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# REGISTER

**IN THIS ISSUE**  
**"INDEX OF PROPOSED RULES"**

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# RULE PROPOSALS

## AGRICULTURE

(a)

### DIVISION OF RURAL RESOURCES

#### State Agriculture Development Committee Agriculture Retention and Development

#### Proposed New Rule: N.J.A.C. 2:76-1

Authorized By: Arthur R. Brown, Jr., Chairman, State  
Agriculture Development Committee.

Authority: N.J.S.A. 4:1C-5f, 4:1C-15f and 4:1C-16a.

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Donald D. Applegate  
Executive Secretary  
The State Agriculture  
Development Committee  
CN 330  
Trenton, NJ 08625

At the close of the period for comments, the State Agriculture Development Committee thereafter may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1983-650.

The agency proposal follows:

#### Summary

The proposed new rules will implement the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. The Act provides for the establishment of county agriculture development

boards or subregional agricultural retention boards, provides for the establishment of voluntary eight year farmland preservation programs and authorizes that criteria be established to administer the Farmland Preservation Fund.

In order for a qualified landowner to enter into a voluntary eight year program, the subject land must be located within an agricultural development area, hereinafter referred to as ADA. In general, an ADA is an area that the county or subregional boards may identify which includes lands that are currently in agriculture or have the potential for future agricultural use and in which agriculture is considered a permitted use. The approval of an ADA by the county or subregional boards does not authorize exclusive agricultural zoning or alter the value of the land for tax assessment purposes. In accordance with the Act, a board, at the request of a municipality, may require any person proposing any non-agricultural development in an ADA to submit a statement describing the potential impact the proposed development would have in the area. In addition to this, any public body or public utility intending to advance a loan or grant for construction of certain types of infrastructure in an approved ADA must file a notice of intent with the board and the State Agriculture Development Committee, established pursuant to N.J.S.A. 4:1C-4, prior to initiation of the action. The board and the committee will review the intended action to determine its effect upon agriculture in the ADA. The proposed rules will assist the board in making sound judgments when identifying an ADA and for receiving State Agriculture Development Committee certification for these areas.

#### Social Impact

The proposed new rules will have a favorable social impact by providing a uniform standard requiring all county agriculture development boards and subregional agricultural retention boards to consider community, natural resource and land use criteria when identifying agricultural development areas.

Proposed N.J.A.C. 2:76-1.3 restates statutory criteria, as set forth in N.J.S.A. 4:1C-21, which at the board's option, will determine where agriculture will be the preferred use of the land.

To supplement this criteria, proposed new rule N.J.A.C. 2:76-1.4 contains factors which must be considered but not necessarily adopted by the local boards. This will ensure that the boards have conducted a thorough and systematic review of various factors and that the adopted ADA will encompass lands which have long term agricultural viability.

Proposed new rule N.J.A.C. 2:76-1.5 through 1.7 provide a

## NEW JERSEY REGISTER

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mechanism by which the State Agriculture Development Committee can ensure that the county or subregional boards have conformed with State statutes by requiring the boards to provide the committee with proper documentation for certification of the ADA.

**Economic Impact**

The proposed new rules for identifying an agricultural development area will have a favorable economic impact.

Proposed new rules N.J.A.C. 2:76-1.3 and 1.4 contain statutory and other criteria which will assist local units of government in properly evaluating where Farmland Preservation Funds will be targeted to counties for easement purchases and to individuals enrolled in eight year programs for soil and water conservation projects. The identification and approval of an agricultural development area will also express local support for retaining agriculture as a viable and economically important industry to both the community and the State.

Full text of the proposed new rule follows.

CHAPTER 76  
STATE AGRICULTURE  
DEVELOPMENT COMMITTEE

SUBCHAPTER 1. AGRICULTURE RETENTION AND  
DEVELOPMENT

2:76-1.1 Applicability

This subchapter applies to County Agriculture Development Boards and Subregional Agricultural Retention Boards when identifying and receiving State Agriculture Development Committee certification for agricultural development areas.

2:76-1.2 Definitions

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

"Agricultural Development Area", hereinafter referred to as ADA, means an area identified by a county agriculture development board pursuant to the provisions of N.J.S.A. 4:1C-21 and certified by the State Agriculture Development Committee.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-17 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-20.

"Committee" means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

2:76-1.3 Statutory criteria

(a) The board may, after public hearing, identify and recommend an area as an agricultural development area, which recommendation shall be forwarded to the county planning board. The board shall document where agriculture shall be the preferred, but not necessarily the exclusive, use of land if that area:

1. Encompasses productive agricultural lands which are currently in production or have a strong potential for future production in agriculture and in which agriculture is a permitted use under the current municipal zoning ordinance or in which agriculture is permitted as a non-conforming use;
2. Is reasonably free of suburban and conflicting commercial development;
3. Comprises not greater than 90 percent of the agricultural land mass of the county;
4. Incorporates any other characteristics deemed appropriate by the board.

2:76-1.4 Other criteria

(a) The factors in this section that shall be considered by the board in developing criteria for the identification of agricultural development area(s) shall include, but not necessarily be limited to, the following:

1. Soils;
2. Current and anticipated local land use plans and regulations;
3. Farmland assessment status;
4. Anticipated approvals for non-agricultural development;
5. Accessibility to publicly funded water and sewer systems;
6. Compatibility with comprehensive and special purpose county and State plans;
7. Proximity and accessibility to major highways and interchanges;
8. Minimum size of an ADA;
9. Landowner sign-up;
10. Land within boroughs, towns or cities;
11. Inclusion of entire or partial lots and blocks;
12. Land ownership;
13. Natural and special features;
14. Type and distribution of agriculture.

(b) Guidelines for interpretation of the above factors may be obtained from the committee upon request. Requests shall be addressed to:

The State Agriculture  
Development Committee  
CN 330  
Trenton, New Jersey 08625

2:76-1.5 Certification request

(a) In order to obtain committee certification of board approval of ADAs, the board shall submit the following to the committee:

1. Board certification that a hearing was held in compliance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.;
2. A copy of the approved minutes of the hearing which shall include a summary of the testimony;
3. A comprehensive report consisting of the following:
  - i. Discussion of factors considered for arriving at the adopted ADA criteria;
  - ii. Adopted criteria for ADA identification;
  - iii. A resolution of adoption of ADA(s);
  - iv. Map(s), preferably but not necessarily U.S.G.S. (1:24000), showing the general location of the ADA(s) as defined by the application of the criteria.

2:76-1.6 Committee review

(a) The committee shall review board submissions pursuant to N.J.A.C. 2:76-1.5.

(b) In order to certify, the committee must make a finding that the board's analysis of factors and resultant criteria are reasonable and consistent with the provisions of this subchapter.

2:76-1.7 Certification

Upon compliance with the provisions of this subchapter, the committee shall present to the Secretary of Agriculture its findings and recommendations to certify, to certify with conditions, or deny the request made pursuant to N.J.A.C. 2:76-1.5.

**BANKING**

**(a)**

**DIVISION OF BANKING**

**Savings Banks Investment Securities  
Investment Approval**

**Proposed Amendment: N.J.A.C. 3:11-8.1**

Authorized By: Michael M. Horn, Commissioner,  
Department of Banking.

Authority: N.J.S.A. 17:9A-182.3.

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Roger F. Wagner, Deputy Commissioner  
 Department of Banking  
 Division of Banking  
 CN 040  
 Trenton, NJ 08625

The Department of Banking thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-636.

The agency proposal follows:

**Summary**

In 1974, the State legislature modified the savings banks securities investment powers by stipulating that the Commissioner of the New Jersey Department of Banking would have the power to issue a regulation establishing additional investment securities in which savings banks may invest. In accordance with this authority, the Commissioner issued the existing regulation, N.J.A.C. 3:11-8.1. In the regulation, at N.J.A.C. 3:11-8.1(a)1, the Commissioner stipulated that savings banks could invest in corporate obligations which received a quality rating in any of the top three quality classifications issued by any one of the three investor rating services listed in the regulation. The regulation also set a rating criteria for eligibility for investment in commercial paper by savings banks.

The Commissioner of Banking has received a request from Duff and Phelps, Inc. to be added to the aforementioned list of firms which issue quality ratings which may be accepted by savings banks when considering the authority to invest in a particular obligation. The Department has reviewed the qualifications of this firm and is satisfied that it has the capacity and national recognition as a rating service to qualify for inclusion in the aforementioned list. Therefore, the Commissioner is proposing the addition of Duff and Phelps, Inc. to this regulation. It should be noted that Duff and Phelps, Inc. does use a different rating symbol (numerical) than the other rating services (alphabetical) for fixed income securities; however, they do have a conversion relationship.

**Social Impact**

Adoption of this amendment will provide savings banks with an alternate acceptable source for evaluation of an investment security in which it may desire to invest. This additional comparative avenue will provide these institutions with a further assurance of the quality of an investment. The amendment would work to the overall benefit of the institution, and its depositors, in that with this additional source of review, the quality and therefore the safety of investments made should be upgraded.

**Economic Impact**

With the potential for an upgrading in the quality of investments held by savings banks, the revenue of these institutions should be enhanced. This will have a positive economic impact on the individual institution.

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

3:11-8.1 Investment securities

(a) In addition to investments otherwise authorized in article 15 of the Banking Act of 1948, as amended, savings banks are further authorized to invest in the following investment securities:

1. Bonds, debentures, notes or other obligations of any business

corporation, except bank holding companies, which are defined in (a)3 below, organized under the laws of the United States or any state therein; provided, however, such investment security has received a quality rating in any of the first three quality classifications issued by Moody's Investors Service, Inc., Standard & Poor's Corporation, or Fitch Investors Service, Inc., or [if] **has received a quality rating in the first seven quality classifications issued by Duff and Phelps, Inc.** If such investment security shall be of a type commonly denominated as "commercial paper" such obligation shall have received a quality rating of P-1 by Moody's Investors Service, Inc., A-1 by Standard & Poor's Corporation, [or] F-1 by Fitch Investors Service, Inc., **or Duff 1 plus or minus.**

2.-5. (No change.)

(b) (No change.)

**COMMUNITY AFFAIRS**

(a)

**DIVISION OF HOUSING AND DEVELOPMENT**

**Uniform Construction Code  
 Construction Boards of Appeals**

**Proposed Amendment: N.J.A.C. 5:23-4.26**

Authorized By: John P. Renna, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124.

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Michael L. Ticktin, Esq.  
 Administrative Practice Officer  
 Division of Housing and Development  
 CN 804  
 Trenton, NJ 08625

At the close of the period for comments, the Department of Community Affairs may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1983-630.

The agency proposal follows:

**Summary**

The rules governing the composition of construction boards of appeals are proposed to be amended to require that at least one member have at least the qualifications required of a fire protection subcode official.

**Social Impact**

Inclusion of a person with fire safety experience in each construction board of appeals will give the boards more competence in evaluating those aspects of cases brought before them which concern fire safety.

**Economic Impact**

There will be no apparent economic impact from the proposed amendment.

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

5.23-4.26 Construction boards of appeal

(a) (No change.)

(b) Rules concerning organization are:

1. Membership; term; qualifications of members:

i.-ii. (No change.)

iii. No more than two members of the board shall be selected from the same profession or business. At least one of the members shall be either a registered architect or licensed professional engineer [of] **with** building construction experience, and at least one member of the board shall be as qualified as a plumbing subcode official, [and] one as qualified as an electrical subcode official **and one as qualified as a fire protection subcode official**;

iv.-vi. (No change.)

2.-6. (No change.)

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

## EDUCATION

(a)

### STATE BOARD OF EDUCATION

#### Business Services; Tuition Public Schools Method of Determining Tuition Rates

#### Proposed Amendment: N.J.A.C. 6:20-3.1

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

Authority: N.J.S.A. 18A:4-15 and 18A:38-19.

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Lorraine L. Colavita  
Executive Assistant for Administrative  
Practice and Procedure  
Department of Education  
225 West State Street  
Trenton, NJ 08625

At the close of the period for comments, the State Board of Education may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1983-631.

The agency proposal follows:

#### Summary

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15 and 18A:38-19, proposes to amend N.J.A.C. 6:20-3.1, of the rules pertaining to the method of determining tuition rates.

The proposal would eliminate problems which have arisen concerning the administration of tuition contracts. Districts frequently are involved in controversies among themselves concerning tuition contracts. In some cases, this has resulted in open conflict between boards of education. In too many cases, sending and receiving districts underestimate tuition costs or the

number of tuition pupils to be sent. This has usually resulted in a surplus or deficit for one district or the other. The amendments establish a procedure whereby the sending district and receiving district boards of education will be able to budget properly for tuition expenditures. The amendments also establish, for the first time, that tuition contracts be in writing and that calculations concerning proposed tuition rates be prepared by using a standard format. The amendments have been reviewed by the Department's Administrative Code Review Committee and on two occasions submitted to New Jersey School Boards Association, the New Jersey Association of School Administrators, the New Jersey Association of School Business Officials, the New Jersey Education Association and the New Jersey Principals and Supervisors Association. County Superintendents of Schools and many local school districts have also had an opportunity to review the amendments. Preliminary reaction to the proposal has been overwhelmingly positive.

#### Social Impact

The amendments will no longer permit districts to realize a surplus or incur a deficit as a result of their tuition contract practices. Budgeting for sending and receiving districts will be more precise and most of the conflict between boards of education over tuition matters will be reduced or eliminated.

#### Economic Impact

The amendments will have a positive economic impact on both sending and receiving district boards of education. The standardization of the administration of tuition contracts proposed by these amendments will permit both parties to anticipate tuition charges and expenditures in a proper fashion. Also the requirement that the commissioner certify the actual cost per pupil for each tuition category will clearly establish the correct charges for all categories of pupils.

At least 500 districts are involved in either a sending or receiving relationship.

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

#### 6:20-3.1 Method of determining tuition rates

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

(d) A tentative tuition [rate may] **charge shall be [set] established for budgetary purposes by written contractual agreement** between the receiving district **board of education** and the sending district **board of education**, and such tentative [rate] **charge shall [be based upon the] equal the receiving district's estimated cost per pupil for the ensuing school year [as to be reflected in the proposed budget of the receiving district:] for the purpose or purposes for which tuition is being charged, multiplied by the estimated average daily enrollment of pupils expected to be received during the ensuing school year. Such written contract shall be on a form prepared by the commissioner.**

1. [If the] **The sending district board of education and the receiving district board of education [reach an agreement before January 1, they shall so notify the Commissioner.] shall enter into a written contractual agreement for tuition for the ensuing school year no later than December 15 preceding the beginning of the ensuing school year. Such contractual agreement shall require the sending district board of education to pay 10 percent of the tentative tuition charge no later than an agreed upon date each month from September through June of the contract year. The contractual agreement shall require that all adjustments which shall be made because of a difference in cost or in the number of pupils sent shall only be made during the third school year following the contract year.**

2. [If the sending district and the receiving district cannot reach agreement on the estimated cost per pupil by January 1, then the tentative tuition rate shall be based upon the actual cost per pupil

for the completed school year immediately preceding.] The sending district board of education shall notify in writing the receiving district board of education of the estimated average daily enrollment of pupils in each tuition category expected to be sent during the ensuing school year no later than November 1 preceding the beginning of the ensuing school year. The receiving district board of education shall notify in writing the sending district board of education of the estimated cost per pupil in each tuition category for the ensuing school year and the tentative tuition charge no later than November 15 preceding the beginning of the ensuing school year. The receiving district board of education shall submit to the sending district board of education a copy of its calculations to determine the estimated cost per pupil in each tuition category for the ensuing school year no later than November 15 preceding the beginning of the ensuing school year. Such calculations shall be on a form prepared by the commissioner.

3. If the [C]commissioner later determines that the tentative tuition [rate] charge was greater than the actual cost per pupil during the school year [for which the tentative rate was charged,] multiplied by the actual average daily enrollment received, the receiving district board of education shall return to the sending district board of education in the third school year, following the contract year the amount by which the tentative [rate] charge exceeded the actual [cost per pupil] charge as determined above, or, at the option of the receiving district, the board of education shall credit the sending district the board of education with the [amount by which the tentative tuition rate exceeded the actual cost per pupil] excess amount.

4. If the [C]commissioner later determines that the tentative [rate] charge was less than the actual cost per pupil during the school year [for which the tentative rate was charged,] multiplied by the actual average daily enrollment received, the receiving district [may] board of education shall charge the sending district [all or part of] board of education the amount [by which the actual cost per pupil exceeded the tentative rate,] owed by the sending district board of education, to be paid [not later than] during the [second] third school year following the school year for which the tentative [rate] charge was paid. [For the school year 1979-1980, the additional charge is to be paid not later than during the 1982-83 school year.] The county superintendent of schools of the county in which the sending district board of education is located may approve the payment of the additional charge over another period, if the sending district board of education can demonstrate that payment during the third school year following the school year for which the tentative charge was paid would cause a hardship.

(e) The [C]commissioner shall prepare [the detailed directions and] the necessary forms to [be used by school officials in determining] certify the "actual cost per pupil" for [tuition purposes according to these rules] each tuition category according to these rules. The commissioner shall also prepare the contract forms and the forms to be used by the receiving district board of education to establish the estimated cost per pupil for each tuition category for the ensuing school year.

(f) (No change.)

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF COASTAL RESOURCES

#### Coastal Permit Program Regulations

**Proposed New Rules: N.J.A.C. 7:7**  
**Proposed Repeals: N.J.A.C. 7:7-2, 7:7A-1,**  
**7:7D-1 and -2**

Authorized By: Robert E. Hughey, Commissioner,  
 Department of Environmental Protection.  
 Authority: N.J.S.A. 13:1D-9, 13:19-17, 13:9A-3, 12:5-3.  
 Docket No: 069-83-11

Public hearings concerning this proposal will be held at the following places and times:

January 11, 1984, 7:30 P.M.  
 Dover Township Community Room  
 33 Washington St., Toms River

January 12, 1984, 1 P.M.  
 Room 702, Labor and Industry Building  
 Trenton

January 12, 1984, 7:30 P.M.  
 Ocean City Music Pier  
 Boardwalk & Moorlyn Terrace  
 (Between 8th and 9th Streets)  
 Ocean City

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Allan Campbell, Chief  
 Bureau of Coastal Planning and Development  
 Division of Coastal Resources  
 Department of Environmental Protection  
 CN 401, Trenton, New Jersey 08625

The Department may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-643.

The agency proposal follows:

#### Summary

The Division of Coastal Resources is responsible for the implementation of three different coastal permitting laws: the Coastal Area Facility Review Act (CAFRA N.J.S.A. 13:19-1 et seq.), the Wetlands Act (N.J.S.A. 13:9A-1 et seq.) and the Waterfront Development Law (N.J.S.A. 12:5-3). In 1980, the substantive policies which are used to evaluate permit applications under these laws were consolidated into one chapter (Chapter 7E) of the New Jersey Administrative Code. However, the procedural regulations which govern the permit review process were not similarly consolidated.

The purpose of this proposal is to bring together, in one place, a uniform set of procedures for making decisions on CAFRA, Wetland and Waterfront Development permits. This proposal represents the first comprehensive review of these rules since the first Wetlands Order was promulgated in 1972 and the adoption of

**PROPOSALS****ENVIRONMENTAL PROTECTION**

the CAFRA procedural rules in 1976. The proposal involves the consolidation of three chapters of the New Jersey Administrative Code (Chapters 7, 7A and 7D) into one, together with some changes and refinements.

Most of the following provisions are based on the existing CAFRA regulations (Chapter 7D), but have been expanded so as to apply to all three coastal permit programs. The following section by section analysis describes these changes.

**SUBCHAPTER 1. GENERAL**

7:7-1.1 Purpose and scope: Expanded to include all three permit programs.

7:7-1.2 Authority: No change.

7:7-1.3 Definitions: This section contains the definitions used throughout the Chapter. The existing CAFRA regulations (N.J.A.C. 7:7D-2.1) include definitions of the various usages of the term "facility". Those definitions now appear in Chapter 2 of this proposal ("Activities for which a permit is required"). The existing CAFRA regulations also define the term "site preparation" to exclude the "mere denuding" of a site (N.J.A.C. 7:7D-2.2). The term "development", which was previously undefined, has been added in this proposal and the term "site preparation" has been revised to make it clear that site clearing will now be considered a regulated activity.

7:7-1.4 Policies for evaluating permit applications: This section, which is already contained in the Waterfront Development Permit Rules (N.J.A.C. 7:7-2), simply makes it clear that all coastal permit applications are reviewed with reference to DEP's Rules on Coastal Resource and Development Policies (N.J.A.C. 7:7E).

7:7-1.5 Permits and permit conditions: The standard procedural conditions applicable to all CAFRA permits have been incorporated into this section with minor changes. The condition that a CAFRA permittee prepare six month status reports has been changed to a requirement (applicable to all three coastal permits) that unanticipated adverse effects be reported. The existing CAFRA rule requiring suspension of a permit in cases where the permittee is unable to comply with a condition requiring dedication of open space to a political subdivision has been revised to make it discretionary.

The rule imposing standard conditions for soil erosion and sediment control has been revised by incorporating Soil Conservation Service standards by reference, and by removing the 5,000 square foot threshold.

The existing CAFRA rules concerning permits with pre-conditions have not been incorporated into this proposal. However, N.J.A.C. 7:7-1.5(a) as proposed does provide that "Permits may be issued with conditions, including conditions that must be satisfied prior to commencement of construction...", and a standard condition requiring compliance with such conditions within six months of the permit's effective date has been added.

A standard requirement that permittees cease construction upon receipt of a notice of suspension or revocation has been added.

The duration and expiration of permits are different under each existing permit program. CAFRA permits are presently valid for two years. Three one-year extensions are available. Wetland permits are presently valid for two years and Waterfront Development for five years. The proposal imposes a uniform five year limit for the commencement and completion of construction, unless an extension is obtained.

7:7-1.6 Provisional permits: No change.

7:7-1.7 Procedure where more than one permit is required: This section authorizes the issuance of one, joint coastal permit in

cases where more than one permit is required, and provides that the fee will be the higher (or highest) of those required for each separate permit.

7:7-1.8 Permit fees: This section simply refers readers to the fee provisions of the 90 Day Construction Permit Rules, which govern the fees for all three coastal permits.

7:7-1.9 Construction: No change.

7:7-1.10 Severability: No change.

**SUBCHAPTER 2. ACTIVITIES FOR WHICH A PERMIT IS REQUIRED**

This subchapter incorporates the definition of the term "facility" from the existing CAFRA rules (to which there are several significant changes) with the equivalent provisions of the Wetland and Waterfront Development Rules.

7:7-2.1 CAFRA: Section 3 of CAFRA (N.J.S.A. 13:9-3) requires a permit for the construction of such activities as "Road, airport or highway construction", "public facilities" and "Installation of above or underground pipelines designed to transport petroleum, natural gas, and sanitary sewage". The existing CAFRA rules expand on these descriptions by excluding certain categories of minor facilities which are not regulated, rather than those which are. This has led to some confusion in the past, and this section has been re-written to be "inclusive", rather than "exclusive", in style.

