A.C. 19:25-15.46(c).

19:25-15.46 Repayment of public or other funds

(a) All public moneys received by a qualified candidate remaining after the liquidation of all lawful obligations with respect to their election shall be repaid to the Commission (for return to the Treasurer of the State of New Jersey) not later than six months after the date of such general election. All moneys other than public moneys, remaining available to any qualified candidate after the liquidation of all obligations, shall also be repaid to the Commission (for return to the Treasurer of the State of New Jersey) not later than six months after the date of such general election; provided, however, that nothing herein contained shall require any candidate to pay to the State Treasurer, a total amount of moneys in excess of the total amount of public moneys received by such qualified candidate from the public fund.

(b) No candidate who has received public funds shall incur any debt or make any expenditure after the date of the election for any purpose other than the following:

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1. To satisfy outstanding obligations incurred on or before the date of the election made for appropriate campaign purposes; or
2. To pay the reasonable and necessary costs of closing the campaign.

(c) An election night celebration or event conducted by a candidate who has received public funds will be deemed a reasonable and necessary cost of closing the campaign provided that it is conducted on the date of the general election.

CASINO CONTROL COMMISSION**(a)****Applications
Fees; Employee License Position Additions and
Deletions****Adopted Amendments: N.J.A.C. 19:41-9.16**

Proposed: November 7, 1988 at 20 N.J.R. 2647(a).

Adopted: December 22, 1988 by the Casino Control Commission,
Walter N. Read, Chairman.Filed: December 22, 1988 as R.1989 d.47, **without change**.

Authority: N.J.S.A. 5:12-63(c), 5:12-69 and 5:12-141.

Effective Date: January 17, 1989.

Expiration Date: May 12, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The Claridge Hotel Casino submitted a comment in support of the proposed amendment. The Claridge stated that the proposed amendment may result in a reduction in requests by casino key employees and casino employees for changes to the endorsements on their licenses, thereby easing the administrative burden for the regulatory authorities.

RESPONSE: The amendment is not intended to limit legitimate requests by casino key employees and casino employees for changes to the endorsements on their licenses. Moreover, the Commission does not believe that the nominal fee being charged for the recoupment of the administrative cost associated with the processing of such requests will have any effect on an employee's decision to delete an unwanted endorsement.

Full text of the adoption follows.

19:41-9.16 Employee license position additions and deletions

(a) (No change.)

(b) A request to delete a position from a license shall require a payment of \$15.00 for each such request. A request to endorse a previously deleted authorized position upon a license shall require payment as set forth in (a) above.

Reletter (b) through (d) as (c) through (e) (No change in text.)

(b)**Accounting and Internal Controls
Jackpot Payouts of Cash
Procedure for Filling Payout Reserve Containers of
Slot Machines****Adopted Amendments: N.J.A.C. 19:45-1.40 and 1.41**

Proposed: August 15, 1988 at 20 N.J.R. 2050(b)

Adopted: December 15, 1988 by the Casino Control Commission,
Walter N. Read, Chairman.Filed: December 15, 1988, as R.1989 d.34, **with substantive
changes** not requiring additional public notice and comment
(See N.J.A.C. 1.30-4.3).

Authority: N.J.S.A. 5:12-63(c).

Effective Date: January 17, 1989.

Expiration Date: March 24, 1993.

OTHER AGENCIES

Summary of Public Comments and Agency Responses:

COMMENT: Thomas C. Bonner, Vice President General Counsel of Showboat Hotel and Casino, supports the amendment. However, he recommends that the combined Jackpot Payout/Hopper Fill form include manual credit meter payouts. Furthermore, Mr. Bonner recommends that N.J.A.C. 19:45-1.1 be amended to include a definition of credit meters.

RESPONSE: Rejected. A substantive change, requiring additional public notice and comment, would be necessary in order to address manual credit meter payouts. This issue will be addressed in a separate proposal.

COMMENT: The Division of Gaming Enforcement supports the amendments with one technical modification that would clarify that all the requirements of N.J.A.C. 19:45-1.40(b) and 1.41(b) apply to the use of this form.

RESPONSE: Accepted. Clarification has been added which requires the Jackpot/Hopper Fill Slip be used in a manner which complies with not only N.J.A.C. 19:45-1.40(b) and 1.41(b) but with the requirements established by the entire rules.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks *thus*).

19:45-1.40 Jackpot payouts of cash

(a) (No change.)

(b) Payouts shall be serially prenumbered forms, each series of Payouts shall be used in sequential order, and the series of numbers of all Payouts received by a casino shall be accounted for by employees independent of the cashiers' cage and the slot department. All original and duplicate void Payouts shall be marked "VOID" and shall require the signature of the preparer. Notwithstanding the above, a serially prenumbered combined Jackpot Payout/Hopper Fill form may be utilized in conjunction with N.J.A.C. 19:45-1.41(b), as approved by the Commission*, **provided that the combined form shall be used in a manner which otherwise complies with the procedures and requirements established by this section***.

(c)-(j) (No change.)

19:45-1.41 Procedures for filling payout reserve containers of slot machines

(a) (No change.)

(b) Hopper Fills shall be serially prenumbered forms, each series of Hopper Fills shall be used in sequential order, and the series numbers of all Hopper Fills received by a casino shall be accounted for by employees independent of the cashiers' cage and the slot department. All originals and duplicate void Hopper Fills shall be marked "VOID" and shall require the signature of the preparer. Notwithstanding the above, a serially prenumbered combined Jackpot Payout/Hopper Fill form may be utilized in conjunction with N.J.A.C. 19:45-1.40(b), as approved by the Commission*, **provided that the combined form shall be used in a manner which otherwise complies with the procedures and requirements established by this section***.

(c)-(k) (No change.)

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(a)

DIVISION OF WATER RESOURCES

Standards and Procedures for Establishing Privileges to Divert Water and for Obtaining Water Usage Certifications for Agricultural or Horticultural Purposes

Readoption with Amendments: N.J.A.C. 7:20A

Proposed: November 7, 1988 at 20 N.J.R. 2663(a).

Adopted: December 16, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Filed: December 16, 1988 as R.1989 d.36, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4).

Authority: N.J.S.A. 13:1B-3, 13:1D-9 and N.J.S.A. 58:1A-1 et seq.

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DEP Docket Number: 041-88-10

Effective Date: Readoption, December 16, 1988. Amendments, January 17, 1989.

Expiration Date: December 16, 1993.

Summary of Public Comments and Agency Responses:

This proposed readoption with amendments was published in the November 7, 1988 New Jersey Register. The public comment period ended on December 7, 1988. Eleven written comments were received.

COMMENT: It may be impossible for a county agricultural agent to verify if a diversion is in a critical aquifer of a critical water supply area unless they are provided with a delineation of the critical aquifers and critical water supply areas.

RESPONSE: Critical Water Supply Areas have been formally established and delineated through rulemaking (see N.J.A.C. 7:19). The Department will continue to serve as a consultant to the county agricultural agent when new and/or modified applications are received or inquiries are made to verify whether an agricultural user is located in any Critical Areas. All existing agricultural water usage certifications in Critical Areas have been identified and modified in accord with the rules and procedures outlined in the Critical Areas Program.

COMMENT: The responsibility for public notice of an application has been reassigned to the county agricultural agent thereby creating an extra workload for the agent. This should be fully clarified with the Cooperative Extension Service prior to adoption.

RESPONSE: N.J.A.C. 7:20A-2.8(b) was inadvertently proposed as requiring the county agricultural agent to publish notice of an application. This has been clarified to require the applicant, in coordination with the county agricultural agent, to have notice of the application published in a newspaper circulating in the territory affected thereby.

COMMENT: The provision for distribution of application forms to the county agricultural agents through the Cooperative Extension Service is deleted in the proposal thereby making the source of the requisite forms unclear.

RESPONSE: Application forms and other necessary instructions are directly provided to the county agricultural agents by the Department and this will be continued. The rule has been modified to reflect this practice.

COMMENT: (1) The requirement that an application for renewal of an existing water usage certification be filed at least three months prior to the expiration date may be missed by farmers who are unfamiliar with the requirement; therefore, there should be some flexibility in the event of inadvertent filing deadline problems.

COMMENT: (2) The requirement that an application for renewal of an existing water usage certification be filed at least three months prior to the expiration date requires close monitoring by the county agricultural agents who are generally under constant demands by farmers for other uses of their time.

RESPONSE: (1) and (2) All New Jersey farmers are expected to comply with these rules. As a courtesy, all farmers with existing certifications due for renewal will be notified by letter from the Department prior to the required time of submission (three months prior to the certification date) by the applicant. The expiration dates of all certifications are on file with the county agricultural agent and Bureau of Water Allocation. The Department will insure that all instances of noncompliance are addressed in accordance with applicable rules.

COMMENT: The modification of an existing water usage certification should not require that a complete new application be submitted and processed unless there is a significant modification. Making this distinction would avoid unnecessary time expenditures for only minor changes to the certification.

RESPONSE: Modification of existing certifications would only be required when the existing certification holder either adds a new source of water supply, requests an increase in the total diversion, requests an increase in pump capacity or any combination of the above. These are all significant changes. As stated in N.J.A.C. 7:20A-1.4(a)3, provisions for emergencies (such as drought) are provided for and such increases in diversion would not constitute a need for any modifications.

COMMENT: The requirement set forth in N.J.A.C. 7:20A-2.2(e) that an accounting of monthly water usage be submitted to the appropriate county agricultural agent on December 31 of each year should not be implied to exceed current practice and become a back-door means of establishing the imposition of metering farm water use.

RESPONSE: The amount of water diverted is most accurately determined by a water meter. However, the Department has allowed the reported water usage to be estimated by time and pump capacity. It may

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be necessary in the future to meter all water users in order to better manage the State's water supplies, especially those in critical water supply areas, or which may be adversely affected by landfills and other potential sources of ground and/or surface water contamination.

COMMENT: The term "critical aquifer" is understood to mean an aquifer duly designated as such under the Department's "critical area" rules and not sole source aquifers or designations by other agencies. There is concern as to possible future changes by various agencies regarding ground water supply and quality and this definition should not be tied to any designation other than the "critical area."

RESPONSE: The definitions of "critical aquifer" and "critical water supply area" were proposed at N.J.A.C. 7:20A-2.13. These definitions make clear that for an aquifer to be considered a "critical aquifer," it must be designated as such under the critical area rules.

COMMENT: Although it has never become part of a rule, information regarding water use, provided by farmers to the Department through the county agricultural agents, should be kept confidential and not shared with other government agencies. This is of further concern as proposals are pending which would link water usage to new methods of taxation for other public purposes.

RESPONSE: Any information which is provided to the Department constituting public information as set forth in N.J.S.A. 47:1A-1 et seq. shall be deemed a public record. This includes information such as agricultural water use as required in this rule.

COMMENT: There should be no water use fees of any type.

RESPONSE: These rules do not include any fee for renewing, modifying or obtaining a new certification.

COMMENT: At the present time, some farmers may not have reported the "grandfather rights" and therefore have not established a legal claim to the basis for a formal water usage certification. The forbearance of the Department is respectfully requested when such situations arise in order that there is no interruption of the farming operation.

RESPONSE: The "Grandfather Rights" as provided by the passage of the Water Supply Management Act of 1981 have lapsed. However, during the renewal process of the agricultural water use certifications, any farmer who would still need to apply for a water usage certification, can do so without any interruption of the farming operation.

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

7:20A-1.3 Definitions

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

...
 "Aquifer" means a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

...
 "Critical aquifer" means an aquifer within a critical water supply area where there may be either insufficient water supply, shortage of ground water by overdraft, threat of salt water intrusion or contamination, or where circumstances existed which required the Department to impose special water supply management provisions by rule pursuant to N.J.A.C. 7:19-6.10.

"Critical water supply area" means any areas to be designated in which special water supply usage conditions shall be mandated pursuant to rules promulgated by the Department pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

...
 "Modification" means a change to a certification including, but not limited to, requests for an increase in certification amount, the addition of a new source, or a change in agricultural/horticultural activity.

...

7:20A-1.4 Applicability

(a) This chapter applies to all persons who have been issued a water usage certification, or to other persons diverting or claiming the right to divert 100,000 or more gallons of water per day for agricultural or horticultural purposes, and to all persons who in the

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future wish to divert 100,000 or more gallons of water per day for agricultural or horticultural purposes except as specified below:

1. (No change.)

2. Water usage certifications shall not be required for a person diverting water from a purveyor or for transfers from a water purveyor within the scope of an existing water usage certification. Modification of a certification shall be required for diversions or transfers of water from certified or permitted usage to another use not within the scope of an existing water usage certification regardless of the same or different ownership of the property.

3.-4. (No change.)

7:20A-1.5 Schedule for applying for water usage certifications and establishing privileges to divert water

(a) Any person who intends to divert 100,000 or more gallons of water per day for agricultural or horticultural purposes shall apply for a water usage certification by following the application procedures set forth in N.J.A.C. 7:20A-2.

7:20A-1.6 Calculation of gallons of water per day for agricultural or horticultural purposes; penalty provision

(a) (No change.)

(b) Any person who fails to comply with this chapter or the Act shall be subject to the penalty provisions set forth in N.J.S.A. 58:1A-16 and N.J.A.C. 7:14-8.

7:20A-1.8 Program information

Unless otherwise specified, any questions concerning the requirements of N.J.A.C. 7:20A-1 and 2 shall be directed to the appropriate county agricultural agent, or to the Bureau of Water Allocation, Water Supply Element, Division of Water Resources, New Jersey Department of Environmental Protection, CN 029, Trenton, New Jersey 08625.

SUBCHAPTER 2. WATER USAGE CERTIFICATION PROCEDURE

7:20A-2.1 (No change in text.)

7:20A-2.2 Information and reports

(a) The Division shall maintain a record of all existing certifications for agricultural or horticultural purposes.

(b) The record required pursuant to (a) above shall include the following information:

1. Name and address of existing certification holders;
2. (No change.)
3. Dates for the term of the certification;
4. Whether location of the existing certification is within a critical water supply usage area; and
5. (No change.)

(c) Copies of the existing certification documents will be provided to the appropriate county agricultural agent upon a written request to the Division.

(d) The appropriate county agricultural agent shall concurrently upon issuance of any water usage certification issued pursuant to this chapter provide the Bureau of Water Allocation of the Division with a copy of the relevant water usage certification.

(e) The appropriate county agricultural agent shall include as standard conditions in all water usage certifications issued pursuant to this chapter the following information to be annually prepared and submitted to the appropriate county agricultural agent:

1. An accounting of monthly water usage on December 31 of each year; and
2. (No change.)

7:20A-2.3 General application procedures

(a) The Department will provide the current application forms required for water usage certification to all county agricultural agents.

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

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7:20A-2.4 Standards and procedures for approval of water usage certifications

(a) In general, an applicant for a water usage certification shall provide all information reasonably available to the applicant which establishes that the application complies with the standards and procedures as follows:

1.-4. (No change.)

5. In the case of surface water only, whether the reduction of the dry season flow of any stream will be caused to an amount likely to produce unsanitary conditions downstream or otherwise unduly injure public or private interests; or

6. (No change.)

(b) Applications for renewal of existing certifications shall supply information not previously established in the existing certification, any information relevant to proposed changes in certification conditions, and other information as requested by the appropriate county agricultural agent or the Division for the proper implementation of the Act and this chapter.

(c) The appropriate county agricultural agent shall review the application and make a determination concerning the accuracy of information submitted pursuant to (a) and (b) above, and based on the appropriate county agricultural agent's actual knowledge of the water systems in the area of the application.

(d) If based upon the appropriate county agricultural agent's actual knowledge, the information submitted is insufficient to indicate compliance with (a) and (b) above, the appropriate county agricultural agent shall request additional information or consideration of the applicant of some more suitable alternative source of water.

7:20A-2.5 Applications for renewal or modification of existing water usage certifications

(a) An application for renewal of an existing water usage certification shall be filed at least three months prior to the expiration date in accordance with the procedures set forth in N.J.A.C. 7:20A-2.3.

(b) All applications for modification to an existing water usage certification shall be processed in accordance with the procedures set forth in this subchapter.

7:20A-2.7 Extension of existing certifications: privileges allowed pursuant to other lawful legislative or administrative actions by county agricultural agent

(a) The appropriate county agricultural agent shall consult the record established pursuant to N.J.A.C. 7:20A-2.2(a) above to determine if an application requests an extension of an existing certification or privileges previously allowed pursuant to other lawful legislative or administrative actions under the same conditions as previously allowed.

(b) If an application requests an extension of the existing certification or privileges previously allowed pursuant to other lawful legislative or administrative actions under the same conditions as previously allowed and the applicant does not request an increase in the amount of water diverted or any modification of the existing certification, the appropriate county agricultural agent may directly issue a new five year certification under the previous conditions plus any additional conditions deemed necessary by the appropriate county agricultural agent or the Division without public notice as set forth in N.J.A.C. 7:20A-2.8(b) below.

(c) N.J.A.C. 7:20A-2.7(a) and (b) shall not apply to diversions located within any designated critical water supply area.

7:20A-2.8 Opportunity to review application by interested parties

(a) (No change.)

(b) The ***applicant, in coordination with the*** county agricultural agent* shall have a notice of the application published in a newspaper circulating in the territory affected by the application within 30 days of the application being deemed complete. A notice is not required for a renewal without modification.

1.-2. (No change.)

7:20A-2.9 Verification of agricultural water need and determination of appropriate processing for application

(a) The county agricultural agent shall verify the need for the water usage requested for all applications submitted and make a determination whether the applications for a water usage certification describes and includes proposed diversions as follows:

1. Within a critical aquifer in critical water supply areas;

2.-3. (No change.)

4. Outside the pinelands area for diversions of not more than 500,000 gallons as calculated pursuant to N.J.A.C. 7:20A-1.6(a).

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

(d) Unless specified in (a)1 or 2 above, if the application for a water usage certification concerns either (a)3 or 4 above or is for renewal of an existing certification, the application may be directly approved or disapproved by the appropriate county agricultural agent without any further processing and pursuant to the standards and procedures for approval of certifications set forth at N.J.A.C. 7:20A-2.4, including conditions deemed necessary by the appropriate county agricultural agent or the Division, and subject to the public notice provisions of N.J.A.C. 7:20A-2.8.

(e) All other applications for a water usage certification not specified in N.J.A.C. 7:20A-2.9 shall be processed pursuant to N.J.A.C. 7:20A-2.8 and 2.10.

7:20A-2.10 Applications referred to the Division

(a) The appropriate county agricultural agent shall forward verification of the applicant's need for water usage requested and the following information to the Bureau of Water Allocation of the Division for all applications pursuant to N.J.A.C. 7:20A-2.9 (b), (c), and (e) above:

1. (No change.)

2. The appropriate county agricultural agent shall forward the application and all other relevant data to the Division's Bureau of Water Allocation for evaluation and review of the application's compliance with the standards and procedures set forth in N.J.A.C. 7:20A-2.4.

(b) The Division's Bureau of Water Allocation shall review and evaluate the application and verification of the need for the water usage and complete the following activities:

1.-5. (No change.)

(c) If no written objection from any interested parties concerning the application for a water usage certification has been made or received by the county agricultural agent and no written objections are made during the Division's Bureau of Water Allocation review process, and the application complies with the standards and procedures set forth in this chapter, then the Division's Bureau of Water Allocation shall:

1. (No change.)

2. Recommend that the appropriate county agricultural agent issue the water usage certification drafted by the Division's Bureau of Water Allocation and based upon the standards and procedures set forth in this chapter.

(d) (No change.)

7:20A-2.12 Notice of public hearing requirements

(a) When a public hearing on a water usage certification is required pursuant to N.J.A.C. 7:20A-2.11(b), or the appropriate county agricultural agent or the Division determines that a public hearing is required in the public interest, the Division shall:

1.-2. (No change.)

3. Notify, in writing, the applicant, the governing bodies of municipalities and counties in the territory affected by the application, and officials of existing public water systems within a five mile radius of the proposed diversion and all Water Allocation permit holders within a one mile radius.

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

(d) Between the time the notice is published and the scheduled date for the public hearing, the Division shall review the application and develop staff recommendations concerning the disposition of the application and any conditions that should be included in the water usage certification if issued.

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1. The staff recommendations shall include and consider the application, the water usage verification of the appropriate county agricultural agent, the Advisory Panel's report, written comments of interested parties, and all other relevant information pertaining to the application. These staff recommendations shall be:

i.-iii. (No change.)

7:20A-2.15 Public hearing report

(a) The hearing officer shall review the application, the water usage verification of the appropriate county agricultural agent, the Division's Bureau of Water Allocation recommendation, the Advisory Panel's report, written comments of interested parties, transcripts from the public hearing, and all other relevant information pertaining to the application and prepare and submit written findings and recommendations to the decision maker for a final recommendation for approval or disapproval of the application for a water usage certification by the appropriate county agricultural agent.

1. (No change.)

7:20A-2.17 Notification of recommendation

The appropriate county agricultural agent shall be notified of the Department's recommendation by either the drafting of a water usage certification with any conditions deemed appropriate, or by a draft letter of denial of the application for signature of the appropriate county agricultural agent stating reasons for the denial.

7:20A-2.19 Record of decision

(a) (No change.)

(b) This record may be reviewed by interested parties at the Division and copies of it may be obtained from the Division upon payment of the fee for duplication.

7:20A-2.21 Validity of water usage certifications issued

(a) (No change.)

(b) The conditions and provisions of previously issued water usage certifications and privileges previously allowed pursuant to other lawful legislative or administrative actions shall remain in effect pending approval or disapproval of an application submitted pursuant to this chapter.

(a)

DIVISION OF WATER RESOURCES

Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities

Adopted New Rules: N.J.A.C. 7:22-10

Proposed: August 15, 1988 at 20 N.J.R. 1983(a).

Adopted: December 20, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Filed: December 22, 1988 as R.1989, d.53, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: P.L. 1985, c. 302; P.L. 1985, c. 329; N.J.S.A. 13:1D-1 et seq.; N.J.S.A. 13:1B-15.128 et seq.; N.J.S.A. 13:1B-15.131; N.J.S.A. 58:10A-1 et seq.; N.J.S.A. 58:11A-1 et seq.; N.J.S.A. 58:11B-1 et seq.; and Executive Order No. 53(1973).

DEP Docket Number: 027-88-07.

Effective Date: January 17, 1989.

Expiration Date: January 5, 1992.

Summary of Public Comments and Agency Responses:

A public hearing was held on September 9, 1988. The comment period closed on September 14, 1988. No written comments were received. Nine comments were provided through testimony of one commenter at the public hearing.

The Department has changed N.J.A.C. 7:22-10.11(j)6 upon adoption, as it contained a typographical error. The word "vegetated" has been corrected in the adoption.

General Issues:

COMMENT: A commenter inquired whether the rules will apply to projects currently in the planning stage.

RESPONSE: Adoption of the rules is anticipated to occur prior to certification of projects in State Fiscal Year 1990, which are the projects currently underway. Furthermore, the rules represent a codification of essentially the same environmental review process which has applied to projects financed with Federal and State funds in the past. Because certification of projects this year will require conformance with the requirements of the rules, it is advised that project sponsors seeking financial assistance in the upcoming year conform at this time with the procedures identified in the rules.

COMMENT: A commenter stated that costs for planning and design will be increased as the result of the enactment of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. ("Act"). The additional costs should be acknowledged in this Statement of Economic Impact set forth in the notice of proposal.

RESPONSE: The Act is a separate statute with implementing rules at N.J.A.C. 7:7A. Activities which are subject to regulation and which require a letter of interpretation and/or a permit under the Act must obtain these regardless of participation in the public financing programs addressed in the adopted new rules (see N.J.A.C. 7:7A-16.) Therefore, any additional costs incurred as the result of complying with the Act are not a result of the adoption of these rules.

N.J.A.C. 7:22-10.2 Definitions

COMMENT: A commenter suggested that wetlands buffers should be defined because they will have a significant effect on planning and design of projects.

RESPONSE: The concept of a regulated wetlands buffer is part of the Act and is defined in the implementing rules at N.J.A.C. 7:7A. While projects pursuing State financing will be required to obtain all applicable permits, the adopted rules do not in themselves specify any requirements with respect to wetlands buffers and do not utilize this term. Therefore, no definition is necessary.

7:22-10.11 Design requirements

COMMENT: A commenter suggested that the required replacement of trees removed following construction in wooded areas should be omitted. The commenter claimed that replaced trees generally do not survive under adverse conditions and are a waste of money. In addition, replanting within easements is inconsistent with the need to maintain access to facilities. Instead, project sponsors should focus on avoiding wooded areas in locating proposed facilities.

RESPONSE: The rules include a requirement to select alternatives which minimize adverse environmental impacts and to minimize clearing within approved easements during construction (see N.J.A.C. 7:22-10.1(c)4 and N.J.A.C. 7:22-10.11(d)). However, in order to adequately mitigate the adverse impact of clearing woodlands, such as loss of habitat, increased erosion and sedimentation, and increased stream temperatures, it is necessary to replace native vegetation to the extent practicable. It is not intended that trees be replanted directly over pipelines. An access path is permitted, except in environmentally critical areas, as set forth in N.J.A.C. 7:22-10.11(d). Further, if the replacement trees are planted and cared for in accordance with approved specifications and good nursery practice, survival is generally good.

COMMENT: A commenter inquired concerning how the specified rate of tree replacement, 10 trees per 100 linear feet of 50 foot wide easement, was derived.

RESPONSE: This rate was calculated from restoration schedules typically encountered over years of experience with the Federal Construction Grants Funding Program.

COMMENT: One commenter claimed that the requirements pertaining to acid-producing deposits are unfamiliar and appear to be excessively costly to implement.

RESPONSE: Acid-producing deposits are found in geologic formations which are encountered in specific parts of the State. The Department has formulated these requirements based on experience with construction projects that have encountered acid-producing deposits (see N.J.A.C. 7:22-10.11(j)). Similar procedures are incorporated in N.J.A.C. 7:13-5.10 which regulates construction in floodplains, as well as in Chapter II of the Statewide Water Quality Management Program Plan, and have been part of the design and construction requirements under the Federal construction grants program since 1979. The environmental damage that

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results from improper handling of acid-producing deposits is long-term and difficult to remedy. It may require more than 50 years for soil to recover sufficiently to support plant growth. The amount of lime required to balance the soil's pH would be enormous. Prevention procedures are critical to avoiding adverse impacts and are less costly than attempting to remedy an existing problem. Normal requirements for planning and design should be sufficient to identify those situations in which there is reason to be concerned that acid-producing deposits will be encountered (see N.J.A.C. 7:22-10.5(b)10).

COMMENT: One commenter suggested that the requirement for testing of soil under the acid-producing deposit requirements should clarify whether the soil to be tested is the in situ soil or imported soil.

RESPONSE: The Department agrees with the commenter. N.J.A.C. 7:22-10.11(j)6 is being revised to identify that the soil to be tested is the in situ soil remaining after construction is complete.

COMMENT: One commenter suggested that the requirement for sodding to stabilize steep slopes should be omitted because it is unlikely to be effective.

RESPONSE: The "Standards for Soil Erosion and Sediment Control in New Jersey" prepared by the New Jersey State Soil Conservation Committee (1987), stipulate sodding as an option for stabilizing sloping areas. N.J.A.C. 7:22-10.11(i) stipulates sodding as one of several options for restoring steep slopes. It is not appropriate to eliminate sodding as an option and, as such, it will be retained as an identified option for slope stabilization.

COMMENT: One commenter suggested that in lieu of an environmental maintenance bond, or in addition to a bond, contractors should be required to establish an escrow account which would be forfeited to the local government unit if that contractor were to default on restoration. This method would be more effective than the current requirements for a bond which provides that, in the case of default, litigation be commenced in order to recover funds.

RESPONSE: The environmental maintenance bond has been the mechanism used as the protection against default on environmental restoration by the Federal construction grants program. The suggested alternative/supplement may be an acceptable mechanism. The merits of this suggestion are being evaluated by the Department and, if found to be acceptable, may be proposed in a subsequent revision to the rules.

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

SUBCHAPTER 10. ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR STATE ASSISTED WASTEWATER TREATMENT FACILITIES

7:22-10.1 Scope and construction

(a) This subchapter shall constitute the rules of the New Jersey Department of Environmental Protection regarding the environmental assessment requirements for projects receiving financial assistance pursuant to N.J.A.C. 7:22-3, 4, and 6.

(b) This subchapter shall be liberally construed to permit the Department to effectuate the purposes of the Wastewater Treatment Bond Act of 1985 (P.L. 1985 c. 329), the Wastewater Treatment Trust Act of 1985, N.J.S.A. 58:11B-1 et. seq., and the Pinelands Infrastructure Trust Bond Act of 1985 (P.L. 1985 c. 302).

(c) This subchapter is promulgated for the following purposes:

1. To implement the purposes and objectives of the Wastewater Treatment Bond Act of 1985 (P.L. 1985 c. 329), the New Jersey Wastewater Treatment Trust Act (N.J.S.A. 58:11B-1 et seq.), and the Pinelands Infrastructure Bond Act of 1985 (P.L. 1985 c. 302);

2. To establish environmental assessment requirements which must be complied with in order to receive financial assistance provided pursuant to N.J.A.C. 7:22-3, 4, and 6;

3. To protect the public and the State of New Jersey by ensuring that funds appropriated are spent in a proper manner for the intended purposes while avoiding or minimizing adverse environmental impacts; and

4. To identify in a comprehensive manner the environmental objectives and constraints, planning and design requirements, and construction inspection procedures which must be observed in order to

achieve the goal of avoiding or minimizing direct and indirect adverse environmental impacts.

7:22-10.2 Definitions

Unless otherwise specified, the terms used herein shall have the same meanings as those terms are defined in N.J.A.C. 7:22-3 and 4. Additional definitions are as follows:

"Administrative action" means Department approval of planning or design documents or offer of award for loan assistance.

"Agricultural Development Areas" means those areas designated as such pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq.

"Cultural resource" means any prehistoric or historic district, site, building, structure, or object listed in or eligible for listing in the New Jersey Register of Historic Places established pursuant to N.J.S.A. 13:1B-15.128 et seq., or the National Register of Historic Places, established pursuant to 16 U.S.C. §470-470-6 (1982). Eligibility criteria for listing on the New Jersey Register of Historic Places are set forth at N.J.A.C. 7:4-1. Eligibility criteria for listing on the National Register of Historic Places are set forth at 36 CFR Part 60.6.

"Designated habitat" means an area which has been designated as critical habitat for an endangered species in accordance with the Federal Endangered Species Act, 16 U.S.C. §§1531 et seq.

"Direct impact" means an impact that is associated with the location and construction of a proposed project.

"Endangered species" means a plant or animal species which has been designated as endangered pursuant to either the New Jersey Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq. or the Federal Endangered Species Act, 16 U.S.C. §§1531 et seq.

"Environmentally constrained area" means areas in which development is in some way restricted including wetlands, floodplains, endangered species sites or designated habitats, parks and preserves and Agricultural Development Areas.

"Environmentally critical area" means an area or feature which is of significant environmental value, including but not limited to wetlands, floodplains, important farmlands, Agricultural Development Areas, steep slopes, endangered or threatened species and their designated habitats, important aquifer recharge areas, coastal areas, stream corridors, parks, and preserves.

"Floodplain" means the 100-year floodplain as delineated on Federal Emergency Management Agency maps or the area subject to regulation under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 and implementing rules at N.J.A.C. 7:13, whichever is greater.

"Indirect impact" means an impact that may be caused as a result of providing new or improved wastewater management facilities, but not generally as the result of constructing the facilities.

"Important farmlands" are those areas mapped as such on the United States Department of Agricultural, Soil Conservation Service, Important Farmlands maps, subject to update to reflect conversion of use.

"Planning area" means that area for which a wastewater management project is proposed, including the proposed service area, as well as the extent of the area which could be impacted, directly or indirectly, by the proposed project.

"Professional qualified archaeologist" means an archaeologist whose credentials satisfy the criteria as set forth in "Recovery of Scientific, Prehistoric, Historic and Archaeological Data: Methods, Standards, and Reporting Requirements, 36 CFR Part 66, Appendix C(b) incorporated into this chapter.