For example, the existing rules expand on the definition of "road, airport or highway construction" by exempting the new paving of parking lots for less than 300 vehicles. The proposal now provides that a permit is required for parking lots in excess of two acres, which is the equivalent of a parking lot for 300 passenger cars. It also provides that a permit will be required for pervious as well as impervious paving.

The existing rules also exclude the construction of elementary and secondary schools from the definition of "public facilities". This exclusion has been continued.

A definition of the term "new housing developments or expansion of existing developments by the addition of 25 or more dwelling units or equivalent" has been included for the first time, and utilizes factors such as common interest in or ownership of adjoining parcels, shared infrastructure between two parcels, the number of beds in a hospital or nursing home, in determining when seemingly separate developments will be treated as one facility for the purposes of CAFRA. In addition, this section provides that a permit will be required for the permanent mooring of 25 or more floating homes. A floating home is defined as a waterborne structure designed and intended primarily as a permanent or seasonal dwelling, and not for use as a recreational vessel, which will remain stationary for more than 30 days.

7:7-2.2 Wetlands: The rules have not been changed, although the list of maps containing regulated wetlands does include changes made in September and November of 1983.

7:7-2.3 Waterfront development: This section has been slightly re-worded in an effort to make it clearer. There are no substantive changes.

**SUBCHAPTER 3. PRE-APPLICATION CONFERENCES**

7:7-3.1 Purpose: No change.

7:7-3.2 Request for a pre-application conference: This section now allows pre-application conferences to be requested by telephone as well as by letter.

7:7-3.4 Discussion of Information requirements: No change.

7:7-3.5 Memorandum of record: No change.

#### SUBCHAPTER 4. PERMIT REVIEW PROCEDURES

7:7-4.1 General: A paragraph explaining this chapter's relationship to the 90 Day Construction Permit Rules (N.J.A.C. 7:1C) has been added. In addition, the "Notice of intent to file" requirement has been deleted.

7:7-4.2 Application contents: No change.

7:7-4.3 Availability of application for examination by the public: No change.

7:7-4.4 Initial review of applications: The existing CAFRA rules allow 30 calendar days in which to conduct an initial review of an application, while the 90 day rules allow 20 working days. These requirements have been made consistent by using the 20 working day deadline. This section has also been revised to make it clear that Wetlands and Waterfront Development applications which are deemed "complete for filing" trigger the 90 day review period under the 90 Day law, while applications which require a public hearing (including all CAFRA applications) move on to the public hearing phase, and will not be deemed "complete for review" until after the hearing.

Finally, this section now requires that a preliminary analysis be made available three days prior to, rather than at, a public hearing.

7:7-4.5 Public hearings: A public hearing is required by law only for CAFRA applications. This section now provides that a public hearing will also be held for Wetland and Waterfront Development applications when, in the discretion of the Division, the public interest requires it. The public hearing notice requirements have been revised and shortened by making reference to the notice requirements of the Municipal Land Use Law.

7:7-4.6 Final review of the application: This section makes it clear that requests for additional information may only be made based on comments or questions raised at the hearing.

7:7-4.7 Publication of final decision: This section now provides that, in addition to publication of the decision by the Department in the DEP Bulletin, the permittee may publish notice by newspaper and by mail to persons who requested such notice. This will affect the time in which persons may appeal a permit decision (see Section 7:7-5).

7:7-4.9 Withdrawal, resubmission and amendment of applications: No change.

7:7-4.10 Requests for modifications: This is a new section, and provides that minor modifications to an approved project may be approved by letter. A minor modification is one which does not result "in a significant change in the scale, design, use or impact of the project as approved". Modifications which are not minor in nature require an amended permit application.

7:7-4.11 Revocation and suspension of permits: No change.

7:7-4.12 Expedited application process: This is a new section. It eliminates the 20 day initial review period for projects which have received an encouraged status at a pre-application conference, and which are complete for filing when submitted.

#### SUBCHAPTER 5. APPEALS

7:7-5.1 Request for review on appeal: The existing CAFRA rules allow 21 days from publication of notice of a final decision

in the DEP Bulletin in which to appeal a CAFRA decision, while the existing 90 Day Rules allow 10 days from publication in which to appeal Wetland and Waterfront Development decisions. The proposal now provides that a notice of appeal from any coastal permit decision must be filed within 10 days of publication of a final decision in the DEP Bulletin or within 10 days of publication by the permittee, which ever occurs earlier. The purpose of the revision is to eliminate the delay which sometimes result from late publication of decisions in the DEP Bulletin. The applicant then has 14 days in which to file a more complete appeal statement.

7:7-5.2 Response to appeal request: This section now makes reference to the right, under the rules of the Office of Administrative Law (N.J.A.C.1:30) of persons having a significant interest in the outcome of an appeal to intervene in the appeal process.

7:7-5.3 Action on appeal request: No change.

7:7-5.4 Review of revised application to settle appeal: No change.

7:7-5.5 Coastal Area Review Board Procedures: No change.

#### SUBCHAPTER 6. ENVIRONMENTAL IMPACT STATEMENT

This subchapter has been substantially revised and shortened by the deletion of many of the specific CAFRA EIS requirements. Instead, the subchapter establishes a general EIS format and provides that the Division will prepare detailed guidelines and instructions for EIS preparation. These guidelines are now being prepared, using the existing CAFRA rules as a model. Those rules will be used as the guidelines until they are revised.

Full text of N.J.A.C. 7:7-2 may be found at 12 N.J.R. 252(a), 12 N.J.R. 576(a) and 13 N.J.R. 73(c), 13 N.J.R. 564(b); N.J.A.C. 7:7A-1, 7:7D-1 and -2 may be found in the New Jersey Administrative Code.

Full text of the proposed new rule follows.

#### SUBCHAPTER 1. GENERAL

##### 7:7-1.1 Purpose and scope

(a) This chapter establishes the procedures by which the Department of Environmental Protection will review permit applications and appeals from permit decisions (including appeals to the Coastal Area Review Board) under the Coastal Area Facility Review Act (CAFRA, N.J.S.A. 13:19-1 et seq.), the Wetlands Act (N.J.S.A. 13:9A-1 et seq.) and the Waterfront Development Law (N.J.S.A. 12:5-3). The following types of activities are regulated under each of these laws:

1. CAFRA: The construction of any facility listed in Section 3 of the Act (N.J.S.A. 13:19-3) or in N.J.A.C. 7:7-2.1, within the coastal area described in Section 4 of the Act (N.J.S.A. 13:19-4).

2. Wetlands Act: The draining, dredging, excavation, or deposition of material, and the erection of structures, driving of pilings or placing of obstructions in any coastal wetlands which have been mapped or delineated pursuant to the Wetlands Act. A list of these maps and a full list of regulated activities appears in N.J.A.C. 7:7-2.2.

3. Waterfront Development Law: The filling or dredging of, or placement or construction of structures, pilings or other obstructions in any tidal waterway, or in certain upland areas adjacent to tidal waterways. These requirements are fully explained in N.J.A.C. 7:7-2.3.

##### 7:7-1.2 Authority

The provisions of this chapter were adopted pursuant to N.J.S.A. 13:1D-9, N.J.S.A. 13:19-17, N.J.S.A. 13:9A-3, and N.J.S.A. 12:5-1 et seq.

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**7:7-1.3 Definitions**

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

“CAFRA” means the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.)

“Commissioner” means the Commissioner of the Department of Environmental Protection or designated representative.

“Department” means the Department of Environmental Protection.

“Coastal Permit” means a CAFRA, Wetlands or Waterfront Development Permit.

“Development” means any activity for which a coastal permit is required, including site preparation and clearing.

“Division” means the Division of Coastal Resources.

“Excavation” means the extraction of sand, gravel, earth or any other material.

“Filling” means the depositing of sand, gravel, earth or any other material.

“Permit” means any legal instrument constituting permission to undertake construction pursuant to CAFRA (N.J.S.A. 13:19-1 et seq.), the Wetlands Act (N.J.S.A. 13:9A-1 et seq.), or the Waterfront Development Law (N.J.S.A. 12:5-3).

“Person” means any corporation, company, association, society, firm, partnership, individual or government agency.

“Regulated activity” or “activity” means any activity for which a permit is required under CAFRA, the Wetlands Act or Waterfront Development Law, and shall also include the terms “project” and “facility”.

“Regulated Wetland” means any wetland which has been mapped and the map promulgated pursuant to the Wetlands Act.

“Site” means the land or area upon which a proposed facility is to be constructed.

“Site preparation” means that substantial physical activity which is an integral part of a continuous process of land development or redevelopment for a particular facility which must occur before actual construction of that facility may commence. It does not include the taking of soil borings, performing percolation tests, driving test pilings, or construction of demonstration or model dwelling units.

“Structure” means any assembly of materials above, on or below the surface of the land or water, including but not limited to buildings, fences, dams, pilings, breakwaters, culverts, pipes, pipelines, piers, roads, railroads, bridges, and includes floating structures.

**7:7-1.4 Policies for evaluating permit applications**

All applications for coastal permits shall be reviewed pursuant to the Department’s Rules on Coastal Resource and Development Policies, N.J.A.C. 7:7E.

**7:7-1.5 Permits and permit conditions**

(a) Legal authority to undertake a regulated coastal activity shall be embodied in a permit issued by the Division of Coastal Resources. Permits may be issued with conditions, including conditions that must be satisfied prior to commencement of construction, at the discretion of the Division.

(b) The following standard procedural conditions shall apply to all coastal permits:

1. A permittee shall notify the Division, in writing, at least three days prior to the beginning of construction on the site.

2. A permittee shall notify the Division in writing within seven days of the completion of construction at the site, and within seven days of commencement of operation of a CAFRA facility. At this time, the permittee shall also certify that all conditions of the permit that must be met prior to operation of the facility have been met.

3. The issuance of a permit shall in no way expose the State of New Jersey or the Department to liability for the sufficiency or correctness of the design of any construction, structure or

structures. Neither the State nor the Department shall, in any way, be liable for any loss of life or property which may occur by virtue of the activity or development resulting from any permit.

4. A permittee shall allow the authorized representatives of the Department free access to the site at all times when construction activity is taking place, and at other times upon notice to the permittee. The permittee shall provide free of charge to the Department all of its equipment reasonably necessary for inspection of the site.

5. No substantial change in plans or specifications upon which a permit is issued shall be made except with the written permission of the Division, in accordance with N.J.A.C. 7:7-4.10.

6. A copy of the permit shall be posted prominently at the site and shall be exhibited upon request to any person.

7. The permittee shall inform the Division of any unanticipated adverse effects on the environment not described in the application or in the conditions of the permit. The Division may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit, pursuant to N.J.A.C. 7:7-4.11.

8. Plans and specifications in the application and conditions imposed by a permit shall remain in full force and effect so long as the proposed facility or any portion thereof is in existence, unless modified pursuant to N.J.A.C. 7:7-4.10.

9. If any condition of a permit is determined to be legally unenforceable, modifications and additional conditions may be substituted as necessary to protect the public interest.

10. A permit is subject to suspension or revocation for violations of its terms and conditions. A permittee shall, upon receipt of a notice of suspension or revocation, comply with the terms of such notice and shall, if required, cease such construction.

11. The Division may issue a revised permit for good cause when circumstances warrant minor changes in the original permit which will not result in additional adverse environmental impacts.

12. If a permit condition requires the dedication of land to a political subdivision for open space and/or recreational or other uses, the permittee shall, within 45 days of the political subdivision’s decision whether or not to accept the land, furnish proof to the Division of the political subdivision’s decision with respect to such dedication, or the permit may be revoked as provided in N.J.A.C. 7:7-4.11.

13. In the event of rental, lease, sale or other conveyance of the site by the permittee, the permit shall be continued in force and shall apply to the new tenant, lessee, owner or assignee so long as there is no change in the site, proposed construction or proposed use of the facility, as described in the original application.

14. If a permit contains a condition that must be satisfied prior to the commencement of construction, the permittee must comply with such condition(s) within six months of the effective date of the permit, or provide an explanation of why such condition(s) cannot be satisfied.

(c) The following standard substantive conditions shall apply to all coastal permits, where appropriate:

1. A permittee shall employ appropriate measures to muffle noise where necessary during construction, as specified in N.J.S.A. 13:16-1 et seq. and N.J.A.C. 7:29 (Noise Control).

2. Development which requires soil disturbance, the creation of drainage structures, or changes in natural contours shall conduct operations in accordance with “Standards for Soil Erosion Sediment Control in New Jersey”, revised and adopted September 9, 1974, by the New Jersey State Soil Conservation Committee, except appendices C-1 and C-2, and shall also comply with N.J.S.A. 4:24-39 through 4:24-55. These standards are hereby incorporated by reference.

(d) A permitted activity shall be commenced and completed within five years from the date of permit issuance, unless the scope of the project is such that a longer time period is required. In such cases the Division may, upon request, extend the time period in which

to complete the activity.

(e) The Division may, after public notice, issue a general permit for activities which are substantially similar in nature and cause only minimal individual and cumulative environmental impacts.

#### 7:7-1.6 Provisional permits

(a) The Division may issue a provisional permit if it finds that the beginning of construction prior to the completion of the full permit review process is necessary either to meet the regulatory or funding requirements of a Federal or State agency, or to respond expeditiously to the harm and suffering caused by a catastrophe including, but not limited to, any storm, explosion, drought or other disaster.

(b) The issuance of a provisional permit shall not exempt the permittee from any of the requirements of this chapter. A permit application must be submitted before a provisional permit can be issued, and all permit review procedures shall be complied with following issuance of the provisional permit.

(c) The Division may waive or modify the requirements of this chapter in the event of an emergency as described in (a) above in order to facilitate the submission and issuance of provisional permits.

#### 7:7-1.7 Procedure where more than one permit is required

(a) When a proposed facility or project requires more than one coastal permit, the Division will require only one application, but that application must comply with the requirements of each applicable permit program. This does not preclude an applicant from submitting separate applications if the timing or magnitude of a project requires it.

(b) The fee to be submitted for such an application shall be the highest of any of the required permit fees provided for in N.J.A.C. 7:1C-1.5.

#### 7:7-1.8 Permit fees

Permit fees are established by the Department pursuant to the 90 Day Construction Permit Law and are published at N.J.A.C. 7:1C-1.5. The Division will maintain a printed fee schedule for public use.

#### 7:7-1.9 Construction

This chapter shall be liberally construed to effectuate the purpose of the Acts under which it was adopted. The Division may, in its discretion, relax their application when necessary and in the public interest.

#### 7:7-1.10 Severability

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

### SUBCHAPTER 2. ACTIVITIES FOR WHICH A PERMIT IS REQUIRED

#### 7:7-2.1 CAFRA

(a) A CAFRA "facility" includes any of the facilities designed or utilized for the purposes enumerated in N.J.S.A. 13:19-3(c), including "Public facilities and housing"; "Sanitary landfills"; "Waste treatment plants"; "Road, airport or highway construction"; "New housing developments of 25 or more dwelling units or equivalent"; and "Expansion of existing developments by the additional of 25 or more dwelling units or equivalent".

(b) The Department interprets the statutory term "facility" in its broadest sense so as to provide adequate environmental safeguards for the construction of any facility in the coastal area. On the other hand, the Department interprets the statutory intent as excluding relatively minor construction or reconstruction. To that end, the following statutory terms are interpreted as follows:

1. "Road, airport, or highway construction" means:

- i. The widening of an existing road or highway, including jug-handle construction, which increases the number of through lanes;

- ii. New road construction of more than 1,200 feet in length or the extension of an existing road by more than 1,200 feet, including a cumulative total of 1,200 feet of road extension or construction in any one municipality at any one site in any one year;

- iii. The impervious or pervious paving of an area of more than two acres for motor vehicle parking and related access thereto. Paving does not include mere grading or regrading;

2. "Public facilities" exclude elementary and secondary schools.

3. "Installation of above or underground pipelines designed to transport petroleum, natural gas, and sanitary sewage," means:

- i. The construction or extension of a sewer line 1,200 feet or more in length with a design capacity of 9,600 gallons per day or greater, including a cumulative total of 1,200 feet or more of sewer line extensions in any one municipality at any one site in any one year;

- ii. The replacement, restoration and repair of sewerage pipes, including substitutions of materials in these pipes, if an increase in design capacity will result;

- iii. The repair, modification, or replacement of sanitary system components, including upgrading of systems from primary to secondary treatment, if an increase in design effluent flow will result;

- iv. Sewer line extensions to service new housing developments of more than 25 dwelling units.

4. "New housing developments or expansion of existing developments by the addition of 25 or more dwelling units or equivalent" means:

- i. The subdivision or resubdivision of a parcel of land which results in the creation of 25 or more building lots, where the owner of such parcel will not conduct actual construction;

- ii. The construction of 25 or more dwelling units on contiguous parcels of property, regardless of present ownership, where there is a proposed sharing of infrastructure constructed to serve those parcels including, but not limited to, roads, utility lines, drainage systems, open spaces or septic drain fields;

- iii. The construction of 25 or more dwelling units on contiguous parcels of property which were under common ownership on or after September 19, 1973 (the effective date of CAFRA), regardless of present ownership;

- iv. The construction of 25 or more dwelling units on contiguous parcels of land where there is some shared pecuniary, possessory, or other substantial common interest by one or more individuals in the units;

- v. The construction of 25 or more motel or hotel rooms, campsites (for tents and/or recreational vehicles), dwelling units in an institution, mobile home sites, or the construction of hospitals or nursing homes with a capacity of 75 or more beds;

- vi. The mooring of 25 or more floating homes in a marina. For the purposes of this subparagraph, a floating home is defined as a waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, and which will remain stationary for more than 30 consecutive days;

- vii. Any building lots or dwelling units in existence on or before September 19, 1973 or which have been determined to be exempt from the requirements of this subchapter due to on-site construction on or before September 19, 1973, will not be counted when determining if a new or expanded residential development exceeds 25 units. The total number of dwelling units in a new or expanded development need not be restricted to any single municipal tax block nor to any one period in time in order to require a permit.

5. This subchapter shall not apply to those facilities for which an exemption was obtained on the basis that on-site construction had taken place on or before September 19, 1973.

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7:7-2.2 Wetlands

[Note: This subchapter incorporates the requirements of the Wetlands Order issued by the Commissioner of Environmental Protection on April 13, 1972 pursuant to P.L. 1970, c.272.]

(a) Wetlands permits are required for almost all activities in coastal wetlands delineated and mapped pursuant to the Wetlands Act, and are divided into two categories:

1. Type "A" Wetland permits are required for:

i. The cultivation and harvesting of naturally occurring agricultural or horticultural products. This provision shall not apply to the continued production of commercial salt hay or other agricultural crops on lands utilized for these purposes on or before April 13, 1972;

ii. The excavation of an individual mooring slip;

iii. The maintenance or repair of bridges, roads, highways, railroad beds or the facilities of any utility of municipality. This provision shall not apply to emergency repairs necessitated by a natural disaster or a sudden and unexpected mechanical, electrical or structural failure. Written notification of such repairs shall be provided to the Division within seven days after their initiation;

iv. The construction of catwalks, piers, docks, landings, footbridges and observation decks.

2. Type "B" Wetland permits are required for:

i. The installation of utilities;

ii. Excavation of boat channels and mooring basins;

iii. The construction of impoundments;

iv. The construction of sea walls;

v. The diversion or appropriative use of water;

vi. The use of pesticides, except those applied to the skin or clothing for personal use;

vii. Driving or causing to pass over or upon wetlands, any mechanical conveyance which may alter or impair the natural contour of the wetlands or the natural vegetation;

(b) The following activities are prohibited on regulated wetlands:

1. Placing, depositing or dumping any solid waste, garbage, refuse, trash, rubbish or debris;

2. Dumping or discharging treated or untreated domestic sewage or industrial wastes, either solid or liquid;

3. Applying any pesticide on areas containing significant stands of high vigor *Spartina alterniflora* (Saltmarsh cordgrass), *Zizania aquatica* (Wildrice), *Typha sp.* (Cattail), and *Scirpus americanus* (common three square) as shown generally on wetlands maps;

4. The storage or disposal of pesticides;

5. The application of persistent pesticides.

(c) The Wetlands Order promulgated by the Commissioner of Environmental Protection in April 1972, any amendments thereto, and these rules shall be applicable only in those areas shown waterward of the upper wetland boundary on the following wetlands maps:

1. Middlesex County:

574-2082	588-2076	595-2070
574-2088	588-2082	595-2076
581-2082	588-2106	595-2082
581-2088	588-2112	595-2088
581-2100	588-2118	595-2094
581-2106		595-2106
581-2112		602-2064
581-2118		602-2076
		602-2082
		602-2088
		602-2094
		602-2100
		602-2106
		609-2094
		609-2100
		609-2106

2. Monmouth County:

455-2166	546-2178	574-2172
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462-2160	546-2184	574-2178
462-2166	546-2190	574-2184
462-2172	553-2160	574-2190
469-2154	553-2166	581-2112
469-2160	553-2172	581-2118
476-2166	553-2178	581-2124
476-2172	553-2184	581-2130
476-2178	553-2190	581-2136
483-2172	560-2166	581-2142
490-2166	560-2172	581-2148
490-2172	560-2178	581-2154
490-2178	560-2184	581-2160
497-2172	560-2190	581-2166
532-2178	567-2172	581-2184
539-2154	567-2718	588-2118
539-2166	567-2184	588-2124
539-2172	567-2190	588-2130
539-2178	574-2118	588-2136
539-2184	574-2124	588-2142
539-2190	574-2154	588-2184
546-2154	574-2160	595-2178
546-2160	574-2166	595-2184
546-2172		

3. Ocean County:

245-2088	252-2106	259-2112
245-2094	259-2070	259-2118
245-2100	254-2076	266-2070
245-2106	259-2082	266-2076
252-2076	259-2088	266-2082
252-2088	259-2094	266-2088
252-2094	259-2100	
252-2100	259-2106	
266-2094	322-2148	406-2118
266-2100	329-2124	406-2124
266-2106	329-2130	406-2130
266-2112	329-2136	406-2148
266-2118	329-2142	406-2154
273-2076	329-2148	406-2160
273-2088	329-2154	413-2118
273-2094	336-2124	413-2148
273-2100	336-2130	413-2154
273-2112	336-2142	413-2160
273-2118	336-2148	420-2142
273-2124	336-2154	420-2148
280-2088	343-2130	420-2154
280-2094	343-2148	420-2160
280-2100	343-2154	427-2142
280-2106	343-2160	427-2148
280-2112	350-2130	427-2154
280-2118	350-2136	427-2160
280-2124	350-2148	434-2148
280-2130	350-2154	434-2154
287-2100	350-2160	434-2160
287-2106	357-2124	434-2166
287-2112	357-2130	441-2148
287-2124	357-2136	441-2154
287-2130	357-2142	441-2160
294-2106	357-2160	441-2166
294-2112	364-2130	441-2172
294-2118	364-2136	448-2148
294-2124	364-2142	448-2154
294-2130	364-2160	448-2160
294-2136	371-2136	448-2166
301-2112	371-2142	448-2172
301-2118	371-2148	455-2154
301-2124	371-2160	455-2166
301-2130	378-2142	462-2154
301-2136	378-2148	462-2172
308-2118	378-2160	469-2154

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308-2124 385-2142  
 308-2130 385-2148  
 308-2136 385-2160  
 308-2142 392-2136  
 315-2124 392-2142  
 315-2130 392-2148  
 315-2136 392-2154  
 315-2142 399-2130  
 315-2148 399-2136  
 322-2124 399-2142  
 322-2130 399-2148  
 322-2136 399-2154  
 322-2142 399-2160

4. Burlington County:

252-2064 273-2076 420-1938  
 259-2046 280-2004 420-1944  
 259-2052 280-2010 427-1926  
 259-2058 280-2016 427-1932  
 259-2064 280-2022 427-1938  
 259-2070 280-2028 434-1908  
 266-2034 280-2040 434-1914  
 266-2040 280-2046 434-1920  
 266-2046 280-2052 434-1926  
 266-2052 280-2058 434-1932  
 266-2058 287-2004 448-1944  
 266-2064 287-2010 448-1950  
 266-2070 287-2016 448-1956  
 273-2022 287-2040 462-1968  
 273-2028 287-2046 469-1974  
 273-2034 294-2040 476-1980  
 273-2040 413-1896 476-1986  
 273-2046 413-1902 483-1986  
 273-2052 420-1890 483-1992  
 273-2058 420-1896 490-1986  
 273-2064 420-1932 490-1992  
 273-2070

5. Atlantic County:

161-1980 189-2052 224-2094  
 161-1986 189-2058 231-2058  
 161-1992 196-1974 231-2064  
 161-1988 196-1980 231-2070  
 161-2004 196-1986 231-2076  
 168-1956 196-2034 231-2082  
 168-1962 196-2040 231-2088  
 168-1968 196-2046 231-2094  
 168-1974 196-2052 231-2100  
 168-1980 196-2058 238-2058  
 168-1986 196-2064 238-2064  
 168-1992 196-2070 238-2070  
 168-1998 203-1980 238-2076  
 168-2004 203-1986 238-2082  
 168-2010 203-2040 238-2088  
 168-2016 203-2046 238-2094  
 168-2022 203-2052 245-2046  
 168-2028 203-2058 245-2052  
 168-2034 203-2064 245-2058  
 175-1974 203-2070 245-2064  
 175-1980 203-2076 245-2070  
 175-1986 210-1974 252-2046  
 175-1992 210-1980 252-2040  
 175-1998 210-1986 252-2052  
 175-2004 210-2040 252-2058  
 175-2010 210-2046 252-2064  
 175-2016 210-2052 252-2070  
 175-2022 210-2058 259-2034  
 175-2028 210-2064 259-2040  
 175-2034 210-2070 259-2046  
 175-2040 210-2076 259-2052  
 182-1980 210-2082 259-2058

182-1986 210-2088  
 182-1992 217-1974  
 182-1998 217-1980  
 182-2004 217-1986  
 182-2010 217-2040  
 182-2016 217-2046  
 182-2022 217-2052  
 182-2028 217-2058  
 182-2034 217-2064  
 182-2040 217-2070  
 182-2046 217-2076  
 182-2052 217-2082  
 189-1974 217-2088  
 189-1980 217-2094  
 189-1986 224-1980  
 189-1992 224-2052  
 189-1998 224-2058  
 189-2022 224-2064  
 189-2028 224-2070  
 189-2034 224-2076  
 189-2040 224-2082  
 189-2046 224-2088

6. Cape May County:

035-1914 084-1968 126-1950  
 035-1920 084-1974 126-1956  
 035-1926 091-1932 126-1980  
 035-1932 091-1938 126-1986  
 035-1938 091-1944 126-1992  
 042-1914 091-1956 126-1998  
 042-1920 091-1962 133-1926  
 042-1926 091-1968 133-1932  
 042-1932 091-1974 133-1986  
 042-1938 091-1980 133-1992  
 042-1944 098-1932 133-1998  
 049-1914 098-1938 133-2004  
 049-1926 098-1944 140-1926  
 049-1932 098-1950 140-1932  
 049-1938 098-1962 140-1974  
 049-1944 098-1968 140-1980  
 049-1950 098-1974 140-1992  
 056-1914 098-1980 140-1998  
 056-1920 098-1986 140-2004  
 056-1932 105-1932 140-2010  
 056-1938 105-1938 147-1980  
 056-1944 105-1944 147-1986  
 056-1950 105-1968 147-1992  
 056-1956 105-1974 147-1998  
 063-1938 105-1980 147-2004  
 063-1944 105-1986 147-2010  
 063-1950 112-1932 154-1980  
 063-1956 112-1938 154-1986  
 063-1962 112-1944 154-1992  
 070-1920 112-1950 154-1998  
 070-1926 112-1956 154-2004  
 070-1944 112-1968 154-2010  
 070-1950 112-1974 154-2016  
 070-1956 112-1980 161-1962  
 070-1962 112-1986 161-1968  
 070-1968 112-1992 161-1974  
 077-1920 119-1926 161-1980  
 077-1926 119-1932 161-1986  
 077-1932 119-1938 161-1992  
 077-1950 119-1944 161-1998  
 077-1956 119-1950 161-2004  
 077-1962 119-1974 161-2010  
 077-1968 119-1980 161-2016  
 084-1926 119-1986 161-2022  
 084-1932 119-1992 168-1956  
 084-1938 126-1926 168-1962

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084-1950 126-1932 168-1968  
 084-1956 126-1938 168-1974  
 084-1962 126-1944 168-1980  
 168-1986  
 168-1992  
 168-1998  
 168-2016  
 168-2022

7. Cumberland County:

119-1926 154-1902 189-1806  
 126-1860 154-1908 189-1812  
 126-1866 161-1818 189-1818  
 126-1896 161-1824 189-1824  
 126-1902 161-1830 189-1830  
 126-1908 161-1836 189-1890  
 126-1914 161-1842 189-1896  
 126-1920 161-1848 189-1902  
 126-1926 161-1854 196-1782  
 133-1854 161-1860 196-1788  
 133-1860 161-1866 196-1794  
 133-1866 161-1872 196-1836  
 133-1872 161-1878 196-1842  
 133-1878 161-1884 196-1890  
 133-1884 161-1896 196-1896  
 133-1890 161-1914 203-1782  
 133-1896 168-1812 203-1788  
 133-1902 168-1818 203-1794  
 133-1908 168-1824 203-1800  
 133-1914 168-1830 203-1806  
 133-1920 168-1836 203-1812  
 133-1926 168-1842 203-1818  
 140-1854 168-1848 203-1824  
 140-1860 168-1854 203-1836  
 140-1866 168-1902 203-1842  
 140-1972 168-1908 203-1890  
 140-1878 168-1914 210-1782  
 140-1884 175-1812 210-1788  
 140-1890 175-1818 210-1794  
 140-1896 175-1824 210-1800  
 140-1914 175-1830 210-1836  
 147-1860 175-1836 217-1782  
 147-1866 175-1842 217-1788  
 147-1872 175-1848 217-1794  
 147-1878 175-1896 217-1836  
 147-1884 175-1902 224-1788  
 147-1890 175-1908 224-1794  
 147-1986 175-1914 224-1800  
 147-1902 182-1800  
 147-1908 182-1806  
 154-1836 182-1812  
 154-1842 182-1818  
 154-1848 182-1824  
 154-1854 182-1830  
 154-1860 182-1836  
 154-1866 182-1842  
 154-1872 182-1896  
 154-1878 182-1902  
 154-1884 182-1908  
 154-1896 182-1914  
 189-1794  
 189-1800

8. Salem County:

196-1782 252-1770 287-1782  
 196-1788 252-1776 287-1788  
 203-1776 252-1782 294-1746  
 203-1782 252-1788 294-1752  
 203-1788 259-1752 294-1764  
 210-1776 259-1758 294-1770  
 210-1782 259-1764 294-1776

210-1788 259-1770 294-1782  
 217-1764 259-1776 294-1788  
 217-1770 259-1782 294-1794  
 217-1776 259-1788 301-1764  
 217-1782 259-1794 301-1770  
 217-1788 259-1800 301-1776  
 224-1752 266-1758 301-1782  
 224-1758 266-1764 301-1788  
 224-1764 266-1770 301-1794  
 224-1770 266-1776 308-1770  
 224-1776 266-1782 308-1776  
 224-1782 266-1788 308-1782  
 224-1788 266-1794 315-1764  
 224-1794 266-1800 315-1770  
 224-1800 273-1746 315-1776  
 231-1752 273-1752 315-1800  
 231-1758 273-1758 315-1806  
 231-1764 273-1764 322-1770  
 231-1770 273-1770 322-1788  
 231-1776 273-1776 322-1794  
 231-1782 273-1782 322-1800  
 231-1788 273-1788 329-1770  
 238-1752 273-1794 329-1776  
 238-1758 280-1746 329-1782  
 238-1764 280-1752 329-1788  
 238-1770 280-1758 329-1794  
 238-1776 280-1764 329-1800  
 238-1782 280-1770 336-1770  
 245-1752 280-1776 336-1776  
 245-1758 280-1782 336-1788  
 245-1764 280-1788 336-1794  
 245-1770 280-1794 343-1782  
 245-1776 287-1746 343-1788  
 245-1782 287-1752 343-1794  
 245-1752 287-1764  
 252-1758 287-1770  
 252-1764 287-1776

9. Gloucester County:

315-1800 343-1800 357-1836  
 315-1806 343-1806 357-1842  
 322-1794 350-1794 357-1848  
 322-1800 350-1800 364-1806  
 329-1794 350-1806 364-1812  
 329-1800 350-1818 364-1818  
 329-1806 350-1824 364-1824  
 329-1818 350-1830 364-1830  
 329-1824 350-1842 364-1836  
 336-1788 350-1848 364-1842  
 336-1794 350-1854 364-1854  
 336-1800 357-1794 364-1860  
 336-1806 357-1800 364-1878  
 336-1812 357-1806 371-1848  
 336-1818 357-1812 371-1854  
 343-1782 357-1818 371-1872  
 343-1788 357-1824 371-1878  
 343-1794 357-1830 378-1866

10. Camden County:

364-1878 378-1872 420-1890  
 371-1872 413-1896 420-1896  
 371-1878 413-1902  
 378-1866

11. Mercer County:

476-1980 483-1986 490-1980  
 476-1986 483-1992 490-1986  
 483-1980 490-1974

7:7-2.3 Waterfront development

(a) The waterfront area regulated under this subchapter is divided into two sections, and will vary in width in accordance with the following rules:

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1. Within the "coastal area" defined by Section 4 of CAFRA (N.J.S.A. 13:19-4) or within any part of the Hackensack Meadowlands Development District as delineated at N.J.S.A. 13:17-4.1, the area regulated by this section shall include any tidal waterway of this State and all lands lying thereunder, up to the mean high water line.

2. In all other areas of the State (for example in those areas outside of the "coastal area" defined by CAFRA and outside of the Hackensack Meadowlands Development District), the regulated waterfront area shall consist of the area as described in (a)(1) above, and an adjacent upland area extending landward from the mean high water line to the first paved public road, railroad or surveyable property line existing on September 26, 1980 (the effective date of these rules) generally parallel to the waterway, provided that the landward boundary of the upland area shall be no less than 100 feet and no more than 500 feet from the mean high water line.

(b) This subchapter shall apply to all man-made waterways and lagoons subject to tidal influence.

(c) The following development activities will require a permit in that portion of the waterfront area at or below mean high tide:

1. The removal or deposition of sub-aqueous materials (for example, dredging or filling);

2. The construction or alteration of a dock, wharf, pier, bulkhead, breakwater, groin, jetty, seawall, bridge, piling, mooring dolphin, pipeline, cable, or other similar structure;

3. The mooring of a floating home for more than 30 days (see N.J.A.C. 7:7-2.1(b) for a definition of floating home);

4. Dredging, the installation of aids-to-navigation, or other similar activities directly related to navigation will not require a permit when conducted by an agency of the United States Government.

5. The repair, replacement or renovation of an existing dock, wharf, pier, floating dock or similar structure will not require a permit, provided that the repair does not increase the size or dimension of the structure, and that the structure is used solely for residential purposes, or for the docking or servicing of pleasure vessels. For the purposes of this section, "repair, replacement or renovation" means the replacement of any component of a structure intended to restore it to a sound state or to the condition in which it originally existed.

(d) A permit will be required in that portion of the waterfront area between the mean high water line and the landward boundary described in (a)2 above for the construction, expansion or enlargement of any structure, or for the excavation or filling of any area with the exceptions listed below:

1. The construction of an individual single family dwelling unit or addition to such unit, if constructed more than 100 feet inland from the mean high water line;

2. The reconstruction, conversion, alteration or enlargement of any existing structure located more than 100 feet inland from the mean highwater line, provided that no change in land use results, and that enlargements do not exceed 5000 square feet;

3. Minor additions to or changes in existing structures or manufacturing operations, where such changes or additions do not result in a change in the present land use of the site.

(e) Any person proposing to undertake or cause to be undertaken any development or activity in or near the waterfront area may request in writing a determination that the proposal is not subject to the requirements of this subchapter on the basis that the proposed development site is located outside the waterfront area, or that the proposed facility does not require a permit under (d) above.

1. The requesting party shall provide the Division with two copies of a map depicting the project site in a scale of not less than 1:2,400 (one inch equals 200 feet) and a project description. When the applicability determination request is based on a proposed facility's location landward of the first surveyable property line more than 100 feet from the waterway, the map shall depict that property line as it is depicted on the official local tax map as of September 26, 1980, shall delineate the mean high water line, and shall graphically depict the proposed project.

2. The Division shall, within 30 days of receipt, return the map to the requesting party, indicating on the map the waterfront area boundary and its relationship to the project site.

(f) A permit is required for the filling of any lands formerly flowed by the tide, the filling of which took place after 1914 without the issuance of a tidelands grant, lease or license by the Department of Environmental Protection and Tidelands Resource Council or their predecessor agencies, even where such lands extend beyond the landward boundary of the upland area defined in (a)2 above.

1. A permit application submitted under this subsection must be submitted in conjunction with an application for a Tidelands grant, lease or license.

2. In addition, a permit is required for any development on lands formerly flowed by the tide where such a permit is required as a condition of the Tidelands grant, lease or license applicable to such lands. This requirement applies regardless of the land's location with respect to the upland area regulated under this subchapter.

(g) This subchapter shall not apply to any development or activity in the upland area and in man-made waterways and lagoons for which on-site construction, including site preparation, was in progress on or prior to September 26, 1980.

1. Any person who believes that a proposed facility is exempt from the requirements of this subchapter due to on-site construction may request in writing a determination of exemption from the Division.

2. Exemptions shall be applied for and considered upon submission of information sufficient for the Division to determine that physical work necessary to begin the construction of the proposed facility, was actually performed prior to September 26, 1980, the effective date of these rules.

i. Any interruption in the process of construction and completion of the facility in excess of one year may be cause for denial of an exemption request by the Division unless caused by financial, labor, legal or other factors beyond the developer's control, provided good faith efforts were made by the developer to overcome such delay or interruption.

ii. Interruptions caused by financial, labor, or legal factors must be documented in the exemption request.

3. A finding that a proposed facility is exempt from the requirements of this subchapter shall apply only to the facility as conceived and designed prior to September 26, 1980. Any modification which expands or substantially changes the exempted facility, and which would not be classified as a minor modification under N.J.A.C. 7:7-4.10, shall require a permit.

**SUBCHAPTER 3. PRE-APPLICATION CONFERENCES**

**7:7-3.1 Purpose**

A pre-application conference is an optional, but highly recommended, step. It allows the Division to inform potential applicants of the various procedures and policies applicable to a permit application. The Division will candidly discuss the apparent strengths and weaknesses of the proposed facility at this conference, but can in no way commit itself to approval or rejection of a proposed facility as a result of these discussions.

**7:7-3.2 Request for a pre-application conference**

(a) Potential applicants are encouraged to request a pre-application conference with the Division's Bureau of Coastal Project Review at the earliest opportunity. A request for a pre-application conference may be made by telephone or in writing.

(b) The Division shall, within five days of receipt of such request, schedule a pre-application conference. A pre-application conference will not be considered a declaration of intent to submit an application to the Division as defined in N.J.A.C. 7:1C-1.3 of the 90-Day Construction Permit rules.

**7:7-3.3 Conceptual proposal**

Prior to the pre-application conference, a potential applicant should present a conceptual proposal for the proposed facility to the Division. This document should include:

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1. A written description of the site and the proposed facility;
2. The dimensions, number, and uses of proposed structures; and
3. Maps indicating the site's location and rough internal plan of development.

### 7:7-3.4 Discussion of information requirements

(a) The Division shall candidly discuss the level of detail and areas of emphasis which will be necessary to allow the Division to review the application if one is submitted.

(b) In cases where an Environmental Impact Statement (EIS) would be required, the Division shall determine which specific EIS requirements need not be included by the potential applicant.

1. The Division shall also make available to the potential applicant current information on nearby projects in the Division's library and files.

2. This information may be incorporated, by reference, in the applicant's EIS if agreed to by the Division.

### 7:7-3.5 Memorandum of record

(a) After the pre-application conference, the Division shall prepare a written memorandum of record summarizing the discussion of the apparent strengths and weaknesses of the proposed facility, the apparent sensitivity of the land and water features of its site, and the level of detail and areas of emphasis necessary in the information that the potential applicant may be required to submit as part of the application.

(b) The memorandum of record shall be mailed to the potential applicant within 10 days of the pre-application conference. If the potential applicant submits an application, a copy of the memorandum of record shall be included.

(c) The memorandum of record shall not be construed as a decision of the Department.

## SUBCHAPTER 4. PERMIT REVIEW PROCEDURES

### 7:7-4.1 General

(a) The provisions of CAFRA, the Wetlands Act, and the Waterfront Development Law are supplemental to other laws, including the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq., P.L. 1975, Chapter 291). Early consultation with the Division by a prospective applicant can avoid unnecessary duplication and delay in development review at the State and local levels for the same facility, if applications for proposed facilities are processed at the same time at the state and local levels.

(b) Applicants for projects which require the review or approval of a county-wide or area-wide planning agency or development, or transportation or improvement authority shall consult with that agency on a regular basis to insure that the project and any changes to it are acceptable.

(c) The 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) and its implementing regulations (N.J.A.C. 7:1C) establish certain uniform permit review requirements for five types of construction permits issued by the Department, including CAFRA, Wetlands and Waterfront Development permits. This chapter incorporates and is consistent with those requirements.

### 7:7-4.2 Application contents

(a) Applications shall consist of a completed DEP Standard Construction Permit (CP-1) form and a check or money order in the amount of the appropriate fee (see N.J.A.C. 7:1C-1.5).

(b) CAFRA permit applications shall also include 20 copies of an Environmental Impact Statement (EIS), prepared in accordance with N.J.A.C. 7:7-5.

(c) Wetland Type B applications shall also include five copies of an Environmental Impact Statement which describes and analyzes all possible direct and indirect effects of the proposed activity on the site itself as well as on adjacent and noncontiguous areas, with particular reference to the effect of the project on public safety, health and welfare, the protection of public and private property,

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the public trust in submerged lands and wildlife and marine fisheries, the protection, preservation and enhancement of the natural environment and the preservation of the ecological balance of the wetlands. It shall relate ecological and physical characteristics of the proposed activity site to local vegetation, birds, mammals, tidal circulation, hydrology, meteorology, geology, soils, land use, recreation and history and, in addition, it shall describe and analyze:

1. The reason that structures cannot be located on lands other than wetlands;

2. Temporary and permanent physical changes which would be caused by the proposed activity and impact of these changes on the activity area and immediate environs;

3. Alternatives to the proposed action which would reduce or avoid environmental damage;

4. All measures to be taken during and after the completion of the proposed activity to reduce detrimental on-site and off-site effects;

5. Adverse environmental impacts which cannot be avoided.

(d) Wetlands Type A and Waterfront Development permit applications shall, at the discretion of the Division, include such additional information as may be required to adequately assess the proposed project's impacts. Applicants will be advised of such additional requirements either at the pre-application conference (see N.J.A.C. 7:7-3) or at the initial review phase (see N.J.A.C. 7:7-4.4).

### 7:7-4.3 Availability of application for examination by the public

(a) Copies of all coastal permit applications will be available for public scrutiny by interested persons in the offices of the Division in Trenton during normal business hours. Local agencies to whom copies of coastal permit applications were submitted may also make a copy of the application available for public scrutiny by interested persons during normal work hours, upon request.

(b) The status of all permit applications shall be published in the DEP Bulletin pursuant to N.J.A.C. 7:1C-1.6, and shall constitute notice to all interested persons.

### 7:7-4.4 Initial review of applications

(a) Within a maximum of 20 working days of receipt of the application, the Division shall take one of the following actions:

1. Declare the application complete for filing, assign an agency project number, and proceed to review on the merits.

2. Assign an agency project number and accept the application, but request in writing that the applicant submit additional information within a specific period of time to assist in its review. In such cases, the application will not be considered complete for filing until all the additional information has been received and deemed acceptable for review.

3. Return the application, explaining why it is unacceptable for filing, and return the filing fee upon notification that the applicant does not intend to reapply.

(b) Within 15 days of the receipt of any additional information submitted pursuant to (a)2 above, the Division shall notify the applicant of the completeness for filing of the application, or shall specify which deficiencies still remain. The application shall not be considered to be filed until it has been declared complete for filing by the Division.

1. Copies of information submitted in response to deficiency letters shall, at the discretion of the Division, be distributed to the same persons to whom copies of the initial application were distributed.

(c) Applications for which a public hearing will be held shall go on to the public hearing phase of the permit review process. Wetland and Waterfront Development applications which do not require a public hearing and which are complete for filing shall begin the 90 day review period established pursuant to the 90 Day Construction Permit Law.

(d) If an application is not complete for filing within 90 days of

a request for additional information, the Division may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90 day extension in which to submit the information will be granted.

1. All fees submitted with a cancelled application shall be non-refundable.

2. A re-submission of a previously cancelled application shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:1C-1.5, unless re-submitted within one year of cancellation.

(e) Once an application for which a public hearing is required has been declared complete for filing, the Division shall prepare a preliminary analysis of the project, based upon the staff analysis and recommendations, as well as upon comments from other agencies to whom copies of the application were distributed and comments from interested persons.

1. To be incorporated in the preliminary analysis, such comments must be received within 20 days after the applicant has been notified of completeness for filing.

2. The Division will release the preliminary analysis to the applicant, recipients of the application, and to any person requesting a copy. The preliminary analysis shall be made available three days prior to the public hearing.