"Provenience" means the cultural association of an object as well as its horizontal and vertical location at a site or surveyed area.

"Register" means the New Jersey Register of Historic Places and/or the National Register of Historic Places.

"Service area" means that area which is intended to be served by a proposed wastewater management project in the course of the design period.

"Significant" means a subjective determination in terms of both context and intensity of effect as defined at 40 CFR Part 1508.27.

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"Threatened species" means a plant or animal species which has been designated as threatened pursuant to either the New Jersey Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., and N.J.A.C. 7:25-4 or the Federal Endangered Species Act, 16 U.S.C. §§1531 et seq.

"Wetlands" means those areas defined as wetlands under any of the following statutes and implementing rules as applicable:

1. New Jersey Coastal Wetlands Act, N.J.S.A. 13:9A-1 et seq., at N.J.S.A. 13:9A-2, (Authority of Commissioner to adopt, modify or repeal orders regulating, altering, or polluting coastal wetlands; coastal wetlands defined);

2. New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., at N.J.S.A. 13:9B-3, (Definitions, Freshwater Wetland), N.J.A.C.7:7A-1.4 (Definitions, Freshwater wetland or wetland);

3. Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., at N.J.S.A. 13:19-4, (Coastal Area boundaries); N.J.A.C. 7:7E-3.25 (Wetlands); and

4. Pinelands Protection Act, N.J.S.A. 13:18-1 et seq., at N.J.S.A. 13:18A-3, (Definitions), and N.J.S.A. 13:18A-11, (Boundaries of pinelands and preservation areas; official state planning maps of Pinelands National Reserve, and pinelands protection and preservation areas); N.J.A.C. 7:50-3.1 (Purpose); N.J.A.C. 7:50-6.3, (Wetlands), N.J.A.C. 60-60.4 (Coastal Wetland) and N.J.A.C. 50-6.5 (Inland wetlands).

7:22-10.3 Establishing the level of environmental review

(a) To initiate the planning process, the local government unit may be required by the Department to attend a preplanning meeting with the Department. When a preplanning meeting is required, the local government unit shall be required to provide a preplanning summary including a brief written description of the proposed planning area, the wastewater management needs, the preliminary wastewater management alternatives to be considered, and a preliminary appraisal of potential beneficial and adverse environmental and cultural resource impacts of the alternatives. A map of the proposed planning area shall also be included. On the basis of this information, as well as any other information that may be available to the Department, the Department shall make a preliminary decision regarding the level of environmental review, Level 1, 2, or 3, that shall be required.

(b) The Department shall make a preliminary determination regarding the requirements for cultural resource study on the basis of the preplanning summary or other information available, in accordance with N.J.A.C. 7:22-10.8.

7:22-10.4 Level 1 environmental review

(a) Projects qualifying for this level of environmental review may include the following categories of projects:

1. Rehabilitation of existing conveyance and/or collection facilities; or

2. Construction of ancillary facilities or minor improvements to treatment facilities which do not create a new discharge, reduce the level of treatment, or result in an increase in the quantity of flow of an existing discharge.

(b) Projects which conform to one of the categories identified in (a) above but which have any of the following characteristics shall not qualify for a Level 1 environmental review:

1. The project can be expected to have a permanent adverse or a significant temporary adverse effect on the human environment;

2. The project can be expected to have a permanent adverse or a significant temporary adverse direct or indirect impact on cultural resources, endangered or threatened species or designated habitats, wetlands, floodplains, important farmlands or other environmentally critical areas;

3. The user cost for the project significantly exceeds 1.75 percent of the median annual household income, as determined and modified according to N.J.A.C. 7:22-10.5(b)11; or

4. The project is expected to result in significant adverse public comment.

(c) Where a Level 1 review has been determined to be appropriate, a Level 1 environmental planning document shall be submitted by the local government unit to the Department for review. The Level 1 environmental planning document shall be of sufficient scope to

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permit the Department to verify the preliminary determination to proceed with this level of review. Information to be provided in the environmental planning document shall include the following:

1. A brief description of the need for the proposed activity, the nature and location of any structures to be built, and a map of the service area of the affected wastewater management facilities;

2. A suitable 8½ inch by 11 inch map of the planning area which depicts the location of the proposed activity. An 8½ by 11 inch site plan showing areas of proposed construction should also be included where appropriate to the type of project proposed;

3. A narrative describing the extent of beneficial and adverse impact on environmental or cultural resource features that can be expected as a result of implementing the proposed project and basis for concluding that the proposed project qualifies for a Level 1 environmental review in accordance with (a) and (b) above;

4. A summary of alternatives available, including, at a minimum, the no action alternative, and the basis for selecting the proposed action. The basis discussion shall include the costs, impacts and effectiveness of the proposed alternatives relative to achieving the identified need as compared with other alternatives considered; and

5. A summary of the involvement of the public in the development and selection of the proposed project.

(d) The Department will review the environmental planning document submitted by the local government unit and will make one of the following determinations:

1. The Level 1 environmental planning document is complete, acceptable, and verifies the preliminary determination to proceed with this level of environmental review. In this case, the Department will issue a Level 1 decision statement which will be sent to a project mailing list developed in accordance with N.J.A.C. 7:22-10.10(c). The local government unit shall publish a notice in a newspaper of general circulation in the planning area within two weeks of the date of the Department's decision statement. The notice shall describe the proposed action, indicate the decision by the Department to approve the project, and advise the public that the local government unit shall, upon written request, make available for public review both the planning documents and the Department's decision statement. Upon issuance of the decision statement, the Department may proceed with award of a loan, subject to the provisions of (e) below, and provided the other requirements of the program have been met as specified in N.J.A.C. 7:22-3, 4 and 6.

2. Additional information is required to make a final determination. In this case, the Department will notify the local government unit in writing of the deficiencies and the local government unit shall be responsible to satisfy the deficiencies. The Department may establish a timeframe for response which, if not met, could result in a bypass of the proposed project in the applicable funding cycle.

3. A Level 1 environmental review is not appropriate. In this case, the Department will notify the local government unit of this determination and will identify whether the project is elevated to a Level 2 or Level 3 environmental review.

(e) If, at any time up until the initiation of construction, additional information becomes available, the project is modified or conditions change, such that the project would not qualify for a Level 1 environmental review, the Department will require the local government unit to proceed with a Level 2 or Level 3 review, whichever is determined appropriate by the Department.

7:22-10.5 Level 2 environmental review

(a) If a project does not qualify for a Level 1 environmental review, but the Department determines that a Level 3 environmental review is not warranted, then a Level 2 environmental review is required.

(b) For a Level 2 review, environmental planning documentation shall be submitted by the local government unit consisting of an environmental information document, results of investigations and consultations conducted pursuant to N.J.A.C.7:22-10.9, and results of public participation conducted pursuant to N.J.A.C. 7:22-10.10. At a minimum, a public hearing shall be required prior to submittal of the planning document to the Department. The environmental information document shall include, where applicable, the following information:

1. A geographical description of the planning area;

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2. A clear map of the planning area. The scale of the map should generally be one inch equal to 2000 feet. However, where the size of the planning area is inappropriate to this scale, a larger or smaller scale map may be required by the Department;

3. A description of and mapping, where applicable, of existing environmental conditions and features including:

i. Existing water quality and uses including a comparison to New Jersey water quality standards and uses established in accordance with N.J.A.C. 7:9-4, 5 or 6;

ii. Hydrologic characteristics;

iii. Water supply source, current demand and current reliable supply. Identify any designated sole source aquifer or critical water supply areas located in the planning area, if applicable;

iv. Geology, topography and soils types and limitations with respect to the use of on-site systems or land application of effluent or residuals. Soil information shall be taken from the Soil Conservation Service county soils maps and interpretations unless more accurate field evaluation of the specific project area is available;

v. Regional air quality and comparison to New Jersey Air Quality Standards established pursuant to N.J.S.A. 26:2C-1 et seq;

vi. General plant and animal communities existing in the planning area;

vii. Existing land use and zoned use permitted for undeveloped areas in the planning area;

viii. Environmentally critical areas within the planning area, including, but not limited to, wetlands, floodplains, important farmlands, Agricultural Development Areas, important aquifer recharge areas, coastal areas, stream corridors, parks and preserves, steep slopes, and locations of endangered or threatened species or designated habitats; and

ix. Areas subject to the jurisdiction of the Pinelands Commission, Coastal Area Facility Review Act, or the Hackensack Meadowlands Development Commission.

4. The purpose and need for the project in terms of surface water or groundwater pollution or public health problems that can be attributed to the existing wastewater management facilities;

5. A description of the future environment without the proposed project;

6. A description of existing wastewater treatment facilities. Include the location of facilities, the service areas, treatment level of treatment plants, the design capacities, and the actual wastewater flows. Provide the actual wastewater flow according to source:

i. Residential;

ii. Commercial;

iii. Industrial; and

iv. Infiltration/inflow.

7. An environmental constraints analysis is required and shall be prepared according to the following procedure:

i. Overlay mapping of environmentally constrained areas, which include wetlands, floodplains, endangered species sites or designated habitats, parks and preserves, and Agricultural Development Areas, in the planning area with mapping of existing land use and permitted zoning for currently undeveloped areas. Areas not yet developed which are not environmentally constrained are considered developable. Environmentally constrained, developed, and developable areas shall be clearly depicted on the mapping to be submitted.

ii. Determine the extent of development which could occur according to permitted zoning in developable areas. This should be represented as the number of dwelling units and population for residential areas and area coverage for commercial and industrial areas. These figures shall be used in calculating the maximum wastewater flow that may be considered in planning wastewater treatment facilities.

8. A description of alternatives considered, including the no action alternative;

9. A cost comparison of alternatives, including capital costs, operation and maintenance costs, user cost and total project cost on a present worth basis;

10. A description of the environmental impacts for each alternative including beneficial and adverse direct, indirect and cumulative effects with other projects. Include an assessment of impacts of alternatives on the following:

i. Surface water and groundwater quality and quantity and hydrology;

ii. Plant and animal communities or other natural resources;

iii. Environmentally critical areas, as identified in (b)3 viii above;

iv. Air quality, especially with respect to consistency with the New Jersey State Implementation Plan prepared pursuant to the Federal Clean Air Act, 42 U.S.C. §§7401 et seq., and the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.; and

v. Social and economic factors including, but not limited to, dust, noise, odors, nuisances, traffic, or hazards.

11. A description of the selected plan including, where applicable, the following:

i. Wastewater treatment processes, treatment level, design flow, capacity of units, effluent quality, discharge location. Include a site plan of the construction area. Design flow shall be broken down into residential, commercial, industrial, and infiltration/inflow components;

ii. A map of the service area of each treatment plant as well as areas to be served with on-site systems. Unless otherwise directed by the Department, this map shall be at a scale of one inch equal to 2000 feet. Include on the map the service area of each treatment plant and the environmentally constrained areas and indicate that no wastewater treatment services shall be provided to environmentally constrained areas, except where development requiring wastewater treatment facilities is specifically permitted by the Department;

iii. Location, size, and capacity of the collection and/or conveyance facilities. Unless otherwise directed by the Department, the location shall be mapped at a scale of one inch equal to 2000 feet;

iv. A summary of costs, including capital, operation and maintenance, present worth of total project cost and anticipated user cost;

v. A comparison of user cost to the median annual household income in the planning area. The base income data source shall be the latest United States Census. Income data shall be updated to the present using the consumer price index or other equivalent means;

vi. A summary of environmental impacts of the selected alternative, as discussed in (b)10 above;

vii. Adverse impacts that cannot be avoided;

viii. The relationship between short term uses of the environment and enhancement of long term productivity;

ix. Irreversible and irretrievable commitments of resources to the project; and

x. Mitigating measures to be incorporated during design, construction, and/or the life of the project.

12. A description of steps needed and timeframe for implementation of the project;

13. The identity of the owner or operator of the proposed facilities;

14. A list of any permits needed to implement the project and the status of obtaining the applicable permits;

15. A summary of the results of coordination with affected Federal, State, regional, or local agencies and the public, carried out in accordance with N.J.A.C. 7:22-10.9 and 10.10; and

16. Identification and assessment of consistency of the proposed project with the areawide Water Quality Management Plan which would apply to the planning area, and an assessment of whether or not the proposed project would trigger preparation of a wastewater management plan or a water quality management plan amendment in accordance with N.J.A.C. 7:15.

(c) The Department will review the environmental planning documentation submitted by the local government and will make one of the following determinations:

1. The Level 2 environmental planning documentation is complete, and acceptable, and there will be no significant adverse impacts as a result of the proposed project. In this case, the Department will prepare and issue a preliminary Level 2 decision statement and an environmental appraisal as set forth in (d) and (e) below.

2. The Level 2 environmental planning documentation is incomplete. The Department will provide written notification to the local government unit regarding the deficiencies. The local government unit will be responsible for correcting the deficiencies. The Department may establish a timeframe for response which, if not satisfied, could result in the bypass of a proposed project in the applicable funding cycle.

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3. The Level 2 documentation is complete or incomplete but there would be a significant adverse impact if the proposed project were implemented. The Department will initially direct the local government unit to develop and evaluate other alternatives which would not have a significant adverse impact. If such an alternative is available, the Department will direct the local government unit to select an alternative with no significant adverse impact or forgo financial assistance. If no such alternative can be identified, then the Department will require the applicant to initiate the Level 3 environmental review process as set forth in N.J.A.C. 7:22-10.6.

(d) When appropriate, in accordance with (c)1 above, the Department will prepare and issue a preliminary Level 2 decision statement and environmental appraisal to the mailing list developed for the project in accordance with N.J.A.C. 7:22-10.10(c). The Department will take no further administrative action until after the conclusion of a 30-day comment period on the decision statement. If no significant adverse comment is received at that point, the Department will approve the planning and may proceed with an offer of loan assistance, provided the other requirements of the program, as set forth at N.J.A.C. 7:22-3, 4 and 6, have been met.

(e) The Level 2 environmental appraisal attached to the decision statement will be the Department's summary of the proposed project and its impact and will include the following information:

1. A proposed project identification;
2. A proposed project description;
3. An evaluation of alternatives considered for the project area;
4. The environmental consequences of the selected plan. This will include beneficial and adverse direct and indirect impacts to water quality and hydrology, air quality, noise, natural resources, cultural resources, and environmentally critical areas;
5. Population and wastewater flow projections;
6. Social and economic impacts of the proposed project;
7. Required mitigating measures;
8. A summary of the coordination with other agencies and the public regarding the proposed project;
9. References to documents used in preparation of the environmental appraisal; and
10. Maps of the planning area, service areas and the location of the proposed construction.

7:22-10.6 Level 3 environmental review

(a) The Department may determine that a Level 3 environmental review is required pursuant to N.J.A.C. 7:22-10.3, 10.5(c), or as a result of significant adverse comment received in response to the Department's issuance of a Level 1 or Level 2 decision statement.

(b) Additionally, the Department will require a Level 3 review when any of the following conditions are present:

1. The proposed project is expected to have significant adverse effects on the pattern and type of land use or growth and distribution of population in the project area;
2. Construction of the proposed project is expected to directly displace a significant amount of population or have a significant adverse effect on a residential area;
3. The proposed project is expected to directly or indirectly conflict significantly with Federal, State, regional, or local land use plans or policies;
4. The proposed project is expected to have significant adverse effects on environmentally critical areas either directly or indirectly or as the result of cumulative effects with other related projects; or
5. The proposed project may directly or indirectly have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface water or groundwater quality or quantity, water supply, fish, shellfish, wildlife or their natural habitats.

(c) If a Level 3 environmental review is required by the Department prior to completion of a Level 2 environmental information document, then an environmental information document shall be prepared in accordance with N.J.A.C. 7:22-10.5(b). In addition, an environmental impact statement shall be prepared under a Level 3 environmental review. Environmental impact statements shall be prepared by the local government unit. The Department will approve the scope, content and conclusion of both draft and final en-

vironmental impact statements prior to publication. The procedure shall be as follows:

1. The Department will issue a notice of intent to prepare an environmental impact statement which will be published in at least two newspapers of general circulation in the State.

2. The Department will conduct a meeting to establish the scope of the environmental impact statement. Affected government agencies, environmental groups, local officials and other interested parties will be invited to the meeting for the purpose of defining the following:

- i. Critical issues to be addressed by the environmental impact statement;
- ii. The preliminary range of alternatives to be considered;
- iii. The information or other analysis required from other agencies;
- iv. The method of environmental impact statement preparation;
- v. The strategy for soliciting public participation including the techniques that will be used and the timing of participation activities;
- vi. Consultation requirements with regard to affected government agencies;
- vii. The relationship between the environmental impact statement and other documentation already prepared in support of the project and the information necessary to complete the project documentation requirements; and
- viii. The coordination procedure required between the Department and the preparers of the environmental impact statement to insure the Department's controlling role in environmental impact statement preparation.

3. The local government unit shall prepare a preliminary draft environmental impact statement which contains the information required by (c)2 above in the format required by (d) below.

4. The Department will review the preliminary draft environmental impact statement, and if necessary, require the local government unit to make additions or modifications to the content or conclusions of the preliminary draft environmental impact statement.

5. When the preliminary draft environmental impact statement is determined by the Department to be satisfactorily complete, the Department will direct the local government unit to print the preliminary draft environmental impact statement, which will then become known as the draft environmental impact statement.

6. The local government unit shall distribute the draft environmental impact statement to the mailing list developed for the project pursuant to N.J.A.C. 7:22-10.10(c) and shall place copies in public repositories in the planning area.

7. The local government unit shall give notice of and hold a public hearing on the draft environmental impact statement. Notification of the hearing shall be sent to the persons on the project mailing list and shall be placed in at least two newspapers of general circulation in the State at least 30 days prior to the date of the hearing. The draft environmental impact statement shall be available for public review during the 30 day notice period and the newspaper notice shall advise the public of the locations of copies of the draft environmental impact statement available for public review. The local government unit shall provide a verbatim transcript of the hearing. Written comments shall be accepted by the local government unit for a minimum of 15 days following the public hearing.

8. The local government unit shall prepare a final environmental impact statement in accordance with (f) below. The Department will approve the content and format of the final environmental impact statement prior to publication.

9. The local government unit shall give notice of and hold a public hearing on and distribute the final environmental impact statement, in the same manner as for the draft environmental impact statement in accordance with (c)6 and 7 above.

10. After the conclusion of the comment period for the final environmental impact statement, the Department will prepare a Level 3 decision statement which will respond to comments received on the final environmental impact statement, set forth the decision made by the Department, and the basis for the decision. No administrative action will be taken by the Department prior to the conclusion of a 30-day comment period for the decision statement. If no further

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significant adverse comment is received during the comment period for the decision statement, the Department will approve the planning and the Department may proceed with an offer of assistance, provided other program requirements as set forth in N.J.A.C. 7:22-3, 4 and 6, have been met. If adverse comment is received which was not adequately addressed in the environmental impact statement process, the Department may require a supplemental evaluation and decision statement or may determine not to participate in the proposed project.

(d) Unless directed otherwise by the Department, the format and content of the draft environmental impact statement shall be as follows:

1. A cover sheet noting title, agencies responsible for development of the draft environmental impact statement, contact person, and the date by which comments must be submitted;

2. A summary which stresses areas of controversy, issues to be resolved, major conclusions, and recommendations;

3. The purpose and need for the proposed project;

4. An identification and comparison of alternatives previously considered including the proposed project and no action, as well as any new alternatives which may be feasible. The comparison shall rigorously and objectively evaluate each alternative and present the beneficial and adverse impacts of each alternative;

5. An identification of the preferred alternative and possible mitigating measures;

6. A description of the affected environment. This description should be brief and draw on or reference information compiled in the Level 2 environmental information document;

7. The environmental consequences of the proposed action, if it were to be implemented, including:

i. Adverse environmental impacts that cannot be avoided;

ii. The relationship between short-term uses of the environment and the maintenance or enhancement of long-term productivity;

iii. Irreversible or irretrievable commitments of resources; and

iv. Mitigating measures that would be required to make the proposal acceptable.

8. A description of the coordination and public participation that has occurred for the project;

9. A list of preparers, including names and qualifications;

10. The mailing list developed for the project; and

11. An appendix, if applicable, with analyses or other material which substantiate evaluations contained in the draft environmental impact statement.

(e) The final environmental impact statement, maintained in the Department's file for the project shall contain copies of the correspondence received and responses to written comments, comments received at the hearing for the draft environmental impact statement, any additional information compiled or modifications made to the project as the result of comments, where applicable, and mitigating measures that will be required to make the proposed project acceptable.

7:22-10.7 Re-evaluation of environmental decision statements

(a) The local government unit shall certify in writing that the project submitted in the design phase is the same as that which was described in the environmental decision statement and approved in the planning phase, and includes all mitigating measures developed for the project in the planning phase. If this certification cannot be made, then the local government unit shall describe the proposed project modifications, the reason for the changes, and the costs and environmental impacts of the revised project. The Department may request additional information or additional public participation regarding the proposed modifications. On the basis of information available, the Department will determine if there is a need to issue a revised environmental decision statement or elevate the project to a Level 2 or Level 3 environmental review and proceed accordingly.

(b) Where five or more years have elapsed between the issuance of a Level 1, 2, or 3 environmental decision statement and the proposed award of financial assistance, and where the Department determines that there are no significant changes in the proposed project or its impact based on the certification made according to (a) above, then the Department will issue a public notice to the

persons on the previously established project mailing list stating that the Department intends to proceed with an award of financial assistance for the previously approved project.

7:22-10.8 Cultural resource survey requirements

(a) Based upon the preplanning summary prepared in accordance with N.J.A.C. 7:22-10.3, the Department will make a preliminary determination regarding the need for and scope of a cultural resource survey. Factors that will affect this preliminary evaluation include:

1. The type and extent of the activity under consideration, particularly the nature of the physical disturbance that may be associated with the proposed undertaking;

2. The environmental characteristics of the planning area; and

3. If known, the likelihood of cultural resource material being present in the planning area.

(b) The Department may determine during the preliminary evaluation that the nature of the proposed project, in terms of ground disturbance or standing structure modifications, will have no impact upon cultural resources. In such cases, no survey will be required and the project may proceed without further cultural resource consideration.

(c) If the Department determines that a cultural resource survey is required for the proposed project, then the Department shall direct the local government unit to secure the services of a professional, qualified archaeologist to prepare the appropriate level of survey as directed by the Department.

(d) The local government unit shall submit to the Department a scope of work for each level of cultural resource survey required, as directed by the Department in accordance with (c) above. The scope of work shall be prepared by a professional, qualified archaeologist. No cultural resource survey shall be initiated until the Department reviews and approves, in writing, the scope of work for the cultural resource survey.

(e) The levels of cultural resource survey are progressive and the Department may decide at the conclusion of any given level that adequate documentation has been presented for the Department to issue a determination of effect as defined in (f) below. The local government unit shall not proceed with a subsequent survey level until directed to do so by the Department.

(f) The following are the levels of cultural resource survey that the Department may require:

1. The first level of investigation is the Stage IA Documentation Review and Strategy Development Survey which consists of the following:

i. A broad-based literature search that provides a concise but comprehensive discussion of the prehistoric and historic development of the planning area;

ii. An analysis of the documentation obtained from the State Historic Preservation Officer, the State Archaeologist, State and local libraries and museums, historic and archaeological societies, and universities;

iii. An environmental and geological analysis of the planning area, which taken with the archaeological and historic documentation, will predict areas of varying potential for the presence of cultural resources;

iv. An initial field inspection of the planning area; and

v. Recommendations for additional surveys, such as field testing and verification, that may be required.

2. The next level of investigation is the Stage IB Site Recognition Survey which consists of the following:

i. Subsurface testing for the identification of previously undocumented archaeological sites. The subsurface tests shall be of sufficient depth to sample all soil strata that may potentially contain evidence of past human activity;

ii. An explanation, clearly presented and justified, of the survey methodology employed;

iii. The identification of previously undocumented historic sites or structures which require further architectural consideration;

iv. A clear presentation of the results of the survey; and

v. Recommendations for further actions concerning the avoidance of identified cultural resources or additional surveys.

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3. The next level of investigation, the Stage II Site Definition and Evaluation Survey, is required if the potential direct or indirect impacts of the proposed project cannot be reasonably avoided by project modification or when there is insufficient data (extent, depth, significance) about the resource to assess avoidance or preservation alternatives. The Department will determine the need for a Stage II survey based upon an evaluation of the Stage IB survey report in conjunction with planning documentation prepared by the local government unit in support of the project. A Stage II survey consists of the following:

i. An assessment of the resource's eligibility to be listed on the New Jersey Register of Historic Places and the National Register of Historic Places;

ii. A draft determination of eligibility for nomination to the National Register of Historic Places prepared in accordance with N.J.S.A. 13:1B-15.129;

iii. An assessment of the probable impact the proposed project may have on Register-listed resources or resources eligible to be listed on the New Jersey Register of Historic Places or the National Register of Historic Places; and

iv. A proposal for mitigating measures that may be implemented should it be determined that avoidance of a Register-listed resource or a resource eligible to be listed on the New Jersey or National Registers of Historic Places is not feasible.

(g) Where a Stage II survey has been required, then, upon acceptance by the Department of the Stage II survey documentation, the Department will make one of the following determinations:

1. It is practicable to avoid potential impacts to Register-listed or eligible resources through project modification. In this case, the local government unit shall be directed to make the appropriate project modifications.

2. It is not practicable to avoid potential impacts to a Register-listed or eligible resource. In this case, the Department will assess the need to request a determination of eligibility from the Keeper of the Register in accordance with (h) below.

(h) The Department, after consultation with the appropriate Federal agencies, in accordance with N.J.S.A. 13:1B-15.129 will prepare the appropriate documentation for submittal to the Keeper of the Register for a determination of eligibility.

(i) After the satisfactory completion of the required cultural resource surveys, the Department, after consultation with the appropriate Federal agencies, in accordance with N.J.S.A. 13:1B-15.129 will issue one of the following determinations of effect:

1. Determination of No Effect: This determination will be issued when the proposed project will have no direct or indirect effect on Register-listed or eligible resources. No further cultural resource review will be required.

2. Determination of No Adverse Effect: If there will be an effect on a resource listed or eligible for listing on the Register, the Department will determine the nature of the effect in accordance with State and, when appropriate, Federal laws and regulations. If a determination of no adverse effect is made, the Department will prepare the documentation required by 36 CFR 800.8 for submittal to the Advisory Council on Historic Preservation. Effects of an undertaking that would otherwise be found to be adverse may be determined to be not adverse when both the nature of the impact is limited and appropriate data recovery is implemented. If the Advisory Council on Historic Preservation concurs with the documentation submitted, or does not object within 30 calendar days of receipt of the submittal, the undertaking may proceed in accordance with all provisions delineated in the documentation submitted to the Advisory Council on Historic Preservation.

3. Determination of Adverse Effect: An adverse effect is an alteration to a Register-listed or eligible resource that detracts from those characteristics by which it was determined eligible for inclusion on the Register. Examples of adverse effects include, but are not limited to, partial or total destruction of the resource, alteration of the resource's environment, neglect of the resource resulting in its deterioration, or transfer or sale of the property which contains a resource without adequate conditions regarding preservation, maintenance or use.

i. If the Department, in consultation with the appropriate Federal agencies, determines that a project has the potential to adversely affect a Register-listed or eligible resource, or if the Advisory Council on Historic Preservation objects to a determination of No Adverse Effect, the Department will initiate the preparation of a preliminary case report incorporating a proposal to avoid or mitigate the adverse effect.

ii. This documentation, submitted to the Advisory Council on Historic Preservation, will be utilized, through a consultation process, in the preparation of a memorandum of agreement in accordance with N.J.S.A. 13:1B-15.129.

iii. The consultation process involves an examination, by the Department, the Advisory Council on Historic Preservation, and other appropriate State and Federal agencies, of all feasible alternatives that would avoid adverse effects to the resource.

iv. The memorandum of agreement shall be signed by the Advisory Council on Historic Preservation, appropriate State and Federal agencies as well as other interested parties, as required. Such signatures shall constitute acceptance of the terms of the agreement.

v. No action will be authorized by the Department that will have an adverse effect on Register-listed or eligible resources until all reasonable alternatives have been examined and until the Advisory Council on Historic Preservation issues comments on the request for guidance in the resolution of the issue.

(j) Where it is determined that the alternative to avoid the adverse effect is not feasible, measures to minimize the potential effects shall be developed by the Department in consultation with the Advisory Council on Historic Preservation, appropriate State and Federal agencies, and, as required, other interested parties. A mitigation plan outlining these measures shall be included in the memorandum of agreement signed by the consulting parties specified in (i)3 iv above. Mitigation shall be commensurate with the nature and the significance of the resource adversely affected by the project.

(k) All reports of cultural resource surveys submitted for review by the Department shall contain the following elements:

1. A table of contents, list of figures, maps and plates;

2. A concise description of the proposed project, particularly in terms of its potential for ground disturbance and possible effects on cultural resources;

3. A clear discussion of the objectives of the survey, the methodology employed to achieve these objectives and an interpretation of the survey results;

4. A list of all sources and authorities consulted;

5. A map of sufficient scale upon which all identified cultural resources as well as potential project impacts are plotted;

6. A United States Geological Survey 7.5 minute quadrangle map of the planning area upon which cultural resources and areas surveyed are noted;

7. A map of sufficient scale identifying and plotting the locations of all tests and excavation units as well as areas of potential impacts;

8. A bibliography of all publications and manuscripts consulted;

9. An inventory of all artifacts recovered and analyzed according to provenience;

10. Stratigraphic profile information for all test units; and

11. Resumes of the individuals responsible for the survey and the report preparation.

(1) All cartographic and document reproductions contained in the report must be clear and legible.

(m) Reports shall have original photographic plates or high quality offsets.

(n) All reports shall satisfy the requirements set forth in "Certain Technical Prescription for Preparing Reports of Surveys of Cultural Resources" which are to be reviewed by the Office of New Jersey Heritage, New Jersey Department of Environmental Protection, which is available upon request from the Department.

7:22-10.9 Environmental coordination

(a) The local government unit shall consult, coordinate with, or apply to those agencies responsible for issuing permits or which have other jurisdiction regarding environmental concerns with respect to the proposed project and its impacts. Those agencies include, but are

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not limited to, the agencies responsible for administering the following:

1. New Jersey Wetlands Act, N.J.S.A. 13:9A-1 et seq;
2. New Jersey Freshwater Protection Wetlands Act, N.J.S.A. 13:9B-1 et seq;
3. Flood Hazard Area Control Act, N.J.S.A. 58:16A-50;
4. Wild and Scenic Rivers Act, N.J.S.A. 13:8-45 et seq;
5. Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq;
6. Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq;
7. Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq;
8. Archeological and Historic Preservation Act of 1974, 16 U.S.C. §§ 469 et seq;
9. Clean Air Act, 42 U.S.C. §§7401 et seq;
10. Coastal Barrier Resources Act, 16 U.S.C. §§3501 et seq;
11. Coastal Zone Management Act of 1972, 16 USC §§1451 et seq., as amended;
12. Endangered Species Act, 16 U.S.C. §§1531, et seq;
13. Federal Executive Order No. 11593, (1971), Protection and Enhancement of the Cultural Environment.
14. Federal Executive Order No. 11988, (1977), Floodplain Management.
15. Federal Executive Order No. 11990, (1977), Protection of Wetlands;
16. Farmland Protection Policy Act, 7 U.S.C. §§4201 et seq;
17. Fish and Wildlife Coordination Act, 16 U.S.C. §§661 et seq. as amended;
18. National Historic Preservation Act of 1966, 16 U.S.C. §§470 et seq. as amended;
19. Safe Drinking Water Act, 42 U.S.C. §300(h) as amended;
20. Wild and Scenic Rivers Act, 16 U.S.C. §§1271 et seq. as amended; and
21. Historic Sites Act, 16 U.S.C. §§461 et seq.