#### 7:7-4.5 Public hearings

(a) Public hearings shall be convened in accordance with the following:

1. The Division shall hold a non-adversarial public hearing for all CAFRA permit applications, to afford the applicant and interested persons the opportunity to present, orally and in writing, their position concerning the application, the preliminary analysis, and any data they may have developed in relation to the proposed facility.

2. The Division may, in its discretion, hold a non-adversarial public hearing for CAFRA permit modification applications and for Wetland and Waterfront Development permit applications when the public interest requires it.

(b) If a hearing is to take place, the Division shall, within 15 days of declaring the application complete for filing, set a date, place, and time for the public hearing and shall so notify the applicant.

1. The date for the hearing shall be not later than 60 days after the application has been declared complete for filing.

2. The hearing shall, if possible, be held in the municipality in which the facility is proposed.

(c) The Division shall publish a notice announcing the date, place, and time of the public hearing in the DEP Bulletin.

(d) The applicant shall give public notice of the public hearing, pursuant to Section 7.1 of the Municipal Land Use Law (N.J.S.A. 40:55D-12).

1. Such notice shall describe the proposed facility, identify its agency project number, announce the date, place, and time of the public hearing on the application, and indicate that comments on the application may be made to the Bureau of Coastal Project Review, Division of Coastal Resources, New Jersey Department of Environmental Protection, CN 401, Trenton, New Jersey 08625 at or within 15 days after the public hearing, or until the application is declared complete for review (see N.J.A.C. 7:7-4.6), whichever occurs last.

2. If the facility is a linear facility greater than 2,400 feet in length, such as a pipeline or road, the applicant shall also give public notice by publication of a display advertisement of at least four column inches in a newspaper of general circulation in the municipality, to the owners of all real property abutting the facility, and to owners of all real property within 200 feet of an above surface structure related to a linear facility, such as a pumping station or treatment plant.

3. Proof of notice shall be submitted to the Division at least three days prior to the public hearing.

(e) The Division shall maintain a copy of the hearing transcript for public inspection in its Trenton Office.

(f) The applicant shall bear the cost of the hearing, as required by N.J.A.C. 7:1C-1.5(e).

(g) The presiding official at the public hearing shall have broad discretion with respect to oral and written presentations by interested persons. This discretion shall be exercised to allow every person the opportunity to speak and insure the maintenance of an orderly forum. At the conclusion of statements by interested persons, the applicant shall be afforded the opportunity to speak to the statements offered by interested persons.

(h) Any interested person may submit information and comments, in writing, concerning the application and the preliminary analysis at or within 15 days after the hearing, or until the application is declared complete for review, whichever occurs last. Such information shall be forwarded to the permit applicant by the Division.

#### 7:7-4.6 Final review of the application

(a) The Division shall, within 15 days after the public hearing, either declare the application complete for review or notify the applicant that additional information is required.

1. The Division may, at or within 15 days after the public hearing, and based on comments or questions raised at the hearing, require an applicant to submit additional information necessary for the complete review of the application. The request for additional information shall be made in writing, or if made at the hearing, confirmed in writing. If a public hearing was held and no additional information is required, the date of the public hearing shall be the date the application was considered complete for review.

(b) The Division shall, within 15 days of the receipt of any required additional information, either declare the application complete for review or notify the applicant that the application is still not complete for review.

#### 7:7-4.7 Timetable for final decisions

(a) The Division shall act on CAFRA applications within 60 days of the public hearing, unless additional information was required at the hearing, in which case the Division shall act on the application within 90 days of the date it was declared complete for review.

(b) The Division shall act on all Wetland and Waterfront Development applications within 90 days after the application was declared complete for filing, unless a public hearing was held, in which case it shall act on the application within 90 days of the date it was declared complete for review.

(c) If the Division fails to act within the prescribed time period, the application shall be deemed to have been approved, subject to the standard conditions set forth in N.J.A.C. 7:7-1.5.

#### 7:7-4.8 Publication of the final decision

(a) The Division shall notify the applicant of the decision by mail, shall publish notice of the decision in the DEP Bulletin, and shall also notify all interested persons who specifically requested notice.

(b) The permittee may, if it so desires, publish notice of the final decision in a newspaper of statewide circulation and a newspaper of regional circulation which includes the municipality in which the project site is located, and by certified mail to any person who requested such notice, in writing, during the public comment period. The Division shall maintain a list of such newspapers.

1. Publication of notice by the permittee shall begin the 10 day appeal period (see N.J.A.C. 7:7-5) if publication takes place prior to publication of notice of the final decision in the DEP Bulletin.

2. Proof of such publication and of mailing shall be submitted to the Division.

(c) The permit application review process may be extended pursuant to the provisions of N.J.A.C. 7:1C-1.8(e) or by mutual agreement.

**PROPOSALS****ENVIRONMENTAL PROTECTION****7:7-4.9 Withdrawal, resubmission and amendment of applications**

(a) An applicant may withdraw an application at any time in the application review process. All fees submitted with such application are non-returnable subsequent to the application being declared complete for filing, except that the fee may be credited for the same project within one year of the date of the notice of withdrawal.

(b) If an application is denied, the applicant may resubmit an application for a revised project on the same site within one year without additional fees. The resubmitted application will be treated as a new application, although references may be made to the previously submitted application. If an applicant wishes to appeal the denial, and at the same time revise the application, he may follow the procedures in N.J.A.C. 7:7-5.4.

(c) Permit applications may be amended at any time as part of the permit review process. Copies of amendments and amended information shall be distributed by the applicant to the same persons to whom copies of the initial application were distributed.

**7:7-4.10 Requests for modifications**

(a) A permittee may apply for a modification to an issued permit. Requests for modification must be in writing, must explain the need for modifying the project as approved, and must indicate whether the applicant considers the modification to be minor in nature.

(b) Modifications which are minor in nature, for example, which do not result in a significant change in the scale, design, use or impact of the project as approved, shall generally be approved by the Division. The determination as to what constitutes a significant change is within the sole discretion of the Division.

(c) Requests for modifications shall be acted on by the Division within 30 days of receipt, unless additional information is required in order to process the request.

(d) If the Division determines that a requested modification is not minor in nature, it shall notify the permittee of that determination within 30 days of receiving the request.

1. Modifications which are not minor in nature shall require an amended permit application, including a new CP-1 form, and any additional information necessary to review the proposed modification.

2. A fee shall be required for any modification which increases total project costs in excess of 10 percent.

3. The status of amended permit applications shall be published in the DEP Bulletin.

**7:7-4.11 Suspension and revocation of permits**

(a) A permit is suspendable for good cause, such as, but not limited to, violations of permit condition and significant changes in the plan for the facility which occur after a permit is issued which are not explicitly authorized in writing by the Division.

1. Prior to the suspension, the Division shall furnish written notice to the permittee by certified mail, providing 10 days within which to either remedy the violations, provide an explanation of why such violations cannot be remedied, or offer a plan to remedy these violations. This plan shall indicate the time necessary to implement the remedy.

2. If the above requirements have not been met, the permit shall be suspended. Construction shall then cease until the violations have been remedied.

3. A permittee may appeal suspension of a permit according to the provisions of N.J.A.C. 7:7-5 only if construction has ceased.

(b) A suspended permit is revocable for good cause.

1. Prior to revocation, the Division shall provide the permittee with written notice of intent to revoke the permit by certified mail and of the permittee's right to a hearing pursuant to the provisions of N.J.A.C. 7:7-5.

2. If such a hearing is not requested within 10 days of receipt of said notice, the permit shall automatically be revoked.

3. Should a permit be revoked, the permittee shall make all

reasonable efforts to restore the site to its pre-construction condition.

**7:7-4.12 Expedited application process**

(a) The Division will, at the request of the applicant, and provided that adequate staff time is available, review coastal permit applications on an expedited basis if they meet the following requirements. The use of this procedure will eliminate the initial 20 working day review period. No extra fee will be charged for an expedited review.

(b) In order to qualify for the expedited application process, an application must meet the following requirements:

1. Applicants must have had at least one pre-application conference.

2. The project must have received an encouraged status as a result of the conference.

3. Applicants must notify the Division at least one week in advance of submission of an application with a request for an expedited review.

4. The application must be complete for filing when submitted. This will require detailed consultation between the Division and the applicant prior to its submission.

(c) The Division shall, by the end of the first working day after submission of an application with a request for expedited review, notify the applicant by telephone (and shall confirm by letter) that the application is or is not complete to qualify for an expedited review. A finding that it does not qualify may be appealed to the Director of the Division.

1. An application which qualifies for expedited review shall be declared complete for filing on the day it is submitted.

2. Copies of the application shall be distributed to other Divisions within the Department and to other agencies pursuant to the usual procedures. The applicant shall be advised by telephone of any deficiencies which arise as the result of that review process.

3. The applicant shall be responsible for supplying any such additional information prior to or at the public hearing.

4. The Division shall act on the permit application within the time periods specified in N.J.A.C. 7:7-4.7.

**SUBCHAPTER 5. APPEALS****7:7-5.1 Request for review on appeal**

(a) Any interested person who considers himself aggrieved by a final action of the Division may, within 10 days of publication of notice of the final decision in the DEP Bulletin or within 10 days of publication of notice by the permittee pursuant to N.J.A.C. 7:7-4.8(b), whichever occurs first, request a hearing by addressing a written request to the Commissioner, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625.

1. The notice of request for a hearing on appeal shall include the appropriate agency project number and, where the appeal is taken by someone other than the applicant, evidence that a copy of the request has been mailed to the applicant.

(b) The appellant shall, within 14 days of submitting the initial hearing request, submit an additional statement describing, in detail, how that person is aggrieved by the decision, and which findings of fact and conclusions of how are being challenged.

(c) Any person who considers himself aggrieved by a final action of the Division with respect to a CAFRA permit application may, in the alternative, request a hearing before the Coastal Area Review Board, by addressing a written request to the Secretary, Coastal Area Review Board, CN401, Trenton, New Jersey 08625.

(d) Copies of an appeal request from a decision on a CAFRA permit application shall also be mailed to the clerk of the county and the municipality in which the project site is located, and evidence of such mailing shall be included with the appeal request.

(e) A hearing request may include a request that the issuance of the permit be stayed.

**7:7-5.2 Response to appeal request**

(a) Any interested person may, within 10 days of receiving notice of a hearing request or appeal statement, submit a written response.

(b) If the responding party contends that the appeal request should be denied, the answer should fully explain the basis for that contention.

(c) Any person or entity having a significant interest in the outcome of a hearing request may, in addition to filing a response, request permission to participate in the appeal process. A request to participate must be made within 10 days of publication of notice of the original hearing request in the DEP Bulletin, and must specify the requesting party's interest in the matter being appealed.

(d) Where the request to participate is filed by someone other than the applicant, evidence that a copy of the request has been mailed to the applicant shall be submitted.

**7:7-5.3 Action on appeal request**

(a) The Division shall publish notice of all appeal requests in the DEP Bulletin.

(b) The Commissioner shall act on any appeal request which complies with the requirements of this subchapter within 21 days of its receipt.

(c) The Commissioner may, upon request and for good cause shown, stay the issuance of the permit pending a final decision on the appeal.

(d) Requests for which a hearing is granted shall be referred to the Office of Administrative Law for the holding of a fact-finding hearing pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), after which the Commissioner will make a final decision.

**7:7-5.4 Review of revised application to settle appeal**

(a) Any applicant who has appealed a decision or has had a decision appealed by a third party pursuant to this subchapter may, at any time prior to the rendering of a decision by the Office of Administrative Law, submit a revised application for the purpose of negotiating a settlement of the appeal.

(b) Applicants will be required to submit information adequate to allow the Division to fully assess any proposed revisions to the project.

(c) Notice of a proposed settlement which is arrived at pursuant to this section shall be published in the DEP Bulletin, and shall be provided to any interested third party who commented on the project in writing or at the public hearing (if one was held).

(d) Any permit which is issued as a result of a settlement may be appealed in the manner provided for in this subchapter.

**7:7-5.5 Coastal Area Review Board procedures**

(a) A request for review on appeal submitted to the Coastal Area Review Board shall be in the form required by N.J.A.C. 7:7-5.1. An answer may be filed as provided by N.J.A.C. 7:7-5.2.

(b) The Commissioner of Environmental Protection, or his designee, shall be the Chairman of the Board.

(c) Argument before the Board shall be restricted to questions of policy and conclusions of law, not findings of fact. The record before the Board shall consist solely of the permit application and file.

(d) The Board shall, within 21 days of receiving an appeal request:

1. Schedule a full hearing;
2. Decline to review the appeal for good cause;
3. Decide the appeal in a summary manner, pursuant to (e) below.

(e) The Board may, at any meeting, decide an appeal in a summary manner, based upon statements in the appeal request, and any information in the record. The Secretary of the Board shall promptly notify the parties to the appeal of the Board's decision.

(f) Beginning with the day of notification of acceptance of a request for hearing, the appellant shall have 15 days to file a statement with the Secretary.

1. The Department and the applicant, as appropriate, shall have

10 days to file a response to the appellant's statement with the Secretary.

2. The appellant shall then have five days to file a rebuttal with the Secretary.

(g) All documents filed with the Secretary pursuant to this section shall be filed with sufficient copies for distribution by the Secretary to all parties to the appeal and to the members of the Board. The time period in this section may be modified in specific cases at the discretion of the Board.

(h) The Board may affirm, modify or reverse the decision of the Division.

**SUBCHAPTER 6. ENVIRONMENTAL IMPACT STATEMENTS**

**7:7-6.1 Purpose**

(a) Section 7 of CAFRA (N.J.S.A. 13:19-7) requires the preparation of an Environmental Impact Statement (EIS) for all CAFRA applications. The Division also requires an EIS for all major Wetlands and Waterfront Development permit applications (for example, those projects which meet the definition of a CAFRA project, but which are located outside the CAFRA area).

(b) The purpose of the EIS is to assist the applicant and the Division in assessing the probable effects of a proposal on the natural resources and human activities at the project site and surrounding region.

**7:7-6.2 Distribution of EIS to other Agencies**

(a) Applicants for CAFRA permits shall submit one copy of the EIS to each of the following agencies:

1. County planning board, division or agency;
2. County environmental commission, agency or council;
3. Municipal planning board;
4. Municipal environmental commission, if any;
5. Soil Conservation District (unless responsibility for enforcing soil conservation requirements has been delegated to the municipality);
6. Delaware Valley Regional Planning Commission (for facilities in Burlington, Camden, Gloucester and Mercer Counties);

(b) The applicant shall include the following statement in the transmittal letter accompanying an EIS distributed to local agencies:

"This environmental impact statement has been submitted to the New Jersey Department of Environmental Protection, Division of Coastal Resources as part of an application for a Coastal Area Facility Review Act permit for a project in (indicate municipality in which the facility is proposed).

"This copy of the EIS is submitted to this agency for your information and comments, and to make the EIS available for review by interested citizens. The Department of Environmental Protection welcomes your comments on the project described and assessed in this EIS. Please submit your written comments within 21 days to:

Bureau of Coastal Project Review  
 Division of Coastal Resources  
 Department of Environmental Protection  
 CN 401  
 Trenton, New Jersey 08625"

(c) An affidavit shall be sent by the applicant or his agent to the Division stating that the applicant has distributed copies of the EIS pursuant to (b) above. No application shall be declared complete for filing pursuant to N.J.A.C. 7:7-4.7 without submission of this affidavit.

**7:7-6.3 Format and contents**

(a) The EIS will be prepared in the form and manner specified by the Division, which shall prepare detailed guidelines and instructions for preparation. Failure to comply with these guidelines may result in a determination that an application is not complete for

filing or review, depending on its status (see N.J.A.C. 7:7-4.1 and 4.4).

(b) The EIS shall consist of the following:

1. Summary: A brief one or two page summary shall preface the EIS, and shall contain:

i. A description of the size, nature and location of the proposed facility;

ii. A description of the major environmental impacts associated with the proposed facility, including possible areas of controversy or significant issues to be solved;

iii. A list of any other municipal, State or Federal approvals required or received, if any.

2. Project description: The project description consists of 11 elements which, when taken together, describe what the applicant proposes to do, where it will be done, how it will be constructed, and how it will be operated.

i. The description shall consist of written and graphic material and maps.

ii. The 11 elements are: the development description, site plan, structure description, housing plan, transportation plan, construction plan, operation plan, utilities plan, energy conservation plan, public services plan, and outdoor recreation plan (as appropriate).

3. Environmental inventory and assessment

i. Section 7(a) of CAFRA requires, as part of the EIS, the preparation of "an inventory of existing environmental conditions at the project site and in the surrounding region...". Section 7 also requires an assessment of the probable impact of the project on the resources identified in the inventory, a list of unavoidable adverse impacts, mitigating measures, and alternatives to all or any part of the project, with reasons for the acceptability or non-acceptability of those alternatives.

ii. In order to comply with this requirement, the EIS shall contain an environmental inventory and assessment which describes and documents, in narrative form and maps, environmental conditions at the site and the surrounding region, and then assesses the probable impacts of the facility on the built and natural environment.

iii. The inventory and assessment is to be made with reference to the Rules on Coastal Resource and Development Policies, N.J.A.C. 7:7E.

(1) It should contain sufficient detail to assist in the evaluation of the facility, to provide a basis for the applicant's assessment of environmental impacts, and to enable the Division to make the necessary statutory findings for permit approval as specified in the relevant enabling legislation.

(2) Specific requirements will vary depending on the magnitude and complexity of the project, and on the sensitivity of the land and water features of the site.

**7:7-6.6 Preparation**

(a) The level of detail and areas of emphasis in an EIS will vary depending upon the nature and complexity of the facility and the nature of the site and its surrounding regions.

1. The EIS should be concise and should contain the facts and analyses necessary to evaluate the application with reference to the Department's Rules on Coastal Resource and Development Policies, N.J.A.C. 7:7E.

2. The information should be presented in an analytic, rather than an encyclopedic format.

(b) If the applicant believes that specific elements of the EIS are not applicable to the proposed facility, and if agreed to by the applicant and the Division at the pre-application conference, the applicant may indicate "not applicable" under the appropriate heading. The reason why the information is not required should be indicated.

(c) The EIS shall be bound or in loose-leaf form, on 8 1/2 by 11 inch paper. All maps, plans and aerial photographs shall specify a north point, graphic scale, date of preparation and source of information.

(d) The EIS should be prepared using an interdisciplinary approach, and the qualifications of the persons who prepared each element shall be identified in a separate section. References to information, reports or treatises not contained in the EIS shall be cited throughout the text as appropriate, and in a consistent manner.

(e) The Division recognizes that some or all of the EIS requirements set forth in (f) below may be addressed in an EIS prepared pursuant to State or Federal law. Such an EIS may be submitted under this subchapter, but must be supplemented in order to comply with (f) below.

(f) The EIS must discuss the applicability of the Department's rules on Coastal Resource and Development Policies, N.J.A.C. 7:7E, to the proposal. This information is to be submitted in both map form and as part of the environmental inventory and assessment.

**(a)**

**DIVISION OF WATER RESOURCES**

**Shellfish-Growing Water Classification  
Growing Water Condemnations**

**Proposed Amendment: N.J.A.C. 7:12-1.3**

Authorized By: Robert E. Hughey, Commissioner,  
Department of Environmental Protection.  
Authority: N.J.S.A. 13:1D-1 et seq., specifically 13:1D-15,  
and 58:24-1 et seq.  
DEP Docket No. 067-83-11.

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

William J. Eisele, Jr., Chief  
Department of Environmental Protection  
Bureau of Shellfish Control  
Richards Lane, Leeds Point  
Star Route  
Absecon, NJ 08201

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-642.

The agency proposal follows:

**Summary**

The Department of Environmental Protection (DEP) proposes to amend the rules on the classification of certain shellfish beds resulting from surveys conducted by the Bureau of Shellfish Control. The investigatory work consists of the collection and analysis of water samples, the inventory of actual and potential sources of pollution, and hydrographic studies of flow patterns which distribute pollution. These surveys are conducted in accordance with applicable State and United States Food and Drug Administration (FDA) guidelines and regulations. FDA recommendations clearly establish the upper limits of bacterial contamination for waters designated for harvest in association with a 48 hour depuration process.

Additionally, the FDA requires that each state appraise, every two years (or more frequently when changes occur that may affect the quality of these waters), shellfish growing waters approved for direct harvest or those waters where shellfish may be harvested only

in association with established resource recovery programs (depuration and relay). In fact, the primary motivation for the DEP to undertake the bacteriological surveys leading to this proposed amendment was to evaluate the effects of the 1981 revision of New Jersey's water quality standards (13 N.J.R. 194(b)). The 1981 revision relaxed the New Jersey regulation requiring the year-round disinfection of municipal wastewater effluents released into certain receiving waters contiguous to Raritan Bay. The 1981 revision was predicted upon the expectation that water quality conditions would not be degraded. Previous to this study, a major portion of Raritan Bay and all of Sandy Hook Bay repeatedly met the bacterial criteria associated with the Special Restricted classification for shellfish growing waters.

The DEP, in conjunction with the Interstate Sanitation Commission, and the New York Department of Environmental Conservation (DEC) are considering requirements which would reestablish water quality in these areas to pre-1981 levels.

The proposed amendment will result in the reclassification of approximately 13,000 acres of potentially productive shellfish growing waters in Raritan and Sandy Hook Bays. This proposal to change these waters from the Special Restricted classification to that of Condemned will effectively result in the elimination of this area from those waters available for harvest in association with the established hard and soft clam depuration programs.

#### Social Impact

The proposed amendment to the shellfish harvesting regulations is expected to have little social impact except to the extent that public confidence in the healthful consumption of shellfish harvested in conjunction with a special permit resource recovery program will be enhanced.

#### Economic Impact

Whereas shellfish are not currently being harvested from these waters, New Jersey's shellfish industry will not be immediately harmed. To the extent that these waters will remain off limits for the harvest of shellfish until an effective solution to the regional problem of adequate treatment of municipal wastewater in greater New York Harbor can be found, the potential economic benefits from the commercial harvest of shellfish from so large an area will not be realized.

#### Environmental Impact

This reclassification reflects a degradation in water quality that has been observed by monitoring surveys conducted both by the DEP and various independent interstate agencies. This finding, that the regional policy of disinfecting municipal wastewater effluents on a seasonal basis was found to have caused a degradation in water quality, is certainly a cause for concern. It is felt that the increase in public awareness resulting from the reclassification of shellfish growing waters will provide an impetus for committing public resources for further evaluation of this situation and, as such, represents a positive environmental impact.