(b) The local government unit shall provide a written report on the results of consultation, the status of permit acquisition, statements of no jurisdiction from each applicable agency or other suitable demonstration of non-applicability, as part of the environmental planning documentation required at all levels of environmental review. Any written determination received by the local government unit from the jurisdictional agency shall be included in the documentation of coordination.

7:22-10.10 Public participation

(a) The local government unit shall inform the affected public regarding the intent to develop and implement a wastewater management project and shall solicit input from the affected public prior to selection of the alternative which will become the proposed project. The local government unit is encouraged to utilize appropriate public participation mechanisms, which shall include, but are not limited to, notices, newsletters, citizens advisory groups, public meetings, and public hearings, to solicit comments. The minimum requirements for public participation at each level of environmental review are specified in N.J.A.C. 7:22-10.4, 5 and 6.

(b) Where a public hearing is required, a public hearing shall be noticed and documented by the local government unit in the following manner:

1. A retail or display advertisement located in the body of the newspaper noting the date, time, place and subject of the hearing shall be placed at least 30 days in advance of the hearing. The advertisement shall indicate repositories where planning documentation prepared for the project will be available for public review. The advertisement shall be placed in a newspaper of general circulation in the planning area for a Level 2 review and in at least two newspapers statewide for a Level 3 review.

2. A verbatim transcript or detailed minutes shall be prepared of the proceedings. The transcript or minutes, any written comments received on the proposed project, and a summary of significant public comments along with the response to the comments, shall be submitted by the local government unit to the Department as part of the planning documentation.

3. A mailing list shall be developed by the Department for each project. The mailing list shall include elected officials, Federal, State

and local government agencies, environmental groups, and other interested groups and individuals appropriate to the planning area for the proposed project.

(d) The Department may require supplemental measures to inform and solicit comment from the public under the following conditions:

1. Where factors, such as delays in project implementation or errors in cost estimation, result in significant increases in the user cost burden prior to the award of financial assistance, the local government unit may be required to place a retail or display advertisement in the body of a newspaper of general circulation in the planning area which describes the proposed project and the revised costs, including user cost, and which establishes a comment period of 30 days. A summary of any public comment received during the comment period shall be submitted by the local government unit to the Department. Based on the response of the public to the advertisement, the Department will determine if further project evaluation is required.

2. Where, as a result of the re-evaluation of the environmental review conducted in accordance with N.J.A.C. 7:22-10.7, the Department determines that significant changes in the project or project impact have occurred, the Department may determine that a supplemental public advertisement as in (d)1 above or a public hearing as in (b) above is required prior to award of financial assistance.

7:22-10.11 Design requirements

(a) The local government unit shall be required to prepare design plans and specifications which include mitigating measures developed during planning and incorporated in the approved planning documentation. In addition, the design plans and specifications shall conform to the minimum standards for each area of concern which is applicable to the proposed project as set forth below.

(b) The contract documents shall be prepared to clearly identify environmental protection measures and shall conform to the following:

1. Unless otherwise approved by the Department, the format of the contract documents shall consolidate environmental and cultural resource protection/restoration measures in a single section of the design specifications as well as on appropriate sheets of the design plans. The specifications which spell out the environmental and cultural resource protection/restoration measures shall be identified in the specifications as having precedence over other potentially contradictory language contained elsewhere in the design contract documents.

2. Environmental and cultural resource protection/restoration measures should generally include the following subject areas:

- i. General;
- ii. Clearing;
- iii. Erosion and sedimentation control;
- iv. Protection of environmentally critical areas;
- v. Stockpiling and waste disposal;
- vi. Prohibited construction procedures;
- vii. Dust control;
- viii. Noise control;
- ix. Cultural resources;
- x. Dewatering;
- xi. Restoration;
- xii. Environmental maintenance bond; and
- xiii. Inspection.

3. The method of payment for environmental and cultural resource protection/restoration measures shall be specified in the applicable section of the contract documents. Where restoration and maintenance of environmental quality are necessary outside of the designated construction area or when measures for maintenance of environmental quality are required after the date of completion and acceptance of the wastewater treatment facilities, the local government unit shall so state in the specifications. The local government unit shall include minimum per unit prices for materials needed for environmental and cultural resource protection and restoration.

4. Where construction will occur within or adjacent to environmentally critical areas, as approved by the Department, those areas shall be identified on design plans.

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(c) Every effort shall be made to prevent and correct problems associated with erosion and sedimentation which could occur during and after project construction. At a minimum, design specifications shall incorporate the following erosion and sedimentation control measures:

1. All erosion and sedimentation control measures shall be in place prior to any grading operations or construction of proposed facilities and shall be maintained until construction is complete and the construction area is stabilized. After restoration is complete, temporary control measures shall be removed and disposed of properly.

2. All erosion and sedimentation control measures shall be constructed and maintained in accordance with the "Standards for Soil Erosion and Sediment Control in New Jersey", prepared by the New Jersey State Soil Conservation Committee, 1987.

3. Disturbed areas that will be exposed in excess of 14 days shall be temporarily seeded and/or mulched until proper weather conditions exist for establishment of a permanent vegetative cover except in areas where final restoration is expected to be completed within seven days after the completion of construction, in which case no temporary protective measures will be required. If final restoration is expected to begin more than seven days and completed more than 30 days after the start of construction, seeding shall be required for temporary protection, except where seasonal conditions are not suitable for growing vegetation. In this case, mulch may be applied until conditions are suitable for establishing vegetative cover or until final restoration is implemented.

(d) Site and access clearing shall be confined to approved construction areas. Protection of existing vegetation shall be practiced wherever possible. At a minimum, the local government unit shall include provisions in the contract documents which conform to the following:

1. Easement widths shall be reduced to the minimum feasible for the proposed construction. Unless specifically approved by the Department, permanent access roads shall not be more than eight feet wide and there shall be no permanent access roads in environmentally critical areas.

2. Only those portions of the site which are absolutely necessary and essential for construction shall be cleared. Whenever possible, excavation shall include the removal and storage of topsoil from the site for future use. The length of time of ground disturbance shall be reduced to the minimum practicable, especially in environmentally critical areas. Ground disturbance shall be avoided until immediately preceding construction to minimize exposure of soils.

3. Trees and shrubs within construction easements, which are not required to be removed to permit construction, shall be protected to the drip line with appropriate protection measures such as snow fencing or batter boards. Trees and shrubs whose removal is necessary to facilitate construction shall either be replanted at the same location or replaced with nursery stock of the same kind. Trees of greater than 12 inches in diameter should be preserved whenever possible by implementing slight shifts in alignment or tunneling under tree roots. Specimen trees, as identified in the "New Jersey's Record Trees", New Jersey Outdoors, September/October, 1984, the New Jersey Outdoors publication listing specimen trees in the State, shall be preserved.

4. Except in heavily wooded areas, the plans shall designate trees and shrubs which are to be protected as well as trees and shrubs which are to be removed. In addition, plans shall provide details which depict methods of protection to the drip line.

5. In heavily wooded areas, every effort shall be made to avoid the destruction of common native trees and shrubs so as not to unduly disturb the ecological balance or environmental quality of the area. Trees of 12 inch diameter or greater should be preserved whenever possible and protected to the drip line. Where practical, common native trees and shrubs, of one through three inch caliper, which must be cleared from the construction area shall be stockpiled for use in restoration. Straggling roots shall be pruned. Trees which must be pruned to facilitate construction shall be cut cleanly and painted with tree paint. If a tree not intended to be removed is damaged, the wood shall be repaired according to common nursery practice and painted with tree paint.

(e) Restoration measures to be identified and designated on the environmental plans and specifications include the following: ground

preparation, topsoiling, fertilizing, liming, reseeded, and replanting/replacement of trees and shrubs. The aim of restoration is to restore the disturbed area to a condition as nearly equal to pre-disturbance condition as possible. The environmental specifications shall set forth the procedure for accomplishing these restoration measures. The plans shall include the location of various types of restoration and shall include details depicting typical methods to accomplish restoration. The provisions shall include the following when applicable:

1. Final restoration shall be undertaken as soon as an area is no longer needed for construction, stockpiling or access. Excavated material unsuitable for backfill as set forth at N.J.A.C. 7:14-2.13 and considered to be solid waste pursuant to N.J.A.C. 7:26-1.6 shall be removed from the construction site and disposed of at a sanitary landfill approved and licensed by the Department. Excess excavated material which is not considered to be solid waste pursuant to N.J.A.C. 7:26-1.6 shall be graded or removed in accordance with (1)3 below. When access roads are no longer needed, road fill shall be removed and the access area shall be restored to pre-disturbance conditions. Care should be taken to avoid damage to adjacent vegetation and to prevent the formation of depressions that would serve as mosquito pools.

2. Topsoil shall be replaced with adequate amounts of topsoil material to restore the disturbed area to its original, pre-disturbance grade and depth of topsoil.

3. Rates and types of fertilization, liming, and seeding shall be as recommended by the local Soil Conservation District based on soil tests and local conditions. Seed mixtures shall be selected that are best suited for the particular site conditions. Seed selection shall provide for a quickly germinating initial growth, to prevent erosion, and for a secondary growth that will survive without continuing maintenance. Mulching shall occur immediately after seeding, and in no case shall more than five days elapse between seeding and mulching.

4. In wooded areas, for a 50 foot wide construction easement, generally 10 trees should be planted for every 100 feet of length of the easement. More trees would be required in wider easements or densely wooded areas. Plans shall include a restoration schedule specifying the quantity, common and botanic names, sizes, and spacing of trees to be planted and the type of seed mixtures to be used from station to station. Trees to be replaced should be trees native to New Jersey suitable for the particular site and generally should conform to the list of trees found in the "Standards for Soil Erosion and Sediment Control in New Jersey", prepared by the New Jersey State Soil Conservation Committee, 1987.

5. In landscaped areas, environmental features shall be replaced or restored to pre-disturbance condition or better. This includes sodding, replacement of trees and shrubs, fences, drives, and other landscape features in kind.

(f) A listing of prohibited construction procedures shall be incorporated into the specifications. These procedures include, but are not limited to, the following:

1. Dumping of spoil material into any stream corridor, any wetlands, any surface waters, or at unspecified locations;

2. Indiscriminate, arbitrary or capricious operation of equipment in any stream corridors, wetlands or surface waters;

3. Pumping of silt-laden water from trenches or other excavations into any surface waters, stream corridors or wetlands;

4. Damaging vegetation adjacent to or outside of the access road or the right-of-way;

5. Disposal of trees, brush and other debris in any stream corridors, wetlands, surface waters or at unspecified locations;

6. Permanent or unspecified alteration of the flow line of any stream;

7. Open burning of project debris;

8. Use of chemicals for dust control; and

9. Use of asphaltic mulch binder.

(g) Construction in wetlands shall conform to requirements imposed through applicable permits and, at a minimum, the following:

1. Before excavation is initiated in the wetlands, a line of hay bales or other siltation control barriers shall be staked in place along the edges of the construction area and shall remain in place until resto-

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ration is complete. In addition, marsh mats shall be used for heavy construction equipment;

2. Topsoil shall be stripped and soil layers replaced in the excavated area in the same order that they were removed. Final grade shall match the elevation prior to disturbance;

3. The cleared easement shall be revegetated with a mix and density of species similar to that which was removed. Material for vegetation can be preserved from the areas cleared and replanted or provided from nursery stock;

4. Anti-seep collars shall be installed as needed in the trench to avoid draining the wetland; and

5. Coastal wetland areas disturbed during the construction shall be restored to pre-disturbance conditions by an environmentally-oriented concern with documented successful experience in the restoration of wetland areas.

(h) Where stream crossings are necessary, adverse impacts shall be minimized by including appropriate mitigating measures and restoration techniques in plans and specifications. At a minimum, mitigating measures and techniques shall include the following requirements:

1. Avoid clearing until immediately preceding construction;

2. Prior to clearing, place staked hay bales across the sloped approach to the crossing and maintain, except during actual crossing, until restoration is complete;

3. Avoid stockpiling material in the floodplain of the stream;

4. Set up in-stream sediment controls prior to commencing construction;

5. Complete crossing expeditiously. Consider weather and anticipated stoppages for weekends and holidays and plan to cross at such a time that the work can be continued until complete;

6. Maintain effectiveness of sediment control features throughout the crossing process;

7. Construction through stream corridors, wetlands and other surface waters shall be scheduled to minimize damage to fish populations wherever possible. Recommend periods during which construction is to take place shall be in accordance with N.J.A.C. 7:13-5.6(g) and N.J.A.C. 7:7E; and

8. Restoration shall be initiated immediately following the crossing and be completed as soon as possible. Restoration shall conform to the following:

i. Re-establishing channel contours;

ii. Replacing bottom with native material, or in very silty bottoms, with crushed stone (one through three inch diameter);

iii. Stabilizing banks with rip-rap. The size and nature of the rip-rap shall conform to the "Standards for Soil Erosion and Sediment Control in New Jersey", prepared by the New Jersey State Soil Conservation Committee, 1987. Jute mesh may be used to stabilize intermittent or extremely low flow streams with shallowly sloping banks in sand/silt bottomed streams; and

iv. Revegetating banks with appropriate native materials such as grasses, ground covers, trees and shrubs.

(i) Slopes exceeding 15 percent require special treatment. Specifications shall call for measures such as water diversion berms, sodding, or the use of jute or excelsior blankets. Hay bales shall be placed at the base of the slope prior to ground disturbance. Steep slopes that have been disturbed, if not sodded, shall be seeded immediately after construction is complete. Slope boards or other measures necessary to prevent slumping of the disturbed slope shall be incorporated, where appropriate.

(j) If there is the possibility of encountering acid-producing deposits in the course of construction, as identified during the planning process, special requirements and conditions shall apply and shall be incorporated in the specifications as follows:

1. In vegetated areas, the top two feet of soil shall be stripped and stockpiled separately from the material to be excavated. A soils specialist, to be provided by the local government unit, shall monitor the stripping operation. If any acid-producing deposits are identified, this material and any contaminated soil shall be disposed of on the same day. The presence of acid-producing deposits is detected by the use of the following tests:

i. Determining the pH of the soil when suspended in 0.5 Molar calcium chloride solution (of neutral pH). A pH value below 3.0

indicates presence of ferrous sulfate and presence of acid-producing deposits is strongly suspected.

ii. Test for sulfate by adding a drop of 10 percent barium chloride solution to a water extract of the material. If voluminous flocks of barium sulfate form immediately the presence of acid-producing deposits is strongly suspected.

2. The disposal site shall be approved by the Department. Any soil of this type disposed of shall be covered with a minimum of two feet of cover to prevent rapid oxidation and subsequent acid formation.

3. In both vegetated and paved areas, when acid-producing deposits are encountered, as determined by the soil specialist, excavated trench material shall be returned to the trench in order of removal, that is, lower material first, followed by upper material. In addition, the top one to two inches of soil on which the deeper soil was stockpiled shall be scraped and placed below a depth of two feet. For interceptor construction, the quantity of material to be displaced by bedding and pipe, as well as soil scraped from the stockpile area, shall be subtracted from the deeper, excavated material and this quantity of deeper material removed to an approved disposal site and covered as described above. After backfilling the deeper soil, one ton of limestone per 2,000 square feet shall be spread over the deeper soil in the trench. This liming requirement shall be applicable in areas of well drained, non-saturated soils, as determined by the soils specialist. In vegetated areas, the top two feet of soil, stockpiled for this purpose, shall then be replaced. If the top two feet of soil was also contaminated, clean backfill material similar to the native topsoil shall be used.

4. The excavated acid-producing deposits shall not be exposed for a period longer than eight hours. When acid-producing deposits are encountered, the trench opened in any construction day shall be backfilled and the areas cleaned up by the close of the day. Alternatively, exposed acid-producing deposits shall be covered with limestone screenings at a rate of 100 tons per acre and then covered with six inches of compacted soil within one week of exposure or before the exposed soil drops to pH 3, whichever occurs first. The pH shall be monitored daily under this option.

5. Temporary restoration of vegetated areas shall consist of mulching and shall be put in place at the end of each day's construction. Permanent restoration of the area shall begin as soon as construction is complete and after the results of incubation tests, where necessary, are available.

6. Prior to restoring *[vegetaged]* ***vegetated*** areas, the soil specialist shall perform pH tests on the ***in-situ*** soil ***after the construction is completed***. If the pH is below 4, intensive liming shall be required in order to make the soil suitable for plant survival.

7. Lime requirement tests shall be performed by the soil specialist to determine the lime application rates. This shall require an incubation test in which the sample is oxidized for a period of six weeks, as follows. The sample shall be air dried and ground so that the whole sample passes a 0.5 millimeter sieve. The lime requirement to reach pH 6.5 shall be determined initially, and again at two week intervals for six weeks, using standard soil testing techniques. The lime requirement can be extrapolated to the area under consideration.

8. A minimum of 30 tons of limestone per acre or the amount of lime required according to the incubation test result shall be applied prior to seeding and planting where the pH is less than 4. Where the pH is greater than 4, liming and fertilizing requirements set out in the planting and environmental specifications shall apply.

9. The spreading and mixing of the subsoil and any topsoil contaminated with acid-producing deposits around the site and beyond the site is prohibited. Areas used for stockpiling acid-producing deposits shall be minimized. Equipment used for excavation and backfilling shall be cleaned, to the extent practicable, at the end of each day's operation and the soil removed shall be placed in the trench below a depth of two feet. No construction shall take place during significant rainstorms or while the area is saturated to avoid smearing or spreading of the acid-producing deposits over the area.

(k) Discharges from dewatering activities which contain silt or hydrogen sulfide shall be subject to the following controls:

1. All discharges from dewatering activities to surface waters, wetlands or storm sewers shall be free of sediment. Care shall be

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taken not to damage or kill vegetation by excessive watering or by damaging silt accumulation in the discharge area. If discharges are sediment laden, techniques shall be employed to remove sediment prior to discharge. A sedimentation basin shall be constructed and used as specified, where necessary, to protect vegetation and to achieve environmental objectives.

2. Sewer inlets within construction areas shall be provided with perimeter hay bales or other appropriate siltation control measures.

3. In coastal areas, it is possible that water emanating from dewatering operations may contain hydrogen sulfide concentrations that could adversely impact areas to which the water is discharged. In these areas, at no time shall the water emanating from dewatering operations be allowed to contain concentrations of hydrogen sulfide in excess of 40 parts per billion (ppb). Prior to, and periodically during, dewatering, tests shall be conducted on the groundwater and dewatering discharge to determine if the hydrogen sulfide concentration is within the prescribed limits. In the event that these limits are exceeded, the contractor shall pretreat the discharge water prior to disposal. Pretreatment shall maintain the hydrogen sulfide concentrations at or below the 40 ppb level and shall be in use during those times when dewatering is occurring and the concentrations are exceeded.

(1) Contract requirements with regard to the location of stockpile, storage and disposal areas, and erosion control measures shall conform to the following:

1. Only environmentally suitable stockpile sites shall be used for the purposes of storing materials, equipment and suitable trench backfill material. Environmentally suitable sites shall be level, and devoid of mature stands of natural vegetation. Drainage facilities and features, wetlands and stream corridors are not environmentally suitable sites.

2. The boundary of the stockpile area shall be clearly marked by hay bales, silt fencing or another appropriate method. Where fill is to be stored in excess of 14 days, a suitable means of protecting excavated material from wind and water erosion shall be employed. Erosion control methods may include one or more of the following: mulching, sprinkling, silt fencing, haybaling and stone covering.

3. Excess excavated material which is not considered to be solid waste pursuant to N.J.A.C. 7:26-1.6 shall be graded on-site or removed from the site and disposed of at a site approved by the Department in accordance with the following:

i. The disposal of excess excavated material in wetlands, stream corridors and floodplains is strictly prohibited, even if the permission of the property owner is obtained. The contractor shall be responsible to remove any fill improperly placed by the contractor at the contractor's expense and restore the area impacted.

ii. If excess excavated material is placed on private property, a hold harmless release in favor of the local government unit and the Department shall be obtained from the property owner; and

iii. Erosion by wind and water of excess excavated materials disposed of on private lands by sewer contractors is a concern. Therefore, when obtaining releases from private property owners, the contractor shall include a statement from the property owner that he or she has been apprised by the contractor of this need for erosion control and accepts complete responsibility for its implementation.

(m) In order to control dust, as often as required during each working day, and particularly prior to the conclusion of each working day, areas under immediate construction (including access roads and other areas affected thereby) shall be swept and wet down with water sufficiently to lay dust. In addition, these areas shall be wet down during non-working hours (including weekends) as often as required to keep the dust under control. The use of calcium chloride or petroleum products or other chemicals for dust control is prohibited.

(n) In order to limit noise impacts, construction operations and activities shall be limited to Monday through Friday between the hours of 7:00 A.M. and 6:00 P.M. unless variances to these times are granted in times of emergency. No driving, pulling or other operations entailing the use of vibratory hammers or compactors shall be permitted, other than between the hours of 8:00 A.M. and 5:00 P.M. The number of machines in operation at a given time shall be limited to the minimum practicable. All engine generators or

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pumps shall have mufflers and be enclosed within a temporary structure.

(o) If a cultural resource is encountered during the course of construction, the contractor is directed to halt all construction activities in that area. The contractor shall immediately contact the local government unit who shall contact the Department. The Department will determine and require initiation of the appropriate actions in accordance with N.J.A.C. 7:22-10.8.

(p) The local government unit shall require that the contractor supply an environmental maintenance bond in the amount of \$25,000 or 50 percent of the price bid for the materials needed to fulfill the environmental specifications, whichever is greater. The environmental maintenance bond shall provide that the contractor shall remedy, without cost, any defects, which are proved to result from faulty workmanship or from failure to comply with the specifications and which develop during the period of one year from the expiration of the performance bond, required pursuant to N.J.S.A. 40A:11-22.

(q) The local government unit shall obtain photographs of existing conditions prior to the start of site and access clearing and construction. At a minimum, one eight inch by 10 inch color glossy print photograph shall be obtained for each 100 feet of the construction area. Special attention shall be given to environmentally critical areas and areas outside of the public right-of-way. Photographs shall be labelled by station so that upon completion of the construction, or during construction if necessary, subsequent photographs can be taken from the same control points. The local government unit shall file copies of the above photographs with the Department.

7:22-10.12 Construction phase requirements

(a) The local government unit shall employ a sufficient number of environmental inspectors to ensure that the requirements of the specifications relating to environmental and cultural resource protection and restoration are effectively carried out. The Department shall utilize environmental inspectors to oversee the conduct of the protection/restoration measures. Responsibilities of the environmental inspectors include the following:

1. The maintenance of a daily job diary in which they shall record the progress of the work and of any problems encountered. The environmental inspectors shall notify the contractor in writing immediately upon noticing that environmental specifications are not being met.

2. At frequent intervals during construction, the loan recipient, the resident engineers, the environmental inspectors and the Department inspectors shall meet to review progress and to resolve difficulties that might result in unnecessary delays in the work.

(b) After award of a contract and before construction commences, a pre-construction conference shall be held. The loan recipient, the resident engineer, the environmental inspectors, the Department inspectors and the contractor should reach general agreement upon procedures to be followed to comply with the plans and specifications intended to provide environmental and cultural resource protection and restoration that have been approved by the Department.

(c) A final inspection shall be required following completion of all construction and restoration work encompassed by each contract. The final inspection shall be conducted as follows:

1. Upon completion of all construction and restoration work of each contract of a project, the loan recipient shall submit a letter to the Department, Municipal Wastewater Assistance Element, CN-029, Trenton, New Jersey 08625, stating that the project (or contract) is ready for final inspection. No final inspection can be scheduled until formal notification is received.

2. The final inspection shall be a joint inspection with the loan recipient and/or the resident engineer, the environmental inspector, the contractor and representatives from the Department in attendance.

3. The Department shall make a determination, within 12 days of the final inspection, regarding the adequacy of the contractor's performance of the specifications relative to environmental and cultural resource protection and restoration. If the performance is not acceptable, this finding and the procedures and schedules needed to effect acceptable performance will be conveyed in writing to the local

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government unit. Failure of the local government unit to comply with the Department's requirements may subject the local government unit to the non-compliance provisions of N.J.A.C. 7:22-3.40, 4.40 and 6.40.

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT Hazardous Waste Fees

**Adopted Amendments: N.J.A.C. 7:26-1.1, 1.4, 4, 7.3,
7.5, 12.2, 13A.6, 16.2, 16.3**

Adopted New Rules: N.J.A.C. 7:26-4A

Proposed: August 15, 1988 at 20 N.J.R. 1995(a).

Adopted: December 22, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Filed: December 22, 1988 as R. 1989 d.54, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3 and 13:1E-1 et seq., particularly 13:1E-6, 13:1E-18, 13:1E-42.2, 13:1E-60d, and 13:1E-87.

DEP Docket Number: 031-88-07.

Effective Date: January 17, 1989.

Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

These amendments and new rules were proposed on August 15, 1988 at 20 N.J.R. 1995(a). Nine commenters submitted written comments during the comment period which ended on October 14, 1988. Two public hearings were held soliciting comments on the proposal on August 30 and August 31, 1988. No persons attended hearings.

COMMENT: The hazardous waste fee schedule may permit the Department to avoid the more stringent cost control efforts exercised during routine budget requests from the Legislature.

RESPONSE: The fee schedule proposed by the Department is authorized pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Major Hazardous Waste Facilities Inspections Act, N.J.S.A. 13:1E-42.1 et seq., and the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq. By including the fee provision at Section 3 of the Solid Waste Management Act, N.J.S.A. 13:1E-18, the Legislature expressed its intention that the funds appropriated by it should be supplemented by service fees collected from industry. The hazardous waste fee schedule adopted herein is intended to support and strengthen the State's hazardous waste program, including certain activities mandated by State and Federal statutes which the Department must perform. These mandated services provided by the Department are subject to State legislative and Federal review. The Department is accountable for all of its expenditures regardless of the sources of funding and undergoes continuous auditing by the New Jersey Office of Legislative Services and the Office of Management and Budget. The Department's expenditures are reviewed at the Federal level when audits are conducted by the United States Environmental Protection Agency (USEPA) of annual Federal appropriations made to the State of New Jersey.

COMMENT: The additional 44 full-time staff positions or full-time equivalents (FTEs) said to be required by the Department are not sufficiently justified. In addition, the fees raised by this rule must be appropriated by the Legislature to the Department, thereby insuring legislative budgetary oversight of the hazardous waste fee program.

RESPONSE: The Department strongly believes that the proposed increase in staff is warranted. Because of decreasing Federal funding and increasing salary costs, there have been no new State-funded hazardous waste management positions added to the State's hazardous waste management program since fiscal year 1986 (FY86). The Department has reduced the total number of Federally funded hazardous waste positions from 107 in 1986 to its current level of 58 in 1988. In addition, while Federal funding has decreased by over 12 percent since FY86 and salary costs have increased by 29 percent during the same time period, the mandates under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq., have not been reduced and have, in fact, been expanded by the 1984 Hazardous and Solid Waste Management Amendments (HSWA) Pub. L. No. 98-616 (1984). These amendments include increased compliance monitoring requirements, increased number of

substances regulated as hazardous waste, and expanded annual reporting requirements. As these requirements are met using the fee revenues, support from the Legislature can then be directed to State-initiative programs such as hazardous waste minimization and hazardous waste-related investigations which are Departmental priorities.

COMMENT: The 15 staff positions or FTEs needed to administer the hazardous waste fee program are not sufficiently justified.

RESPONSE: An in-house evaluation of the administrative process required for the hazardous waste fee program identified the need for a decentralized administrative system in order to provide efficient and expeditious service to the regulated community. This system will entail one position each in the following program areas: the Bureau of Compliance and Technical Services, to process incoming fees and to perform recordkeeping functions for inspections; the Bureau of Hazardous Waste Classification and Technical Assistance, to process incoming fees and to perform recordkeeping functions of classifications; and the Bureau of Revenue, handle tracking and accounting of funds. Due to the volume of items processed annually, over 120,000 manifests and 6,000 annual reports, two positions will be required in the Bureau of Manifest and Information Systems to process incoming fees and to perform recordkeeping functions. Three positions will be required in the Division of Solid Waste to handle hazardous waste transporter registrations including recordkeeping and processing of applications. Five positions in the Bureau of Management Services are necessary to handle billings and collections, direct payments received from programs, and fiscal accounting and oversight functions. Also identified during the evaluation process was the need for automation, as this is the only reasonable means of administering the over 120,000 records to be handled annually. Automation will enable the Department to track inspections, waste classifications, permit reviews, and waste generation figures and will be used for issuing and monitoring billings and payments. This will require two positions in the Bureau of Manifest and Information Systems for computer systems development and maintenance in support of the fee program. If experience demonstrates that this level of overall support is not necessary, any excess revenues will be dedicated to the programs directly providing services.

COMMENT: Given the \$500.00 charge for each inspection, a facility which was inspected daily would face a total annual charge of \$182,500. The Department should either guarantee only one inspection per year or charge for only one inspection per year.

RESPONSE: Major hazardous waste facilities, as defined at N.J.S.A. 13:1E-42.1, must be inspected weekly in accordance with statutory mandates under N.J.S.A. 13:1E-42.1. Non-major commercial hazardous waste facilities are inspected once every two weeks in accordance with long-standing Departmental policy. This policy evolved in response to the historical need for close monitoring by the Department. Although handling a smaller volume of waste, a non-major commercial facility may handle a greater variety of waste types from a greater number of sources than a major commercial hazardous waste facility. The biweekly inspection program provides an effective mechanism for the Department to monitor the non-major commercial facilities' operations and compliance efforts. The universe of facilities subject to inspection is comprised of approximately 6,500 generators, transporters, and non-commercial treatment storage and disposal (TSD) facilities, 25 non-major TSD commercial facilities, and eight major TSD facilities. While a facility would not normally be subject to an inspection every day of the year, and the Department is not able to inspect all hazardous waste handlers each year, it would be inappropriate and contrary to the purpose of the Department's enforcement mandate and compliance monitoring under the Solid Waste Management Act to assure that only one inspection per year would be conducted at any individual facility. For example, if numerous violations exist or violations are not expeditiously corrected at a facility, the Department would exercise its right to conduct the number of inspections necessary to ensure compliance at that facility and to protect public health, safety, and the environment. The Department is authorized to charge fees to meet actual costs of inspections to the extent allowed by the Solid Waste Management Act.

COMMENT: A commenter representing a non-major commercial hazardous waste facility objected to paying a biweekly RCRA inspection fee amounting to \$26,000 annually and recommended that a maximum \$500.00 annual cap be placed on RCRA inspections.

RESPONSE: Biweekly inspections have proven to be an effective means for the Department to monitor compliance efforts of non-major commercial hazardous waste facilities. Based on the biweekly schedule of 26 inspections per year, the \$500.00 per inspection fee would amount to \$13,000 annually.

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The authorization to assess these fees comes from the Solid Waste Management Act at N.J.S.A. 13:1E-18, which allows the Department to "charge fees for any of the services it performs in connection with this act, which fees shall be annual or periodic as the department shall determine." Each RCRA non-major hazardous waste facility inspection is considered by the Department to be a specific service and is therefore limited to a \$500.00 fee per inspection. Because the \$500.00 fee per inspection is, in the majority of cases, far below the actual cost of the inspection to the Department, the proposed rule set this fee at \$500.00. This figure remains unchanged upon adoption.

COMMENT: Fuel oil and gasoline distributor businesses should be exempt from routine inspection because of the small quantity of hazardous waste generated. Such businesses should only be inspected if there is a specific or suspected problem.

RESPONSE: As part of the Department's compliance monitoring efforts, all generators of hazardous waste are subject to Departmental inspections. The mishandling of even a small quantity of hazardous waste has the potential to cause contamination problems, especially if such mishandling is continuous. To prevent such mishandling, the Department will continue to include all hazardous waste generators within the compliance monitoring program.

COMMENT: The proposed annual reporting exemption from fee payment at N.J.A.C. 7:26-4A.4 should be expanded from 1.33 tons per year to 1.5 tons per year.