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

#### 7:12-1.3 Growing water condemnations

(a) Charts designating condemned areas as hereinafter described are available from the Bureau of Shellfish Control offices, Marine Police Stations, and Shellfisheries Field Offices at Bivalve and Nacote Creek. However, all persons are cautioned that emergency closures may be necessary and may not be charted. These Approved Area Charts are developed from Nautical Charts Number 12327 New York Harbor 76th Edition, December 20, 1980; Number 12324 Intracoastal Waterway, Sandy Hook to Little Egg Harbor, 19th Edition, December 13, 1980; Number 12316 Intracoastal Waterway, Little Egg Harbor to Cape May 18th Edition, December 6, 1980; and Number 12304 Delaware Bay, 27th Edition March 28,

1981. The State Department of Environmental Protection hereby condemns all shellfish growing waters or other places from which shellfish are or may be taken, at all times of the year, except when otherwise noted in N.J.A.C. 7:12-1.4 and 1.5.

1.-2. (No change.)

3. Raritan Bay area (a portion is designated as a special restricted area):

i.-iii. (No change.)

iv. Special restricted area: That portion of [Raritan Bay, Lower Bay and] Sandy Hook Bay bounded by a line beginning at [Conaskonk Point near Union Beach, New Jersey, and bearing approximately 345 degrees T toward Sequine Point at Princess Bay, Staten Island, New York, until it intersects the New York-New Jersey boundary, then along that boundary in an easterly direction until it intersects the Raritan Bay East Reach Channel, then along the southwest boundary of that channel in a southeasterly direction to its intersection with Sandy Hook Channel, then to Sandy Hook Point Light E. Int. 6 sec & VB 38 feet 15M Bell, then southward along the west shore of Sandy Hook Peninsula to the Route 36 highway bridge over the Shrewsbury River then westward along the bridge, then following the shoreline in a general northwestward direction to the northernmost point of land on Point Comfort (Keansburg), then bearing approximately 272 degrees T to the northernmost point of land on Conaskonk Point (Union Beach), its point of origin.] **the south end of that pier maintained by the United States Navy in Leonardo (United States Navy Ammunition Depot - Earle) where it intersects the shoreline and following the easternmost side of the main stem of that pier to its northernmost extent, then following a line connecting that point to Sandy Hook light (F 88 ft 19 M) bearing approximately 082 degrees T to where it intersects with the western shoreline of Sandy Hook peninsula, then southward following the west shore of Sandy Hook to the Route 36 Highway bridge over the Shrewsbury River, then westward along that bridge to where it adjoins the mainland, then following the shoreline in a general northwestward direction to its point of origin at the base of the naval pier.**

4.-40. (No change.)

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

OFFICE OF ADMINISTRATIVE LAW NOTE: An information map outlining the area to be reclassified as condemned was also filed with this proposal but is not reproduced herein.

(a)

## DIVISION OF WATER RESOURCES

### Flood Hazard Area Regulations

#### Proposed New Rule: N.J.A.C. 7:13

#### Proposed Recodification: N.J.A.C. 7:13-1.11 to N.J.A.C. 7:13-7

Authorized By: Robert E. Hughey, Commissioner,  
Department of Environmental Protection.  
Authority: N.J.S.A. 58:16A-50 et seq., N.J.S.A. 58:10A-1 et seq. and N.J.S.A. 13:1D-1 et seq.  
DEP Docket No. 068-83-11.

A public hearing concerning this proposal will be held on:

## PROPOSALS

## ENVIRONMENTAL PROTECTION

January 10, 1984  
9:00 A.M.  
State Library Conference Room  
Trenton, NJ

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

William Whipple, Administrator  
Water Supply Administration  
Division of Water Resources  
CN 029  
Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-644.

The agency proposal follows:

### Summary

These new proposed regulations have been undertaken to update the existing regulations and bring them into conformity with changes in the law and recent cases. The most important change is to provide for increased delegation of the permitting authority to counties and municipalities, in accordance with N.J.S.A. 58:16A-55.6 and 57. Another major change is the establishment of standards and criteria, particularly as regards environmental concerns, so as to provide some assurance of policy continuity. This will enable agencies with delegated authority to issue permits in a consistent manner. A third major change is the coordination of standards and criteria to provide uniform treatment of similar situations along delineated and nondelineated streams. These regulations omit reference to many engineering and technical matters, which have been issued by the department in a technical manual.

In addition, another major change is the designation of Projects of Special Concern. These projects are those of a nature which could result in substantial environmental impact. This impact must be considered and weighed against the advantages of allowing the proposed construction to proceed. Projects of Special Concern require special provisions for public notice and are not subject to delegation.

An additional procedural provision of importance is that of calling for fact-finding meetings in the Division of Water Resources when differences of opinion arise. This allows for the possibility of reconciling conflicting views without the necessity of a judicial proceeding. Solutions to the formal appeal can then be informally explored. This procedure was established on a trial basis and has been very successful.

The department presented these rules as a pre-proposal (see: 15 N.J.R. 824(a)). Numerous comments were received on the pre-proposal. In addition to hearings and written comments, input was solicited through the Division of Water Resources' (DWR) Public Involvement meetings. At various meetings throughout the State, DWR staff have explained the impact of the pre-proposal on local government, industry and the public at large and solicited their input with an eye towards developing a proposal which addresses the complex issues that are associated with this program.

The following is a summary of major comments received and the agency response to them. They are listed by the subchapter they pertain to in the proposed regulations.

### SUBCHAPTER 1. GENERAL PROVISIONS

Comment: A definition of "Dam" was needed.

Response: A definition of "Dam" was added to N.J.A.C. 7:13-1.2.

Comment: The definition of "Net fill" left room for various interpretations.

Response: The definition was changed.

Comment: The definition of "Perennial stream" did not allow the use of site specific information.

Response: The definition was changed to allow the use of such information.

Comment: The list of streams excluded from review under these regulations (at N.J.A.C. 7:13-1.4(c)) because of the Division of Coastal Resources review was not all inclusive.

Response: A number of additional streams were added. However there will be some areas of overlap where the flooding potential is such that review by both the Division of Water Resources and the Division of Coastal Resources is necessary.

### SUBCHAPTER 2. GENERAL PROCEDURES FOR THE STREAM ENCROACHMENT PERMITTING PROCESS

Comment: The easement requirement in N.J.A.C. 7:13-2.1(g) placed unreasonable burdens on an applicant.

Response: The requirement was changed to make it less burdensome while still protecting affected property holders.

Comment: The department received a large number of comments on the notice provisions of N.J.A.C. 7:13-2.2. They ranged from asking for notice of all projects (minor, modifications in detail) to asking why notification to abutting property owners was required at all.

Response: The department, with some minor changes, left the section as pre-proposed. It is felt that a balance exists therein between the public right to know and the applicant's right to be free of unnecessary administrative burdens.

Comment: The hardship exemption provision at N.J.A.C. 7:13-2.9 should be eliminated. It also gives the impression that other lawful requirements can be waived by obtaining such an exemption.

Response: The Act requires this section. To clarify that all other required permits, certifications, etc. must be obtained, N.J.A.C. 7:13-2.9(j) was added.

### SUBCHAPTER 3. GENERAL STANDARDS FOR STREAM ENCROACHMENT PERMITTING WITHIN THE FLOODWAYS OF DELINEATED STREAMS AND WITHIN ENCROACHMENT LINES OF NONDELINEATED STREAMS

Comment: The construction of any septic systems in the floodway should be prevented.

Response: N.J.A.C. 7:13-3.1(a)5 has been changed to prevent this.

Comment: There was no allowance for bridge construction in N.J.A.C. 7:13-3.1(b).

Response: N.J.A.C. 7:13-3.1(b)5 was added to correct this.

Comment: The use of the term "buffer strip" in N.J.A.C. 7:13-3.4(a)2, and elsewhere in the negotiations, was misleading, since it referred to setback requirements.

Response: The definition of "buffer strip" was dropped and all references to it in the regulations have been changed to reflect the actual requirement.

Comment: Duplication of review will occur when erosion plans are reviewed by an SCD and then must be submitted to the State.

Response: N.J.A.C. 7:13-3.4(d) was added to eliminate this duplication.

Comment: The maximum allowable removal of material in the stream cleaning, N.J.A.C. 7:13-3.6, is unclear.

Response: The phrase "in depth" was added after "two feet" to clarify this point.

Comment: N.J.A.C. 7:13-3.10 appeared to prevent channel work designed to enhance environmental concerns.

Response: The section was changed to allow for such work when carefully planned.

**SUBCHAPTER 4. REGULATION OF STREAM ENCROACHMENTS IN THE FLOOD FRINGE AREA OF DELINEATED STREAMS AND BETWEEN THE ENCROACHMENT LINES AND THE BOUNDRIES OF THE 100-YEAR FLOODPLAIN OF NON-DELINEATED STREAMS**

Comment: The use of the term locality is confusing.

Response: The term has been changed where possible, but continues to be used where reference is made to both municipalities and delegated agencies.

Comment: The department received many comments on N.J.A.C. 7:13-4.7(2) "Requirements for fill". The comments ranged from asking why it was needed at all to why it did not prevent all filling in the fringe area.

Response: The present Federal and State flood plain management programs are built upon the assumption that the discharges from repetitions of past hydrologic events (such as the 100-year storm) will be no greater in the future. The floodway is determined in such a way that in New Jersey such a flood could be passed with only 0.2 foot rise in water surface, if the flood fringe area were blocked (National Standards allow a rise of 1.0 foot, through a narrower floodway). However, if the entire flood fringe area of a stream were to be filled in, the reduction in valley storage would result in much increased maximum discharge at any point from the same 100-year storm, the amount of the increase depending upon the scope and configuration of the flood plain. Such an increase could result in the 100-year storm flooding developments which had been built one foot above the originally computed flood elevation. It is for this reason that in the Passaic River Central Basin, in order to avoid increasing flood heights, a special regulation provides for no net fill to be added from outside of that Basin. To the extent that this regulation is observed, it should preserve the previously existing valley storage. However, the existing "no net fill" provision is difficult to define exactly and more difficult to enforce. Moreover, it applies only to a single basin, whereas many streams and rivers throughout New Jersey are subject to increased flooding conditions if valley storage is diminished by filling. Therefore, the provision limiting net fill to 20 percent of the maximum potential on a given site has been developed. It will not preclude development of a larger portion of a site, but it requires for the more intensive development's compensating excavation on that site or else building on pillars or piles. The 20 percent fill provision will still involve a considerable reduction in valley storage, and consequent increase in flood heights, which will have to be accommodated by the 25 percent increase in discharge over the calculated 100-year discharge which is used in outlining flood hazard areas. The 20 percent limitation is considered to be a fair balance between the public interest in holding down increases in flood discharge and the rights of landowners to develop their property.

Agency Note: Provisions preventing the addition of any net fill within the Central Passaic Basin, as currently provided for, have been added at N.J.A.C. 7:13-4.7(e).

**SUBCHAPTER 5. SPECIAL CASES**

Agency Note: A number of comments received from the Division of Fish, Game and Wildlife were incorporated in changes to N.J.A.C. 7:13-5.6 "Projects along trout streams".

**SUBCHAPTER 6. IMPLEMENTATION**

Comment: Numerous comments were received on the department's plans to delegate various permitting and review functions. They ranged from expressing a desire to have local governmental units do all permitting to not allowing them to do any.

Response: The Act requires municipalities to do the permitting in the flood fringe area. The additional delegations to counties, in limited instances, is deemed desirable to get these functions closer to the level they occur at and is authorized by the Act. The additional use of optional reviews (see N.J.A.C. 7:13-2.5 and 2.6) is a codification of existing practice whereby these entities act as the department's agent, subject to the department's acknowledgement. No applications for projects of special concern will be delegated by the department.

The charts below show who may review and/or approve what type of application:

**Nondelineated Streams**

	MAJOR	MINOR
DEP	Yes	Yes
County	Yes <sup>2 or 3</sup>	Yes <sup>2 or 3</sup>
Municipal	Yes <sup>3</sup>	Yes <sup>3</sup>
SCD	Yes <sup>4</sup>	Yes <sup>4</sup>

**Delineated Streams**

	MAJOR		MINOR	
	Floodway	Fringe	Floodway	Fringe
DEP	Yes	Yes <sup>1</sup>	Yes	Yes <sup>1</sup>
County	Yes <sup>2 or 3</sup>	Yes <sup>1 &amp; 2</sup>	Yes <sup>2</sup>	Yes <sup>1 &amp; 2</sup>
Municipal	Yes <sup>3</sup>	Yes	Yes <sup>3</sup>	Yes
SCD	Yes <sup>4</sup>	No	Yes <sup>4</sup>	No

1. If a Municipality fails to adopt/enforce ordinance.
2. If delegated.
3. Subject to DEP approval, and only if drainage area for major project is less than 150 acres or 320 acres in case of minor project.
4. Subject to terms of agreement.

County and municipal officials can contact Mr. Arthur R. Kondrup, Executive Assistant to the Director, at CN 029, Trenton, New Jersey 08625 (609-292-1637) for further information or to set up meetings concerning the proposed regulations and delegations.

**Social Impact**

The social impact of this new chapter will be favorable, as damage from floodway will be reduced and the integrity of the waterways of the State will be protected. In addition, it will have a favorable impact on account of the elimination of the delays and confusion which results from administration of a permit system without adequate standards and criteria. Furthermore, the ability of county and municipal governments to issue permits in many instances will allow individuals closer to the situation to make decisions, permitting decision making on the basis of more complete data. This should eliminate delay and result in a more responsive permitting system.

**Economic Impact**

These regulations will have some economic impact on construction and land development in flood plains. Some additional

costs may be involved in that there will be a definite limit on the amount of fill which can be placed by developers in flood hazard areas. This limitation will restrict the amount of development which can be built on a given site without entailing extra design and/or construction costs. Previously, although excessive, fill in such areas was discouraged, there was no generally-established uniform standard. Secondly, there will be a favorable economic impact on developers, in that the delegation of functions to counties and municipalities and the establishment of written standards and criteria for stream encroachment will help eliminate uncertainty, speed up the issuance of permits and minimize delays and misunderstandings.

The fees which are levied under these regulations, located in the 90-day rules, N.J.A.C. 7:1C, will not be increased, but to a considerable extent will be levied by local agencies rather than by the State. Thus the economic impact of fees paid by the applicant will be unchanged.

#### Environmental Impact

The most important single change embodied in the new regulations is the limitation of net fill to be placed in the flood fringe area (or the corresponding areas of nondelineated streams) to 20 percent of the maximum which could be placed between the natural surface of the ground and design flood elevation. This provision will minimize the artificial increases in flood heights which result from unrestricted filling of flood fringe areas, due to elimination of valley storage. This change will not prevent development, but it will to some extent limit the amount of development which can be placed on a given site without increases in cost and/or modification in type of structure. From an environmental viewpoint, the change will be very beneficial, as in addition to the favorable effect on flood heights, it will assist in preserving a greater proportion of flood plains in natural cover or open space.

Another change of major environmental consequence is the establishment of criteria for stream encroachment in various types of trout-related streams. These criteria relate to certain types of construction and development which are prohibited or restricted in such streams, and limitation of the periods during which construction may be carried on. Other changes establish special criteria relating to other types of fish.

Additionally, special restrictions are provided for in certain limited areas where construction may expose acid-producing geologic deposits. These deposits, when exposed, can result in fish kill and other environmental damage.

The establishment of preventive measures will be environmentally beneficial.

OFFICE OF ADMINISTRATIVE LAW NOTE: The text currently found in the New Jersey Administrative Code at N.J.A.C. 7:13-1.1 through 1.9 expired on July 19, 1983, pursuant to Executive Order No. 66(1978). N.J.A.C. 7:13-1.11 (Delineated floodways) was readopted as N.J.A.C. 7:13-7 effective July 21, 1983 (see 15 N.J.R. 839(a), 15 N.J.R. 1374(b)).

Full text of the proposed new rule follows.

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 7:13-1.1 Purpose and scope

(a) The general purpose of this chapter is to control construction and other developmental activities in stream channels and in areas subject to flooding in order to avoid or mitigate detrimental effects of such activity.

(b) Areas naturally subject to inundation by flood waters are called flood plains; and for the purpose of this chapter flood plains are divided into two major classes, delineated and nondelineated.

1. The delineated flood plains, or delineated streams, are those for which the flood hazard areas have been officially specified

("delineated") by the State of New Jersey and each flood hazard area has been divided into a floodway and a flood fringe area. The procedure for delineating streams is established by N.J.S.A. 58:16A-52.

2. Other flood plains, and the streams that create them, are referred to as nondelineated.

3. The United States Federal Emergency Management Agency (FEMA) classifies flood plain areas in much the same manner as the State of New Jersey. The provisions of these regulations refer to, and are controlled by, delineations by the State.

(c) The purpose of this chapter is to minimize losses and damage to public and private property caused by land uses and channel modifications which, at times of flood, increase flood heights and/or velocities; to safeguard the public from the dangers and damages caused by materials being swept onto nearby or downstream lands; to protect and enhance the public's health and welfare by minimizing the degradation of stream water quality from point and nonpoint pollution sources, and to protect wildlife and fisheries by preserving and enhancing water quality and the environment of the stream channel and flood plain.

(d) Without proper controls, stream encroachments may adversely affect the flood carrying capacity of the stream, may create new facilities within areas subject to floods, may reduce natural flood storage that the flood plain provides, and may result in increased sedimentation or erosion or other environmental damage. Any stream encroachment must conform to certain criteria which, as outlined in this chapter, depend upon the characteristics of the area and the type of activity involved.

##### 7:13-1.2 Definitions

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

"Act" means the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.

"Alteration" means changes in banks, bed and vicinity of a stream which may affect its flood carrying capacity or environment.

"Applicant" means the owner of the property on which the permit is applied for or his legal agent.

"Application" means the department application form.

"Cascades" means sections of streams with stream beds consisting primarily of bedrock, with little rubble, gravel, or other such material present. The current is usually more swift than in riffles.

"Central Passaic Basin" means the flood hazard area or 100-year flood plain along:

1. Central Passaic River: Extending from Little Falls at Beatties Dam upstream to Route 202 in Bernards and Harding Townships;

2. Pompton River: Entire river;

3. Ramapo River: Extending from its confluence with the Pompton River upstream to Pompton Lakes Dam;

4. Pequannock and Wanaque Rivers: Extending from their confluence with the Pompton river upstream to Paterson-Hamburg Turnpike;

5. Dead River: Extending from its confluence with the Passaic River upstream to Liberty Corner Road in Bernards Township;

6. Harrison Brook: Extending from its confluence with the Dead River upstream to Lake Road in Bernards Township;

7. Rockaway River: Extending from its confluence with the Passaic River upstream to the Jersey City Reservoir (Boonton Reservoir);

8. Whippany River: Extending from its confluence with the Passaic River upstream to Route 10;

9. Black Brook: Extending from its confluence with the Whippany River upstream to the Exxon Research and Engineering Center in the Borough of Florham Park; and

10. Beaver Dam Brook: Including East and West Ditches from Pompton River to Jacksonville Road in Lincoln Park.

"Channel" means a watercourse with a definite bed and banks which confine and conduct continuously or intermittently flowing water.

"Channelization" means any artificial reconstruction of the stream channel such as by straightening, lining or deepening.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Compliant ordinance" means a municipal ordinance adopted in compliance with the Act and this chapter.

"Dam" means any artificial dike, levee or other barrier together with appurtenant works, which is constructed for the primary purpose of impounding water on a permanent or temporary basis that raises the water level five feet more above its usual mean low water height, prior to the construction of the dam, during passage of the spillway design flood.

"Delegated agency" means a county agency to which the department has delegated its power to approve or disapprove certain classes of stream encroachment applications.

"Delineated floodway" means any floodway designated by the department under the provisions of the act.

"Department" means the State Department of Environmental Protection.

"Division" means the Division of Water Resources in the Department of Environmental Protection.

"Encroachment line" means a line encompassing the channel of a natural stream and portions of the 100-year floodplain adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any natural stream. It is approximately equal to the floodway line along delineated streams. Methods for determining this line are set out in N.J.A.C. 7:13-1.8 and in the Manual.

"Erosion" means detachment and movement of soil or rock fragments by water, wind, ice or gravity.

"Excavation" means removal or recovery, by any means whatsoever, of minerals, mineral substances or organic substances, other than vegetation, from the water, land surface or beneath the land surface, whether exposed or submerged. Normal agricultural activities shall not be considered to be excavation.

"Exceptional and undue hardship" means situations where strict compliance with this chapter would result in peculiar and substantial burdens upon the applicant or owner and where such compliance would not be necessary to avoid substantial detriment to the public health, safety and general welfare.

"Fact finding meeting" means a meeting held by the Department to solicit information on a pending application and provide an opportunity to exchange views.

"Fill" means sand, gravel, earth or any other material placed or deposited within the 100-year floodplain or flood hazard area.

"Fishway" means a device that allows for the passage of fish over a barrier that would ordinarily preclude migration.

"Flats" means sections of streams with current too slow to be classified as riffle and too shallow to be classified as a pool. The stream bottom usually consists of sand or finer materials.

"Flood carrying capacity" means the ability of a channel or floodplain to transport flood waters, as determined by its shape, cross-sectional area, bed slope, coefficient of hydraulic friction, and upstream and downstream channel configurations, as used in accepted engineering practices.

"Flood damage potential" means the susceptibility at a particular site to damage by potential floods at that site, as well as increased off-site flooding or flood related damages caused by such use.

"Flood fringe" means that portion of the flood hazard area not designated as the floodway.

"Flood hazard area" means the floodway and the flood fringe area of a delineated stream.

"Flood hazard area design flood" means the 100-year storm in nondelineated areas and the 100-year storm plus 25 percent in delineated areas.

"Flood hazard design elevation" means the elevation of the Flood Hazard area design flood.

"Flood plain" means the relatively flat area adjoining the channel of a natural stream which has been or may be hereafter covered by

flood water.

"Floodproofing" means any combination of structural and nonstructural design features, additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

"Floodway" means the channel of a natural stream and portions of the flood hazard area adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any natural stream.

"Hazardous materials" means any waste or combination of waste which poses a present or potential threat to human health, living organisms or the environment.

1. It shall include waste material that is toxic, carcinogenic, genetically harmful, corrosive, irritating or sensitizing, radioactive, biologically infectious, explosive, or flammable.

2. It includes, but need not be limited to, those materials and concentrations of materials that are determined to be toxic by the Federal Secretary of Health and Human Services pursuant to section 20(6) of the Occupational Safety and Health Act of 1970 (Public Law 91-596, OSHA) and those materials listed in the current Part 172, Title 49 of the Code of Federal Regulations issued by the Federal Department of Transportation.

"Local agency" means a municipality, county governing body or county water resource association which is authorized to review applications pursuant to this chapter.

"Low dam" means a dam which will not raise the water level of a stream or river by more than five feet above its usual mean low water height.

"Low water" means the water level characteristic of a stream during low flow conditions.

"Major project" means that class of project defined as major in the 90 day rules.

"Manual" means the Technical Manual on Stream Encroachment published by the Department in draft form in December, 1981 and any subsequent amendments thereto.

"Minor project" means that class of project defined as minor in the 90 day rules.

"MLUL" means the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

"Net fill" means additional earth or other fill beyond the total quantity already present above the low water level of the stream or ground water level (whichever is higher) in that portion of the project site which is in the flood hazard area or 100-year flood plain.