RESPONSE: N.J.A.C. 7:26-8.3 exempts small quantity generators from annual reporting requirements under N.J.A.C. 7:26-7.4(g). A small quantity generator is defined at N.J.A.C. 7:26-8.3 as one who "generates less than 100 kilograms of hazardous waste" in a calendar month. One hundred kilograms per month is approximately equal to 220 pounds per month or 2,640 pounds per year. This amounts to slightly less than 1.33 tons per year. The suggested quantity of 1.5 tons per year would exceed the limit for qualification for small quantity generator status specified in Federal regulations promulgated pursuant to RCRA and New Jersey rules must be at least as stringent as Federal regulations in order for the New Jersey hazardous waste program to be authorized and to retain such authorization pursuant to RCRA.

Note that under N.J.A.C. 7:26-7.7(b) generators who only generate less than 1,001 gallons per month of hazardous waste with hazardous waste code numbers X721, X723, X724, X726, or X727 or generators who only generate hazardous waste with waste code number X722 in any amount are exempted from the generator requirements contained in N.J.A.C. 7:26-7.4, including annual reporting requirements. These hazardous wastes include various types of waste oils. Additionally, automotive service stations which generate only those hazardous wastes listed above are, under N.J.A.C. 7:26-7.7(c), exempted from generator requirements under N.J.A.C. 7:26-7.4, including annual reporting requirements, provided they comply with N.J.A.C. 7:26-7.7(d). Therefore, these generators are also exempt from annual reporting fees.

COMMENT: The hazardous waste fee proposal unfairly shifts the burden of providing the Department with operating funds from Federal and State government to industry.

RESPONSE: The commenter failed to specify how this shift is unfair. The Department is bound to carry out legislative mandates and to support mandated activities as authorized by law. The use of fee generated revenues is appropriate to fund specific Departmental services provided to an industry when the industry derives economic benefit from activities requiring those Department services.

COMMENT: The proposed fee schedule inequitably allocates the burden of support between various parties. Larger firms generating larger amounts of hazardous waste should pay a greater share of the overall fees.

RESPONSE: The Department is bound to assess fees in accordance with the Legislature's authorization. The Department is not authorized to assess fees based on the amount of hazardous waste generated alone, although if the volume of waste is related to the Departmental resources devoted to certain facilities, the fees assessed will indirectly reflect the volume of waste generated. Also, major hazardous waste facilities, defined at N.J.S.A. 13:1E-42.1 as those commercial facilities capable of handling more than 250,000 gallons or the equivalent of hazardous waste, are not subject to the \$500.00 cap at N.J.S.A. 13:1E-18, and inspection fees may, for that reason, be significantly higher for major commercial hazardous waste facilities than for non-major or non-commercial hazardous waste facilities. The Major Hazardous Waste Facilities Inspection Act, at N.J.S.A. 13:1E-42.2, authorizes the Department to assess fees "in an amount sufficient to cover the costs of the inspections" of major commercial hazardous waste facilities. The Solid Waste Management Act,

at N.J.S.A. 13:1E-18, authorizes the Department to collect "fees for any of the services it performs in connection with this act" but restricts such charges.

COMMENT: The Department should more aggressively pursue the Federal funds necessary to properly administer the hazardous waste program.

RESPONSE: The Department has always aggressively pursued Federal funding sources in order to fulfill Federal and State program requirements. Unfortunately, there has been a trend towards declining Federal funding. For example, between FY86 and FY89 Federal support for the RCRA program has decreased by over 12 percent while RCRA staff salaries have increased by 29 percent. The downward trend in Federal financial support is expected to continue. The Department will, however, continue to pursue the maximum available funding from Federal sources.

COMMENT: The Department lacks legislative authority for the imposition of these fees on the industrial community.

RESPONSE: The Department clearly has the legislative authority, under N.J.A.C. 13:1E-18, to collect "fees for any of the services it performs in connection with" the Solid Waste Management Act. The Siting Act, at N.J.S.A. 13:1E-42.2, specifically allows the Department to assess fees "in an amount sufficient to cover the costs of the inspections" of major hazardous waste facilities as defined therein. Additionally, the Siting Act, at N.J.S.A. 13:1E-60d, specifically allows the Department to charge and collect "reasonable fees as may be necessary to cover the costs of reviewing applications" for new or expanding major hazardous waste facilities.

COMMENT: If the USEPA is cutting back on funding for the hazardous waste program, the Department should request additional funds from the Legislature or scale back the program to a level which can be covered by existing funding.

RESPONSE: The Department disagrees. The purpose of the proposed fee schedule is to provide a balanced funding program by shifting a portion of financial responsibility for the State's hazardous waste program from the general taxpaying public to those who derive direct monetary benefit from the management of hazardous waste. The overall funding program consists of a balance of approximately \$4 million in general State revenues, \$3 million in Federal funding, and \$3.26 million in estimated fee revenues.

COMMENT: What will happen to any excess revenues generated by the fee schedule? Industry based revenues should not be applied towards public programs such as household hazardous waste collection.

RESPONSE: The estimated \$3.26 million in fee revenues are strictly tied to services provided by the Department to industry. In fact, because of the \$500.00 cap at N.J.S.A. 13:1E-18, the overall fee revenues will be substantially less than the total cost of services provided by the Department. In the event that excess revenues are generated, these could support and strengthen the baseline hazardous waste program by being applied to the following year while remaining dedicated to activities specified in the rules. Surpluses would not be diverted to any activity which is not in conformance with statutory mandates.

COMMENT: The proposed rules require registration of individual units of hazardous waste vehicles. This presents a practical problem in and out of State and an administrative nightmare for hazardous waste transporters. For instance, which registration number would be used on a manifest form?

RESPONSE: The Department agrees with the comment, in part, and has, upon adoption, deleted the definition of a hazardous waste trailer at N.J.A.C. 7:26-1.4 and has deleted the requirement for registration of the trailer unit at N.J.A.C. 7:26-4A.3(c)1iii. These deletions will help reduce confusion in the registration process. This change will result in a decrease in the number of categories of vehicle units requiring registration. Also, upon adoption, the Department is decreasing registration fees for a hazardous waste vehicle having a capacity exceeding one ton, to \$250.00, and for a detachable hazardous waste transport unit with a capacity of over one ton, to \$225.00. A hazardous waste vehicle is defined upon adoption, at N.J.A.C. 7:26-1.4, as any combination of hazardous waste cab and transport unit, whether detachable or permanently attached. The four categories that are now required to be registered under N.J.A.C. 7:26-4A.3(c)1 are as follows: (1) hazardous waste cab, at (c)1i; (2) hazardous waste transport unit, either detachable or with a permanently attached hazardous waste cab, having a capacity less than or equal to one ton, at (c)1ii; (3) detachable hazardous waste transport unit having a capacity greater than one ton, at (c)1iii; and (4) hazardous waste transport unit with permanently attached hazardous waste cab having a capacity greater than one ton, at (c)1iv.

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The registration process will remain the same, with hazardous waste transporters receiving a registration number which identifies the transporter company. Individual units of hazardous waste vehicles will also be registered and will be identified with their company registration number. The company registration number is entered on the manifest form as before, with the pertinent hazardous waste transport unit decal numbers also indicated on the form. The company registration number is used to track the hazardous waste while the transport unit decal numbers are used for vehicle compliance monitoring purposes.

COMMENT: One commenter stated that it would be more cost effective for the Department to hire eight instead of seven FTEs to conduct hazardous waste inspections at the eight major facilities and to have one inspector assigned full-time to each site. Other commenters, however, requested justification for the proposed seven inspectors needed for the eight major facilities.

RESPONSE: The concept of one full-time inspector assigned to each of the eight major commercial facilities was rejected by the Department because the size and complexity of the major facilities varies greatly. Assigning one inspector to each facility would result in an unequal distribution of Departmental resources. The Department believes it would be more cost effective to utilize seven FTEs on a shared facility basis.

The seven FTEs required to perform inspections of the eight major commercial facilities are justified based upon the Department's evaluation of manpower requirements to conduct complete weekly inspections in accordance with N.J.S.A. 13:1E-42.1. With the additional support the fees will provide, the inspectors will be able to conduct facility inspections that will include, but not be limited to, checking shipments of hazardous waste for properly completed manifests, sampling wastes claimed as not hazardous, inspecting hazardous waste containers for proper storage and labelling, and checking records pertaining to waste analysis plans, equipment maintenance schedules, etc. to verify compliance. In addition to actual inspection time, the workload requirements for the seven FTEs includes travel time, report and documentation preparation time, training, and secretarial assistance.

COMMENT: The charging of \$500.00 for each step in the delisting process is not consistent with the spirit of N.J.S.A. 13:1E-18 which authorizes fees of up to \$500.00 for services performed.

RESPONSE: The Department disagrees with the commenter. N.J.S.A. 13:1E-18 allows the Department to "establish and charge fees for any of the services it performs in connection with this act, which fees shall be annual or periodic as the Department shall determine." The delisting process currently involves four distinct services: (1) development, monitoring, and review of sampling plans; (2) review of delisting petitions (including review of and technical assistance on draft petitions); (3) regulatory development and publication of proposed rulemaking pursuant to the delisting petition; and (4) regulatory development and publication of final rulemaking. Each service requires the application of significant resources in a distinct set of tasks the Department must perform in order to process delisting petitions, and the delisting process may terminate upon completion of any service. The Department, therefore, believes the Solid Waste Management Act authorizes fees to be assessed for distinct Departmental Services, particularly when they are distinct over time and require different expertise and resources. It should also be noted that not all requests for delisting of wastestreams will require each service. Rather than charging the petitioner for all four phases up front, the Department believes payment should be made for each service actually used.

COMMENT: The fee schedule imposes a \$500.00 fee on revisions or amendments to a permit application. One commenter suggested that there be no fee for any revision initiated by the Department. Another commenter recommended that the \$500.00 fee be limited to only major permit changes.

RESPONSE: Under the fee schedule as proposed, any permit revisions or amendments that are mandatory under State or Federal statute or regulations are not subject to the permit revision fee (see N.J.A.C. 7:26-4A.3(a)5iii(2)). The Department initiation of a permit revision is not reason alone to exempt the revision from the fee payment. The Department agrees that fees should not be assessed for minor permit revisions or amendments. Accordingly, the Department has amended N.J.A.C. 7:26-4A.3(a)5iii upon adoption so that the fee specified therein will be required only for a permit modification that is not minor according to the criteria at N.J.A.C. 7:26-12.8(b).

COMMENT: Hazardous waste flow should not be included in calculating into inspection costs for major facilities since it is not related in any way to inspection costs.

RESPONSE: The Department disagrees with the commenter. The quantity of waste is included in the formula for calculating inspection

fees at N.J.A.C. 7:26-4A.3(a)3 because it is related to a site's complexity with respect to the number of manifests to be reviewed, the nature and extent of waste handling activities, the number and type of hazardous waste management units, and sampling requirements. Since complexity is one factor relating to the level of resources and time required for the Department to evaluate a facility, which is reflected in the inspection costs.

COMMENT: It is inequitable for the Department to impose fees on pre-existing permit applications. The fee schedule should include a grandfather clause for permit applications submitted prior to the effective date of these rules.

RESPONSE: There are currently no major hazardous waste facility permit applications being reviewed by the Department. For non-major hazardous waste facilities, under the new fee schedule, a \$500.00 fee may be imposed for three different services necessary in the permit review process under N.J.A.C. 7:26-4A.3(a)5. The services are (1) permit application review, (2) permit issuance, and (3) modifications to a permit application or reissuance of a permit. Permit applications submitted to the Department prior to adoption of this fee schedule will have already been accompanied by a \$500.00 permit application review fee under the prior fee schedule. These applications will not be reassessed fee for permit application services. However, the Department will assess additional fees for permit issuance or reissuance and permit application modification at the time that the Department provides these services for existing applications. The Department has no intention of collecting application review fees from facilities already permitted except in the case of non-minor permit revisions or modifications or permit renewals.

COMMENT: It is inequitable for the Department to charge an inspection fee each time the Department's personnel changes and a new inspection is scheduled in order to familiarize new personnel with an existing permit application.

RESPONSE: The Department agrees. The fee schedule for permit reviews includes the cost of engineering inspections required for review of the application, and does not include the cost of compliance inspections. A separate fee is assessed for compliance inspections (see N.J.A.C. 7:26-4A.3(a)2 and 3). If an inspection is conducted solely to familiarize new personnel with a facility, it is not a bona fide compliance evaluation inspection and it would not be billed as such. Further, fees are not assessed based upon the number of inspectors who conduct an inspection.

COMMENT: The 25 full-time positions needed for permit reviews are not sufficiently justified. There are few, if any, new facilities being constructed in New Jersey, and most Part B permits should have been called in by November, 1988. What are the numbers of major facility and non-major facility applications the Department is expecting to review on an annual basis?

RESPONSE: The 25 full-time positions or FTEs are currently filled and these staff review both new and existing facility applications. The commenter is correct in stating that there is a minimal number of new facility applications. However, there are 225 existing TSD facilities, approximately 110 of which will undergo review for a final permit. The number of facilities permitted to date totals 35, with another 75 currently under various stages of review. Based upon the Department's experience, these reviews will take several years. Most of these applications are for storage and treatment facilities, which require approximately one half FTE for each review. Eight applications are for incinerators, which take approximately one and one half FTEs for each review. These FTEs may be distributed over the duration of the permit application process, which can be several years. Permits are effective for a maximum term of five years. Renewal applications must be approved before extending the term of the permit. Recent experience with the first renewal applications indicates that about the same number of FTEs are required for review of renewal applications as are required for existing and new application reviews due to amendments to Federal and State requirements.

The 25 FTEs are also necessary for the review of closure plan permits for those existing facilities that choose not to obtain a final permit. Approximately 115 of these plans are currently under review, requiring one quarter FTE each. Additionally, the 25 FTEs include review of annual reports, exemption requests for tank storage under 90 days, and other exemption requests which require Departmental determinations and written approval.

It is the Department's experience that, on an annual basis, an average of two new non-major hazardous waste facility applications are submitted annually. An application for a new major hazardous waste facility has not been received since the effective date of the Major Hazardous Waste Facilities Siting Act, September 10, 1981. However, it is anticipated that

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within the next few years several applications for new major hazardous waste facilities will be submitted.

COMMENT: The classification of hazardous waste is an inefficient and duplicative process for many wastestreams. The Department should publish a standard each time a major wastestream is classified. Why is there a cost differential for different volumes of waste?

RESPONSE: The Department has invested significant time and resources in improving the services provided by the waste classification program. The proper classification of wastes is a complex and often time consuming process. It should be noted that the Department's waste classification program is an advisory service to generators of waste in New Jersey. N.J.A.C. 7:26-8.5(a) firmly places responsibility for proper classification of the generator's solid wastes with the generator. There is no regulatory requirement for waste generators to submit classification requests to the Department. The Department is justified in collecting fees for these services as provided for in the Solid Waste Management Act. While many wastestreams are similar in chemical constituents and environmental impacts, small differences in composition and/or properties require review of each wastestream as a separate entity, and it is not possible to publish a standard each time a major wastestream is reviewed (with the exception of those wastestreams already listed as hazardous in N.J.A.C. 7:26-8). The Department is in the process of preparing additional guidance to generators concerning the status of their wastes. This guidance will include standardized waste classification request forms and a model approach to hazardous constituent determinations. This guidance should assist both generators and the Department in further streamlining waste classification activities.

The fees charged for waste classification services are proportional to the time and resources utilized in performing these services. Classification requests requiring the greatest use of Departmental resources (that is, those wastestreams identified herein at N.J.A.C. 7:26-4A.3(b)3i) are charged the highest fees, while those requests requiring less Departmental resources are charged less. Higher volume waste streams generally require more complex analysis on the part of the Department because a greater number of samples are submitted.

COMMENT: Inspection fees should be based on a reasonable hourly rate fee system.

RESPONSE: The Department believes that a billing system for inspections based on an hourly rate fee system would be unduly administratively burdensome. It would be extremely difficult to determine an hourly rate to account for not only the actual inspection but also for support costs such as special equipment, training, operating expenses, and secretarial assistance. The Department believes that the flat use of a formula allowing assignment of variables and the fee of \$500.00 per inspection is a more reasonable means to assess fees at this time and will result in an overall lower cost associated with administration of the State's hazardous waste program.

COMMENT: Special equipment and training costs said to be required annually for seven inspectors conducting inspections at major hazardous waste facilities, totalling \$129,850, and for 11 inspectors conducting inspections at non-major hazardous waste facilities, totalling \$137,459, are not sufficiently justified.

RESPONSE: The following is a breakdown of costs required for special equipment, training, and sampling to determine compliance with permit conditions. Included in these costs are equipment and vehicle maintenance as well as initial purchases. All items are represented as annual costs per inspector.

Safety equipment, sampling equipment, and safety training, which includes protective clothing, respirators, and monitoring equipment that is necessary to comply with the Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25: \$5,720.00

Vehicle and mobile car radio maintenance, gasoline, oil, etc.: \$5,676.00
SUBTOTAL \$11,396.00

Estimated analytical costs for environmental samples collected at facilities:

Non-major facilities:	\$1,100.00
Major facilities:	\$7,154.00
Non-major facilities total cost per inspector:	\$12,496.00
Major facilities total cost per inspector:	\$18,550.00

COMMENT: The Department is taxing hazardous waste handlers and is, therefore, discouraging the siting and locating of hazardous waste facilities, including new industrial facilities, despite the Federal mandate to site and locate such facilities or risk losing Superfund monies.

RESPONSE: The Department realizes that the proposed fee schedule is a significant increase over the previous schedule. However, when compared with the overall costs of hazardous waste facility construction projects and the other costs of managing hazardous wastes, the Department believes that the fees, alone, would not discourage the siting and locating of hazardous waste facilities such that federal mandates would not be met. Compliance with the capacity assurance requirement under Section 104(c) of SARA, which requires that the State demonstrate its capacity to handle hazardous waste generated for 20 years or risk loss of future Federal funding for cleanup actions, will be insured with by the Department and the New Jersey Hazardous Waste Facility Siting Commission under the Siting Act. The proposed hazardous waste fees are essential to provide reliable and stable support for the Departmental services which industry requires in order to conduct business.

COMMENT: The Department should revise its hazardous waste management rules to allow generators and transporters to print their own manifests. Additionally, the manifest form should be revised to be computer compatible so that line items numbered one through 10, which appear at the top of each uniform hazardous waste manifest, could be printed at the top of each page in accordance with a weekly schedule rather than logged in by hand.

RESPONSE: The Department will continue to allow hazardous waste generators, in those few instances where large quantities of manifest forms are needed, to print their own manifests as long as these manifests satisfy the form requirements of USEPA and the Department. Details regarding the printing of manifests may be arranged on an individual basis with the Departments' Bureau of Manifest and Information Systems.

While the Department believes that the commenter's suggestion regarding revising the manifest to be computer compatible has merit, the format of the uniform manifest form is dictated by the USEPA in order to assure uniformity of forms between different states. Therefore, any significant changes to the document's format must be achieved through a USEPA rule amendment. The Department will take this suggestion under advisement with USEPA but cannot assure that any revisions to the manifest form will result.

COMMENT: The fees for waste classification are excessive and the fees may discourage generators from classifying their wastes.

RESPONSE: The Department believes that the fees associated with review of waste classification requests accurately reflect the Departmental costs incurred in providing this service. Determination of the proper status of wastes in accordance with the New Jersey hazardous waste management rules, at N.J.A.C. 7:26-8, is a complex and often resource-intensive process. In order to provide generators with accurate opinions on the proper classification of their wastes in a timely manner, the Department uses well-qualified personnel with backgrounds in chemistry, engineering, and related fields. Additionally, the review of more complicated classification requests, for example, those where the manufacturing process generating the waste must be investigated or where extensive analytical data must be reviewed, requires significant program resources, including personnel time, computer resources, and often extensive correspondence. The actual cost incurred in processing these complicated requests often exceeds the \$500.00 fee.

It should be noted that a survey of classification requests submitted to the waste classification program shows that over 80 percent of the requests received were for wastestreams of less than 200 cubic yards of contaminated soil. This data suggests that four of every five requests will be charged \$250.00 instead of the \$350.00 or \$500.00 rates, as specified at N.J.A.C. 7:26-4A.3(b)3. Given the time and resources necessary to provide this service, the proposed fees are not excessive.

COMMENT: N.J.A.C. 7:26-4A.3(b)1i to (b)1iii assesses a dollar-per-ton fee for generators of hazardous waste. Since some TSD facilities also generate waste, and hazardous waste materials going through a transfer station are technically regenerated by the operators of the transfer station, the Department would receive double payment for the same wastestreams. Transfer stations should be exempt from the fee if the material was originally generated in New Jersey.

RESPONSE: The referenced fee schedule provision assesses an annual reporting fee for hazardous waste generators. This fee schedule is based on volume ranges of hazardous waste generated. The Department cannot exempt interim storage facilities, or hazardous waste transfer stations, from the fee schedule because these facilities require compliance inspections and annual report reviews equivalent to those of other facilities, even though the waste stream involved may be handled by more than one facility. The fees are assessed for the services provided and not for individual wastestreams.

COMMENT: The preamble to the proposal notes that the estimated major facility inspection fee will be up to \$3,200 per inspection. Assuming one inspection per day and a normal work year of 220 to 225 days, each day of inspection time should cost in the area of \$300 (using the figures given in the proposal of \$472,850 in salary, operating and special costs and seven inspectors). It seems difficult to justify a fee 10 times as high as the actual cost.

RESPONSE: The estimated fee amount of \$3,200 per inspection is the maximum estimated fee for a major commercial facility inspection. A complete compliance inspection includes, but is not limited to, checking shipments of hazardous waste for properly completed manifests, sampling, if necessary, of wastes claimed to be not hazardous, inspecting hazardous waste containers for proper storage and labeling, and checking records including those pertaining to waste analysis plans and equipment maintenance schedules. The inspection fee includes not only the cost of the actual inspection but also the cost of special equipment, travel time, training, report and documentation preparation time, and secretarial assistance. Consequently, the commenter's assumption that a major commercial facility inspection reflects only one day's costs attributed to an inspection is erroneous.

COMMENT: The formula which determines inspection fees for major hazardous waste facilities takes no account of the nature of the wastes received. At a facility that treats large volumes of relatively dilute wastes, the fee schedule imposes an unjustifiably high cost.

RESPONSE: The fee schedule is based upon the service the Department provides, such as compliance monitoring inspections of hazardous waste facilities. As long as a waste meets the definition of hazardous, regardless of concentration, the full inspection services are warranted. Experience within the Department has shown that the overall waste volume is generally a good indication of site complexity, which corresponds to resources needed, including technical expertise and time, in order to evaluate a facility. The Department continues to evaluate the possibility of varying fees based on waste type; however, current reporting requirements do not allow the Department to sufficiently account for waste type and concentration levels. The fee schedule represents actual current costs for inspections.

COMMENT: The State should register the transporter company requesting registration. Once the company is registered, only the waste hauler portion of individual vehicles should be registered and required to display a registration number. The registration should be by vehicle serial number, not license plate number. The display of an additional number on the cab would be confusing and meaningless if the company is registered and the company's name is displayed on the cab door.

RESPONSE: Under current Departmental procedure, each hazardous waste transporter receives a registration number which identifies the company. Under the new fee schedule, both the company registration number and a decal with a unique individual vehicle number are required to be displayed on the cab and transport unit because the company name printed on vehicles does not always correspond to the company name indicated on the Department registration documents. Transport units, such as roll-offs or dumpsters, may not have a serial number or license plate. The vehicle serial number and license plate numbers, if applicable, are included on the registration documents. These procedures are necessary for compliance monitoring purposes during roadside inspections or related investigations and will leave no doubt as to the companies involved in the transportation of the hazardous waste.

COMMENT: Specific fees for RCRA permitting activities for new major hazardous waste facilities or expansions of 50 percent or more, proposed at 7:26-4A.3(a)4, range from \$23,000 to \$84,000 depending upon the type of hazardous waste facility being permitted. As the RCRA permit process has been underway for more than eight years, it appears that some permit applications would be much simpler to process than others. The fee schedule should be more flexible and should assess a flat fee of \$500.00 per hazardous waste facility permit application with subsequent fees based on actual time spent on the individual permit.

RESPONSE: The Department disagrees with the commenter. There are currently no permits of major commercial hazardous waste facilities under review. The permit application review process for new major hazardous waste facilities and expansions of 50 percent or more at existing major hazardous waste facilities is very resource intensive due to the size, complexity, and uniqueness of each project. The Department continues to look for and institute means to make the permit process more efficient. The fee schedule will be adjusted as these revisions are instituted.

COMMENT: What additional aspects of transportation do State authorities expect to cover during the inspections authorized by the Solid

Waste Management Act that are not already covered by other Federal and State laws?

RESPONSE: New Jersey statutes which affect the transportation of hazardous wastes through the State are the Hazardous Materials Transportation Safety Act, N.J.S.A. 39:5B-1 et seq., and the Solid Waste Management Act.

The Hazardous Materials Transportation Safety Act empowers the New Jersey State Police, the Department of Environmental Protection, and the New Jersey Department of Transportation to enforce motor carrier safety regulations relative to the transportation of hazardous materials, including hazardous wastes, on the roads of the State. The enforcement of these regulations is accomplished through roadside inspections, facility audits, and review of waste manifests. The roadside inspections are conducted in cooperation with the New Jersey State Police and are designed to focus upon individual vehicles, driver qualifications, shipping papers, waste sampling, emergency preparedness, and logs. This is the only routine roadside vehicle inspection program conducted in the State and is a cooperative effort. The Department inspectors provide the expertise relative to chemical hazards, waste classification, waste manifests, and waste packaging. The New Jersey State Police provide the expertise relative to the vehicle safety and hazardous materials packaging.

The transporter facility inspection program, conducted solely by Departmental inspectors under the authority of the Solid Waste Management Act, is designed to focus upon the transporters' vehicles, drivers' records, safety precautions, maintenance procedures, and waste generation and storage areas.

This program is designed to ensure the proper shipping, handling, and disposal of hazardous wastes and is designed in coordination with the facility-based Compliance Evaluation Inspection Program which focuses upon hazardous waste generators and treatment, storage, and disposal facilities. Any improprieties which are discovered during manifest review are further investigated during a subsequent review of facility and handler records.

COMMENT: Since hazardous wastes are no more harmful than the pure products from which they are derived, what similar inspection authority is proposed for these products?

RESPONSE: The Department does not currently have the statutory authority to inspect transporters of pure products. This authority lies with the Federal and State Departments of Transportation and the New Jersey State Police. These agencies derive their authority from the State Hazardous Materials Transportation Safety Act and the Federal Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq. (1975). The Department's authority under the Solid Waste Management Act to regulate hazardous substances is limited to solid waste as defined in the Act at N.J.S.A. 13:1E-3 and as defined at N.J.A.C. 7:26-1.6. To this end, the Department enforces current Federal and State mandates regarding sound hazardous waste management by tracking hazardous waste from cradle to grave or generation to ultimate disposal. If pure products are accidentally or deliberately discharged to the environment, the Department considers that material a waste and has the authority to act accordingly under the Solid Waste Management Act and other State statutes, including the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 (1976).

COMMENT: The fees levied against hazardous waste transporters would exceed Department expenses allocated to transporter enforcement by over 25 percent. Additionally, the figure of 280 hazardous waste transporters may be a gross underestimation since it may not include subcontract trucking companies which are mostly one vehicle owners/operators.

RESPONSE: Upon additional review of transporter enforcement activity costs to the Department and estimated transporter fee revenues, the Department found that the revenues exceeded Departmental costs of \$937,000 by \$333,000. Based on this finding and on public comments received regarding the number of categories requiring registration, the Department has on adoption eliminated the requirement for registration of the trailer unit, has lowered the registration fee for each hazardous waste vehicle having a capacity greater than one ton to \$250.00, and has lowered the fee for each detachable hazardous waste transport unit having a capacity greater than one ton to \$225.00.

These changes in the transporter registration requirements and registration fees will result in a \$337,500 decrease in estimated revenues from the proposed transporter fees upon adoption, from \$1,270,000 to \$932,500. The total fee revenues will decrease to an estimated \$3,269,250 for FY89. The Department bases the estimated transporter revenues upon current trends in registration of hazardous waste vehicles within the State.

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Due to current interpretation of the A-901 licensing Act, N.J.S.A. 13:1E-126 et seq., all subcontractors must annually register their hazardous waste vehicles and parts thereof with the Department. It may be that the figure of 280 hazardous waste transporters is an underestimation. This will be determined during the registration process for FY89. If the fee revenues exceed the cost to the Department for transporter enforcement activities, the registration fee amounts will be reevaluated by the Department.

COMMENT: The Department failed to calculate Federal funds contributed under the Federal Motor Carrier Safety Association Program which sponsors roadside inspections by State inspectors.

RESPONSE: By virtue of the Department's incorporation into its solid waste management rules of certain portions of both the Federal Motor Carrier Safety Act, Pub. L. No. 98-554 (1984), and the Federal Hazardous Materials Transportation regulations, 49 C.F.R. pt. 171 (1987), the State Police and the Department work in cooperation to inspect transporters hauling hazardous waste materials. The Department does not receive any portion of the Federal moneys given to the State Police to conduct hazardous material compliance inspections.

COMMENT: The imposition of waste fees to provide an incentive for hazardous waste minimization discriminates against wastestreams for which there are no substitutes.

RESPONSE: The Department disagrees. The hazardous waste fees herein are assessed to meet actual costs of Departmental services provided to industry. Fees are related to waste volume where increased technical expertise and resources on the part of the Department is required for inspections of those major commercial hazardous waste facilities with larger waste flows.

COMMENT: The proposed transporter fees penalize a more environmentally sound management practice mandated by the USEPA by imposing a cost on the transporting of hazardous waste to commercial treatment and disposal facilities that is not imposed on on-site management of hazardous wastes.

RESPONSE: The Department does not believe that this fee schedule serves to penalize off-site waste management practices as opposed to on-site practices when considered in comparison to the overall costs of handling waste. The imposition of the new fees will provide the needed additional support for specific hazardous waste program services which the Department believes are essential to monitor compliance with Federal and State statutes and rules and regulations. As more vehicles transport hazardous waste in accordance with increasingly stringent mandates, it is imperative that the Department be responsive and maintain its compliance monitoring efforts to protect public health, safety and the environment.

COMMENT: The fees are constitutionally suspect because they discriminate against interstate commerce. The DEP fee scheme violates the Commerce Clause because it does not provide for fair apportionment. Whether a transporter operates in the State one day or all 365 days of a permit year, the fee paid is the same.

The end result is that some transporters may choose not to do business in the State. As supply dwindles, artificial shortages are created, and the costs for services further escalate. The DEP should carefully consider the true costs to society if it pursues this recommended course of action.

RESPONSE: The fee schedule does not discriminate against interstate commerce. All transporters, whether originating in-State or out-of-State, that pick-up or deliver hazardous waste in the State of New Jersey are required to register with the Department and to pay a uniform registration fee. For those hazardous waste transporters passing through the State of New Jersey, it is Departmental policy not to require registration. A one-time annual registration fee is assessed for hazardous waste transporters in order to avoid excessively complicated administrative and compliance monitoring tasks. Furthermore, the Department does not believe that the proposed fee schedule presents enough of a financial disincentive to result in serious economic impacts.

COMMENT: The 13 FTEs said to be required for administering hazardous waste transporter enforcement operations are not sufficiently justified.

RESPONSE: The projected workload for the hazardous waste transporter program will require 12 professional positions and one clerical position. The 12 inspectors will be involved in conducting approximately 180 roadside inspection operations annually involving an estimated 15 vehicles per operation, 40 hazardous waste transporter facility compliance inspections annually, and associated transporter enforcement document processing and follow-up.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks ***[thus]***):

7:26-1.1 Scope of rules

(a) Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department of Environmental Protection which govern the registration, operation, and closure maintenance of sanitary landfills and other solid and hazardous waste facilities in the State of New Jersey as may be approved by the Department; registration, operation, and maintenance of solid waste transporting operations and facilities in the State of New Jersey; a fee schedule for engineering review, registration, and inspection of solid and hazardous waste facilities, hazardous waste generators' reporting, classification, and delisting, and registration of solid waste, including hazardous waste, transporters and disposal operations and facilities in the State of New Jersey. These rules shall not apply to the following:

1.-6. (No change.)