"Ninety day rules" means N.J.A.C. 7:1C (90 Day Construction Permits).

"Nonregulated use" means any use set forth in N.J.A.C. 7:13-3.2 and 4.5.

"Non-trout waters" means the non-trout waters identified in the Department's Surface Water Quality Standards (N.J.A.C. 7:9-4.1 et seq.).

"Obstruction" means, but is not limited to, any structure, excavation, fill or other materials placed in, along, across, or projecting into any channel, watercourse or floodway which may impede, retard, or change the direction of the flow of water either in itself or by catching or collecting debris carried by such water or that is placed where the flow of water might carry the same downstream to the damage of life or property.

"One hundred year floodplain" means the area inundated by a 100-year flood. A 100-year flood is estimated to have a one percent chance, or one chance in 100, of being equalled or exceeded in any one year.

"Perennial stream" means any stream mapped as perennial on either the 7 1/2' topographic maps published by the U.S. Geological Survey (latest revision) or the detailed map sheets in county Soil Surveys published by the U.S. Department of Agriculture, Soil Conservation Service, unless site specific information to the contrary is presented to and accepted by the Department.

"Person" means corporations, companies, associations, societies,

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firms, partnerships and joint stock companies, as well as individuals, the State, and all political subdivisions of the State or any agencies or instrumentalities thereof.

"Pools" means sections of stream that are deeper than immediately upstream or downstream sections and that have appreciably slower current. The stream bottom is usually a mixture of silt and coarse sand; the water depth exceeds two feet.

"Prohibited use" means a use which shall not be allowed under any circumstances.

"Projects of Special Concern" means stream encroachment projects which, because of their potentially serious adverse effects, will be subject to the special conditions described in N.J.A.C. 7:13-5.

"Regulated use" means any use which is subject to the provisions of the sections of this chapter dealing with regulated uses.

"Riffles" means sections of stream containing gravel or rubble in which surface water is at least slightly turbulent and current is swift enough that the surface of the gravel and rubble is kept fairly free from sand and silt.

"Soil Conservation District" means a political subdivision of the State of New Jersey authorized under N.J.S.A. 4:24-1 et seq.

"Solid waste" means garbage, sludge, refuse, trash, rubbish, debris or other discarded solid materials.

"State Soil Conservation Committee" means the agency created by article 3 of N.J.S.A. 4:24-1 et seq.

"Stream encroachment" means any structure, alteration, filling, construction or other activity within the area which would be inundated by the 100-year flood of any nondelineated stream or within the flood hazard area of a delineated stream.

"Stream Encroachment Permit" means a permit issued by the Department, delegated agency or municipality under the provisions of N.J.S.A. 58:16A-50 et seq.

"Structure" means any assembly of materials above or below the surface of land or water including, but not limited to, buildings, fences, except as provided in this chapter, dams, fills, levees, bulkheads, dikes, jetties, embankments, causeways, culverts, roads, railroads, bridges and the facilities of any utility or governmental agency. Trees or other vegetation shall not be considered to be structures.

"Trout-associated streams" means streams that are:

1. Trout production waters;
2. Trout maintenance waters;
3. Non-trout waters upstream from trout production waters (with or without intervening trout maintenance waters); or
4. Non-trout waters less than one mile upstream from trout maintenance waters that are not upstream from trout production waters.

"Trout maintenance waters" means the trout maintenance waters identified in the Department's Surface Water Quality Standards (N.J.A.C. 7:9-4).

"Trout production waters" means the trout production waters identified in the Department's Surface Water Quality Standards (N.J.A.C. 7:9-4).

"Trout stocked waters" means waters that are stocked with trout by the Department's Division of Fish, Game and Wildlife, as listed in the Fish Code adopted by the New Jersey Fish and Game Council.

#### 7:13-1.3 Construction

(a) This chapter shall be liberally construed to permit the Department to discharge its statutory functions.

(b) The Commissioner may amend, repeal or rescind this chapter from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et. seq.

#### 7:13-1.4 Applicability

(a) This chapter shall apply to all stream encroachments within the flood hazard area and 100-year floodplains within the State of New Jersey, at locations having a drainage area of over 50 acres and all Projects of Special Concern as defined in N.J.A.C. 7:13-5.

(b) This chapter will also apply to all perennial trout-associated streams.

(c) Activities otherwise encompassed by this chapter, that are located along tidal water bodies and segments of tidal water bodies on the following list, as identified on the 7 1/2' U.S. Geological Survey topographic maps, shall not be required to obtain a permit under this chapter, provided that the Division of Coastal Resources has issued a permit for the activity:

1. Atlantic Ocean.
2. All water bodies named on the U.S. Geological Survey 7 1/2' topographic maps as "bays", "canals", "coves", "guts", "harbors", "inlets", "sounds", "thorofares", and "channels", except for the portion of the Delaware River near Camden called "Back Channel".
3. All man-made lagoons and canals.
4. All sections of the "Intracoastal Waterway".
5. All streams south of Great Egg Harbor Bay and east of the Garden State Parkway to its end at the Cape May Canal except for Crooked Creek upstream from Stone Harbor Boulevard and Homes Creek.
6. Absecon Creek (Atlantic Co.): Absecon Bay to Absecon Blvd.
7. Alloway Creek (Salem Co.): Delaware River to Mill St.
8. Arthur Kill (Middlesex Co./Union Co.)
9. Ayers Creek (Cumberland Co.)
10. Back Creek (Cumberland Co.)
11. Bass River (Burlington Co.): Mullica River to Route 9.
12. Beach Creek (Cumberland Co.)
13. Beaverdam Creek (Ocean Co.): Barnegat Bay to Jordan Blvd.
14. Beaverdam Creek (N. Br.): Barnegat Bay to Route 88 (Ocean Co.).
15. Bidwell Creek (Cape May Co.): Delaware Bay to Route 47.
16. Big Creek (Ocean Co.)
17. Black Ditch (Salem Co.)
18. Cabin Creek (Cumberland Co.)
19. Cape Island Creek (Cape May Co.): Cape May Harbor to the Conrail Bridge.
20. Cedar Creek (Cumberland Co.) Delaware Bay to Main St. and Mulford Ave.
21. Cedar Creek (Ocean Co.): Barnegat Bay to Route 9.
22. Cedar Run (Ocean Co.): Little Egg Harbor to first bridge downstream from Route 9.
23. Cheesecake Creek (Middlesex Co.): Raritan Bay to 11,000 feet upstream of Garden State Parkway.
24. Cherry Tree Creek (Salem Co.)
25. Clam Creek (Atlantic Co.)
26. Cohansey River (Cumberland Co.): Delaware Bay to confluence with Rocaps Run.
27. Delaware River (Salem Co.): Delaware Bay to Delaware Memorial Bridge.
28. Dennis Creek (Cape May Co.): Delaware Bay to Route 47.
29. Dias Creek (Cape May Co.): Delaware Bay to Route 47.
30. Dinner Point Creek (Ocean Co.)
31. Dividing Creek and Tributaries (Cumberland Co.): Delaware Bay to Route 553.
32. Division Creek (Cumberland Co.)
33. Drumbo Creek (Cumberland Co.)
34. Dyer Creek (Cumberland Co.)
35. East Creek (Cape May Co.): Delaware Bay to Route 47.
36. Fishing Creek (Cape May Co.): Delaware Bay to Bay Shore Road.
37. Fishing Creek (Cumberland Co., Downe Twp.)
38. Fishing Creek (Cumberland Co., Greenwich Twp.)
39. Fishing Creek and tributaries (Salem Co.)
40. Flat Creek (Middlesex County)
41. Forked River, Middle and North (Ocean Co.): Barnegat Bay to Route 9 Branches.
42. Fortescue Creek (Cumberland Co.)
43. Goose Creek (Ocean Co.): Barnegat Bay to Fisher Blvd.

44. Great Egg Harbor River: Great Egg Harbor Bay to Atlantic County Route 50.  
 45. Green Creek (Cape May Co.): Delaware Bay to Route 47.  
 46. Hope Creek (Salem Co.)  
 47. Hudson River (Bergen Co./Hudson Co.)  
 48. Jacobs Creek (Cumberland Co.)  
 49. Kettle Creek (Ocean Co.): Barnegat Bay to Hooper Avenue.

50. Kill Van Kull (Hudson Co.)  
 51. Lone Tree Creek (Cumberland Co.)  
 52. Lower Deep Creek (Salem Co.)  
 53. Mad Horse Creek and tributaries (Salem Co.)  
 54. Manasquan River (Monmouth Co./Ocean Co.): Atlantic Ocean to Route 70.  
 55. Maurice River (Cumberland Co.): Delaware Bay to Route 548.  
 56. Melvins Creek (Middlesex Co.)  
 57. Metedeconk River (Ocean Co.): Barnegat Bay to Route 70.  
 58. Middle Marsh Creek (Cumberland Co.)  
 59. Middle River (Atlantic Co.)  
 60. Mill Creek (Salem Co., Elsinboro Twp.)  
 61. Mill Creek (Salem Co., Pennsville Twp.): Delaware River to Lighthouse Road.  
 62. Mott Creek (Atlantic Co.)  
 63. Mullica River (Atlantic Co./Burlington Co. Ocean Co.): Great Bay to Lower Road.  
 64. Nacote Creek (Atlantic Co.): Mullica River to Old New York Blvd.  
 65. Nantuxent Creek (Cumberland Co.)  
 66. Navesink River (Monmouth Co.): Shrewsbury River to Coopers Bridge.  
 67. Oranoaken Creek (Cumberland Co.)  
 68. Oyster Creek (Ocean Co.) Barnegat Bay to Route 9.  
 69. Padgetts Creek (Cumberland Co.)  
 70. Riggins Ditch (Cumberland Co.): Delaware Bay to Route 47.  
 71. Salem River (Salem Co.): Delaware River to confluence with Salem Canal.  
 72. Shark River (Monmouth Co.): Atlantic Ocean to confluence with Laurel Gully Brook.  
 73. Shore Ditch (Salem Co.)  
 74. Shrewsbury River (Monmouth Co.): Sandy Hook Bay to Seven Bridge Road.  
 75. Sluice Creek (Cape May Co.): Delaware Bay to Route 47.  
 76. South River (Atlantic Co.): Great Egg Harbor River to Route 50.  
 77. Sow and Pigs Creek (Cumberland Co.)  
 78. Stow Creek (Cumberland Co./Cape May Co.): Delaware Bay to Canton Road.  
 79. Straight Creek (Cumberland Co.)  
 80. Straight Ditch (Salem Co.)  
 81. Stump Creek (Middlesex Co.)  
 82. Toms River (Ocean Co.): Barnegat Bay to Route 9.  
 83. Tuckahoe River (Atlantic Co./Cape May Co.): Great Egg Harbor Bay to Route 557.  
 84. Tuckerton Creek (Ocean Co.): Little Egg Harbor to Route 9.  
 85. West Creek (Cape May Co.): Delaware Bay to Route 47 Cumberland Co.  
 86. Westcunk Creek (Ocean Co.): Little Egg Harbor to Route 9.  
 87. Whale Brook (Middlesex Co./Monmouth Co.): Raritan Bay to Route 35.

(d) This chapter shall not apply to activities along the Delaware and Raritan Canal except insofar as such activities affect streams that flow into, over, under, or parallel to the canal.

#### 7:13-1.5 Program information

Information and forms relating to the stream encroachment permitting process may be obtained from:

Bureau of Flood Plain Management  
 Department of Environmental Protection  
 Division of Water Resources  
 CN 029  
 Trenton, NJ 08625  
 (609)292-2402.

#### 7:13-1.6 Other State statutes, rules and regulations

The powers, duties, and functions vested in the Department under the provisions of the Act or these regulations shall not be construed to limit in any manner the powers, duties, and functions vested therein under any other provisions of law except as specifically set forth in this chapter.

#### 7:13-1.7 Severability

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

#### 7:13-1.8 Establishment of 100-year flood plain zones and encroachment lines

(a) On non-delineated streams, the boundaries of 100-year flood plains and encroachment lines may be established accurately by technical engineering methods described in the Manual. If such computations have not been made, the limits of the 100-year flood plain may be established by comparison, where available, with the following:

1. Maps adopted pursuant to the National Flood Insurance Program;

2. United States Army Corps of Engineers lines of area inundated by 100-year flood; and

3. Actual area inundated by maximum flood of record.

(b) On non-delineated streams, in the case of minor or stream cleaning projects, if none of the methods in (a) above are used, the encroachment line may be taken as a smoothed line not extending closer to the bank of the stream than a distance twice the distance between banks.

(c) For major projects or Projects of Special Concern, an analysis and determination of the 100-year flood plan, as described in the Manual, will be necessary to be submitted by the applicant.

### SUBCHAPTER 2. GENERAL PROCEDURES FOR THE STREAM ENCROACHMENT PERMITTING PROCESS

#### 7:13-2.1 Required information for all applications submitted to the Department

(a) The application form must be completed by the applicant or his agent including all signatures and seals. Notarization is not necessary.

(b) The engineering data sheet must be completed and all required information required by the engineering data sheet for the type of project must be supplied.

(c) The fee as required by the 90-day rules.

(d) Certification of notification required by N.J.A.C. 7:13-2.2, for major projects and projects of special concern must be included with the application.

(e) Five sets of plans prepared in accordance with the requirements outlined on the Engineering Data Sheet.

(f) Hydrologic and hydraulic computations (for major projects only) must be supplied as outlined in the Engineering Data Sheet.

(g) Except for applications by government agencies, easements or other property rights must be obtained before the Department will approve an application where any work is outside of the applicant's property or physically affects other properties.

#### 7:13-2.2 Notice

(a) The applicant shall provide proof of notice with an

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application for a stream encroachment constituting a major project or Project of Special Concern with a request for a hardship exemption or with an appeal from the decision of the Department. The notice shall include a description of the nature and location of the proposed project and data on the application. It shall be sent to the following:

1. Municipal Planning Board, Engineer, Environmental Commission, and Clerks Office where the project is located. Also the municipality, if any, across the stream and the municipality next downstream on both sides of the waterway, if within one mile of the project must be notified;

2. All abutting property owners;
3. County Planning Board;
4. The Soil Conservation District; and
5. Any other agencies or bodies as requested by the Department or the county.

(b) Notice sent pursuant to the 90-day rules or the MLUL to the above listed parties will satisfy the requirement of this section.

(c) For Projects of Special Concern, an advertisement is required as indicated in N.J.A.C. 7:13-5.3(b).

**7:13-2.3 Pre-application conference**

(a) A pre-application conference is suggested and may be requested by the applicant, his agent or his engineer to meet with one of the representatives of the Bureau to discuss the requirements for preparation of a specific application.

1. Minutes of the conference will be kept by the Bureau.
2. When the application is submitted, it shall make reference to the date and parties present at any such conference.

(b) A pre-application conference may also be used to deliver an application to the Bureau to be checked for completeness and accepted for review.

(c) A pre-application conference will be scheduled by appointment only.

**7:13-2.4 Over the counter permit processing**

A one day processing service may be provided for certain minor stream encroachment applications as provided for in the 90-day rules.

**7:13-2.5 Optional review for projects in small drainage areas**

(a) When a project site is at a point along a stream or waterway with a small contributory drainage area, as defined in (b) below, approval from the municipal or county engineer, or any appropriate professional engineer for a State agency project, may be obtained as an alternative to submitting a stream encroachment application to the Department, provided that approval authority is not specifically reserved to the Department by this chapter and that the review is approved by the Department.

(b) The drainage area for a major project must be less than 150 acres and the drainage area for a minor project must be less than 320 acres to qualify for this approval process. Projects in flood plains will be construed to be within the drainage area which causes the flood plain.

(c) After municipal or county review a letter must be submitted to the Bureau by the approving authority specifically addressing the following points:

1. The project must conform to the criteria of this chapter;
2. The drawings being approved must be listed by title block, page, original date and any revision date; and
3. The drainage area to the downstream-most point must be noted.

(d) The letter must state that the review is subject to Department approval. A copy must be sent to the Department and must be accompanied by two sets of plans prepared by the applicant or his designee so that the Department may approve such review.

**7:13-2.6 Optional Soil Conservation District Review**

Certain farming practices which would otherwise constitute stream encroachments may be reviewed by the local Soil

Conservation District in conformance with the agreement entered into between the DEP and State Soil Conservation Committee in September 1978 entitled "Stream Encroachment Permit Procedures for Soil Conservation District Projects" and any subsequent amendments thereto. The Soil Conservation District approval letter recommending approval and engineering plans are to be forwarded to the Department.

**7:13-2.7 Emergency permit waiver**

(a) Situations which threaten the public health, safety and welfare and require emergency work will be considered by the Department under the following procedure:

1. Inform the Bureau by telephone as to the extent of work to be performed, the reason for the emergency and the location of the project.

2. Perform the emergency work upon verbal approval of the Bureau Chief, which approval shall be verified by the Department in writing within three working days. The Bureau Chief or one of the staff engineers shall offer guidance and instructions in performing the work.

3. After the work has been completed in accordance with the Department's instructions, a stream encroachment application with appropriate fees and "as built" drawings shall be submitted to the Bureau for review. A letter shall then be issued by the Bureau in lieu of a stream encroachment permit.

**7:13-2.8 Permit application review procedures by the Department**

(a) A maximum of 20 working days from the receipt of the application will be allowed for preliminary review of the application for completeness. During this period the Department will either accept the application for review, which will begin the 90-day review period, or reject the application for incompleteness and inform the applicant in writing of the information necessary to complete his application.

(b) The 90-day review period begins on the day a project number is assigned and the application is accepted for review. At this time an acknowledgment letter is sent to the applicant. During the 90-day review period, the Bureau may:

1. Request additional information from the applicant.
2. Schedule a fact-finding meeting for Projects of Special Concern or other projects.
3. Approve the application.

i. The applicant will receive a permit which will specify how long it will be effective. This will generally be for a period of two years from the effective date of the permit. However, the Department reserves the right to issue the permit for any period of time.

4. Conditionally approve the application.

i. All conditions specified in the conditional permit must be complied with or the permit may be rescinded.

5. Deny the application.

i. Denial with prejudice is a disapproval of the project.

ii. Denial without prejudice is a disapproval of the application. However, a subsequent revised application by the same applicant for the same project on the same site may be submitted within one year of the date of disapproval without additional fees.

6. Grant a 30-day extension of time to the 90-day review period, if agreed to by both parties, provided that the applicant or the Bureau request from the other such an extension at least 15 days prior to the expiration date for the approval or disapproval of such an application.

(c) In the event of a denial of a stream encroachment application where no hardship was initially claimed the applicant may submit a petition for reconsideration of that decision on the basis of a hardship without the payment of an additional fee. The Department shall have 90 days to review the petition.

**7:13-2.9 Hardship waivers**

(a) A waiver from strict compliance with the requirements of this

chapter may be granted by the Department for any of the following reasons:

1. Cases in which the Department determines that there is no feasible and prudent alternative to the proposed project, including the no-action alternative, which would avoid or substantially reduce any anticipated adverse effects and where the waiver is consistent with the reasonable requirements of the public health, safety and welfare; or

2. Cases in which the Department determines that there is an unreasonably disproportionate relationship between the benefits to be achieved by impairing strict compliance and the added cost of the requirements; or

3. Cases in which the Department and applicant agree to alternative requirements that, in the judgment of the Department, provide equal or better protection to the public health, safety and welfare.

(b) No such waiver shall be granted without advance public notice and, where demanded or necessary, a fact-finding meeting. These requirements may be waived in emergency situations as determined by the Department.

(c) Except as otherwise provided in this chapter, a delegated agency may grant waivers in accordance with this subsection.

(d) In order for the Department to consider a hardship waiver the applicant must demonstrate the following:

1. That by reason of the extraordinary or exceptional situation or condition of the property, the strict enforcement of this subchapter would result in exceptional and undue hardship upon the applicant in question;

2. That the waiver will not substantially impair the appropriate use or development of adjacent property and will not pose a threat to the public health, safety, and general welfare;

3. That the hardship is unique or peculiar to the applicant; and

4. That the exceptional or undue hardship claimed as grounds for the waiver has not been created by the applicant.

(e) The applicant shall submit to the Department with an application for a hardship waiver as much of the following information as is relevant to the project:

1. A plan for flood proofing, the implementation of which shall be a condition of the waiver;

2. Proof that appropriate steps shall be taken to anchor materials in order to prevent flotation, collapse, or lateral movement;

3. The relationship of the proposed project to the comprehensive land use plan and flood plain program for the area;

4. Proposed routes to and from the property during flood times;

5. The projected height, velocity and duration of the flood waters expected at the site during the Design Flood;

6. The type of soil located at the proposed site;

7. A statement concerning the land use and value absent the granting of the hardship waiver;

8. Information regarding the existing development of the area and the impact of the additional work;

9. Evidence that the project will not distort the stream's flood carrying capacity so as to cause substantial problems along the stream; and

10. An analysis of the extent to which the sediment regimen and water quality of the stream will be affected by the proposed exemption with consideration of possible effects upon the environment.

(f) The applicant shall also submit proof of required public notice for consideration of a hardship waiver as required by N.J.A.C. 7:13-2.2.

(g) The applicant shall submit the request for an waiver along with the appropriate documentation to the Department.

1. The Department shall notify the applicant of the results of its review within 90 days.

2. Before making a decision, the department may request that additional information and/or documentation be supplied. When additional information is not provided by the applicant as requested, the waiver will be denied.

(h) If the material submitted to the Department by the applicant in support of the petition for a hardship waiver does not satisfactorily demonstrate that a hardship waiver is warranted, the Department shall so notify the applicant by letter advising the applicant that the petition for a hardship waiver has been denied by the Department and shall also state the reasons for this denial.

(i) The denial of an waiver shall be treated as the denial of an application without prejudice.

(j) A hardship waiver granted pursuant to this section does not relieve the applicant from obtaining any other approvals, certifications or permits required by Law.

#### 7:13-2.10 Post-review procedures by the Department

(a) Extension of time for permit: Permits may be extended beyond the two year period for a maximum of five years, granted in one year increments.

1. Requests shall be made in writing to the Department before the permit has expired and shall include the permit number and fee as specified in the 90-day rules.

2. The applicant will then be informed in writing of the new time limit of the permit.

(b) Modification in detail: Approved plans may be modified in detail at the request of the applicant. Five sets of plans accompanied by a letter requesting the modification and a fee as specified in the 90 day rules are required for this procedure.

1. Only items already approved on the original permit can qualify for this procedure.

2. Any new structures, major channel modifications or major changes in the hydraulic capacity of a structure cannot be allowed and a new application for a permit must be submitted for this work.

#### 7:13-2.11 Appeal procedure to the Department

(a) The applicant or any person alleging to be adversely affected by the Department's decision shall have a right to apply for a hearing thereon pursuant to N.J.A.C. 1:1 (Uniform Administrative Procedure).

(b) Such a hearing request shall be accompanied by proof of publication or pending publication of the request for the appeal in a newspaper of local circulation.