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

7:26-1.4 Definitions

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

...
 "Approved registration" means the registration of solid waste disposal site, transporter, or other solid or hazardous waste facility issued by the Department of Environmental Protection after review and approval of the registration statement.

...
 "Collection or collecting" means the act of picking up solid waste at its point of generation or storage and placing it in a solid or hazardous waste vehicle.

...
 "Hazardous waste cab" means any powered device to which a hazardous waste transport unit ***[or trailer]*** can be attached for transporting hazardous waste off-site or to a hazardous waste facility by road.

...
[**"Hazardous waste trailer" means any non-powered device that is used to carry a hazardous waste transport unit. The hazardous waste trailer may be permanently attached to or detachable from the hazardous waste cab. A hazardous waste trailer includes, but is not limited to, trailer flat beds, flat rail cars, and flat barges.**]

"Hazardous waste transport unit" means any portable non-powered device that is used to contain and transport hazardous waste off-site or to a hazardous waste facility by road, rail, water, or air and that is not normally disposed of with the waste. Hazardous waste transport unit includes, but is not limited to, trailer roll-offs, roll-off containers, hoppers/dumpsters, rail cars, ***[and]*** barges***[**. (Note: Permanently attached hazardous waste trailer/hazardous waste transport units include, but are not limited to**]***, trailer boxes/vans, trailer dumps, trailer tanks, and trailer vacs***[**, and will be assessed the fee specified therefor at N.J.A.C. 7:26-4A.3(c)1.)**]**,***

"Hazardous waste vehicle" means any self-propelled device that is used to move hazardous waste off-site or to a hazardous waste facility by road. Hazardous waste vehicle is any combination of hazardous waste cab***[**, trailer,**]*** and transport unit, whether detachable or permanently attached, and includes, but is not limited to, straight boxes/vans, straight dumps, straight tanks, straight vacs, straight roll-offs, and pick-up trucks.

...
 "Transporter" means a person engaged in the act of collection and/or transporting of solid waste off-site or to a solid or hazardous waste facility by road, rail, water, or air.

"Transportation" or "transporting" means the act of collecting and/or moving solid waste off-site or to solid or hazardous waste facility by road, rail, water, or air.

...

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SUBCHAPTER 4. SOLID WASTE FEES EXCLUDING HAZARDOUS WASTE FEES

7:26-4.1 General provisions

In accordance with N.J.S.A. 13:1E-18 and N.J.S.A. 13:1E-6, there is hereby established a Fee Schedule. Said schedule shall apply to all sanitary landfill operations, incinerators, transfer stations, processing facilities, resource recovery facilities or any other methods of collection or disposal of solid waste, excluding hazardous waste, requiring registration with the Department.

7:26-4.2 (No change.)

7:26-4.3 Fee schedule for solid waste facilities

(a) The Fee Schedule for solid waste facilities is as follows:

1.-2. (No change.)

3. Inspection and Regulation Fee: Fee per quarter
 Solid Waste Facilities accepting during which wastes
are accepted

i. Nonhazardous bulk liquids, nonhazardous semi-liquids and nonhazardous chemicals (in quantities greater than normally present in municipal refuse and excluding septic tank clean-out waste): \$500;
 ii.-viii. (No change.)

7:26-4.4 through 4.6 (No change.)

7:26-4.7 Fee schedule for transporting

(a) For all solid waste, excluding hazardous waste transporters, an annual registration and inspection fee shall be paid. The fee shall be \$20.00 for each vehicle per year or part thereof. The registration year shall extend from May 1 through April 30.

(b) The Registration of a solid waste vehicle is non-transferable.

7:26-4.8 through 4.10 (No change.)

SUBCHAPTER 4A. HAZARDOUS WASTE FEES

7:26-4A.1 General provisions

In accordance with N.J.S.A. 13:1E-1 et seq., specifically 13:1E-6, 13:1E-18, 13:1E-42.2, and 13:1E-60d, there is hereby established a fee schedule for hazardous waste generators, transporters, and treatment, storage, or disposal facilities. Notwithstanding provisions in N.J.A.C. 7:26-4, this subchapter constitutes the rules of the Department for hazardous waste fees.

7:26-4A.2 Payment of fees

(a) Fees for activities related to hazardous waste generators, transporters, and treatment, storage, or disposal facilities shall be paid by certified check or money order payable to: Treasurer, State of New Jersey. Payment shall be submitted to:

New Jersey Department of Environmental Protection
 Attention: Hazardous Waste Fee Unit
 Division of Hazardous Waste Management
 401 E. State St.
 CN 028
 Trenton, New Jersey 08625

(b) All fees shall be paid within 30 days of the date on the bill issued by the Department unless otherwise specified herein. Those fees not paid within the time due shall be subject to penalties pursuant to N.J.S.A. 13:1E-9 and 13:1E-12.

7:26-4A.3 Fee schedule for hazardous waste facilities, generators, and transporters

(a) The fee schedule for hazardous waste facilities is as follows:

1. Annual reporting fee: \$500.00;

2. Fee for inspection of hazardous waste facilities, other than major hazardous waste facilities as defined at N.J.S.A. 13:1E-42.1, per inspection: \$500.00;

3. Fee for inspection of major hazardous waste facilities, as defined at N.J.S.A. 13:1E-42.1, will be determined on an annual basis by the following formula:

F = Fee

T = Inspection time (expressed as a percentage of the Department's total annual inspection time for all major facilities)

W = Total quantity of hazardous waste generated and manifested off-site and hazardous waste manifested into the facility (expressed as a percentage of total hazardous waste generated and received annually from off-site for all major facilities)

I = Total annual cost for major inspections

F = (T + W) / 2 x I

4. Fees for review of permit applications for new major hazardous waste facilities, as defined at N.J.S.A. 13:1E-51, and expansions of 50 percent or more at major hazardous waste facilities, shall be paid at the time of application submission, and are as follows:

- i. Land disposal: \$84,000.00;
- ii. Storage (including treatment): \$23,000.00;
- iii. Incineration with trial burn: \$65,000.00; and
- iv. Incineration without trial burn: \$40,000.00;

5. Fees for review of permit applications and issuance of permits for hazardous waste facilities, other than major hazardous waste facilities as defined at N.J.S.A. 13:1E-51, which are required to be permitted pursuant to N.J.A.C. 7:26-12, are as follows:

i. Fee for permit application review: \$500.00

(1) The permit application review fee shall be paid at the time of each submission of a permit application;

ii. Fee for permit issuance: \$500.00

(1) The permit issuance fee shall be paid at the time of public notice of the draft permit, including draft permits for permit modifications;

iii. ***[Fee for each revision or amendment to a permit application:]* *Fee for each modification of a permit or reissuance of a permit pursuant to N.J.A.C. 7:26-12.6, except that there shall be no fee assessed for permit revisions that are minor according to the criteria at N.J.A.C. 7:26-12.8(b):***

\$500.00

(1) The permit ***[application revision or amendment]* *modification or reissuance*** fee shall be paid at the time of submission of a request for ***[revision or amendment]* *modification or reissuance***;

(2) No fee is required for permit ***[application revisions or amendments]* *modifications*** that are mandatory under State or Federal statute or regulation; and

iv. Fee for issuance of closure approval: \$500.00

(1) The fee for issuance of closure approval shall be paid at the time of submission of the application for closure.

(b) The fee schedule for hazardous waste generators is as follows:
 1. Annual reporting fees are as follows. Annual reporting fees shall be based on manifest information and/or annual reports for the previous calendar year:

i. Hazardous waste generators manifesting 1.33 or more tons but less than 10 tons of hazardous waste annually: \$200.00;

ii. Hazardous waste generators manifesting 10 or more tons but less than 100 tons of hazardous waste annually: \$300.00; and

iii. Hazardous waste generators manifesting 100 or more tons of hazardous waste annually: \$400.00;

2. Fee for inspection of hazardous waste generators, per inspection: \$500.00;

3. Fees for waste classification and delisting are as follows. Fees for waste classification shall be paid upon submission of each request for classification. A fee will be assessed for each separate waste classification requested:

i. The fee for the classification of the following wastes is \$500.00 per classification:

- (1) Manufacturing process waste streams;
- (2) Wastes for which the source of contamination is unknown; and
- (3) Wastes for which an analytical assessment of the presence of substances listed at N.J.A.C. 7:26-8.13 through 8.16 is required;

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ii. Fee for the classification of wastes where the source of contamination is known and an analytical assessment of the potential presence of wastes or waste constituents listed at N.J.A.C. 7:26-8.13 through 8.16 is not required, and the total volume of waste to be classified is greater than or equal to 200 cubic yards of solids or 500 gallons of liquids, per classification: **\$350.00;**

iii. Fee for the classification of wastes where the source of contamination is known and an analytical assessment of the potential presence of wastes or waste constituents listed at N.J.A.C. 7:26-8.13 through 8.16 is not required, and the total volume of waste to be classified is less than 200 cubic yards of solids or less than 500 gallons of liquids, per classification: **\$250.00;**

iv. Fee for review of sampling plans submitted in support of waste classification requests, for each plan submitted: **\$200.00;**

v. Fees for evaluating site specific waste streams for delisting pursuant to N.J.A.C. 7:26-8.17 shall be paid upon submission of the document, and are as follows:

(1) Review of delisting petition: **\$500.00;**

(2) Development, monitoring, and review of sampling plan: **\$500.00;**
and

(3) Development and publication of each public notice in the New Jersey Register: **\$500.00;**
and

vi. The fee for Hazardous Waste Manifest forms is \$10.00 for a package of 10 forms and shall accompany the request for forms.

(c) The fee schedule for hazardous waste transporters is as follows:

1. All hazardous waste transporters shall pay an annual registration fee. A State of New Jersey hazardous waste transporter registration decal will be issued for each hazardous waste cab*[, trailer,]* and transport unit, as defined at N.J.A.C. 7:26-1.4. The fee registration year shall extend from October 1 through the following September 30. The fee shall accompany the submission of the annual registration application. All vehicles registered with the Department must be owned or leased by the applicant. If the vehicle is leased, a copy of the lease must be submitted with the registration application. The registration of a hazardous waste transporter is non-transferable and fees are not refundable. The annual registration fees are as follows:

i. Each hazardous waste cab: **\$25.00;**

*[ii. Each hazardous waste cab with permanently attached trailer: **\$50.00;**

iii. Each hazardous waste trailer: **\$25.00;]***

*[iv.]***ii.*** Each hazardous waste transport unit, either detachable or with a permanently attached hazardous waste cab *[or trailer, or both]*, having a capacity less than or equal to one ton (one ton = one cubic yard = 200 gallons): **\$100.00;**

*[v.]***iii.*** Each hazardous waste transport unit without a hazardous waste trailer having a capacity greater than one ton (one ton = one cubic yard = 200 gallons): ***[\$250.00;]***
***\$225.00;**
and*

*[vi. Each hazardous waste transport unit with a permanently attached hazardous waste trailer having a capacity greater than one ton (one ton = one cubic yard = 200 gallons): **\$275.00;**
and]*

*[vii.]***iv.*** Each hazardous waste transport cab with permanently attached *[hazardous waste trailer and]* hazardous waste transport unit with a capacity greater than one ton (one ton = one cubic yard = 200 gallons): ***[\$300.00.]***
\$250.00.

2. Fee for inspection of transporter facilities, per inspection: **\$500.00.**

7:26-4A.4 Exemption from fee payment

(a) A hazardous waste generator is exempt from annual reporting fees if the quantity of manifested waste is less than 1.33 tons per year.

(b) Homeowners seeking waste classification of oil spill residues from home heating oil tanks are exempt from the classification fees.

7:26-7.3 Hazardous waste manifest forms

(a) For the purpose of this chapter, only the uniform hazardous waste manifest forms as described in the Appendix for 40 CFR Part 262 (1987) are to be used for hazardous waste shipments originating in or destined for New Jersey. Manifests shall be obtained in accordance with the procedures set forth below, for the fee established at N.J.A.C. 7:26-4A.3(b)3iv, and filled out and distributed according to the instructions set forth at N.J.A.C. 7:26-7.4, 7.5, and 7.6.

1.-3. (No change.)

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

7:26-7.4 Hazardous waste generator responsibilities

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

(e) It shall be considered a violation of this section for a hazardous waste generator to:

1. (No change.)

2. Utilize a transporter of hazardous waste who is not properly registered with the Department pursuant to N.J.A.C. 7:26-7.5 and/or who fails to display a current Department registration number (see N.J.A.C. 7:26-7.5(d)); or

3.-4. (No change.)

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

(j) A generator shall not offer hazardous waste to a waste reuse facility for use or reuse unless:

1. The generator has registered with the Department's waste reuse facility program. To register, a generator shall submit the following information to: New Jersey Department of Environmental Protection, Division of Hazardous Waste Management, Waste Reuse Program, 401 East State Street, 5th Floor, CN 028, Trenton, NJ 08625.

i.-vii. (No change.)

2.-5. (No change.)

7:26-7.5 Hazardous waste transporter responsibilities

(a) This section applies to all hazardous waste transporting, including the transporting of hazardous waste fuels, except for the transportation of hazardous waste from one point to another on the site where the hazardous waste is generated, stored, or disposed. Hazardous waste transporter requirements are also found at N.J.A.C. 7:26-3.4(d), (e), (f), and (i).

(b) (No change.)

(c) License issuance, renewal and revocation requirements are as follows:

1.-6. (No change.)

7. The failure to submit updated information and to submit all applicable fees (See N.J.A.C. 7:26-4A) within 30 days after the annual renewal/expiration date of a hazardous waste transporter license shall be sufficient cause for the Department to revoke the license or to declare it expired.

8.-9. (No change.)

10. The Department, after notice and opportunity for 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, may revoke the license of a hazardous waste hauler for the causes listed in this paragraph which are in addition to, and not a limitation of, any disqualifying reasons set forth in N.J.A.C. 7:26-16.8 and 16.9:

i.-iv. (No change.)

(d) General requirements are as follows:

1.-18. (No change.)

19. All hazardous waste vehicles*[, including]* ****the hazardous waste cab*[, trailer,]* and transport unit individually if detachable*[,]**** used in the transporting of hazardous waste shall properly and conspicuously display a current State of New Jersey hazardous waste transporter registration decal, issued by the Department, and the New Jersey Solid Waste Administration (N.J.S.W.A.) registration number in letters and numbers at least three inches in height. In addition, the capacity of the vehicle in cubic yards or in gallons, with the appropriate unit designated, shall be marked on

both sides of the vehicle so as to be visible to the operator of the hazardous waste facility to which the hazardous waste is being transported.

(e)-(i) (No change.)

7:26-7.6 Hazardous waste facility operator responsibilities

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

(e) It shall be considered a violation of this section for a hazardous waste facility operator or any other person to:

1.-2. (No change.)

3. Accept waste from a hazardous waste vehicle which fails to display a current Department registration number, as required by N.J.A.C. 7:26-7.5(d).

(f) (No change.)

7:26-12.2 Public participation in the permit process

(a)-(k) (No change.)

(l) All costs to conduct a public hearing such as stenographer fees and notice of public hearing shall be paid by the applicant. The applicant will be billed by the Department prior to permit issuance. The Department has the right to withhold the issuance of the final permit until all applicable fees have been paid in full.

7:26-13A.6 Procedure for designating a facility site at the request of any hazardous waste industry pursuant to N.J.S.A. 13:1E-59

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

(e) Upon receiving notice of transmittal of the request as required in (c)2 above, the requester may, at its discretion, submit a Part A and Part B hazardous waste facility permit application in accordance with N.J.A.C. 7:26-12.1 and 12.2 and a fee in accordance with N.J.A.C. 7:26-4A to the Department. The requester may also, at its discretion, authorize the Commission to prepare at the requester's expense, an environmental and health impact statement, which meets the requirements of N.J.A.C. 7:26-12.2, concerning the proposed site. Should the Commission arrange for preparation of the environmental and health impact statement by contract with a consultant, the requester shall be afforded the opportunity to:

1.-2. (No change.)

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

(j) If the requester's proposed site is adopted by the Commission, the requester, if it has not previously exercised its discretion to do so, shall:

1. Authorize the commission to prepare an environmental and health impact statement as provided for in (e) above;

2. Thereafter be considered an applicant and be bound by the procedures for the review of all applications for registration and engineering design approval for new major hazardous waste facilities as set forth in N.J.S.A. 13:1E-60 and the applicable rules of the Department; and

3. Submit a Part A and Part B hazardous waste facility permit application in accordance with N.J.A.C. 7:26-12.1 and 12.2 and a fee in accordance with N.J.A.C. 7:26-4A to the Department.

(k) Any amendment to a major commercial hazardous waste facility's permit or engineering design which would result in an increase of 50 percent or more of the capacity of that facility shall be reviewed and approved by the Department according to the procedure in N.J.S.A. 13:1E-60 and any applicable rules pursuant thereto.

(l) (No change in text.)

7:26-16.2 Definitions

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

...
 "License" means the initial approval and first renewal of any registration statement or engineering design pursuant to N.J.S.A. 13:1E-1 et seq. and/or N.J.S.A. 13:1E-49 et seq. for the collection, transportation, treatment, storage or disposal of solid waste including hazardous waste in this State, except that "license" shall not include any registration statement or engineering design approved for any of the persons listed in N.J.A.C. 7:26-16.3(d). "License" includes any authorization equivalent to an approved registration, including any

temporary operating authorization, hazardous waste transporter license, or hazardous waste facility permit.

7:26-16.3 Filing of disclosure statement

(a) (No change.)

(b) Disclosure statements shall be filed by submitting an original and one conformed copy of all papers, including Personal History Disclosure Forms, to the Department at the following address:

Department of Environmental Protection
 Division of Solid Waste Management
 Bureau of Registration and Permits Administration
 CN 414
 Trenton, New Jersey 08625

1.-3. (No change.)

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

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Solid Waste Facility Permit Exemptions for Vegetative Waste Composting Facilities and Leaf Composting Facilities

**Readoption of Concurrent Proposed New Rules:
 N.J.A.C. 7:26-1.11, 1.12**

**Readoption of Concurrent Proposed Amendments:
 N.J.A.C. 7:26-1.4, 1.7, 2.1, 2.4, 2.8 and 2.13.**

Proposed: November 7, 1988 at 20 N.J.R. 2817(a).

Adopted: December 23, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Filed: December 23, 1988 as R.1989, d.55, 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. 13:1B-3, 13:1D-9, 13:1E-1 et seq., particularly 13:1E-4, 13:1E-6 and 13:1E-99.11, 58:10A-1 et seq., particularly 58:10A-4.

DEP Docket Number: 036-88-08.

Effective Date: Readoption, December 23, 1988. Changes upon Readoption, January 17, 1989.

Expiration Date: November 4, 1990.

These new rules and amendments were adopted on an emergency basis pursuant to N.J.S.A. 52:14B-4(c) on October 26, 1988. Notice of the Adopted Emergency Rules and Amendments and Concurrent New Proposed Rules and Amendments were published on November 7, 1988 in the New Jersey Register at 20 N.J.R. 2817(a). The notice advised that a public hearing concerning the concurrent proposal was to be held on November 22, 1988 at 10:00 A.M. at the War Memorial Building, Trenton, New Jersey, to afford the public an opportunity to be heard on the proposed new rules and amendments. The notice further advised that written comments concerning the proposed new rules and amendments could be submitted to the Department on or before December 7, 1988. In addition, notice of these new rules, the comment period and the November 22, 1988 public hearing were published in the Star Ledger, the New Jersey Herald, the Gloucester County Times, the Record, the Times and Today's Sunbeam. Ten individuals attended the November 22, 1988 public hearing and eight chose to testify. Three written submissions concerning the new rules and amendments were received during the comment period. These written and oral comments are summarized below:

COMMENT: The permitting process should be streamlined for agricultural composting activities, allowing for the development of a Farm Conservation Plan (N.J.S.A. 4:24-39), utilizing the Right to Farm Act (N.J.S.A. 4:1C-1), Agricultural Management Practices (N.J.A.C. 2:76-2) and/or the Best Management Practices (BMP) with the technical guidance of Rutgers Cooperative Extension. The requirements under N.J.A.C. 7:26-1.11, such as the filing package and documentation about consistency with the district solid waste management plan, application forms, site plan preparation by a licensed engineer, fences and public access restrictions are inconsistent with the Right to Farm Act and BMP and they also discourage farmers from engaging in composting activities.

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RESPONSE: The leaf composting rule at N.J.A.C. 7:26-1.11 regulates all leaf composting operations with a capacity not in excess of 20,000 cubic yards annually which compost only leaves. The rule was developed to minimize potential adverse environmental impacts such as odor, noise and leachate generation which could occur with any leaf composting facility regardless of the category of land on which the facility is located. The Department of Environmental Protection (Department) is presently meeting with the New Jersey Department of Agriculture, New Jersey Farm Bureau, New Jersey Landscape and Nursery Association, Rutgers Cooperative Extension and the State Soil Conservation Committee to discuss the feasibility of streamlining the process for authorization of operation for composting which would be performed on agricultural lands. If the Department decides that the establishment of a BMP can ensure the same degree of environmental protection as do these rules, it may be considered for inclusion in an amendment to the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq., and these rules would be revised accordingly.

COMMENT: The Department should allow for the creation of an advisory council on composting chaired by individuals representing the public and private composting sectors as well as members of regulatory institutions such as the Department. The council could address issues such as the economics of composting, specifications for a range of quality products produced with compost, public perception of composting, the promoting of composting through education, studies related to composting grass clippings, leaves, woodchips, mixed composting of vegetative waste and the composting of food wastes.

RESPONSE: Although it does not plan to create such a council at this time, the Department recognizes the value of an advisory council on composting. If such a council is established, the Department would be interested in participating on the council to discuss all issues presented. Should the Department determine, based on the conclusions of such discussions, that the existing rules require revision, the Department may decide to amend accordingly.

Regarding the various proposed topics for discussion suggested by the commenter, the Department is aware of the need for and value of specifications for a range of compost materials and is considering the development of qualitative standards for the final compost product. The Department's Office of Recycling funds composting courses to educate public officials and compost site operators on the operations and economics of composting operations. The Department's Office of Recycling is also funding a two year composting project through Rutgers, the State University, which will, among other things, research the composting of leaves mixed with grass clippings. Finally, the Department recognizes the value of composting food waste; however, the Department did not intend to address that issue in these rules.

COMMENT: Standard operating procedures should be incorporated into the new rule at N.J.A.C. 7:26-1.12 to protect the environment and guarantee that the mulched material is recycled. Operational procedures should be stipulated to ensure that the practice of leaf mulching at farmlands will have minimal impact on the physical and chemical properties of the soils, which may affect subsequent crop yields. Such procedures may include the following: leaves should be monitored and screened of any nondecomposable solid waste; leaves should be shredded to decrease their particle size and to facilitate decomposition; leaves should be spread over the farmland two to five inches in depth and double-diced into the soil; nitrogen at a rate of 50-100 pounds per acre should be applied to reduce nitrogen immobilization to the soil; and soil analyses should be performed before and after the leaves are applied to the soil to determine the need for nutrient supplementation.

RESPONSE: The new rule at N.J.A.C. 7:26-1.12(c) does provide standard operating procedures for leaf mulching operations on agricultural and horticultural lands. To protect the environment from potential adverse impacts of odor, the Department is limiting the volume of leaves to be mulched at a leaf mulching operation to no more than six inches in height. Further, the Department is restricting the stockpiling of leaves for more than seven days and is requiring that the mulched leaves be incorporated into the soil during the next tillage season. To minimize the potential problems with nondecomposable solid waste, the Department is requiring the leaves to be delivered unbagged. This provides the farmer an opportunity to examine the contents of each truckload and reject loads containing unacceptable waste materials.

The Department has determined that limiting the spreading of leaves to be mulched to six inches in height will accomplish effective mulching and that shredding is not absolutely necessary to successfully decompose leaves. The standards for leaf mulching were arrived at after consultation

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with the New Jersey Department of Agriculture and Rutgers, the State University.

Regarding the commenter's suggestion for stipulated operational procedures to ensure that the practice of leaf mulching on farmlands will have minimal impact on the physical and chemical properties of the soils, the Department has left this issue to the individual farmer who better understands the particular composition of the soil upon which the mulching operation will take place.

COMMENT: Farmers should not be allowed to charge a tipping fee for mulching operations because the services that they are providing improve their soil.

RESPONSE: The Department does not dictate the contractual relationships between leaf mulching operators and municipalities. Further, under the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq., specifically N.J.S.A. 13:1E-99.33, the Board of Public Utilities, which normally sets tipping fees for solid waste collection and disposal, does not have jurisdiction over charges or rates for recycling or recycling services in the State.

COMMENT: Leaf composting should be the preferred method for farmers over leaf mulching because of the tendency of leaf mulching to immobilize the nitrogen present in the soil and the potential problems with trash being introduced into the fields.

RESPONSE: The new rules and amendments do not limit farmers to leaf mulching operations only. If a farmer has concerns regarding a potential problem with nitrogen immobilization in the soil, the farmer may seek authorization to operate a vegetative waste composting facility under N.J.A.C. 7:26-1.7 or a leaf composting facility under N.J.A.C. 7:26-1.11. Further, a farmer is eligible to apply for a vegetative waste composting facility permit under N.J.A.C. 7:26-2.4. It is the farmer's prerogative to select the method most suitable to his or her farming needs. Further, to minimize the potential problems of nondecomposable waste interfering with the mulching operations, the Department is requiring that the leaves be delivered to the site unbagged which provides the farmer with the opportunity to reject loads containing unacceptable materials.

COMMENT: There is overwhelming public interest in the preservation of farms and open space. There is a direct correlation between leaf composting and the economic benefits derived therefrom, and the preservation of farms and other open space.

RESPONSE: The Department agrees that there may be a correlation between leaf composting and the economic benefits derived therefrom and the preservation of open space. Any activity undertaken by farmers which proves to be economically profitable including, but not limited to, composting or mulching, may provide incentives for farmers to remain in the agricultural business thereby providing for the preservation of farms and open space.

COMMENT: The New Jersey Farmland Preservation Program, under the State Agricultural Development Committee, should use existing mechanisms under the Right to Farm Act (N.J.S.A. 4:1C-1), utilizing Agricultural Management Facilities Practices (N.J.A.C. 2:76-2), and/or the Best Management Practices (BMP) for creating a BMP for farmland composting in cooperation with Rutgers Cooperative Extension.

RESPONSE: The Department is meeting with the New Jersey Department of Agriculture to discuss the feasibility of establishing a BMP for farmland composting. If the Department decides that the establishment of a BMP can ensure the same degree of environmental protection as do these rules, the BMP may be considered for inclusion in an amendment to the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq., and these rules would be revised accordingly.

COMMENT: The enforcement responsibility for farmland composting should be assigned to the Soil Conservation District because they are a longstanding group that farmers are familiar with. This would provide for streamlining of procedures which in turn would facilitate farmers' interest in taking leaves.

RESPONSE: The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., particularly 13:1E-9, set forth that the Department, a local board of health or county health department shall enforce all codes, rules and regulations adopted by the Department. As a regulation adopted by the Department, the new rule and amendments would fall within the jurisdiction of the Department, a local board of health or county health department to enforce. However, the Department supports the position that the Soil Conservation District or Rutgers Cooperative Extension could provide technical assistance to farmers who are involved in composting or leaf mulching activities.

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COMMENT: The Department's involvement in permitting and enforcement of farmland composting activities should be limited to receiving notification of composting activities in the form of a registry. Little if any Department regulatory involvement should be necessary and therefore farmers would be more willing to adopt the practice of composting leaves.

RESPONSE: Pursuant to the new amendment and rules at N.J.A.C. 7:26-1.7, 1.11 and 1.12, the Department does not issue "permits" but exempts certain operations from full Solid Waste Facility permitting and instead gives authority to operate composting facilities and mulching operations, provided the requirements of the applicable rule are met.

Prior to the new rules and amendments, the only regulatory scheme for permitting composting facilities was N.J.A.C. 7:26-2.4, which, while still available, is a more rigorous application and approval process. The new rules and amendments provide mechanisms through which any person, including farmers, wishing to engage in composting activities may obtain authority to operate a composting facility or mulching operation in a more expeditious manner. The Department maintains that, due to the potential adverse impacts associated with composting, regardless of whether the facility is located on agricultural or non-agricultural lands, the regulatory scheme set forth in the new rules and amendments is necessary to prevent and control such potential impacts. A "registry" could not prevent and control such potential impacts. The Department's role, as it relates to enforcement of these activities, was discussed in the previous response.

COMMENT: Preliminary results of a survey were presented to the Department indicating that farmers and nurseries are interested in composting.

RESPONSE: The Department has considered these preliminary results and finds it encouraging that farmers are interested in composting leaves. The Department appreciates the results of the preliminary survey and awaits the submittal of the final survey results.

COMMENT: It is unclear from reading the rules that a farmer can require the municipality to absorb the costs associated with meeting all of the regulatory requirements established in N.J.A.C. 7:26-1.11, and it should therefore be spelled out in the rule.

RESPONSE: The Department is without authority to dictate the contractual relations between farmers and municipalities in regard to the assignment of costs. These matters are best addressed by the individual farmers and any municipalities that wish to avail themselves of the farmers' composting services.

COMMENT: Agricultural establishments that currently have mulching or composting arrangements with municipalities should be exempt from regulations under the new rules. They should not have to go through special permitting.

RESPONSE: Agricultural establishments that were not previously permitted pursuant to N.J.A.C. 7:26-2.4, now have an opportunity to seek approval of their operations through expedited procedures made available in the new rules. Existing "arrangements" do not justify exempting those agricultural establishments operating as composting facilities or as leaf mulching operations from the laws and rules of the State. In addition, an agricultural establishment operating as a composting facility or a leaf mulching operation without a permit or without authorization under the amendment and new rules at N.J.A.C. 7:26-1.7, 1.11 or 1.12 is in violation of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Solid Waste Management regulations, N.J.A.C. 7:26-1 and may be subject to enforcement proceedings.

COMMENT: Agricultural and horticultural establishments should retain the right to use leaves in a way that is suitable to refurbish the soils.

RESPONSE: Assuming the commenter is addressing the use of composted leaves as an end product, the Department agrees with this comment and believes the rules are supportive of allowing agricultural and horticultural establishments to use leaves to amend the soil, provided the activity is consistent with all Department rules.

COMMENT: Nurseries and farms should be able to accept leaves without the restrictions mandated by N.J.A.C. 7:26-1.11. Restrictions such as site access controls and having a site operator present during leaf dumping activities are not compatible with everyday farming. Further, municipalities in the past have been dumping their leaves in windrows when it suits them and not when an operator is present. This arrangement aids the municipality in disposing of its leaves in a trouble free manner and the nursery aids the community by providing a site for disposal.

RESPONSE: The rule was not designed to discourage nurseries and farms from composting leaves. The requirements of N.J.A.C. 7:26-1.11 are designed to ensure environmentally acceptable operations at leaf

composting facilities, regardless of whether the facility is located on agricultural or non-agricultural lands. The Department, at this point in time, has no reason to expect that the potential for adverse environmental impacts resulting from leaf composting activities on agricultural lands will be substantially different from potential impacts that may result from similar activities on non-agricultural lands. Therefore, the Department maintains that the regulation of composting facilities on agricultural lands and nurseries is warranted. However, if the Department decides that the establishment of a BMP is feasible, as discussed in an earlier response, the BMP may be considered for inclusion in an amendment to the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq., and these rules would be revised accordingly.

COMMENT: These new rules should be addressed as an agricultural concern and not as an exclusive solid waste concern if it involves farmland composting because farmers use composting as part of their agricultural process.

RESPONSE: The Department does not deny that leaf composting and the use of composted materials can and should be an integral part of the agricultural process. However, because leaves are a component of the municipal solid waste stream, and are classified as a putrescible waste which must be transported to a leaf composting facility pursuant to N.J.S.A. 13:1E-99.21, the Department is the agency authorized to regulate the disposition of this waste material. The Department is discussing with the New Jersey Department of Agriculture the possibility of establishing a BMP for farm composting. If the Department determines that the establishment of a BMP can ensure the same degree of environmental protection as these rules, it may be considered for inclusion in an amendment to the Recycling Act, N.J.S.A. 13:1E-99.11 et seq., and those rules would be revised accordingly.