(c) For 30 days following receipt of the request for a hearing the Department may attempt to settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate or deny the appeal if it is found to be without merit. The 30 days may be extended upon agreement of all parties.

#### 7:13-2.12 Permit application review by delegated agencies

When authority to approve certain types of stream encroachments is delegated by the Department to another agency under provisions of this chapter and the Act, the standards and criteria of this chapter shall remain applicable. However, procedures for submission of information may be simplified to the extent permitted by the greater availability of information and greater ease of verification of questioned points by delegated agencies.

### SUBCHAPTER 3. GENERAL STANDARDS FOR PERMITTING STREAM ENCROACHMENT WITHIN THE FLOODWAYS OF DELINEATED STREAMS AND WITHIN ENCROACHMENT LINES OF NONDELINEATED STREAMS

#### 7:13-3.1 Prohibited uses

(a) No person shall engage in or cause other persons to engage in any of the following prohibited uses within the delineated floodways and within the encroachment lines of non-delineated streams of the State.

1. Placing, depositing or dumping any solid or hazardous waste;

2. The erection of structures for occupancy at any time by humans

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or livestock, and the erection of kennels for the boarding of domestic pets;

3. The discharge (except as authorized under other provisions of law), processing, storage or disposal of pesticides, domestic or industrial wastes, radioactive materials, petroleum products or other hazardous materials;

4. The storage of materials or equipment;

5. The construction of septic systems;

6. The addition of net fill.

(b) Exceptions to (a) above are as follows:

1. Lawful pre-existing prohibited uses may be maintained provided that if they are expanded or enlarged that they do not increase the flood damage potential.

2. Lawful pre-existing prohibited structures damaged by any means other than flooding may be restored provided that:

i. Any expansion or enlargement will not decrease the flood carrying capacity of the stream; and

ii. Efforts are made to provide floodproofing or other similar techniques to minimize future flood damage.

3. Lawful pre-existing prohibited structures damaged by flooding may be restored provided that:

i. Any expansion or enlargement will not decrease the flood carrying capacity of the stream;

ii. The owner submits an application together with drawings of the proposed reconstruction and the application is approved by the Division; and

iii. Plans for the proposed reconstruction include provisions for floodproofing or other similar techniques designed to minimize future flood damage to the structure from the occurrence of the flood hazard area design flood.

4. Lawful pre-existing sanitary landfills may be expanded vertically provided that:

i. No horizontal expansion is made;

ii. The side slopes of the landfill shall not be steeper than a ratio of two horizontal to one vertical;

iii. Adequate soil erosion and sediment control measures are taken;

iv. The flood damage potential is not increased; and

v. The other applicable provisions of law are complied with.

5. Bridges shall be handled on a case-by-case basis.

**7:13-3.2 Non-regulated uses**

(a) For purposes of this section, non-regulated uses are uses which:

1. Do not require fill borrowed from outside the floodway or encroachment lines;

2. Do not require erection of structures;

3. Do not require channel modification or relocation;

4. Do not obstruct flood flows;

5. Do not affect the flood carrying capacity of any stream;

6. Are undertaken with full on-site flood damage risks accepted by the owner;

7. Do not increase offsite flood damage potential; and

8. Do not constitute a Project of Special Concern.

(b) Non-regulated uses which satisfy the conditions of (a) above shall include, but not be limited to:

1. Lawns, gardens and play areas;

2. Private and public recreation uses: Playing fields, picnic grounds, swimming areas, parks, wildlife and nature preserves, game farms, hunting and fishing areas, shooting preserves, bike paths, and hiking and horseback riding trails.

3. Agriculture uses: General cultivation, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.

i. Additionally, specific soil conservation practices such as terracing, construction of diversions, subsurface tile drainage and the construction of grassed waterways and dug ponds will be considered nonregulated uses, but only when designed and constructed under the immediate supervision of the appropriate

County Soil Conservation District Office and the local U.S.D.A. Soil Conservation Service.

ii. Single strand fences associated with these agricultural uses are nonregulated.

(c) Irrigation head gates along stream banks are non-regulated uses when approved by a certification issued by a County Agricultural Agent, pursuant to N.J.A.C. 7:20A-1.

**7:13-3.3 Regulated uses**

Any activity not specifically prohibited or non-regulated by N.J.A.C. 7:13-3.1 or 3.2 or the Act, shall be a regulated use and be subject to the applicable provisions of this chapter.

**7:13-3.4 Soil erosion and sediment control**

(a) Soil erosion and sediment control measures are required on all submissions under the jurisdiction of the Act if such submissions:

1. Require modification of the stream channel or stream bank(s);

2. Require disturbance of more than 1,000 square feet of the surface area of land within 50 feet of the stream bank of trout associated streams and 25 feet of the stream bank for all other streams.

3. Require disturbance of more than 5,000 square feet of the surface area of land.

(b) The latest revised version of the "Standards for Soil Erosion and Sediment Control in New Jersey" promulgated by the New Jersey State Soil Conservation Committee pursuant to the Soil Erosion and Sediment Control Act of 1975 as amended, N.J.S.A. 4:24-42 et seq. and N.J.A.C. 2:90-1.3 et seq., shall be used in the preparation and submission of Stream Encroachment Applications.

(c) The following additional soil erosion and sediment control requirements shall also be met:

1. The area of soil disturbance shall be no larger than that which is necessary for the conduct of the project.

2. Soil disturbance schedules shall be formulated to provide minimum practicable exposure of soils to erosion.

3. If erosion and sediment control measures such as diversions, sediment basins, or sediment barriers, whose purpose is to divert surface runoff before it reaches exposed soil or to intercept sediment eroded from exposed soil, are part of the erosion and sediment control plan for the project, such measures shall be installed prior to any major soil disturbance or in their proper sequence to minimize sediment delivery to waterways. All soil erosion and sediment control practices shall be left in place until the soil is stabilized by vegetation or engineering measures.

4. Disturbed soil on the banks of waterways shall be protected within 48 hours of disturbance by rip-rap, sandbags, sod, or approved mulch netting, as conditions warrant, in accordance with the "Standards for Soil Erosion and Sediment Control."

i. Asphalt or other liquid binders shall not be sprayed for mulch anchoring in such areas.

ii. Calcium chloride or spray-on adhesives shall not be applied for dust control in such areas.

5. In areas where vegetative methods (including "mulch only") are relied on for erosion and sediment control (without down slope controls to intercept sediment such as sediment basins or sediment barriers), seeding, mulching, or placement of sod shall be performed within 48 hours of soil exposure in accordance with the "Standards for Soil Erosion and Sediment Control". Seeding shall, in such areas, always be accompanied by mulching.

i. If weather conditions are unfavorable for seeding, sod placement, or the subsequent establishment of such vegetation, the area shall be mulched within 48 hours of soil exposure in accordance with the "Standards for Stabilization with Mulch Only" in the "Standards for Soil Erosion and Sediment Control".

ii. Slopes exceeding 15 percent (in areas without downslope sediment controls) shall be protected within 48 hours of soil exposure by special treatment such as water diversion berms, sodding, or approved mulch netting, in accordance with the "Standards for Soil Erosion and Sediment Control".

6. Pumping of sediment-laden water from the dewatering of trenches or other excavations directly into waterways is prohibited.

i. Wherever possible, pumpage shall be piped to sediment basins or sediment barriers that meet the "Standards for Soil Erosion and Sediment Control", or mechanical filtration or sedimentation devices shall be used to minimize the discharge into waterways of sediment in pumpage.

ii. Pump intakes shall be placed near the water surface to minimize the sediment content of pumpage.

iii. Special approval may be granted for the pumpage to be spread onto land as far from the stream bank as possible, providing that care is taken to avoid damaging trees not scheduled for removal.

(d) When a certification is given by a SCD or exempt municipality that a plan meets both the "Standards for Soil Erosion and Sediment Control in New Jersey" and the additional requirements contained in this section, said certification shall be accepted by the Department or delegated agency as satisfying the requirements of this section.

#### 7:13-3.5 Protection of near-stream vegetation

(a) Trees, shrubs, grasses, and other vegetation within 25 feet of the stream bank shall not be disturbed except where necessary for the conduct of the project. Where possible trees shall be left standing. Brush and stumps shall not be removed except for the purpose of landscaping. Construction shall be performed from one stream bank where possible, leaving vegetation on the opposite bank. Where there is a practical choice, access roads to worksites shall not be constructed along shoreline routes.

(b) Vegetative waste from construction shall not be disposed of in the floodway or within the encroachment lines. This prohibition shall not apply to vegetative mulches applied for soil erosion and sediment control. However, waste mulch, which is no longer serving to control erosion or sediment, shall not be disposed of in channels or on waterway banks.

#### 7:13-3.6 Stream cleaning

(a) Stream cleaning permits may be issued for projects which involve the removal of no more than two feet in depth of material as specified in (c)3iii below and such removal is restricted to the channel bed alone. These projects involve de-snagging, silt or sediment removal or removal of only logs, leaves and debris, and removal shall not extend below the natural stream bed.

(b) Governmental agencies may obtain yearly permits by submitting a stream encroachment application for all the streams where stream cleaning is planned within the upcoming year. If additional streams require maintenance or de-snagging within the year, a modification in detail to the original permit is necessary and the necessary information must be submitted to the Department.

(c) The required information for stream cleaning applications is the same as that outlined in N.J.A.C. 7:13-2.1. In addition, the following information is required:

1. A narrative which includes the following:

- i. Description of project area;
- ii. Need for project;
- iii. Methods of excavation; and
- iv. Methods of spoil disposal and soil erosion and sediment control.

2. Color photographs of the stream(s).

3. Plan drawing showing the limits of work for each affected reach of stream and a typical cross-section sheet showing the extent of proposed work.

i. When a Mosquito Commission is the applicant, drawings may be signed by a Mosquito Commission superintendent.

ii. A United States Geological Survey 7 1/2' topographic map may be submitted for the plan drawing, however, the requirements for the drawing shall still be adhered to.

iii. The following provisions must be noted on the drawings:

"The maximum amount of material to be removed from the stream bed or ditch shall not exceed two feet in depth and shall be

restricted to the channel bed alone. Removal shall not extend below the natural stream bed."

"Stream cleaning within two hundred (200) feet of any government structure in the channel shall be under the direct supervision of the appropriate government engineer or his agent. Care shall be exercised to avoid any structural damage within such limits."

"No heavy equipment shall be operated within the channel section. Removal of materials from the watercourse shall be performed by one of the following:

- 1) dragline
- 2) backhoe
- 3) clamshell
- 4) hydraulic dredge
- 5) hand labor"

iv. Deviation from these methods will be considered by the Department in special cases.

(d) Spoil disposal methods and soil erosion and sediment control techniques shall comply with the provisions of this chapter.

(e) Municipalities which administer a stream encroachment program in flood fringe areas under provisions of N.J.A.C. 7:13-4 may also, at their option, review and recommend approval for stream cleaning permits within their boundaries.

#### 7:13-3.7 Excavation

(a) All projects involving permanent excavation within the 100-year floodplain or flood hazard area shall not have cut faces at slopes steeper than a ratio of two horizontal to one vertical.

(b) Excavation projects shall not be so deep as to affect any wells in the surrounding areas or to cause any groundwater pollution.

(c) The Department may require information, and set conditions, concerning the character, excavation methods and disposal sites of any excavated materials.

#### 7:13-3.8 Disposal of spoils

(a) Disposal shall be prohibited within the floodway or encroachment lines of any stream, any wetlands, or within any surface waters to which this chapter applies, except in stream cleaning projects, or disposals specifically authorized by individual permit pursuant to the Federal Clean Water Act (33 U.S.C. 466 et seq.).

(b) Where materials removed by stream cleaning cannot be feasibly removed from the site, a description of the method of disposal shall be indicated on the plan.

1. A minimum 15-foot buffer zone from the top of banks shall be established wherein no spoilage shall be placed. The buffer zone shall remain as natural as possible with only selective tree removal being permitted. Brush and trees less than 4 inches in diameter may be selectively cleared to provide access through the buffer zone.

2. The material being disposed of must be spread evenly.

(c) Any disposal in the flood hazard area or within the 100-year floodplain should not inhibit the drainage of the area. Such spoil material must be stabilized within 48 hours according to the "Standards for Soil Erosion and Sediment Control". Details of the methods of stabilization shall be included on the plan.

#### 7:13-3.9 Retention and detention basins

(a) No off-stream detention or retention basin is to be located in the floodway or within the encroachment lines.

(b) Any on-channel retention and detention basins for storm water management within the floodway or within encroachment lines shall be submitted to the Department for a permit and be constructed in accordance with criteria of the State Storm Water Management Regulations (N.J.A.C. 7:8).

(c) If the municipal ordinances are not in full compliance with said storm water regulations, the plans for the basin shall be submitted to the Department for approval as part of the stream encroachment application. If such a local ordinance does exist, a copy of the approval by the local municipality or county shall be submitted.

**7:13-3.10 Channel modification**

(a) Channelization of existing streams and stream relocation are discouraged except when necessary to control existing flooding problems or where carefully planned to restore or improve environmental values. Any channelization or relocation project which involves more than 100 feet of stream is a Project of Special Concern unless it is associated with the construction or maintenance of a bridge or culvert, in which case the limits are 300 feet on either side of the structure.

(b) If any change in stream bed grade or cross section is made, the channel shall be stabilized where the change takes place in a manner so that no erosion will occur at either high or low flows. In addition, care must be taken to ensure that if a change in slope causes a hydraulic jump to occur just downstream of the constructed area, proper channel protection is provided.

**7:13-3.11 Underground utility crossings**

(a) Underground utility crossings include, but are not limited to, electric cables, telephone cables, sanitary sewer lines, water lines, gas mains, petroleum pipelines and other pipes carrying various types of materials.

(b) Basic criteria for underground utility crossings:

1. Vertical clearance: In general, the top of pipe or encasement shall be at least three feet below the stream bed. In special circumstances, such as hard rock bottoms, this may be varied with the approval of the department.

2. Encasement: Sanitary sewer, petroleum product and gas lines shall be encased in six inches of concrete or a larger steel pipe for protection. The encasement requirement may be waived if a minimum of four feet of cover is maintained for as long as the crossing is in use.

3. Horizontal clearance: The crossing should be horizontal under the stream, and the pipe or encasement should extend a minimum of 10 feet beyond the top of banks. This may also be varied in special circumstances by the department.

4. Slopes: The inclined leg of the crossing should not be steeper than a ratio of one vertical to two horizontal unless a special justification is shown.

5. Manholes: If manholes are to be located in the floodway or within the encroachment lines, the top of the manhole shall be flush with the ground and shall have a watertight manhole cover.

6. Cables: For large or tidal channels, a cable may be laid directly on the stream bed. The cable should be laid with slack so as to be readily moveable.

7. Trenches: The width of trenches for installation of underground utilities shall be limited to the minimum necessary to permit installation.

**7:13-3.12 Aboveground utility crossings**

(a) Cables or pipes may be attached to a bridge above the lowest member crossing the stream. However, if it is on the outside of the structure it is preferable that the crossing be located on the downstream face of the structure.

(b) Cables or pipes will generally not be approved if they are to be located within a culvert or bridge opening. However, special consideration will be given if no other alternatives exist.

(c) Aerial crossings should be at least one foot above the 100-year flood elevation and shall be protected to prevent damage. Such applications will be treated on a case-by-case basis.

(d) Electric and telephone aerial crossings are usually high enough above the waterway so that the Bureau will not require a stream encroachment permit.

1. However, if the towers are to be located in the floodway or within encroachment lines it will be necessary for the Bureau to review the plans for the tower.

2. Poles for the support of aboveground utilities shall be adequately anchored to withstand flood flow forces and erosion.

**7:13-3.13 Stability of structures**

(a) All structures to be placed or construction to be undertaken in the floodway or within the encroachment lines shall be stable.

(b) Particular attention shall be paid to stability to resist soil and frost pressures, and footings, if required, shall be placed well down so as not to be undermined by streambed degradation. For any wall or structure extending vertically four feet or more above the stream bed, a stability analysis by a licensed professional engineer will be required.

**7:13-3.14 Fish passage**

(a) The following fish passage requirements apply to channel modifications at bridges, culverts (including upstream and downstream transition zones), to channelization projects, to stream cleaning projects, and to other channel modifications (excluding dams).

1. Any new or modified channel of a perennial stream shall, where practicable as determined by the department or delegated agency, be designed and constructed in such a manner so that during low flow conditions the water depth is at least as deep as in the existing channel or 10 inches deep, whichever is less.

2. Exceptions to the requirement in (a)1. above shall not be granted by any delegated agency, but shall be considered by the Department if:

i. The existing channel does not allow for the upstream passage of fish during low flow conditions; or

ii. Fish passage in the particular channel segment is irrelevant because of upstream or downstream conditions unfavorable to fish passage; or

iii. Other conditions such as public need or extreme hardship make this requirement impracticable.

**7:13-3.15 Dams**

(a) Any dam which raises the waters of a stream five feet or less above its usual mean low-water height is under the jurisdiction of this chapter. Dams greater than five feet in height fall under jurisdiction of N.J.S.A. 58:4, the requirements of that legislation shall be met, and no permit under this chapter for the dam structure shall be required.

(b) The stability of a low-dam shall be assured by compliance with this subchapter.

(c) Any backwater created by a 100-year storm passing the dam shall be contained within the applicant's property unless written consent is obtained from all affected property owners. Effects on both surface water and groundwater shall be considered.

(d) In addition to the above, it is unlawful to construct a dam in any water of this State which is a runway for migratory fish without installing a fish ladder or other contrivance to permit the fish to pass the dam in either direction (see: N.J.S.A. 23:5-29.1). This provision is applicable to dams of any size.

1. The determination of whether a stream is currently a runway for migratory fish is made by the Department's Division of Fish, Game and Wildlife during the Department's review of the stream encroachment application.

2. Applicants are encouraged to discuss the matter with the Bureau and the Division of Fish, Game and Wildlife prior to filing the application.

**7:13-3.16 Minimizing of environmental damage**

(a) Consideration shall be given to short or long term primary environmental effects of any stream encroachment whether or not it is classified or handled as a Project of Special Concern.

(b) Stream encroachment projects shall be carried out in such a manner that the pollution, impairment, or destruction of the environment of the flood hazard area is minimized to the extent practicable. Federal, State, or local statutes, regulations and ordinances designed to minimize or prevent such damage shall be complied with.

**SUBCHAPTER 4. REGULATION OF STREAM ENCROACHMENTS IN THE FLOOD FRINGE AREA OF DELINEATED STREAMS AND BETWEEN THE ENCROACHMENT LINES AND THE BOUNDARIES OF THE 100-YEAR FLOOD PLAIN OF NON-DELINEATED STREAMS**

**7:13-4.1 General provisions**

(a) The following governs minimum standards for the development and use of land in the flood fringe area, and outside the encroachment lines but within the 100-year flood plain of non-delineated streams, and the procedures to be followed by all affected local agencies.

(b) Under provisions of this subchapter, the Department shall administer the program of stream encroachment permits for non-delineated streams outside the encroachment lines but within the 100-year flood plain. This subchapter shall also apply to delineated streams for which a compliant ordinance has not been adopted within the time period allowed by the Act, or, having been adopted, has later been found by the Department to be noncompliant by reason of modification or non-enforcement.

(c) Lawful pre-existing prohibited structures damaged by any means other than flooding may be restored provided that:

- i. Any expansion or enlargement will not increase the flood damage potential; and
- ii. Efforts are made to provide floodproofing or other similar techniques to minimize future flood damage to the structure.

(d) Lawful pre-existing prohibited structures damaged by flooding may be restored provided that:

1. Any expansion or enlargement shall not increase the flood damage potential;
2. The owner submits an application together with drawings of the proposed reconstruction and the application is approved by the Division; and
3. Efforts are made to provide floodproofing or other similar techniques to minimize future flood damage to the structure.

**7:13-4.2 Municipal responsibilities and procedures, flood fringe area**

(a) Each municipality shall adopt and enforce a flood fringe area ordinance complying with the minimum standards set forth in this subchapter. Although not required by this subchapter, in order to be in compliance with the National Flood Insurance Program, the ordinance should include in that ordinance the Federal "Criteria For Land Management and Use", 44 CFR 603(a) through (d). The ordinance may be more restrictive but shall not be less restrictive than this subchapter.

1. When adopted the Flood Fringe Area Ordinance shall take precedence over any existing ordinance establishing standards less restrictive than the Flood Fringe Area Ordinance.

2. Any ordinance adopted subsequent to the adoption of the Flood Fringe Area Ordinance or modifications of pre-existing ordinances or sections thereof shall not diminish the effect of the Flood Fringe Area Ordinance.

(b) If a municipality fails to adopt a compliant ordinance effective within 12 months after promulgation of this subchapter or within 12 months after the adoption of a delineation of the flood fringe area by the Department, whichever is later, or if a municipality having adopted a compliant ordinance shall subsequently modify it so that it becomes noncompliant, then the Department may apply these flood fringe area rules and enforce this subchapter in the noncompliant municipality.

(c) The municipality shall submit three copies of its Flood Fringe Area Ordinance to the Bureau and a copy to the County Planning Board immediately upon its adoption.

(d) Each municipality shall notify the Bureau when it has adopted its Flood Fringe Area Ordinance and every time said ordinance is amended or modified.

(e) For municipalities whose ordinances, even though previously approved, have been determined to be noncompliant, the Department shall act upon stream encroachment applications in the flood fringe area and shall collect the fees thereon.

(f) A municipality may grant variances to standards and criteria of this subchapter pursuant to ordinance or resolution. In all such cases, an information copy of the action taken, giving reasons, shall be furnished to the Bureau, within one month from the date of the action.

**7:13-4.3 Applications to local agency**

(a) Upon adoption of a compliant municipal ordinance or upon delegation pursuant to this subchapter the local agency shall be responsible for processing all applications, issuing all permits, and enforcing all permit conditions and the procedures thereof in accordance with the requirements of this chapter and within the authority delegated.

(b) The local agency shall provide standard forms and procedures for all applications and a Docket Number to identify each application. This Docket Number shall be clearly marked on all correspondence and submissions related to the application.

(c) The local agency shall require at least one copy of the application, including detailed drawings of the project showing the floodway line and the flood fringe line, and of any additional information required to be kept on file for public review.

(d) The local agency shall within 20 days of receipt of the application either:

1. Declare the application complete for the purpose of making a review for determination and decision; or
2. Return the application as unacceptable for further review. The applicant shall be notified in writing of the reasons for such action; or
3. Request in writing that the applicant submit, within a specific period of time, additional information to assist in its review.

4. If the local agency fails to act on the application within 20 days, it shall be deemed complete.

(e) When the application is deemed complete, the local agency shall provide for public notice and review. One copy of the application and other submitted information and a Fact Sheet stating the following shall be made available for public review:

1. The docket number;
2. The applicant;
3. The date the application was declared complete by the local agency;
4. The date by which interested parties may submit comments concerning the application. Such date shall be 30 days from the date the application is declared complete; and
5. The date by which the local agency shall approve, condition, or disapprove the application.