COMMENT: The emergency rules require a significant amount of involvement, such as site preparation, for farmland composting which results in a time consuming and costly regulatory permitting process.

RESPONSE: The Department does not issue "permits" in these new rules but rather gives authority to operate a vegetative waste composting facility, N.J.A.C. 7:26-1.7, or a leaf composting facility, N.J.A.C. 7:26-1.11, for those applicants who comply with the requirements of the applicable rule. The Department maintains that site preparation for farmland composting is usually minimal and rarely time consuming. It is the Department's position that the filing, site preparation, and operational standards established in the rules reflect the requirements needed to ensure environmentally sound composting activities. Prior to proposing the new rules and amendments, the only regulatory scheme for permitting composting facilities was N.J.A.C. 7:26-2.4 which, while still available, is a more rigorous application and approval process. The new rules and amendments provide mechanisms through which any person wishing to engage in composting activities may obtain authority to operate a composting or mulching operation in a more expeditious manner. Further, the farmers and municipalities are free to contract in any manner agreed upon with regard to costs.

COMMENT: Is there really an emergency situation? Not one of the private composting facilities are operating at capacity. The emergency may have been contrived by municipalities who have either not properly prepared for such a problem or do not want to prepare for the problems which should have been solved fairly easily. Municipalities may have wanted to see if the State would enforce its stand that all leaves must be composted.

RESPONSE: The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., provides that counties shall have the primary responsibility for the planning and siting of solid waste disposal facilities, which include leaf composting sites. The Department, prior to the development of these new rules, conferred with each county regarding availability of leaf disposal facilities within each district. In addition, the Department reviewed the district recycling plans and determined that many plans did not designate composting facilities for the use of each municipality in the counties. The information provided by the counties indicated that more composting facilities were needed in order to adequately accommodate the State's leaves.

The New Jersey Statewide Mandatory Source Separation and Recycling Act (the Recycling Act), N.J.S.A. 13:1E-99.11 et seq., provides that from September 1 to December 31 of each year, a municipality shall require its residents to source separate leaves from solid waste. Further, a municipality is prohibited, during this time frame, from disposing of leaves in a sanitary landfill. The leaves must be brought to a leaf composting facility. In the past, leaves have been either composted, landfilled, or land applied by farmers.

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The Department conducted a survey of the counties and determined that 202 municipalities or approximately 35 percent of the State's municipalities were without available permitted leaf composting facilities to enable them to handle their leaf waste. Therefore, the Department determined that due to the lack of permitted leaf composting facilities, the State faced an imminent peril to the public health, safety, welfare and the environment. The amendment and new rules at N.J.A.C. 7:26-1.7, 1.11 and 1.12 enable the Department to expeditiously authorize the operations of needed facilities.

COMMENT: Private organizations have risked great amounts of time and money to help solve some of the greatest problems of our time. The State should carefully analyze decisions that can negatively affect private composting businesses' performance in the free marketplace. State officials should first try to communicate and consult with the private sector before emergency rules are implemented.

RESPONSE: Due to the emergency nature of the above rules, there was no comment period prior to the adoption of the emergency rule. However, at the time the Department's emergency rules were adopted, these rules were concurrently proposed and the public has been invited to and did comment on the proposed readoption to which the Department is now responding. The commenter and all others were free, during the comment period, to communicate to the Department their concerns. The Department recognizes the contributions to composting that private businesses have made and maintains that these rules are available to assist both private and public entities in obtaining authority to operate composting facilities.

COMMENT: The State is not providing for the development of the private composting sector.

RESPONSE: Private, as well as public, composting facilities may apply for a permit to operate a vegetative waste composting facility in accordance with N.J.A.C. 7:26-2.4. In addition, N.J.A.C. 7:26-1.7(g) and 1.11 allow private businesses as well as municipalities to engage in composting operations, provided that the rules are followed. It is not the responsibility of the Department to "provide for the development of the private composting sector." Rather, it is the Department's obligation in this context to develop rules which control the operation of all leaf composting facilities in a manner that ensures that the environment is protected.

COMMENT: To protect many small business people trying to make a living in New Jersey as pioneers in composting from being penalized, the State should have tried to maximize the capacity of all of the composting facilities that are permitted before these emergency measures were taken.

RESPONSE: The Recycling Act, N.J.S.A. 13:1E-99.11 et seq., provides that the counties are responsible for determining the recycling strategy to be employed within each county. This responsibility includes designating the composting facilities that each municipality shall utilize for composting leaves. Further, the counties are responsible for entering into contracts or agreements on behalf of municipalities for disposition of recyclable materials where the municipality has not done so (N.J.S.A. 13:1E-99.14).

The Department has reviewed the district recycling plans and determined that many plans did not designate leaf composting facilities to be utilized by the municipalities as required by N.J.S.A. 13:1E-99.13. In addition, counties and municipalities on various occasions, communicated with the Department seeking information concerning available leaf composting facilities. The Department, in trying to assist those counties and municipalities, encouraged maximizing the use of already permitted leaf composting facilities. However, as addressed in a previous response, the lack of permitted leaf composting facilities to handle the entire State's leaf waste necessitated the promulgation of this rule.

COMMENT: The adoption of N.J.A.C. 7:26-1.12 can create a stage for open dumping of all kinds of waste on farmland and also create measurable negative impacts on soil fertility if not properly managed. The argument that farmers have been plowing leaves into their land for years does not mean the practice is either acceptable or environmentally sound.

RESPONSE: N.J.A.C. 7:26-1.12 was designed to allow for the mulching of leaves only on agricultural or horticultural lands provided that certain operational requirements are met. The Department encourages farmers who are contemplating leaf mulching in accordance with this rule to consult with the appropriate agricultural authority if there is a concern with nitrogen immobilization which may adversely affect certain crop yields. No farmer is required to mulch under this rule and can choose not to engage in that activity if he or she deems it undesirable. If, at any time, the mulching activity is not being performed in accordance with the operational requirements, the Department reserves the right to

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take appropriate enforcement action to ensure that leaf mulching operations, if allowed to continue, are being conducted in an environmentally sound manner.

COMMENT: Farmers must realize that leaf and vegetative waste composting businesses are very specialized and secure the majority of income from a very narrow market. The farmers have government programs to help them through times of strife. If farmers charge lower fees than existing composting facilities, municipalities will choose to transport leaves to farms.

RESPONSE: As indicated by the commenter, composting is a very specialized field requiring an investment in time and equipment and requires a competent operator in order to be done in a manner which is both environmentally sound and economically viable. These investments will undoubtedly be reflected in the operation's tipping fee. A poorly run operation, whether on farmland or not, which fails to maximize the decomposition rate through effective management and the use of proper equipment will soon be rendered unprofitable. Additionally, an operation which is determined by the Department to fall short of meeting the operational standards set forth in this rule will lose its authority to operate. There is no reason to expect that farmers will be able to "undercut" the tipping fees of experienced commercial composters; even if this were so, competitive pricing in a free market environment should prevail.

COMMENT: A list of farmers accepting leaves for mulching should be made available to anyone who is interested. The list should include the farmer's name, the legal description of the farmer's property intended for leaf disposal and the number of acres that will be devoted to this process.

RESPONSE: At this time, the Department has not compiled a list of farmers who mulch leaves. In the future, if the Department does compile such a list, it would be available to all interested parties. In addition, each county recycling coordinator may also be able to provide this information.

COMMENT: Farmers should provide the Department with a monthly report of the activities surrounding the acceptance and disposal of leaves on his or her land. The report should include, at a minimum, the following items: the date and origin of leaf material; the transporter's name; volume and density of material delivered; total area and specific location of the parcel the farmer intends to use or will be using for this practice; and soil sample analyses performed in the autumn before the leaf material is incorporated into the soil and in the spring before the sowing of seed or planting of crops.

RESPONSE: Though the comment does not specifically state that it concerns leaf mulching operations, the Department assumes that it does because incorporation of leaves into the soil is part of mulching operations. The Department has determined at this time that it is unnecessary for farmers to submit detailed monthly reports of the activities surrounding the acceptance and disposal of leaves. N.J.A.C. 7:26-1.12 was established to provide minimal operational procedures for leaf mulching activities, while at the same time ensuring that the environment is protected. These procedures were streamlined to encourage farmers to engage in leaf mulching operations.

COMMENT: Will the increased use of herbicides to combat weeds on agricultural lands where leaf mulching activities take place create additional environmental problems?

RESPONSE: The commenter assumes that herbicide use will increase where leaf mulching activities take place but this may not be the case in all situations and the rule does not require its use. However, if an individual mulcher decides to use herbicides, the user would be responsible for proper use and handling of the herbicides in accordance with the requirements set forth in the Pesticide Control Code, N.J.A.C. 7:30, to ensure application in an environmentally sound manner.

COMMENT: Is it wrong to first compost the leaves before incorporating the organically rich, nitrogen sufficient, composted leaf amendment into the soil?

RESPONSE: It is not wrong to first compost leaves before incorporating the leaves into the soil, and in fact, this activity may be advantageous to the farmer as it provides for a more stable soil amendment than do uncomposted leaves. However, composting of leaves, prior to incorporation with the soil, requires that the farmer obtain a solid waste facility permit under N.J.A.C. 7:26-2.4 or authority to operate under these new rules at N.J.A.C. 7:26-1.7(g) or 1.11. The use of the end product, composted leaves, was not within the purview of this rule.

COMMENT: The Statement of Imminent Peril stated that because there is a shortfall of permitted leaf composting facilities, the prices

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charged to dispose of vegetative waste, including leaves, has increased. This argument is unfounded.

RESPONSE: Based on further investigations, it appears that prices for leaf composting have slightly fluctuated over the year but it appears that prices have now stabilized.

COMMENT: The fundamental problems of lack of planned funding for proper leaf disposal at the municipal level and the misconceptions at the municipal and county level regarding the cost of complying with the Department's rules for operating a licensed facility were not addressed in the emergency rule. Also, the private sector does not view composting as an activity that needs to be or will best be conducted by municipal or county governments.

RESPONSE: The Recycling Act, at N.J.S.A. 13:1E-99.11 et seq., which, among other things, requires municipally collected leaves to be transported to leaf composting facilities, was signed into law on April 20, 1987. The Recycling Act, at N.J.S.A. 13:1E-99.21, requires that leaves be collected and transported to a leaf composting facility by the beginning of the Fall 1988 leaf season (September 1, 1988). Therefore, municipalities were aware, or should have been aware, at least one year prior to the effective date, of the need to appropriate monies in their budgets for the proper disposal of leaves for the Fall of 1988. It is likely that despite the State and county recycling education programs conducted on the provisions of the law, some municipalities did not recognize the timing and effective date of the Recycling Act and thus the issue of funding gaps arose.

The intent of the rules was not to penalize those municipalities and counties which were unable to secure adequate disposal agreements, but rather to allow for greater assistance in expediting authority to operate leaf composting facilities so that municipalities which needed leaf composting facilities might in fact have such facilities available.

The commenter assumes that the facilities and operations authorized under these new rules are "licensed facilities"; however, this is not the case. Rather, these facilities and operations are given authority to operate provided that the applicable rule is followed.

Regarding the costs of complying with these new rules, the Department's concurrent proposal of these rules, published in the November 7, 1988 New Jersey Register at 20 N.J.R. 2817(a), addressed the costs of compliance.

The Department stated that it was likely that the services of a professional engineer would be needed to comply with the vegetative waste composting rule at N.J.A.C. 7:26-1.7. Regarding the rule at N.J.A.C. 7:26-1.11, for leaf composting facilities, the Department stated that the services of a professional engineer will be required to prepare the site plan, the certification, and the annual update certification. Regarding the rules on leaf mulching operations, the Department stated that the services of professionals would not be required to comply with this rule.

The Department also stated that it cannot predict the capital costs which will result from compliance with these rules, since only engineering and consulting costs incurred will vary measurably depending upon the site selected for the facility.

To assist persons involved in making decisions regarding the economic viability of leaf composting, the Department, along with Rutgers, the State University of New Jersey, has published a booklet titled "Leaf Composting Manual for New Jersey Municipalities" which includes a section on assessing the economics of leaf composting. The booklet is available through the Department's Office of Recycling or Bureau of Resource Recovery and may prove helpful to municipal and county officials, as well as members of the private sector.

In response to the comment that the private sector does not view composting as an activity that needs to be or will best be conducted by municipal or county governments, many have proven successful from both an operational and environmental perspective.

Department Initiated Changes

N.J.A.C. 7:26-1.7(g)4iv

The Department has added the word "emergency" to describe the required operational narrative in the same way that the environmental impact statement required to be submitted pursuant to N.J.A.C. 7:26-1.7(g)4ii is described. The term "emergency" is used in both contexts to clarify that they are distinct from the full submission required for a full SWF permit and are, instead, submitted as part of an expedited approval process.

N.J.A.C. 7:26-1.7(g)5ii

The Department has deleted "and" from the first sentence as a grammatical correction because "composting operation" is one term.

N.J.A.C. 7:26-1.11(e)

The Department has deleted "municipality" in the phrase "host municipality" and replaced it with "host municipal recycling coordinator" to more accurately describe the municipal entity or office which should receive the submission.

In addition, the Department has added the word "host" before the word county and has added the phrase "solid waste coordinator" to better describe the county entity or office which is to receive the submission.

N.J.A.C. 7:26-1.11(e)8

The Department has deleted the word "compost" from the title of the filing package and replaced it with "composting" because this is the more accurate term which is used throughout the rule.

The Department has also placed "Division of Solid Waste Management" above "Bureau of Registration and Permits Administration" in the address to which an owner or operator must send the filing package since this is the correct form of address.

N.J.A.C. 7:26-1.11(f)

The Department has added "performance standards" before the colon because the term accurately describes the listing of standards found at N.J.A.C. 7:26-1.11(f)1 through 23.

N.J.A.C. 7:26-1.11(k)1

The Department has added the phrase "or approvals" to this paragraph so that in cases where "approvals" are granted by the Federal, State, county or local entity instead of "permits", the applicant must obtain those approvals.

N.J.A.C. 7:26-1.12(e)1

The Department has again added the phrase "or approvals" to this paragraph so that in cases where "approvals" are granted by a Federal, State, county or local entity instead of "permits", the applicant must obtain those approvals.

Full text of the adoption follows (additions to proposal indicated by boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

7:26-1.4 Definitions

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

...
 "Leaf composting facility" means a solid waste facility which is designed and operated for the purpose of composting leaves exclusively and shall also include leaf mulching operations on land deemed actively devoted to agricultural or horticultural use as described in N.J.S.A. 54:4-23.5.

...
 "Vegetative waste composting facility" means a solid waste facility which is designed and operated for the purpose of composting leaves, either exclusively or in combination with other type ID 23 wastes, as described in N.J.A.C. 7:26-2.13.

7:26-1.7 Exemption from SWF permitting

(a) Pursuant to N.J.S.A. 13:1E-4a, the Commissioner may exempt, from the requirement of Solid Waste Facility permitting as set forth in N.J.A.C. 7:26-2, and may grant a permanent or temporary certificate of authority to operate, with or without conditions, to these classes of solid waste collection or disposal facilities or operations which in the Commissioner's opinion meet the general and applicable specific criteria set forth in this section.

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

(g) This subsection sets forth the specific criteria for exempting vegetative waste composting facilities which accept greater than 20,000 cubic yards of leaves annually or vegetative waste composting facilities that, regardless of volume, accept in addition to leaves other non-crop residues such as grass clippings, tree branches, shrubbery and garden wastes.

1. Notwithstanding the provisions of N.J.A.C. 7:26-1.11 and 2.4, a temporary certificate of authority to operate (TCAO) which shall be for a fixed period of time, not to exceed one year, may be granted to a vegetative waste composting facility which in the opinion of the Commissioner meets the following criteria for exemption:

i. The proposed owner or operator of the facility is determined by the Commissioner, after a preliminary review of such information as the Commissioner may require, to demonstrate sufficient, integri-

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ty, expertise and competence to operate a vegetative waste composting facility in compliance with the Solid Waste Management Act and this subsection. Where this determination is made pursuant to N.J.S.A. 13:1E-135 and N.J.A.C. 7:26-16.5(c), the TCAO shall not be issued for a period exceeding six months and may, in the Department's discretion, be renewed for one additional consecutive six month period;

ii. Use of the facility prior to the time that a Solid Waste Facility Permit (SWF permit) can be issued pursuant to N.J.A.C. 7:26-2 is essential in order to avoid a major disruption in the provision of solid waste disposal services, which disruption would be inconsistent with the purpose and intent of the Solid Waste Management Act;

iii. The facility is included in or consistent with the solid waste management plan of the solid waste management district within which the facility is to be located;

iv. The facility will be designed, constructed, and operated in a manner consistent with the public health, safety and the environment under the circumstances. Notwithstanding any other requirement specified in Title 7 of the New Jersey Administrative Code, the facility requirements for design, construction and operation shall be those specified as conditions in the TCAO and this subsection; and

v. A schedule has been established and incorporated into the TCAO for compliance with all the requirements of N.J.A.C. 7:26-2 for a SWF permit for this facility or for an alternative facility (where the subject facility is designed for temporary operation only). The schedule may call for accomplishing one or more SWF permit requirements after commencement of facility operation.

2. Vegetative waste composting facilities are not eligible for an exemption under this section if they are located on land which has been purchased with money from any Green Acres bond act or which is designated as land for recreation and conservation purposes and listed in the Green Acres recreational land inventory prepared by individual municipalities and counties and approved by the Department pursuant to N.J.S.A. 13:8A-1, 13:8A-20, 13:8A-35, and N.J.A.C. 7:36, unless the approval of the Department and the State House Commission has been received and any and all conditions of said approvals have been complied with. In cases where such approvals have been given, evidence of those approvals must be submitted to the Department as part of the application for a TCAO pursuant to (g)4 below.

3. Vegetative waste composting facilities shall also not be eligible for an exemption under this section if they are located on lands which are county or municipally owned parks, wildlife sanctuaries, recreational facilities or other similar open public spaces;

4. Notwithstanding any other provision of N.J.A.C. 7:26, the following shall constitute the application requirements for a TCAO for vegetative waste composting facilities:

i. Where applicable, a disclosure statement pursuant to N.J.S.A. 13:1D-126 et seq. and N.J.A.C. 7:26-16 on such forms as the Department requires. The disclosure statement, where appropriate, should be accompanied by a written request for a temporary license pursuant to N.J.S.A. 13:1E-135 and N.J.A.C. 7:26-16.5(c);

ii. An emergency environmental impact statement pursuant to (g)5 below;

iii. An engineering design or site plan which specifies the following:

- (1) Boundaries of the composting area showing windrow locations and the property boundary lines;
- (2) Access roads;
- (3) Site access controls;
- (4) Location of scales, if required pursuant to N.J.S.A. 13:1E-117;
- (5) Location of equipment and all machinery sufficient to handle specified capacity;
- (6) Contours of the land;
- (7) On-site drainage controls; and
- (8) On-site roadway designs sufficient to handle anticipated vehicular traffic;

iv. An ***emergency*** operational narrative which specifies the following:

- (1) The maximum design capacity of the facility by weight and volume;

(2) A description of types of vegetative wastes to be handled at the facility and anticipated quantity of each by weight and volume;

(3) A description of the proposed level of technology to be employed at the facility, for example, low-level, intermediate level, high-level, and the term of the composting process from the time of windrow formation to the time of final product;

(4) A description of the additives, where applicable, to be employed to maintain the proper moisture content or carbon to nitrogen ratios;

(5) Operational safety and environmental monitoring procedures; and

(6) Housekeeping procedures such as litter, odor, dust and vector control; and

v. Where applicable, a copy of any approval of the Department and State House Commission obtained in accordance with (g)2 above.

5. Notwithstanding any other provision of N.J.A.C. 7:26, the following shall constitute the requirements for an emergency environmental impact statement for a vegetative waste composting facility meeting the exemption criteria in (g)1 above. An emergency environmental impact statement shall be in narrative form and must be approved by the Department prior to or concurrent with issuance of a TCAO for a vegetative waste composting facility. An emergency environmental impact statement shall contain, at a minimum, the following:

i. A brief description of the existing land use of the proposed site and of the area within a one-quarter mile radius of the proposed facility, including identification of properties used or occupied by humans;

ii. A description of possible environmental impacts associated with the composting ***[and]*** operation on-site and within one-quarter mile radius of the facility and a description of the facility design elements or other measures that will address these impacts. This description shall address, at a minimum, the following environmental concerns:

- (1) The impact that the proposed facility will have on:
 - (A) All existing wetlands;
 - (B) Applicable Federal, State or local land uses including the Pinelands area and agricultural development areas;
 - (C) Diversion of dedicated recreational or open space areas; and
 - (D) Endangered or threatened wildlife and vegetation.
- (2) Soil erosion and sediment control;
- (3) Noise;
- (4) Air quality including odor control mechanisms;
- (5) Traffic;
- (6) Stormwater run-off and drainage controls;
- (7) Ground water and surface water quality; and
- (8) Any other concerns described in the solid waste disposal rules, N.J.A.C. 7:26, which the Department determines should be discussed based upon the circumstances of the particular case, including time constraints.

6. All TCAO applicants for vegetative waste composting facilities shall file copies of their applications, except for the disclosure statement, in the offices of the municipality and county in which the facility is proposed to be located on the same day such application is filed with the Department. The applicant shall also publish notice of the application, within five calendar days after filing the application, in a newspaper of general circulation in the municipality and county. After evaluating the emergent time constraints, the Department may require a public comment period. The dates of the public comment period and the address at which the Department will receive public comments shall be included in the public notice, if applicable.

7. The completed TCAO application shall be submitted to the following address:

Department of Environmental Protection
 Division of Solid Waste Management
 Bureau of Resource Recovery
 428 East State Street
 CN 414
 Trenton, New Jersey 08625

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8. When approved by the Department, the TCAO applicant shall be issued a temporary certificate of authority to operate, receipt of which is necessary prior to beginning construction.

9. Within one year of the start up of the facility, leaf composting facility operators shall attend a leaf composting course sponsored by the Rutgers Extension County Agricultural or Resource Management Agents or other courses approved by the Department.

7:26-1.11 Exemption from SWF permitting—leaf composting facilities (leaves only)

(a) This section applies only to and sets forth the requirements for an exemption from SWF permitting for leaf composting facilities with a capacity not in excess of 20,000 cubic yards annually which compost only leaves.

(b) Notwithstanding N.J.A.C. 7:26-1.7(g) and 7:26-2.4(c), a leaf composting facility which composts only leaves not in excess of 20,000 cubic yards annually shall be exempt from SWF permitting if the requirements set forth in this section are met.

(c) Leaf composting facilities are not eligible for an exemption under this section if they are located on land which has been purchased with money from any Green Acres bond act or which is designated as land for recreation and conservation purposes and listed in the Green Acres recreational land inventory prepared by individual municipalities and counties and approved by the Department pursuant to N.J.S.A. 13:8A-1, 13:8A-20, 13:8A-35, and N.J.A.C. 7:36, unless the approval of the Department and the State House Commission has been received and any and all conditions of said approvals have been complied with. In cases where such approvals have been given, evidence of those approvals must be submitted to the Department as part of the "Filing Package for Exemption from SWF permitting—Leaf Composting Facility (leaves only)" pursuant to (e) below.

(d) Leaf composting facilities are not eligible for an exemption under this section if they are located on lands which are county or municipally owned parks, wildlife sanctuaries, recreational facilities, or other similar open public spaces. Such facilities must comply with the SWF permitting requirements set forth at N.J.A.C. 7:26-2.4.

(e) Prior to beginning construction, the owner or operator shall submit required information as a "Filing Package for Exemption from SWF permitting—Leaf Composting Facility (leaves only)" to the Department and on the same day to the host *[municipality]* ***municipal recycling coordinator*** and the ***host*** county ***solid waste coordinator*** *[in which the facility is located]*, which shall include, but not be limited to, the following:

1. Documentation establishing that the facility is included in or consistent with the solid waste management plan of the solid waste management district within which the facility is to be located;

2. For informational and filing purposes, a completed Standard Application Form (CP#1) and a Solid Waste Supplement Form, which are available from the Department;

3. A key map plotted on a seven and one-half minute United States Geological Survey Quadrangle Map that shows the boundary of the proposed facility site and which delineates public access roads to the facility, streams or ponds, and other details such as hospitals, schools, playgrounds, and homes located on-site and within a one-half mile radius from the site;

4. A site plan prepared by a New Jersey Licensed Professional Engineer which shall be signed, sealed, and dated and which shall identify the following:

i. Composting area boundaries showing acreage available for composting;

ii. Available utilities, location of all buildings, and other pertinent data related to the operation of the proposed facility;

iii. Location of composting windrows, which terminate no closer than 50 feet from the facility property line and 150 feet from any area of human use or occupancy;

iv. Drainage characteristics, specifically the direction of storm-water flow both on-site and off-site, ditches, swales and any runoff controls that now exist or will exist; and

v. Location and volumetric capacity of the staging and final product storage areas.

5. A New Jersey Licensed Professional Engineer's certificate which shall be signed, sealed and dated by the engineer certifying the following:

"I certify under penalty of law that I have personally examined and am familiar with the site plan submitted in the Filing Package for Exemption from Solid Waste Facility permitting—Leaf Composting Facility. I certify that the information is true, accurate and complete. I further certify that the facility's design and operation, as set forth in the site plan, is capable of complying with the terms and conditions set forth in N.J.A.C. 7:26-1.11 if operated properly. I am also aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

6. The Filing Package shall include the following owner or operator Certification:

"I certify that the leaf composting facility site will be properly constructed, maintained and operated in accordance with the site plan, as filed with the Department, and in accordance with N.J.A.C. 7:26-1.11."

7. The certification required in (e)6 above shall be signed as follows:

i. For a corporation, by a principal executive officer of at least the level of vice president;

ii. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

iii. For a municipality, county, state or other public agency, by either a principal executive officer or ranking elected official.

8. A cover sheet which the owner or operator shall entitle "Filing Package for Exemption from SWF permitting—Leaf *[Compost]* ***Composting*** Facility (leaves only)" and which shall be submitted to:

New Jersey Department of Environmental Protection
Division of Solid Waste Management
 Bureau of Registration and Permits Administration
 [Division of Solid Waste Management]
 401 East State Street
 CN 414
 Trenton, New Jersey 08625

9. Where applicable, a copy of any approval of the Department and State House Commission obtained in accordance with (c) above.

(f) The construction and operation of the composting facility shall be performed in accordance with the site plan and specifications required pursuant to (e) above, prepared by a New Jersey Licensed Professional Engineer and in accordance with the following ***performance standards***:

1. Only leaves may be accepted for processing at leaf composting facilities exempted by this section;

2. No more than 3,500 cubic yards of leaves per acre shall be composted in the composting area delineated on the site plan submitted in accordance with (e)4 above;

3. Prior to operation the composting area, related leaf staging and finished compost storage areas and access roads shall be graded in a manner that prevents the accumulation of surface water on site without resulting in a discharge of leachate off site or an adverse impact to natural drainage conditions of surrounding properties. Once original grading is completed in the manner which satisfies the local soil conservation office, the four areas of the site referenced above shall be maintained throughout the life of the facility. Any disturbance of the natural environmental setting caused by any necessary land clearing and grading shall be held to a minimum;

4. The perimeter of the composting activity area shall be separated from any and all adjacent residential and/or commercial land uses through the establishment of an effective vegetative visual screen buffer;

5. The access road shall be fenced or otherwise secured to prevent unauthorized access to the site;

6. Leaves shall be received only during times when the site operator or owner is present;

7. A sign shall be posted at the entrance of the facility which identifies the hours of operation;

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8. An adequate water supply and fire-fighting equipment shall be readily available to extinguish any fires. The telephone number of the local fire department shall be posted at the entrance to the facility;

9. The operation of the facility shall follow the approved method of windrow composting set forth at (f)10 through 18 below, or other composting method approved by the Department, on a case-by-case basis, which results in the aerobic biodegradation of the leaves received;

10. All leaves delivered to the facility for processing shall be removed from bags, boxes or similar containers prior to windrow formation, except that leaves brought to the facility in biodegradable paper bags and natural fiber biodegradable burlap bags need not be removed from these specified containers. All discarded bags, boxes and similar containers shall be placed in a suitable refuse receptacle in the staging area of the facility for removal to an off-site disposal facility in accordance with N.J.A.C. 7:26-6;

11. Prior to windrow formation, dry leaves shall be moistened to saturation without producing excess runoff;

12. To facilitate drainage and to reduce surface water ponding, each windrow shall be constructed and positioned in such a manner so that it is perpendicular to the contours of the ground surface;

13. Windrows shall be constructed and reconstructed after each turning to a maximum height of six feet with a corresponding base not to exceed a maximum of 14 feet in width;

14. A minimum separation of 16 feet measured from the pile base of the windrow to the next adjacent pile base shall be provided along at least one side of the longest dimension of each windrow pile to provide ample working space;

15. Windrows shall be turned and reconstructed, at a minimum, once no later than the end of the first two months of the composting cycle. The composting cycle begins on the day that the leaves are placed in windrows. Windrows shall be turned and reconstructed again, at a minimum, four to six months into the composting cycle, and finally again at the tenth month of the composting cycle. More frequent windrow turning and reconstruction may occur at the discretion of the owner or operator;

16. No composting activities shall be conducted in an area within 50 feet from all property lines;

17. Upon completion of the 12 to 18 month composting cycle, the end product mulch shall be aerated and any uncomposted material present shall be removed and re-composted;

18. The composting cycle shall be extended beyond the 12 to 18 month period, but not beyond 24 months, if the leaves do not show evidence of an acceptable level of biodegradation. Similarly, the composting cycle can be shortened provided that suitable accelerated biodegradation has occurred and a finished compost has been produced;

19. The operation of this facility shall not result in odors associated with the composting process being detected off-site by the sense of smell in any area of human use or occupancy;

20. The noise generated by the use of equipment at the facility shall not exceed the applicable noise standard established by N.J.A.C. 7:29-1.2 at any surrounding residential and/or commercial property line;

21. To provide ample vehicular support, to prevent the tracking of soil onto public roads and to prevent the generation of dust, those areas of the facility subject to vehicular usage shall be suitably compacted and, where necessary, surfaced;

22. Traffic associated with the operation of the facility shall not result in a degradation of the level of service of any major intersection or public roadway within a one-half mile radius of the composting facility; and

23. Within one year of the start up of the facility, leaf composting facility operators shall attend a leaf composting course sponsored by the Rutgers Extension County Agricultural or Resource Management Agents or other courses approved by the Department.

(g) Construction or operation may not occur until receipt of a letter from the Department notifying the owner or operator that the submittals are complete and in accordance with (e) above.

(h) The Department may enter and inspect any building or other portion of the facility, at any time, in order to ascertain compliance

or non-compliance with the act or this section. No person shall refuse, prohibit or otherwise inhibit the Department from lawfully entering and inspecting any building or other portion of the facility at any time. Inspection includes, but is not limited to:

- i. Sampling any materials on site;
- ii. Photographing any portion or portions of the facility;
- iii. Investigating an actual or suspected source of pollution of the environment;
- iv. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department; and
- v. Reviewing and copying all applicable records, which shall be furnished upon request and made available at all reasonable times for inspection.

(i) The following annual updates shall be submitted by May 1 of each calendar year to the address listed in (e)8 above:

1. An annual operational statement which is available from the address listed in (e)8 above.

2. An updated New Jersey Licensed Professional Engineer's certification which shall be signed, sealed and dated by the engineer certifying the following:

"I certify under penalty of law that I have personally examined the site and that I have reviewed the site plan submitted in the Filing Package for Exemption from SWF permitting—Leaf Composting Facility. I certify that the site's construction is in accordance with the site plan submitted."

3. An updated owner or operator certification which shall contain the following statement and which shall be signed in accordance with (e)8 above:

"I certify that the leaf composting site has been and is now properly constructed, maintained and operated in accordance with the site plan, as filed with the Department, and the rules and regulations under which authority to operate was granted by the New Jersey Department of Environmental Protection."

(j) A request for expansion or modification of any leaf composting facility authorized under this section shall be accompanied by a new filing package in accordance with (e) above. Any expansion shall not allow operations to exceed 20,000 cubic yards annually.

(k) Eligibility for this exemption shall terminate and the facility shall cease operations if any of the following occur:

1. The owner or operator fails to obtain any applicable permits ***or approvals*** required by Federal, State, county and local statute, rule and ordinance;
2. The owner or operator fails to comply with this section; or
3. The Department determines that the facility poses a threat to the public health, safety or the environment.

7:26-1.12 Exemption from SWF permitting—leaf composting facility—(leaf mulching only operations)

(a) Notwithstanding the provisions of N.J.A.C. 7:26-2.4(c), a leaf mulching operation shall be exempt from SWF permitting if the requirements set forth in this section are met.

(b) The leaf mulching operation shall be included in or consistent with the solid waste management plan of the solid waste management district within which the operation is to be located.

(c) Standards for leaf mulching include the following:

1. Leaves shall be delivered unbagged to land deemed actively devoted to agricultural or horticultural use, as defined in the Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.5.
2. Within seven days of delivery, the leaves shall be spread onto the field in a thin layer no higher than six inches.
3. No later than the next tillage season, the layered leaves shall be incorporated into the soil.
4. At no time shall leaves delivered to the leaf mulching operation be stockpiled on-site for more than seven days.

(d) The Department may enter and inspect any building or other portion of the facility, at any time, in order to ascertain compliance or non-compliance with the act or this rule. No person shall refuse, prohibit or otherwise inhibit the Department from lawfully entering and inspecting any building or other portion of the facility, at any time. This right to inspect includes, but is not limited to:

- i. Sampling any materials on site;
- ii. Photographing any portion or portions of the facility;

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iii. Investigating an actual or suspected source of pollution of the environment;

iv. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department; and

v. Reviewing and copying all applicable records, which shall be furnished upon request and made available at all reasonable times for inspection.

(e) Eligibility for this exemption shall terminate and the facility shall cease operations if any of the following occur:

1. The owner or operator fails to obtain any applicable permits ***or approvals*** required by Federal, State, county and local statute, rule and ordinance;

2. The owner or operator fails to comply with this section; or

3. The Department determines that the facility poses a threat to the public health, safety or the environment.

7:26-2.1 Scope and applicability

(a) This subchapter and N.J.A.C. 7:26-2A and 2B shall constitute the rules and regulations of the Department governing the disposal of nonhazardous solid waste unless specifically exempted by N.J.A.C. 7:26-1.1, 1.7, 1.8, 1.11, or 1.12.

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

7:26-2.4 Application procedures for a solid waste facility permit

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

(c) All applications for a SWF permit shall include a completed registration statement meeting the requirements of N.J.A.C. 7:26-2.8, an EHIS meeting the requirements of N.J.A.C. 7:26-2.9 and an engineering design meeting the requirements of N.J.A.C. 7:26-2.10, except for applications for the types of facilities identified in (c)1, 2, 3 or 4 below, which shall include only the material required to be submitted for that particular type of facility.

1. Unless otherwise exempted by N.J.A.C. 7:26-1.7(g), 1.11 or 1.12 an application for a vegetative waste composting facility shall include the following:

i.-iii. (No change.)

2.-4. (No change.)

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

7:26-2.8 Registration and general prohibitions

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

(e) No person shall engage or continue to engage, unless exempt by N.J.A.C. 7:26-1.1, 1.7, 1.8, 1.11 or 1.12 in the disposal of solid waste in this State without first having filed a completed application for and received approval of a SWF Permit.

1. (No change.)

(f) No person shall begin construction or operation of a solid waste facility without obtaining a SWF Permit unless exempt pursuant to N.J.A.C. 7:26-1.1, 1.7, 1.8, 1.11, or 1.12.

(g) No person shall continue to operate a solid waste facility, unless exempt pursuant to N.J.A.C. 7:26-1.1, 1.7, 1.8, 1.11 or 1.12, without obtaining a SWF Permit. All existing Certificates of Approved Registration and Engineering Design Approval shall constitute an approved SWF Permit until the duration of the Certificate of Approved Registration and Engineering Design Approval expires or a modification is requested by the permittee or required by the Department.

(h) (No change.)

(i) No person shall engage or continue to engage in the disposal of solid waste in this State if such an operation does not comply with the operational requirements of N.J.A.C. 7:26-2.11, unless specifically exempted by N.J.A.C. 7:26-1.1, 1.7, 1.8, 1.11 or 1.12.

(j)-(o) (No change.)

7:26-2.13 Solid waste facilities; records

(a)-(f) (No change.)

(g) Waste identification and definition of solids include the following:

1. Solid wastes; waste ID numbers and definitions;

i.-iii. (No change.)

iv. 23 Vegetative waste: Waste materials from farms, plant nurseries and greenhouses that are produced from the raising of plants. This waste includes such crop residues as plant stalks, hulls, leaves and tree wastes processed through a wood chipper. Also included are non-crop residues such as leaves, grass clippings, tree parts, shrubbery and garden wastes.

v.-vi. (No change.)

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

EMERGENCY ADOPTIONS

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medicaid Only

New Eligibility Computation Amounts

Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:71-5.4, 5.5, 5.6, 5.7

Emergency Amendment Adopted: December 23, 1988 by Drew Altman, Commissioner, Department of Human Services. Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): December 29, 1988.

Emergency Amendment Filed: December 29, 1988 as R. 1989 d.57.

Authority: N.J.S.A. 30:4D-3i(7); 30:4D-7 a,b, and c; 42 CFR 435.210 and 435.1005.

Concurrent Proposal Number: PRN 1989-59.

Emergency Amendment Effective Date: December 29, 1988.

Emergency Amendment Operative Date: January 1, 1989.

Emergency Amendment Expiration Date: February 27, 1989.

Submit comments and address inquiries by February 16, 1989 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follow:

Summary

The amendments to N.J.A.C. 10:71 increase the Medicaid Only computation amounts at N.J.A.C. 10:71-5.4(a)12, 5.5(g) and 5.7(e) and the income eligibility standards at N.J.A.C. 10:71-5.6(c)5. The amendments align Medicaid Only income eligibility for the aged, blind, and disabled with the Supplemental Security Income (SSI) program. Section 1902(a) of the Social Security Act requires that Medicaid Only eligibility be determined using the same criteria as applies in the SSI program. The revised income eligibility and computation amounts reflect the four percent Federal cost-of-living increase in SSI payment levels effective January 1, 1989. The Medicaid "cap", the income standard applicable for persons in Title XIX facilities, is set at 300 percent of the Federal SSI benefit for an individual, the maximum level authorized by the Social Security Act. The amendments must be implemented, effective January 1, 1989, to maintain compliance with Federal law.

Social Impact

The increase in the standards and income computation amounts used in the eligibility process theoretically expands the population of potentially eligible persons. However, based on past experience, little increase in the caseload because of the amendment is anticipated.

The Medicaid "cap" income eligibility standard is used to determine income eligibility for the Community Care Program for the Elderly and Disabled and other home and community based waiver programs, as well as for persons in Title XIX facilities. The increase in the "cap" standard will help preserve eligibility of persons whose income is increasing. In particular, the increased "cap" will offset the four percent increase in Social Security benefits also scheduled for January 1, 1989.

Economic Impact

Past experience with similar increases in these standards has demonstrated that there will be an insignificant economic impact on the public and State and county agencies administrating the program. These increases affect only eligibility for Medicaid and do not result in receipt of cash assistance.

Regulatory Flexibility Statement

These standards affect only Medicaid eligibility for individuals. Because program eligibility is determined by State and county governments, these rules have no effect on small businesses. Therefore, the Department concludes that no regulatory flexibility impact analysis is necessary.

Full text of the emergency adoption and concurrent proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]);

10:71-5.4 Includable income

(a) Any income which is not specifically excluded under the provisions of N.J.A.C. 10:71-5.3 shall be includable in the determination of countable income. Such income shall include, but is not limited to, the following:

1.-11. (No change.)

12. Support and maintenance furnished in-kind (community cases): Support and maintenance encompasses the provision to an individual of his or her needs for food, clothing, and shelter at no cost or at a reduced value. Persons determined to be "living in the household of another" in accordance with N.J.A.C. 10:71-5.6 shall not be considered to be receiving in-kind support and maintenance as the income eligibility levels have been reduced in recognition of such receipt. Persons not determined to be "living in the household of another" who receive in-kind support and maintenance shall be considered to have unearned income in the amount of:

\$[138.00] **142.67** for an individual

\$[197.33] **204.33** for a couple

i. (No change.)

13. (No change.)

(b) (No change.)

10:71-5.5 Deeming of income

(a)-(f) (No change.)

(g) A table for deeming computation amounts follows:

TABLE A

Deeming Computation Amounts

1. Living allowance for each ineligible child \$[178.00] **185.00**
2. Remaining income Head of Receiving Support
[support] amount Household and Maintenance
\$[177.00] **184.00** \$[118.67] **122.67**

3. Spouse to Spouse Deeming—Eligibility Levels

- a. Residential Health Care Facility \$[682.05] **703.05**
- b. Eligible individual living alone with ineligible spouse \$[734.36] **763.36**
- c. Living alone or with others \$[563.25] **584.25**
- d. Living in the household of another \$[398.98] **412.98**

4. Parental Allowance—Deeming to Child(ren)

Remaining income is:

	1 Parent	Parent & Spouse of Parent
a. Earned only	\$[708.00] 736.00	\$[1,064.00] 1,106.00
b. Unearned only	\$[354.00] 368.00	\$[532.00] 553.00
c. Both earned and unearned	\$[354.00] 368.00	\$[532.00] 553.00

- 10:71-5.6 Income eligibility standards
 - (a) and (b) (No change.)
 - (c) Non-institutional living arrangements
 - 1.-4. (No change.)

TABLE B

Variations in Living Arrangements	Medicaid Eligibility Income Standards	
	Individual	Couple
I. Residential Health Care Facility	\$[504.05] 518.05	\$[989.36] 1,017.36
II. Living Alone or with Others	\$[385.25] 399.25	\$[557.36] 578.36
III. Living Alone with Ineligible Spouse	\$[557.36] 578.36	
IV. Living in Household of Another	\$[280.31] 289.65	\$[447.76] 461.76
V. Title XIX Approved Facility: Includes persons in acute general hospitals, skilled nursing facilities, intermediate care facilities (level A, B, and ICFMR) and licensed special hospitals (Class A,B,C) and Title XIX psychiatric hospitals (for persons under age 21 and age 65 and over) or a combination of such facilities for a full calendar month.	\$[1,062.00] 1,104.00†	

†Gross income (that is, income prior to any income exclusions) is applied to this Medicaid "Cap".
 (d)-(g) (No change.)

- 10:71-5.7 Deeming from sponsor to alien
 - (a)-(d) (No change.)
 - (e) To determine the amount of income to be deemed to an alien, the CWA shall proceed as follows:
 1. (No change.)
 2. Subtract \$[354.00] **368.00** for the sponsor, \$[531.00] **553.00** for the sponsor if living with his or her spouse, \$[708.00] **736.00** for the sponsor if his or her spouse is a co-sponsor.
 3. Subtract \$[177.00] **184.00** for any other dependent of the sponsor who is or could be claimed for Federal Income Tax purposes.
 4. (No change.)
 - (f) (No change.)

(a)

DIVISION OF PUBLIC WELFARE
Service Programs for Aged, Blind, or Disabled Supplemental Security Income Payment Levels
Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:100, Appendix A

Emergency Amendment Adopted: December 1, 1988 by Drew Altman, Commissioner, Department of Human Services.
 Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): December 30, 1988.
 Emergency Amendment Filed: December 30, 1988 as R.1989 d.58.
 Authority: N.J.S.A. 44:7-87 and Section 1618(a) of the Social Security Act.

Emergency Amendment Effective Date: December 30, 1988.
 Emergency Amendment Operative Date: January 1, 1989.
 Emergency Amendment Expiration Date: February 28, 1989.
 Concurrent Proposal Number: PRN 1989-62.

Submit comments on the concurrent proposal by February 16, 1989 to:

Marion E. Reitz, Director
 Division of Public Welfare
 CN 716
 Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

Section 1618(a) of the Social Security Act requires the State to maintain supplemental payments in the Supplemental Security Income (SSI) program at levels no lower than those in effect in December 1976. This effectively requires the State to "pass-through" to SSI recipients the full amount of any Federal cost-of-living adjustment (COLA). The amendment reflects payment levels in the SSI program which include the 4.0 percent Federal cost-of-living increase effective January 1, 1989.

Social Impact

The amendment provides for an increase in payment levels to eligible low-income aged, blind, and disabled individuals. The increase will enable such persons to maintain a measure of parity with the increased cost of living.

Economic Impact

The increase in State expenditures over existing levels is estimated to be \$273,300 through the end of calendar year 1989. Increased cost to county government is estimated at \$91,100 for the same period. This amendment will not impact administratively on the Department or county governments, as the SSI program is administered by the Social Security Administration.

Regulatory Flexibility Statement

This emergency adoption and concurrent proposal has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This rulemaking imposes no compliance requirements on small business; therefore, a regulatory flexibility statement is not required.

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

10:100 APPENDIX A

The New Jersey Supplemental Security Income Payment Levels

Living Arrangement Categories	Payment Level	
	[1/1/88]	1/1/89
Eligible Couple		
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	[\$50/532.00†]	\$50/553.00†
Residential Health Care Facilities and certain residential facilities for children and adults	[\$989.36]	\$1017.36
Living Alone or with Others	[\$557.36]	\$ 578.36
Living in Household of Another, Receiving Support and Maintenance	[\$447.76]	\$ 461.76

EMERGENCY ADOPTIONS

OTHER AGENCIES

Eligible Individual		
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	[\$25/354.00†]	\$25/368.00†
Residential Health Care Facilities and certain residential facilities for children and adults	[\$504.05]	\$ 518.05
Living Alone or with Others	[\$385.25]	\$ 399.25
Living with Ineligible Spouse (No other individuals in household)	[\$557.36]	\$ 578.36
Living in Household of Another, Receiving Support and Maintenance	[\$280.31]	\$ 289.65

†The lower figure applies when Medicaid payments with respect to an individual equal an amount over 50 percent of the cost of services provided in a month.

OTHER AGENCIES

(a)

**ELECTION LAW ENFORCEMENT COMMISSION
Public Financing of Primary Election for Office of Governor**

Dates of Submission

Adopted Emergency Amendment: N.J.A.C. 19:25-16.19

Emergency Amendment Adopted: December 30, 1988 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.
 Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): December 30, 1988.
 Emergency Amendment Filed: December 30, 1988 as R. 1989 d.59.
 Authority: N.J.S.A. 19:44A-38.

Emergency Amendment Effective Date: December 30, 1988.
 Emergency Amendment Operative Date: December 30, 1988.
 Emergency Amendment Expiration Date: February 28, 1989.

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). The emergency adoption is not being proposed concurrently.

The agency emergency adoption follows:

Summary

Candidates for nomination for the Office of Governor in the June 6, 1989 primary election, in the absence of this emergency adoption, could have applied for public matching funds pursuant to N.J.A.C. 19:25-16.19, Dates of submission, on January 3, 1989. This emergency adoption postpones that date to January 23, 1989.

The postponement was necessitated by the uncertainty surrounding substantive legislative amendments to "The New Jersey Campaign Contributions and Expenditures Reporting Act," and in particular those statutes controlling the public financing program (see N.J.S.A. 19:44A-29 et seq. (hereafter, "Public Financing Act").

On December 19, 1988, the Senate State Government Committee amended, approved and released to the State Senate legislation substantially amending the existing Public Financing Act (see ACS for A-1705/2250). That legislation had been approved by the State Assembly

on December 16, 1988. There is reason to believe that the Senate will consider this bill at its session scheduled for January 12, 1989.

The Commission perceives an imminent peril to public welfare should some 1989 gubernatorial primary election candidates qualify and receive public funds under statutory criteria different from those applied to other candidates. For example, under the existing Public Financing Act, a candidate may qualify for receipt of public funds after having raised and expended \$50,000 in contributions not to exceed \$800 each (see N.J.S.A. 19:44A-3(m), defining "qualified candidate" and N.J.S.A. 19:44A-29, establishing the \$800 contribution limit). Under the Senate Committee amendments to ACS A-1705-2250, a candidate may qualify only after having raised and expended \$150,000 in contributions not to exceed \$1,500 each (see Sections 1 and 5 of Senate State Government Committee Amendments to ACS A-1705/2250).

The prospect of some candidates submitting applications and possibly qualifying for matching public funds on January 3, 1989 while other candidates who apply after that date cannot qualify under the same criteria raises concern that the fundamental goal of the program to place candidates under uniform campaign restrictions will be irrevocably compromised. Furthermore, candidates submitting on January 3, 1989 and receiving public funds based upon those applications will be compelled to submit subsequent applications and certifications to meet new requirements. It is conceivable some candidates who qualify and receive funds under January 3, 1989 criteria will lose eligibility should the new legislation be enacted, but recovery of public funds already paid may be legally impermissible, and administratively impossible.

To avoid these consequences, the Commission approved this emergency adoption at its December 20, 1988 public meeting.

Social Impact

The social impact of this amendment will be positive because it promotes the public interest in the integrity of the gubernatorial electoral process. While delaying the start of public financing may have some slight adverse impact on some candidates who may prefer to apply and qualify for public funds in early January, 1989, the delay to January 23, 1989 is not substantial when viewed in the context of an election that will not occur until June 6, 1989. Most importantly, the postponement will provide a greater possibility for the uniform application to all candidates of amendments which may be enacted to the Public Financing Act.

Economic Impact

The Commission believes that postponement of the 1989 Public Financing Program will have a beneficial economic impact by minimizing the prospects of distributing public funds to candidates who may become ineligible for such funds if statutory amendments currently under consideration by the Legislature become enacted into law on or about January 12, 1989.

Regulatory Flexibility Statement

The amendment does not impose any requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:25-16.19 Dates of submission

(a) Statements and certifications may be submitted by candidates on or before 12:00 noon of the first Monday following January 1 of the year of a primary election for nomination for the office of Governor of New Jersey, and the fourth Monday following January 1, and every other Monday thereafter through March 31, and every Monday thereafter up to and including the Monday immediately preceding the primary election being funded. **Notwithstanding the above, the first date for submission of statements and certifications by candidates in the primary election of 1989 shall be on or before 12:00 noon on January 23, 1989.**

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

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Sussex County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan for Sparta Township. That document allows for the upgrade and expansion of the Sparta Township Plaza Sewage Treatment Plant and establishes a sewer service area for that facility. Sparta Township will be designated as the Wastewater Management Agency.

This notice is being given to inform the public that a plan amendment has been developed for the Sussex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment are located at the Sussex County Water Resource Management Program, 57 High Street, Newton, New Jersey 07860; and the NJDEP, Division of Water Resources, Bureau of Water Quality 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.

The Sussex County Board of Chosen Freeholders will hold a **public meeting** on the proposed Sussex County WQM Plan amendment. The public meeting will be held on Tuesday, January 24, 1989 at 8:30 P.M. in the Freeholders Meeting Room of the Sussex County Administration Complex at Don Bosco College, Swartswood Road, Newton, New Jersey. **Interested persons** may submit written comments on the amendment to Ms. Lyn Halliday at the Sussex County Water Resource Management Program address cited above; and Mr. George Horzempa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted by February 16, 1989. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEP during its review. Sussex County and the NJDEP thereafter may approve and adopt this amendment without further notice.

HUMAN SERVICES

(b)

DIVISION OF PUBLIC WELFARE

Final Response to Petition for Rulemaking Standards of Performance

Petitioner: Robert Fasanello, Director, Hunterdon County Board of Social Services

Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6(a).

Take notice that on April 15, 1988 a petition was filed with the Department of Human Services requesting that a rule be proposed concerning "a standard of measure for investigative performance of county welfare agencies" maintained as an "internal policy" by its Division of Public Welfare. The petitioner stated that "standards of performance upon which the Division of Public Welfare acts to grant or withhold approval of budget and staffing for county welfare agencies should not be disseminated by internal memo . . . but are properly promulgated in the form of rules under the Administrative Procedure Act."

Take further notice that the Department of Human Services, in accordance with N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6(c), initially responded to the petition by taking the matter under review and study including a commitment to reconvene a committee to address county welfare agency (CWA) staffing standards in critical operation areas. That

response was published in the June 6, 1988 issue of the New Jersey Register at 20 N.J.R. 1298(a).

AGENCY RESPONSE: The Department believes that the initiation of rulemaking pursuant to the petitioner's request is not necessary. The Department's Division of Public Welfare will continue to collaborate with the CWA Directors' Association and any other appropriate body or committee that has or will be formed to deal with mutual administrative and budgetary concerns at the local and State level. It is recognized that the direct input and participation of the CWAs is essential in the formulation of acceptable staffing standards in conjunction with the efficient and effective administration of public welfare. The petition inappropriately linked staffing standards with standards of performance. It is recognized that standards of performance should be subject to the rule-making procedures. Staffing standards, however, are the result of consultation between the Division and representatives of county welfare agencies, and, therefore, are not subject to the rule-making process.

PERSONNEL

(c)

MERIT SYSTEM BOARD

Notice of Petition for Rulemaking and Action on Petition

Equal Employment Opportunity: N.J.A.C.

4A:7-1.1(d)4

Petitioner: Richard J. Delaney

Authority: N.J.S.A. 10:5-12, 11A:7-1 through 7-9.

Take notice that Richard J. Delaney filed a rulemaking petition with the Department of Personnel requesting the amendment of N.J.A.C. 4A:7-1.1(d)4.

The subsection in question defines the race/ethnic categories used by the Department of Personnel in administering equal employment opportunity and affirmative action programs. The category of "American Indian or Alaskan Native" is defined as follows: "persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition." The petitioner proposes deletion of the phrase "and who maintain cultural identification through tribal affiliation or community recognition", contending that this condition is discriminatory and not authorized by Title 11A of the New Jersey Statutes.

The categories found in this rule are utilized for statistical reports and other requirements under State and Federal civil rights laws, and the definitions for each category are set by the Federal Equal Employment Opportunity Commission (see 29 C.F.R. 1602.30). Since these definitions apply uniformly to all public and private employees, it would be inappropriate to consider any changes in this particular rule. Therefore, the petition will not be implemented.

STATE

(d)

NEW JERSEY STATE COUNCIL ON THE ARTS

New Jersey Cultural Centers Bond Issue Program Notice of Availability of Funds

This is a notification of the availability of funds under a program administered by the New Jersey State Council on the Arts as authorized under the "Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L. 1987, Chapter 265 ("the Act").

The name of the program is the New Jersey Cultural Centers Bond Issue Program, the purpose of which is to provide financial assistance in the form of competitive matching grants to applicants proposing to implement capital projects for the improvement of existing New Jersey-based cultural centers which would present arts programs of sufficient

PUBLIC NOTICES

STATE

State or regional significance, or proposals to construct new centers, which would present arts programs of sufficient state or regional significance.

The Act authorizes the New Jersey State Council on the Arts ("NJSCA") to develop and administer the program.

Those interested in applying for grants under the program must contact the NJSCA, 4 North Broad Street, CN306, Trenton, New Jersey 08625, (609) 292-6130, and request an application. Part I of the application is due at the NJSCA on April 7, 1989 by 5:00 P.M. Part II is due at the NJSCA by April 19, 1989 by 5:00 P.M. Both parts of the application must be submitted for consideration. The NJSCA will compile a list of prospective grant recipients to be submitted to the State Legislature for its approval and appropriation of funds by July 31, 1989.

Following is the text of the New Jersey Cultural Centers Bond Issue Program "Guidelines and Criteria" implementing the Act:

INTRODUCTION

On November 3, 1987, by referendum the voters of New Jersey overwhelmingly approved the Green Acres, Cultural Centers and Historic Preservation Act (P.L. 1987, c.265). The Act authorizes the sale of \$100,000,000 in State bonds, the proceeds of which are to be allocated as follows: \$40,000,000 for the State competitive grants for cultural center projects, \$25,000,000 for State competitive grants and State loans for historic preservation projects and \$35,000,000 for State grants and loans to local government units for acquisition and development of lands for recreational and conservation purposes.

In particular the Act authorizes the New Jersey State Council on the Arts to develop and administer the cultural centers projects program and award competitive grants to those projects in strict accordance with the provisions of the Act. The information contained here pertains only to the CULTURAL provisions of the Act. These materials are intended to implement the New Jersey Cultural Centers Bond Issue Program provided for in the Act and include the guidelines, definitions, policies, procedures and application forms under which cultural centers capital development grants will be received, processed, evaluated, awarded and monitored.

THE NEW JERSEY STATE COUNCIL ON THE ARTS

The New Jersey State Council on the Arts (NJSCA), an agency in the Department of State, was created in 1966. Public Law, Chapter 214 mandates that NJSCA shall:

1. Take such steps as may be deemed necessary and appropriate to stimulate and encourage the study and presentation of the performing and creative arts and to foster public interest in and support of the arts in our state.
2. Make such surveys as may be deemed advisable to public and private institutions within the State engaged in the performing and creative arts and to make recommendations for appropriate action to enlarge the State's resources in the performing and creative arts.
3. Encourage and assist freedom of expression in the performing and creative arts.

The NJSCA consists of 17 members, appointed by the Governor and confirmed by the Legislature for terms of three years, and 3 ex-officio members, consisting of the Secretary of State and representatives of the Senate and the Assembly. The NJSCA receives and administers an annual appropriation from the State Legislature and the National Endowment for the Arts through which the NJSCA encourages and gives financial support to artists, arts organizations and arts programs throughout New Jersey.

In 1986, when the NJSCA adopted its first Five-Year Plan, it identified as one of its four primary goals the "fostering of an environment that supports and nurtures artists and the arts throughout the state and makes New Jersey an attractive place in which to live, work, visit and invest." In furtherance of that particular goal the NJSCA established several objectives, one of which is "to support the development of first-class regional arts centers." In amplification of its position the NJSCA characterized cultural centers as a "crosscutting issue" and stated: "The New Jersey State Council on the Arts remains deeply concerned with the status of the state's art facilities, i.e., the arts infrastructure, and is committed to assisting efforts to improve it. The Council will continue to propose and to monitor legislation for that purpose and will provide its constituency and the Legislature with appropriate support information." The passage of the Bond Act represents a unique opportunity to fulfill in great measure the above-stated goal and to insure the continuing high quality and status of New Jersey's arts environment thereby securing New Jersey's position in the forefront of national attention.

AN OVERVIEW OF THE PROGRAM

The Act makes provision for the support of a wide variety of projects ranging from the acquisition of land and construction of entirely new facilities to the technical restoration of fixtures. Furthermore, pursuant to the Act, the NJSCA must be as concerned with the operation, management and scope of the public impact of the facility as it is with the merits of the capital plan itself. Thus, in applying for a grant under the Cultural Centers Bond Issue Program each applicant must consider the purpose and intent of the Act as well as what has been learned through the various studies and surveys of the status of New Jersey arts facilities. Furthermore, in order for the NJSCA to be able to effectively evaluate the wide range of project proposals submitted to it, it is essential that each applicant provide the NJSCA with pertinent materials and information.

In addition, the Act repeatedly emphasizes that grants awarded under its authorization must be competitive. Various studies of capital needs for cultural centers conducted over the last three years suggest that competition for these program funds will be very keen. Thus, the NJSCA must insure that the actual capital expenditures of these state revenues are made openly, fairly and competitively. Therefore, each application will be evaluated on its merits according to the Act's mandated criteria, which include among other things, consideration of the racial, ethnic and geographic diversity of the State. After the applications are evaluated and the review process completed, the NJSCA will submit a list of recommended grant recipients to the Legislature for review. In turn, if the Legislature approves the list, it will appropriate the necessary funds for the approved projects.

The deadline for applications will be April 7, 1989 for Part I of the application, and April 19, 1989 for Part II. The grant cycle will, of course, be contingent upon the existence of adequate, available funds.

ELIGIBLE APPLICANTS

To be eligible for this program each applicant **MUST MEET ALL OF THE FOLLOWING**:

1. It must be incorporated in the State of New Jersey as a not-for-profit corporation and determined to be tax-exempt by the Internal Revenue Service in accordance with section 501(c)(3) of the Internal Revenue Code or be a unit of government.

NOTE: Applicants who do not own the property or facilities in question must have the authorization of the owner to engage in the proposed capital development and to enter into contracts on the owner's behalf. Such authorization must be in writing and the application must be co-signed by the property owner. In such cases the owners must also meet the above-stated eligibility criteria set out in point #1. Without such verified authorization the applicant will be deemed **INELIGIBLE**.

2. The applicant must be governed by a board of directors or duly appointed or elected body empowered to set policy and take actions regarding the operations, programs, finances and development of the organization and its assets as set forth in an officially adopted constitution or statute and published by-laws.

3. The applicant must maintain an existing arts facility or propose to operate a new arts facility of sufficient state or regional significance (SEE DEFINITIONS).

4. The applicant must have and submit a capital construction plan (SEE DEFINITIONS) that is comprehensive with respect to specifying all work required in order to achieve a fully operational cultural center.

5. The applicant must be able to demonstrate the ability to match the grant requested under the provisions of this program (SEE MATCHING REQUIREMENTS).

INELIGIBLE APPLICANT:

Ineligible organizations include, but are not limited to:

1. Organizations which are unincorporated or are incorporated as profit-making entities.
2. Organizations whose facilities lack "sufficient State or regional significance" as defined in the Act.
3. Institutions, organizations or associations whose membership is composed of or confined to persons who profess any particular religious or spiritual creed, viewpoint, manifesto, philosophy or doctrine and whose mission, programs, activities and services are intended to express, profess or support a particular religious or spiritual creed, viewpoint, philosophy, or doctrine.
4. Public or private elementary or secondary schools or institutions of higher education.
5. Fraternal organizations.

6. Organizations which do not comply with the Civil Rights Act of 1964 (Title VI, Section 601) and the Rehabilitation Act of 1973 (Section 504) as amended which bar discrimination on the basis of race, color, national origin, sex or handicap.

7. Organizations which do not own the property or facilities in question and which are not expressly authorized by the owners to engage in the proposed capital development and construction.

8. Organizations which do not have a capital improvement plan in place.

9. Organizations which cannot demonstrate the ability to match the grant requested as provided for in the Act.

ELIGIBLE PROJECTS

Applicants should consult the Definitions section of these guidelines in order to gain an exact understanding of the terms used here and elsewhere.

1. All projects must be capital projects.

2. Only capital projects which pertain exclusively to the construction, physical development or improvement of visual or performing arts facilities will be considered. Any and all ancillary or additional facilities proposed for inclusion in the scope of work of the capital project for which grant support is sought must be justified. That is, the applicant must demonstrate how that ancillary or additional facility will further the activities and purposes of the cultural center.

3. Each capital project, including all of its various aspects, must be described, designed and specified within and governed by a professionally developed, certified and administered capital construction plan.

INELIGIBLE PROJECTS

Ineligible projects include, but are not limited to:

1. Non-capital projects.
2. Capital projects of organizations which do not meet the criteria of an eligible applicant.
3. Capital projects of non-arts facilities, spaces or property.
4. Capital projects of arts facilities for which professionally-developed plans either do not exist or have not been completed.
5. Capital projects whose cultural center development costs are less than \$100,000.00.

DEFINITIONS (Asterisks indicate language taken directly from the Act)

1. Capital Construction Plan

Those portions of the total Capital Plan which specify in writing and in measured drawing under the signature and seal of an architect registered in the State of New Jersey, both in general and in detail all construction required to be performed in order to achieve a fully operational cultural center.

2. Capital Plan

A compendium of research, specification, design, budgetary, organizational and other documents, reports, drawings, schedules and projections relating to the feasibility, programmatic, management, marketplace, architectural, construction, capitalization and implementation considerations and actions necessary to achieve a successfully completed capital project and a fully operational cultural center.

3. *Capital Project

Realty acquisition, building expansion or repair; and repair and replacement of fixtures. Fixtures include, but are not limited to, seating, curtains and lighting.

4. *Construction

In addition to the usual meanings thereof, acts of construction, reconstruction, rehabilitation, relocation, demolition, renewal, repair, replacement, extension, improvement and betterment.

5. Plan

Throughout these documents the use of the word "plan" shall mean "capital plan" unless specifically stated otherwise.

6. *Project

Any work relating to the construction or improvement or development of a cultural center. Work related to providing access for the handicapped to cultural centers shall be considered a project.

7. *Sufficient State or Regional Significance

A facility to be of sufficient State or regional significance shall have:

1. Appropriate and requisite spaces, technical capabilities and professional management to present or produce year-round programs, exhibitions and activities of high artistic quality; and

2. Quality programs from a variety of artistic disciplines which serve broad and diverse regional audiences and shall have the necessary display or seating capacity, staging, appurtenant production spaces, auxiliary facilities, sound, lighting and other technical aspects, management, mar-

keting and maintenance support, and convenient parking, to attract a wide variety of performing groups and to serve New Jersey's citizens on a regional basis.

SIZES OF GRANTS

The enabling legislation for this program mandates that no single grant may exceed 15 percent of the value of the bonds authorized to be issued for the purpose of supporting cultural center development. It further specifies that a grant cannot be made for any project for which the cultural center development costs are less than \$100,000.00. Therefore, the maximum and minimum grants possible through this program are as follows:

MAXIMUM: \$6,000,000.00 MINIMUM: \$50,000.00

MATCHING REQUIREMENT

The applicant must demonstrate the ability to match the grant request in the manner mandated by the Act:

For each \$1.00 of private sector funds the applicant has generated or proves that it will generate for funding the capital project, the applicant may request \$1.00 of grant money, and;

For each \$1.00 of public, non-State funds the applicant has generated or proves that it will generate for funding the capital project, the applicant may request \$.50 of grant money.

NOTE: Proof of the match must meet the satisfaction of the NJSCA.

Monies raised for an applicant's on-going capital project from December 1, 1985 to the present may be considered matching funds for the purposes of meeting the above matching requirements. However, pursuant to the Act, no funds raised prior to December 1, 1985 may be considered for the purposes of meeting the matching requirements.

The Project Finances Section of the application is designed to assist in making grant request calculations. With respect to funds raised from December 1, 1985 to the present it is imperative to note that only those funds raised to meet the eligible capital development cost of capital projects involving the same facilities and structures as are contained within the capital projects now proposed for funding assistance can be considered eligible to be included as part of the match. Finally, prospective applicants are advised that the verification of matching funds is of prime importance to the NJSCA. Capital funds MUST be kept in accounts that are entirely separate from all other fund accounts and over which the strictest of controls are maintained. Recipients of grants from this program WILL BE AUDITED.

APPLICATION

The application consists of two parts. Part I is due at the NJSCA on April 7, 1989 by 5:00 P.M. Part II is due at the NJSCA offices on April 19, 1989 by 5:00 P.M. Parts I and II must be completed, including the required signatures, attachments and fully completed forms. Failure to submit a complete application with all required supplemental documents and signatures by the deadlines specified above, or failure to provide the NJSCA with additional information or documentation it may request of the applicant, will preclude consideration of the application.

EVALUATION

Materials: All prospective applicants must submit Parts I and II of the application as specified in these Guidelines. Parts I and II, along with all requested support materials specified for each, will form the basis for the evaluation of any grant request.

Process: NJSCA will forward copies of complete applications to members of a specially constituted Cultural Centers Grants Evaluation Panel. On-site evaluations will be conducted. Then panelists will provide evaluations and recommendations to the NJSCA based on the site visits and review of complete applications and supporting documentation. Thereafter, the NJSCA will review all applications and panel recommendations and will compile a list of prospective grant recipients to be submitted to the State Legislature by July 31, 1989 for its approval and appropriation of funds for those purposes.

CRITERIA

The following criteria will be employed in evaluating applications for grant funds:

I. High Quality Programming and Administrative Capabilities

- A. Artistry
- B. Marketing
- C. Relationship to community-at-large
- D. Operational soundness
 1. Calibre, organization and management of staff
 2. Governance/board functions
 3. Finances/fundraising

PUBLIC NOTICES

TREASURY-TAXATION

- II. High Quality Capital Plans
 - A. Knowledge of the environment
 - 1. The marketplace
 - 2. Real and potential audiences
 - 3. Community needs
 - 4. Cultural resources
 - B. Overall feasibility of plan implementations
 - 1. Intended facility uses
 - 2. Capitalization of construction
 - 3. Projected operating budgets
 - 4. Schedule of implementation
 - C. Capital construction plan
 - 1. Architectural/design quality(ies)
 - 2. Suitability to intended uses
 - 3. Public/handicapped accessibility and safety
 - 4. Accommodation of artists' needs
 - 5. Conformation to codes
 - 6. Sensitivity to community needs
 - 7. Projected impact on historical resources
 - D. Local support for the plan
 - 1. Governmental
 - 2. Corporate
 - 3. Civic
 - 4. Individuals

- III. Ability to Meet Eligibility Standards
 - A. Applicant (SEE ELIGIBLE APPLICANTS)
 - B. Project (SEE ELIGIBLE PROJECTS)
 - C. Sufficient State or regional significance (SEE DEFINITIONS)
 - D. Capital construction plan (SEE II-C ABOVE)
 - E. Match (SEE MATCHING REQUIREMENTS)

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

**Average Wholesale Price of Cigarettes
Cigarette Surtax Rate**

Take notice that, for the purpose of complying with the requirements of Chapter 40, P.L. 1982, sec. 4 (N.J.S.A. 54:40A-8.2), John R. Baldwin, Director of the Division of Taxation, hereby gives notice that, based upon the best available current data, the average wholesale price of cigarettes in this State during the succeeding six months commencing January 1, 1989, is \$0.5896 for each 10 cigarettes or fraction thereof.

Therefore, the cigarette surtax due for such six months, pursuant to Sec. 302, P.L. 1948, c.65 (N.J.S.A. 54:40A-8), as amended, shall be \$0.04 for each 10 cigarettes or fraction thereof.

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 December 5, 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.1989 d.1 means the first rule adopted in 1989.

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.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT NOVEMBER 21, 1988

NEXT UPDATE: SUPPLEMENT DECEMBER 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
20 N.J.R. 125 and 220	January 19, 1988	20 N.J.R. 1759 and 1976	August 1, 1988
20 N.J.R. 221 and 320	February 1, 1988	20 N.J.R. 1977 and 2122	August 15, 1988
20 N.J.R. 321 and 434	February 16, 1988	20 N.J.R. 2123 and 2350	September 6, 1988
20 N.J.R. 435 and 570	March 7, 1988	20 N.J.R. 2351 and 2416	September 19, 1988
20 N.J.R. 571 and 692	March 21, 1988	20 N.J.R. 2417 and 2498	October 3, 1988
20 N.J.R. 693 and 842	April 4, 1988	20 N.J.R. 2499 and 2610	October 17, 1988
20 N.J.R. 843 and 950	April 18, 1988	20 N.J.R. 2611 and 2842	November 7, 1988
20 N.J.R. 951 and 1018	May 2, 1988	20 N.J.R. 2843 and 2948	November 21, 1988
20 N.J.R. 1019 and 1126	May 16, 1988	20 N.J.R. 2949 and 3046	December 5, 1988
20 N.J.R. 1127 and 1316	June 6, 1988	20 N.J.R. 3047 and 3182	December 19, 1988
20 N.J.R. 1317 and 1500	June 20, 1988	21 N.J.R. 1 and 88	January 3, 1989
20 N.J.R. 1501 and 1594	July 5, 1988	21 N.J.R. 89 and 224	January 17, 1989
20 N.J.R. 1595 and 1758	July 18, 1988		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-5.5	Non-lawyer representatives: consent orders and stipulations	20 N.J.R. 2845(a)		
1:1-10.4	Discovery: requests for admissions	20 N.J.R. 2845(b)		
1:1-14.3	Interpreters for hearing impaired	20 N.J.R. 2845(c)		
1:10-12.2	Emergency fair hearings concerning AFDC and General Assistance: transmittal of notices and initial decisions	20 N.J.R. 3049(a)		
1:30-3.1	Regulatory flexibility analysis and proposed rulemaking	20 N.J.R. 573(a)	R.1989 d.20	21 N.J.R. 152(a)
Most recent update to Title 1: TRANSMITTAL 1988-5 (supplement November 21, 1988)				
AGRICULTURE—TITLE 2				
2:2	Animal disease control program	20 N.J.R. 2419(a)	R.1989 d.30	21 N.J.R. 154(a)
2:24-2, 3	Registration and transportation of bees	20 N.J.R. 2951(a)		
2:32-2.2, 2.3, 2.10, 2.11, 2.13, 2.20, 2.22, 2.27, 2.28	Sire Stakes conditions	20 N.J.R. 2952(a)		
2:33	Agricultural fairs	20 N.J.R. 2954(a)		
2:52-1.6	Reporting by small milk dealers	20 N.J.R. 2955(a)		
2:76-6.2, 6.5, 6.6, 6.9, 6.15, 6.16	Farmland development easements: residual dwelling sites	20 N.J.R. 1761(a)	R.1989 d.49	21 N.J.R. 158(a)
2:76-8	Acquisition of farmland in fee simple	20 N.J.R. 2501(a)	R.1989 d.48	21 N.J.R. 160(a)
Most recent update to Title 2: TRANSMITTAL 1988-8 (supplement November 21, 1988)				
BANKING—TITLE 3				
3:1-16	Mortgage loan practices	20 N.J.R. 1021(b)		
3:24-5.1	Licensed check cashing	20 N.J.R. 2353(a)		
3:38-5	Repeal (see 3:1-16)	20 N.J.R. 1021(b)		
Most recent update to Title 3: TRANSMITTAL 1988-7 (supplement November 21, 1988)				
CIVIL SERVICE—TITLE 4				
4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:2-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:3-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
Most recent update to Title 4: TRANSMITTAL 1988-3 (supplement September 19, 1988)				
PERSONNEL—TITLE 4A				
4A:6-1.3, 1.10	Sick leave; leave without pay	20 N.J.R. 133(a)	R.1989 d.29	21 N.J.R. 19(a)
4A:8	Layoffs	20 N.J.R. 2955(b)		
4A:8	Layoffs: change of public hearing dates	20 N.J.R. 3171(a)		
Most recent update to Title 4A: TRANSMITTAL 1988-3 (supplement September 19, 1988)				
COMMUNITY AFFAIRS—TITLE 5				
5:10	Maintenance of hotels and multiple dwellings	20 N.J.R. 2126(a)	R.1988 d.572	20 N.J.R. 3122(a)
5:10-1.3, 1.6, 1.10, 1.12, 1.17, 25	Fire safety in hotels and multiple dwellings	20 N.J.R. 2126(a)	R.1988 d.572	20 N.J.R. 3122(a)
5:13-1.14	Limited dividend and nonprofit housing projects: payment in lieu of taxes	20 N.J.R. 2425(a)	R.1988 d.571	20 N.J.R. 3123(a)
5:14-1.2	Neighborhood Preservation Balanced Housing Program: eligibility	21 N.J.R. 3(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)		
5:23-3.15	Uniform Construction Code: plumbing subcode	20 N.J.R. 2846(c)		
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:27-1.3, 1.6, 5	Fire safety in rooming and boarding houses	20 N.J.R. 2126(a)	R.1988 d.572	20 N.J.R. 3122(a)
5:38	State intergovernmental review process for Federal programs and direct development activities	20 N.J.R. 2354(a)	R.1988 d.553	20 N.J.R. 3015(a)
5:70-6.3	Congregate Housing Services Program: service subsidy formula	20 N.J.R. 2426(a)	R.1988 d.576	20 N.J.R. 3123(b)
5:91-4.1	Council on Affordable Housing: adoption of housing element	20 N.J.R. 2613(b)	R.1989 d.41	21 N.J.R. 160(b)
5:91-5.2, 6.2, 7.1, 7.3	Council on Affordable Housing: mediation process	20 N.J.R. 3050(a)		
5:91-14	Council on Affordable Housing: amending of certified municipal plan	20 N.J.R. 2613(c)	R.1989 d.42	21 N.J.R. 161(a)
5:92-6.1, 11.4, 11.5, 12.9, 16.6, App. F	Affordable housing council rules	20 N.J.R. 1673(b)	R.1988 d.566	20 N.J.R. 3123(c)
5:92-12.4	Initial pricing: correction to text	_____	_____	20 N.J.R. 3127(a)
5:92-12.4	Council on Affordable Housing: initial pricing of units	20 N.J.R. 3051(a)		

Most recent update to Title 5: TRANSMITTAL 1988-11 (supplement November 21, 1988)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

EDUCATION—TITLE 6

6:2	Appeals to State Board	20 N.J.R. 2615(a)		
6:3-1.10, 1.12, 1.14, 1.18, 1.21, 1.22, 3.1	School districts: corrections to text	_____	_____	21 N.J.R. 19(b)
6:3-5	Reporting of allegations of child abuse	21 N.J.R. 3(b)		
6:8-1.1, 4.3, 7.1	High school core proficiencies	20 N.J.R. 2619(a)		
6:11-12.5	Substance awareness coordinator	20 N.J.R. 1980(c)	R.1988 d.562	20 N.J.R. 3015(b)
6:20-2	Bookkeeping and accounting in local districts	20 N.J.R. 2502(a)		
6:20-5.7	Reimbursement to nonpublic schools for asbestos removal and encapsulation	20 N.J.R. 2505(a)		
6:22A-1	School facility lease purchase agreements	20 N.J.R. 2127(a)	R.1988 d.590	20 N.J.R. 3127(b)
6:29-4.2	Testing for tuberculosis infection	20 N.J.R. 1981(a)	R.1988 d.563	20 N.J.R. 3016(a)
6:39	High school core proficiencies	20 N.J.R. 2619(a)		

Most recent update to Title 6: TRANSMITTAL 1988-9 (supplement November 21, 1988)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1A-1.1, 1.2, 1.4, 1.6, 2.1-2.4, 2.8, 2.10, 2.12-2.15, 5.1, 5.2, 7	Replacement of contaminated wellfields	20 N.J.R. 2470(a)	R.1988 d.574	20 N.J.R. 3129(a)
7:1C-1.2, 1.5	90-day construction permits: fee structure for treatment works approvals	20 N.J.R. 135(a)		
7:1D	Allocation of costs for emergency water supply projects	20 N.J.R. 2197(a)	R.1988 d.589	20 N.J.R. 3135(a)
7:2	State Park Service: extension of comment period	20 N.J.R. 1035(a)		
7:7-2.2	Coastal wetlands maps for Gloucester County	19 N.J.R. 2090(b)	R.1988 d.570	20 N.J.R. 3135(b)
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)		
7:7-2.3	Waterfront development	20 N.J.R. 2815(a)	R.1989 d.8	21 N.J.R. 34(a)
7:7-2.3	Waterfront development	21 N.J.R. 4(a)		
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)		
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4	Surface water quality standards: extension of comment period	20 N.J.R. 2427(a)		
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A-G	Surface water quality standards	20 N.J.R. 1597(a)		
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7:9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(a)	R.1989 d.28	21 N.J.R. 43(a)
7:10-13.2, 13.10, 13.13	Industrial wastewater treatment systems: licensing of operators	20 N.J.R. 1141(b)		
7:10-16	Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water	19 N.J.R. 2228(a)	R.1989 d.12	21 N.J.R. 46(a)
7:13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)		
7:14A-3.1	NJPDES permit requirements: discharges of dredged and fill material into freshwater wetlands and open waters	20 N.J.R. 1328(a)	R.1988 d.588	20 N.J.R. 3135(c)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:14A-5.12	Closure of hazardous waste facilities	20 N.J.R. 2650(a)		
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:20A	Water usage certifications for agricultural and horticultural purposes	20 N.J.R. 2663(a)	R.1989 d.36	21 N.J.R. 176(a)
7:22-10	Environmental assessment requirements for State-assisted wastewater treatment facilities	20 N.J.R. 1983(a)	R.1989 d.53	21 N.J.R. 179(a)
7:25-1.5, 8	Clam licenses	20 N.J.R. 2666(a)	R.1989 d.26	21 N.J.R. 55(a)
7:26-1.1, 1.4, 2.7, 2.11, 2.12, 2.13, 2A.8, 2B.4, 2B.8, 3.1-3.5, 3.7, 4.1-4.5, 4.7-4.10, 16.2, 16.3, 16.13	Solid waste facility and transporter registration fees	20 N.J.R. 2668(a)		
7:26-1.1, 1.4, 4, 4A, 7.3, 7.5, 12.2, 13A.6, 16.2, 16.3	Hazardous waste fee schedule	20 N.J.R. 1995(a)	R.1989 d.54	21 N.J.R. 190(a)
7:26-1.1, 1.4, 4, 4A	Hazardous waste fee schedule: extension of comment period	20 N.J.R. 2427(c)		
7:26-1.4, 1.7, 1.11, 1.12, 2.1, 2.4, 2.8, 2.13	Permit exemptions for composting facilities	20 N.J.R. 2817(a)	R.1989 d.55	21 N.J.R. 198(a)
7:26-1.4, 7.4, 9.1, 12.1	Hazardous waste research and testing facilities: pre-proposal	20 N.J.R. 460(b)		
7:26-1.4, 9.8, 9.9, 9.10, 9.11, 9.13, App. A, 12.3, 12.5	Closure of hazardous waste facilities	20 N.J.R. 2650(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)		
7:26-7.3, 7.4, 7.5, 7.6	Hazardous waste management	20 N.J.R. 867(a)		
7:26-7.4, 9.1, 12.1	Hazardous waste stored for reuse	20 N.J.R. 1329(a)		
7:26-9.4	General facility standards: correction to text			21 N.J.R. 56(a)
7:26-12.9	Hazardous waste management: research, development and demonstration permits	20 N.J.R. 462(a)	R.1989 d.11	21 N.J.R. 56(a)
7:26B-1.10	Environmental Cleanup Responsibility Act: fee schedule	20 N.J.R. 2000(a)	R.1989 d.27	21 N.J.R. 57(a)
7:27-16.1, 16.2, 16.5, 16.6	Volatile organic substance emissions and ozone concentrations	20 N.J.R. 3052(a)		
7:27-16.1, 16.3	Marine transfer of gasoline: vapor recovery program	20 N.J.R. 1866(a)		
7:27-23	Volatile organic substances in consumer products	20 N.J.R. 2002(a)		
7:27-25	Control and prohibition of air pollution by vehicular fuels	20 N.J.R. 1631(a)		
7:27-25	Control and prohibition of air pollution by vehicular fuels: extension of comment period	20 N.J.R. 2355(a)		
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)		
7:45	Delaware and Raritan Canal review zone: extension of comment period	20 N.J.R. 552(c)		

Most recent update to Title 7: TRANSMITTAL 1988-11 (supplement November 21, 1988)

HEALTH—TITLE 8

8:31B-2.2, 2.4	Hospital reimbursement: DRG classification of newborns	20 N.J.R. 3057(a)		
8:31B-3.19	Hospital reimbursement: burn care unit reporting	20 N.J.R. 2541(a)		
8:31B-3.19, 3.38, 3.45	Hospital reimbursement: newborn DRGs; outlier categories	20 N.J.R. 3057(b)		
8:31B-3.43	General acute care hospitals: implementation of proposed schedule of rates	20 N.J.R. 2542(a)		
8:31B-3.44	Hospital reimbursement: DRG outliers	20 N.J.R. 2542(b)		
8:31B-3, App. II	Hospital reimbursement: laundry and linen cost center	20 N.J.R. 2543(a)		
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8:31C	Residential alcoholism treatment: facility rate setting	20 N.J.R. 2960(a)		
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8:33E-2.3, 2.4	Cardiac surgery centers: pediatric patients; surgery teams	20 N.J.R. 2848(a)		
8:33J-1.3	Nuclear Magnetic Resonance (NMR)/Magnetic Resonance Imaging (MRI) demonstration period	20 N.J.R. 2220(a)	R.1988 d.573	20 N.J.R. 3136(a)
8:34	Licensing of nursing home administrators	20 N.J.R. 2355(b)	R.1988 d.567	20 N.J.R. 3136(b)
8:38-1.1, 1.4	HMOs and vision care services	21 N.J.R. 6(a)		
8:39-41.3, 42.2	Long-term care facilities: excessive heat emergency plan	20 N.J.R. 2543(b)		
8:42A	Licensure of alcoholism treatment facilities	20 N.J.R. 3059(a)		
8:43-4.11	Residential health care facilities: hot water temperature	20 N.J.R. 2221(a)	R.1988 d.578	20 N.J.R. 3136(c)
8:43B-1.10	Hospital facilities: confidentiality of patient information	20 N.J.R. 2221(b)		

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8:60-2.1 (12:120-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
8:65-10.2, 10.4, 10.5	Scheduling of controlled dangerous substances	_____	_____	21 N.J.R. 70(b), 70(c), 70(d)
8:66-1	Bureau of Alcohol Countermeasures (recodified from 13:20-31)	_____	_____	21 N.J.R. 70(a)
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)		
8:71	Interchangeable drug products (see 20 N.J.R. 1710(b), 2376(d), 2768(b))	20 N.J.R. 871(a)	R.1989 d.3	21 N.J.R. 63(a)
8:71	Interchangeable drug products (see 20 N.J.R. 2769(a))	20 N.J.R. 1766(a)	R.1989 d.5	21 N.J.R. 63(b)
8:71	Interchangeable drug products	20 N.J.R. 2356(a)	R.1989 d.4	21 N.J.R. 63(c)
8:71	Interchangeable drug products	20 N.J.R. 3078(a)		
8:71	List of Interchangeable Drug Products	21 N.J.R. 7(a)		

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9:1	Licensing and degree approval standards	20 N.J.R. 2965(a)		
9:6A-4.3	Managerial employees at State colleges: annual salary increases	20 N.J.R. 3079(a)		
9:7-6.4	Garden State Graduate Fellowships: approved programs	20 N.J.R. 2624(a)		
9:7-8.1	Vietnam Veterans Tuition Aid: eligibility	20 N.J.R. 2625(a)		
9:11	Educational Opportunity Fund Program	20 N.J.R. 2506(a)		
9:11-1.1	Educational Opportunity Fund grants: student eligibility	20 N.J.R. 1768(b)		
9:11-1.6, 1.8, 1.9, 1.20	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		
9:11-1.7	EOF grants: award amounts	20 N.J.R. 1770(a)		
9:12	Educational Opportunity Fund Program	20 N.J.R. 2506(a)		
9:12-2.6, 2.9	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		

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10:4	Communication with communities regarding development of group homes: extension of comment period	20 N.J.R. 149(a)		
10:31	Mental illness screening and screening outreach programs	20 N.J.R. 2427(d)		
10:37-5.6, 5.16	Repeal (see 10:31)	20 N.J.R. 2427(d)		
10:39	Group homes for mentally ill: operating standards	20 N.J.R. 2547(a)		
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10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)		
10:48-3	Lead toxicity control among developmentally disabled	20 N.J.R. 2555(a)		
10:48-3	Lead Toxicity Control Program: comment period	20 N.J.R. 2688(a)		
10:54-4	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:54-4.5	Medicaid reimbursement for physician's services	20 N.J.R. 2558(a)		
10:56-3.7, 3.10	Medicaid reimbursement for dental services	20 N.J.R. 2558(a)		
10:58-1.2, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:61-3.2	Medicaid reimbursement for independent laboratory services	20 N.J.R. 2558(a)		
10:62-1, 2, 3	Vision Care Manual	20 N.J.R. 956(c)	R.1988 d.580	20 N.J.R. 3147(a)
10:63-1.11, 1.19	Use of personal needs allowance in long-term care facilities	20 N.J.R. 1144(a)	R.1988 d.556	20 N.J.R. 3017(b)
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10:66	Independent Clinic Services Manual	20 N.J.R. 2562(a)	R.1989 d.33	21 N.J.R. 162(a)
10:66-1.6, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
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10:69B	Lifeline Credit/Tenants Lifeline Assistance programs	20 N.J.R. 2440(a)	R.1988 d.575	20 N.J.R. 3153(a)
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10:83-1	Special Payments Handbook for SSI recipients	20 N.J.R. 2563(a)		
10:85-3.2	General Assistance: residency in therapeutic care facility	20 N.J.R. 2968(b)		
10:85-3.3	General Assistance: income-in-kind	20 N.J.R. 2238(a)	R.1989 d.7	21 N.J.R. 20(a)
10:85-3.3	Medically Needy eligibility	20 N.J.R. 2688(b)		
10:87	Food Stamp Program	20 N.J.R. 2689(a)		
10:87-12.1-12.4, 12.7	Food Stamp Program: income deductions, coupon allotment, maximum allowable income	20 N.J.R. 2592(a)	R.1989 d.1	21 N.J.R. 21(a)
10:100-App. A	Supplemental Security Income (SSI) payment levels	Emergency (expires 2-28-89)	R.1989 d.58	21 N.J.R. 208(a)
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10:124-1.2, 1.3, 5.2	Shelters accepting juveniles: corrections to text	_____	_____	21 N.J.R. 162(b)
10:124-1.2, 4.11, 5.2, 6.5	Shelters accepting juveniles: corrections to text	_____	_____	20 N.J.R. 3169(d)
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10A:4-11.9, 12	Inmate appeals to Office of Administrative Law: public hearing	20 N.J.R. 880(b)		
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10A:9-4.6	Open charges and reduced custody status	20 N.J.R. 880(a)		
10A:16-2.9	Infirmity care	20 N.J.R. 2969(a)		
10A:16-6.6	Infants born to female inmates	20 N.J.R. 2747(a)		
10A:18-2.6, 2.19, 2.20, 2.22	Inmate correspondence	20 N.J.R. 2854(a)		
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10A:71-2.1, 3.4, 3.28	Parole Board rules	20 N.J.R. 2129(a)		
10A:71-3.21, 6.4	State Parole Board: juvenile inmates: conditions of parole	20 N.J.R. 2747(b)		

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11:5-1.16	Real estate listing agreements	20 N.J.R. 2185(a)		
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12:100-9.18	Public employee safety and health: work in confined spaces	20 N.J.R. 2855(b)		
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16:22-1.3, 3.1	State aid for urban revitalization, special demonstration and emergency projects	20 N.J.R. 3000(b)		
16:28-1.6, 1.14, 1.44	Speed limit zones along U.S. 40 in Salem County, Route 33 in Monmouth County, and Route 27 in Middlesex County	20 N.J.R. 2630(a)	R.1989 d.19	21 N.J.R. 26(c)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28-1.13	Speed limit zone along Route 20 in Paterson	20 N.J.R. 2631(a)	R.1989 d.14	21 N.J.R. 27(a)
16:28-1.72	School zone along U.S. 206 in Montaque Township	20 N.J.R. 2862(a)	R.1989 d.51	21 N.J.R. 172(a)
16:28-1.79	Speed limits along Route 94 in Sussex County	20 N.J.R. 3116(a)		
16:28-1.79, 1.81	Speed limit zones along Route 49 in Salem County and Route 94 in Sussex County	20 N.J.R. 2632(a)	R.1989 d.17	21 N.J.R. 28(a)
16:28-1.130	Speed limit zones along Route 66 in Monmouth County	20 N.J.R. 2633(a)	R.1989 d.13	21 N.J.R. 27(b)
16:28A-1.4, 1.11, 1.21, 1.38	Bus stop zones and no stopping or standing along Routes 4, 21, and 71, and U.S. 30	20 N.J.R. 2862(b)	R.1989 d.52	21 N.J.R. 172(b)
16:28A-1.7, 1.22, 1.32, 1.34	Parking restrictions along U.S. 9 in Tuckerton, Route 31 in Hopewell, U.S. 46 in Mountain Lakes, and Route 49 in Pennsville	20 N.J.R. 2633(b)	R.1989 d.18	21 N.J.R. 28(b)
16:28A-1.20	Parking restrictions along Route 29 in Lambertville	20 N.J.R. 3001(a)		
16:28A-1.21, 1.51, 1.53, 1.68	Parking restrictions along U.S. 30 and Route 168 in Camden County, Route 179 in Lambertville, and Route 93 in Leonia	20 N.J.R. 3001(b)		
16:28A-1.33	No stopping or standing zone along Route 47 in Franklin Township	20 N.J.R. 2634(a)	R.1989 d.15	21 N.J.R. 29(a)
16:28A-1.53	Parking along Route 179 in Lambertville	20 N.J.R. 3117(a)		
16:30-3.6	Exclusive bus and HOV lanes along Routes 3 and 495 into Manhattan	20 N.J.R. 737(b)		
16:30-9	Use restrictions on bridges along highway system	20 N.J.R. 3117(b)		
16:30-10.9	Midblock crosswalk along U.S. 9 in Galloway Township	20 N.J.R. 2635(a)	R.1989 d.16	21 N.J.R. 29(b)
16:31-1.11	Turn restrictions along Route 21 in Newark	20 N.J.R. 3120(a)		
16:32-3.5, 3.6, App. A	102-inch truck standard network; Route 47 access	20 N.J.R. 2536(b)	R.1989 d.9	21 N.J.R. 29(c)
16:44-1.2	Classification of prospective bidders for department projects	20 N.J.R. 3004(a)		
16:49-1.3, 1.5, 1.6, 2.1, App.	Transportation of hazardous materials: intrastate shipments of combustible liquids	20 N.J.R. 3005(a)		
16:51-1.3, 1.4, 1.6, 3.1, 4.3-4.7	Practice and procedure before Office of Regulatory Affairs concerning autobus operations, companies, and services	20 N.J.R. 2635(b)		
16:53D	Regular route autobus carriers: zone of rate freedom	20 N.J.R. 2374(b)		
16:54-1.4	Licensing of aeronautical facilities	20 N.J.R. 2638(a)	R.1989 d.31	21 N.J.R. 173(a)
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16:62-5.1, 9.1	Land uses within airport hazard areas: preproposal	20 N.J.R. 1534(a)		
16:76	NJ TRANSIT: private carrier capital improvement	20 N.J.R. 2638(b)		
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17:6	Consolidated Police and Firemen's Pension Fund	20 N.J.R. 2537(a)	R.1988 d.579	20 N.J.R. 3142(a)
17:7	Prison Officers' Pension Fund	20 N.J.R. 2375(a)	R.1988 d.577	20 N.J.R. 3142(b)
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19:25-15.4, 15.5, 15.14, 15.16, 15.17, 15.20, 15.26, 15.46	Public financing of general election for governor	20 N.J.R. 2642(a)	R.1989 d.43	21 N.J.R. 173(d)
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19:45-1.11A, 1.12	Jobs compendium information; assistant casino manager position	20 N.J.R. 3120(b)		
19:45-1.20	Marking baccarat vigorish	20 N.J.R. 2647(b)		
19:45-1.25	Verification of cash equivalents	20 N.J.R. 1789(a)		
19:45-1.40, 1.41	Jackpot payout and hopper fill forms	20 N.J.R. 2050(b)	R.1989 d.34	21 N.J.R. 175(b)
19:45-1.40B	Inspection of slot machine jackpots	20 N.J.R. 2648(a)		
19:46-1.7, 1.9	Roulette wheels	20 N.J.R. 2445(a)		
19:47-2.15	Blackjack irregularities	20 N.J.R. 3014(a)		
19:47-3.3	Marking baccarat vigorish	20 N.J.R. 2647(b)		
19:49-1.1, 1.2, 1.3, 2.1, 2.4, 3.1, 3.2, 3.5, 3.6	Junket activities and representatives	20 N.J.R. 2644(a)		
19:49-3.1, 3.2, 3.3	Junket reporting requirements	20 N.J.R. 2648(b)		
19:52-1.3	Musical entertainment	20 N.J.R. 2649(a)		
19:53-1.16	Repeal procedural rule concerning affirmative action	21 N.J.R. 18(b)		
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