(f) The local agency shall render its decision and notify the applicant in writing within 90 days after the date the application is declared complete as follows:

1. Approval: By issuance of a stream encroachment permit.
2. Conditional approval: By issuance of a stream encroachment permit with conditions.
3. Disapproval: By issuance of a letter citing the reasons for disapproval.

(g) If the local agency fails to render a decision within 90 days after the date the application is declared complete the application shall be deemed approved.

(h) The local agency shall notify all persons who have submitted comments concerning the application of the decision within five working days after the decision.

(i) To give persons who may object to the issuance of the permit time to appeal, the permit shall not be valid until 15 days following issuance of the permit.

**7:13-4.4 Appeals and hearings in the flood fringe area**

(a) The municipality shall establish appeal procedures for

applications in the flood fringe area which shall provide a fair hearing for persons aggrieved by the municipality's decision concerning an applicant's stream encroachment application.

(b) Aggrieved persons shall file an appeal with the appropriate body within 15 days of the issuance of the permit.

#### 7:13-4.5 Prohibited uses

The disposal of pesticides, industrial wastes, radioactive materials, petroleum products or other hazardous materials shall not be permitted within the flood fringe area or outside of encroachment lines but within the 100-year flood plain. Wastewater and water treatment plants may be permitted and shall comply with this subchapter.

#### 7:13-4.6 Non-regulated uses

(a) For the purposes of this chapter, non-regulated uses are land uses within flood fringe areas or outside of encroachment lines but within the 100-year flood plain which:

1. Do not require the construction of structures with an area of more than 100 square feet or major regrading; and
2. Do not require modification or relocation of any channel.

(b) Non-regulated uses satisfy the conditions of (a) above and include, but are not limited to, the following:

1. Residential: Improvements such as lawns, play areas, gardens, landscaping, fences, anchored dog houses and auxiliary utility buildings, driveways, barbecues, and addition of no more than 200 square feet to existing residential structures.

2. Private and public recreation: Playing fields, bike paths, picnic grounds, fences, swimming areas, parks, wildlife and nature preserves, gamefarms, hunting and fishing areas, shooting preserves, hiking and horseback riding trails, tennis courts, basketball courts, driving ranges, archery ranges, target ranges, trap and skeet ranges, fish hatcheries and anchored auxiliary utility buildings.

3. Agriculture: General cultivation, pasture, grazing, fences, irrigation, outdoor plants, nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.

i. Additionally, specific soil conservation practices such as terracing, construction of diversions, subsurface drainage and the construction of grassed waterways and dug ponds will be considered non-regulated uses but only when designed and constructed under the supervision of the appropriate Soil Conservation District.

ii. Anchored plastic covered greenhouses and other anchored auxiliary utility buildings constructed without permanent foundations, and fences associated with agricultural uses, are non-regulated.

#### 7:13-4.7 Regulated uses

(a) Regulated uses are all land uses within the flood fringe area of delineated streams and between the encroachment lines and the 100-year flood plain of non-delineated streams, except for non-regulated uses and prohibited uses as defined in N.J.A.C. 7:13-4.5 and 4.6.

(b) No person shall engage in a regulated use within a delineated flood fringe area or outside the encroachment lines but within the 100-year flood plain of any non-delineated stream until he has received a Stream Encroachment Permit from the local agency or Department as appropriate.

(c) Requirements for structures under regulated use.

1. Within the 100-year floodplain but outside of encroachment lines of non-delineated streams and within the flood fringe area in delineated streams, all proposed structures must be designed and anchored to prevent collapse, lateral movement and buoyancy.

2. All proposed hospitals, nursing homes, schools, day care centers, residences and similar noncommercial structures shall be elevated so that the lowest floor, including any basement, is a minimum of one foot above the 100-year flood elevation along non-delineated streams, or at or above the flood hazard design elevation along delineated streams.

i. At least one driveway and access route to any hospital, school, nursing home, day care center or other similar noncommercial structure, except for individual residences, shall be elevated to comply with the above requirements.

ii. Recreation areas may be allowed to be inundated in low areas where it is determined that there is acceptable flood damage potential.

3. All proposed commercial and industrial structures, including water supply and wastewater treatment facilities, shall be elevated so that the lowest floor, including any basement, is a minimum of one foot above the 100-year flood elevation along non-delineated streams or at or above the flood hazard design elevation along delineated streams.

i. An exception to this may be allowed if said structures are floodproofed in a manner which reflects flood velocities, durations, rates of rise, hydrostatic and hydrodynamic forces, probable evacuation time available after flood warning, and other similar factors.

ii. The applicant shall submit a plan or document certified by a licensed professional engineer that the floodproofing measures are consistent with the design elevation and associated flood factors.

iii. All or any of the following floodproofing measures may be required so as to result in a dry floodproofed structure:

(1) Installation of watertight doors, bulkheads, and shutters, or similar devices;

(2) Reinforced walls to resist water pressures;

(3) Use of membranes or mortars to reduce seepage of water through walls;

(4) Installation of pumps to remove water from the structures;

(5) Construction of water supply and wastewater treatment systems in a manner which prevents the entrance of floodwaters;

(6) Pumping facilities, or comparable measures, for the subsurface drainage systems of buildings to relieve external foundation wall and basement flood pressures;

(7) Construction that resists rupture or collapse caused by water pressure or floating debris;

(8) Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent backup of sewage or storm waters into the structure. Gravity drainage of basements may be eliminated by mechanical devices;

(9) Location or floodproofing of all electrical equipment, in a manner which will assure that it is not subject to flooding; and

(10) Adequate emergency electrical power supplies.

4. Parking lots and recreation areas may be allowed to be inundated where it is determined by the permitting authority that the risk is acceptable.

(d) Requirements for fill under regulated uses:

1. Within the flood fringe area of delineated streams or within the 100-year flood plain but outside of encroachment lines of non-delineated streams, the volume of net fill and structures to be placed on an applicant's site shall be limited to occupying 20 percent of the total volume between the natural ground surface of the applicant's property and the level of the flood hazard design elevation along delineated streams or the 100-year storm elevation along non-delineated streams.

2. It will have to be shown adequately on submitted plans and in calculations that this limit of 20 percent is not being exceeded. There shall be no net fill in the floodway or within stream encroachment lines except as provided in N.J.A.C. 7:13-3.1.

3. All fill shall be graded in a manner so as not to adversely affect overland drainage flows.

4. Fill shall be placed so that slopes are not steeper than a ratio of two horizontal to one vertical.

5. Fill shall be compacted and stabilized in accordance with the "Standards for Soil Erosion and Sediment Control in New Jersey" or latest amendment thereto, adopted pursuant to N.J.A.C. 2:90-1.3.

(e) Additional requirements for fill in the Central Passaic Basin:

1. In addition to the requirements of (d) above, within the

Central Passaic Basin any net fill placed upon an applicant's project site must be counterbalanced by corresponding excavation within the Central Passaic Basin.

2. Said fill must be taken from between the natural ground surface and the low water level of the stream, or the groundwater level, whichever is higher.

(f) Soil erosion and sediment control:

1. Soil erosion and sediment control measures are required on all submissions under this subchapter if such submissions require disturbance of more than 5,000 square feet of the surface area of land within the flood hazard area along delineated streams or within the 100-year flood plain along non-delineated streams.

2. The latest revised version of the "Standards for Soil Erosion and Sediment Control in New Jersey" promulgated by the New Jersey State Soil Conservation Committee pursuant to the Soil Erosion and Sediment Control Act of 1975 as amended (N.J.S.A. 4:24-39 et seq.) and N.J.A.C. 2:90-1.3 shall be used in the preparation and submission of Stream Encroachment Applications.

3. The following additional soil erosion and sediment control requirements shall also be met:

i. The area of soil disturbance shall be no larger than that which is necessary for the conduct of the project.

ii. Soil disturbance schedules shall be formulated to provide minimum practicable exposure of soils to erosion.

iii. If erosion and sediment control measures such as diversions, sediment basins, or sediment barriers, whose purpose is to divert surface runoff before it reaches exposed soil or to intercept sediment eroded from exposed soil, are part of the erosion and sediment control plan, such measures shall be installed prior to any major soil disturbance or in their proper sequence to minimize sediment delivery to waterways. All soil erosion and sediment control practices shall be left in place until the soil is stabilized by vegetation or engineering measures.

iv. In areas where vegetative methods (including "mulch only") are relied on for erosion and sediment control (without downslope controls to intercept sediment such as sediment basins or sediment barriers), seeding, mulching, or placement of sod shall be performed within 48 hours of soil exposure in accordance with the "Standards for Soil Erosion and Sediment Control". Seeding shall, in such areas, always be accompanied by mulching.

(1) If weather conditions are unfavorable for seeding, sod placement, or the subsequent establishment of such vegetation, the area shall be mulched within 48 hours of soil exposure in accordance with the "Standards for Stabilization with Mulch Only" in the "Standards for Soil Erosion and Sediment Control".

(2) Slopes exceeding 15 percent (in areas without downslope sediment controls) shall be protected within 48 hours of soil exposure by special treatment, such as water diversion berms, sodding, or approved mulch netting, in accordance with the "Standards for Soil Erosion and Sediment Control."

v. Pumping of sediment-laden water from the dewatering of trenches or other excavations directly into waterways is prohibited.

(1) Pump intakes shall be placed near the water surface to minimize the sediment content of pumpage.

(2) Wherever possible, pumpage shall be piped to sediment basins or sediment barriers that meet the "Standards for Soil Erosion and Sediment Control", or mechanical filtration or sedimentation devices shall be used to minimize the discharge into waterways of sediment in pumpage.

(3) As a last resort, special approval may be granted for the pumpage to be spread onto land as far from the streambank as possible, providing that care is taken to avoid damaging trees not slated for removal.

(g) Excavation requirements under regulated uses:

1. All projects involving permanent excavation within the 100-year floodplain or flood hazard area, except as related to the installation of underground utilities or foundation for structures, shall not have cut faces at slopes steeper than a ratio of one vertical to two horizontal (1:2).

2. Excavation projects shall not be so deep as to affect any wells in the surrounding areas or to cause any groundwater pollution.

(h) Disposal of spoil requirements under regulated uses:

1. Material being disposed of within the flood fringe area along delineated streams or between encroachment lines and the 100-year floodplain along non-delineated streams shall be spread evenly and should not inhibit the drainage of the area. Such spoil material shall be stabilized within 48 hours according to the "Standards for Soil Erosion and Sediment Control". Details of the methods of stabilization shall be included on the plan.

2. The Department may require information and set conditions concerning excavation methods, contents and disposal sites of any excavated materials except material recovered from stream cleaning.

(i) Retention and detention basins for storm water management: Retention and detention basins for storm water management within the flood fringe area along delineated streams or between encroachment lines and the 100-year floodplain along non-delineated streams shall be constructed in accordance with criteria of the State Storm Water Management Regulations (N.J.A.C. 7:8).

(j) Manhole requirements under regulated uses: If manholes are to be located within the flood fringe area along delineated streams or between encroachment lines and the 100-year floodplain along non-delineated streams, they shall be flush with ground level and provided with watertight manhole covers.

(k) Minimization of environmental damage:

1. Consideration shall be given to short and long term primary environmental effects of any stream encroachment whether or not it is classified or handled as a Project of Special Concern.

2. Stream encroachment projects shall be carried out in such a manner that the pollution, impairment, or destruction of the environment as related to the flood hazard area, is minimized to the extent practicable. Federal, State, and local statutes, regulations, and ordinances designed to minimize or prevent such damage shall be complied with.

(l) Sewage disposal requirements under regulated uses: Individual sewage disposal systems within the 100-year floodplain but outside of encroachment lines or within the flood fringe area shall be constructed in accordance with the Department's Standards for the Construction of Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9-2.

## SUBCHAPTER 5. SPECIAL CASES

### 7:13-5.1 General provisions

(a) To help assure adequate protection of the State's aquatic life and water resources from the adverse impacts of some kinds of stream encroachments, special procedures and standards have been prepared to supplement the general standards. These special requirements include the following:

1. The classification of some kinds of stream encroachments as "Projects of Special Concern"; and

2. The establishment of special standards for various kinds of stream encroachments affecting selected geographic areas.

3. The general standards in subchapters 3 and 4 remain applicable to any stream encroachment to which this subchapter is applicable, except insofar as the requirements of this subchapter are more stringent.

(b) As described in N.J.A.C. 7:13-5.2, Projects of Special Concern are stream encroachment projects which, because of their potentially serious adverse effects, will not be approved unless denial of the application would damage the public interest, cause hardship to the applicant, or produce costs disproportionately large relative to the adverse effects of the project.

1. Some kinds of stream encroachment projects are always classified as Projects of Special Concern.

2. Other kinds of stream encroachment projects may be classified as Projects of Special Concern depending on geographic location or on the characteristics of the individual projects.

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3. Projects of Special Concern are subject to special requirements for public notice and fact-finding meetings.

(c) Dams built for any purpose are subject to special requirements for public notice and fact-finding meetings described in N.J.A.C. 7:13-5.3.

#### 7:13-5.2 Projects of Special Concern, defined

(a) A Project of Special Concern shall be any stream encroachment project in perennial streams with over 50 acres of drainage area, which involves either or both of the following:

1. Channelization or relocation of a stream for a distance over 100 feet (except for low-flow channels constructed as part of a detention basin) or for a distance over 300 feet on either side of a bridge or culvert; or

2. Loss of more than 6,000 square feet of the existing woodland within 25 feet of the banks.

(b) Where a project is performed in phases and two or more applications are submitted, the total length of the affected stream segment shall be used in applying the criteria in (a) above.

(c) In addition, stream encroachment projects which the Department determines would be likely to produce serious adverse effects on the water resources of the State may also be handled as Projects of Special Concern. Such effects may include, but are not limited to, the following:

1. Potential serious adverse effects on the biota of the stream, the adjoining wetlands, or on the sites where dredge spoils are to be disposed of including, but not limited to, rare or endangered species.

2. Potential serious degradation of water quality below the Department's Surface Water Quality Standards or Ground-Water Quality Standards.

3. Potential serious adverse effects on water resources including, but not limited to, adverse effects on potable water supplies, flooding, drainage, channel stability, navigation, energy production, municipal, industrial, or agricultural water supplies, fisheries or recreation. Such adverse effects include damage to potential as well as existing water uses.

(d) Projects affecting the following are always Projects of Special Concern in the indicated geographic areas:

1. Trout-associated streams:

i. Stream encroachment applications requiring loss of more than 6,000 square feet of the existing woodland within 50 feet of the banks of perennial trout-associated streams; or

ii. Construction of low dams across perennial, trout-associated streams, except for the reconstruction or repair of existing dams.

2. Acid-producing deposits: Stream encroachment projects causing exposure of acid-producing deposits along more than 50 feet of stream channel, if the drainage area of the stream is over 50 acres. However, this applies to smaller streams if the stream is trout-associated and if the stream is perennial.

#### 7:13-5.3 Procedural requirements

(a) The Department shall not delegate to any other agency its power to approve or disapprove any stream encroachment application that is classified or handled as a Project of Special Concern or process any such application on an over-the-counter basis.

(b) Concurrent with submitting any application for a Project of Special Concern, the applicant shall publish a public notice in a local newspaper stating the name of the applicant and the location, reference number, and description of the project, and inviting interested persons to send written comments to the Bureau of Flood Plain Management within 15 days from the date of publication. A reference number shall be obtained from the Bureau by phone or letter.

1. A copy of such published notice shall accompany the applicant's application.

2. The Department will accept comments from interested parties up to 15 days from the date of publication.

(c) If a project submitted to the Department is not determined to be a Project of Special Concern until after the application is accepted as complete, the applicant shall upon notice by the Department immediately publish the public notice for comment.

(d) Applicants are encouraged to have a pre-application conference to determine if the application is to be treated as a Project of Special Concern.

(e) Fact-finding meetings shall be scheduled by the Department prior to issuance or denial of a permit in all cases of Projects of Special Concern, except where there is no objection to the issuance of the permit and the Department considers a meeting unnecessary. Fact-finding meetings may also be scheduled in other cases where it is considered desirable either to obtain more information or to provide an opportunity for consideration or reconsideration of opposing views.

1. At such a meeting, the applicant and any interested parties will be given the opportunity to present information and arguments and to raise questions.

2. These meetings shall be open to the public and minutes of the meeting, including the facts found will be kept.

3. Those persons expressing an interest will be given advance notice of such a meeting as practicable.

(f) If a formal objection is raised to a delegated agency considering granting a stream encroachment permit and if such objection asserts that the proposed project is a Project of Special Concern, the matter shall be referred to the Department by the delegated agency for determination of the project's status and the procedure to be followed.

#### 7:13-5.4 Permits for Projects of Special Concern

(a) Permits for Projects of Special Concern may be granted when the Department determines, based upon information supplied by the applicant and information otherwise available to the Department, that:

1. There is no feasible and prudent alternative, including the no-action alternative, which would avoid, or substantially reduce, the hydraulic environmental or other damage, and which is consistent with the reasonable requirements of the public health, safety, and welfare; or

2. Denial of the permit would create exceptional and undue hardship upon the applicant; or

3. There is an unreasonably disproportionate relationship between the hydraulic, environmental or other damage of the proposal and the added cost of avoiding or mitigating such damage.

#### 7:13-5.5 Procedural requirements for low dams

Stream encroachment applications to construct low dams are subject to the requirements of N.J.A.C. 7:13-5.3(d) and (e) whether or not such applications are classified or handled as Projects of Special Concern.

#### 7:13-5.6 Projects along trout streams

(a) Except for the timing requirements for trout-stocked streams in N.J.A.C. 7:13-5.6(g), the requirements of this section are applicable only to those stream encroachment applications along trout-associated streams with a drainage area of over 50 acres or which are perennial and which require one or more of the following:

1. Excavation within the channel or along the banks;

2. Channel relocation;

3. Placement of construction equipment in the channel;

4. Placement of fill within the channel;

5. Modifications to the channel or banks that could result in increased stream erosion;

6. Disturbance of a total of more than 1,000 square feet of the surface area of land within 50 feet of the banks of a stream;

7. Loss of more than 6,000 square feet of the existing woodlands within 50 feet of the banks of the perennial, trout-associated streams;

8. Replacement of the natural bed of perennial, trout-associated streams with an artificial floor; or

9. Construction of impoundments across perennial, trout-associated streams.

(b) The requirements of this section are applicable to such stream encroachments in (a) above in trout streams whether the project requires approval by the Department or by a delegated agency, and are applicable whether or not such stream encroachments are classified as "minor" in the 90-day construction permit rules (N.J.A.C. 7:1C) or are processed "over-the-counter" pursuant to those rules, or are classified or handled as Projects of Special Concern.

(c) Applications for stream encroachments along trout-associated streams shall identify:

1. The planned method for disposing of sediment-laden pumpage from dewatering operations;
2. Channel segments of perennial, trout-associated streams along which trees or shrubs would be removed if the length of such segments would exceed 500 feet; and
3. Places where construction vehicles would ford or operate within the channel of trout-associated streams and the physical character of the stream bed at such places.

(d) Where practicable, trees and shrubs along perennial, trout-associated streams shall be removed from the northerly rather than the southerly bank.

(e) Placing construction equipment directly in trout-associated streams is prohibited unless such placement is necessary for the project and is specifically authorized by the Department. Where feasible, fording shall be permitted only where the stream bottom is firm and the approaches are gentle and stable.

1. The Department may require the construction of bridges or culverts if many equipment crossings are necessary at an unfavorable location.

2. All crossings shall be made at right angles to the stream and extra care shall be taken to minimize washing of petroleum products or sediment into the stream.

3. Any stream bank disturbed during fording shall be stabilized within 48 hours to minimize the potential for erosion.

(f) Construction equipment for stream encroachment projects shall not be washed in trout-associated streams or where wash water would drain as surface runoff into such streams.

(g) Unless modified, the following timing requirements are to be observed when constructing within 50 feet of the banks of a trout-stocked or trout-associated stream to minimize adverse impacts:

1. Stream encroachment projects shall not be constructed during certain periods along trout production waters or waters that are less than one mile upstream from trout production waters. These periods depend on the particular species of trout spawning in the particular trout production stream, as identified in the Department report, "Classification of New Jersey Waters as Related to Their Suitability for Trout", as follows:
  - i. Brook trout: September 15 through December 31, inclusive;
  - ii. Brown trout: October 1 through January 31, inclusive; and
  - iii. Rainbow Trout: February 1 through March 31, inclusive.

2. Stream encroachment projects shall not be constructed along trout-associated streams during the period of June 1 through August 31, inclusive.

3. Stream encroachment projects shall not be constructed along trout-stocked streams, or one mile or less upstream from trout-stocked streams, during the period of April 1 through June 30, inclusive. However, for those trout-stocked streams which are nontrout waters, the applicable period is April 1 through May 31, inclusive.

4. Modifications of the requirements of (g), 1 through 3 above, may be granted by the Department for the following reasons:

- i. Cases in which the Department determines, for the particular project, that the hazard of damage to trout-associated streams from construction during period of low flow in the June 1 through August 31 period would be less than the hazard of damage from encroachment at prospectively higher flows in other seasons.
- ii. In cases where the combined effect of N.J.A.C. 7:13-5.6(g),

5.7, or 5.8 would allow construction in less than 183 days of each year, the Department shall modify the requirements of N.J.A.C. 7:13-5.6(g) (2) or (3) above, or both, to permit construction during 183 days of each year.

(h) The mining of bottom material from trout-associated streams is prohibited. This prohibition does not extend to the incidental use or sale of stream bottom material removed during the course of channelization, stream cleaning or other approved stream encroachments performed for purposes other than mining.

(i) Where logs or boulders create adjacent pools or riffles that provide fish habitat, removal of such logs or boulders for stream cleaning is prohibited unless such removal is necessary for the project and is specifically authorized by the Department.

(j) Established below are the requirements for channelization projects along trout production or trout maintenance waters. These requirements do not apply to:

1. Stream cleaning;
2. Channel modifications directly and immediately associated with the construction or maintenance of bridges or culverts including transition zones up to 300 feet upstream or downstream from such bridges or culverts; or
3. Minor bank reestablishment or protection projects limited to 100 feet of channel length; or
4. Other projects which require 100 feet or less of channel modification including, but not limited to:
  - i. Sewer headwalls;
  - ii. Sewer outlet works;
  - iii. Sewer outlet diffusers;
  - iv. Minor water intake facilities;
  - v. Minor regrading; and
  - vi. Channel crossings of utilities.

(k) Any stream encroachment application for channelization of a perennial trout production or trout maintenance stream shall include a map of the existing stream channel that identifies the location and extent of cascades, riffles, flats and pools unless the Department determines that the project would not significantly disturb the existing stream bed.

(l) The new or modified channel of perennial, trout production or trout maintenance streams shall be designed and constructed in such a manner as to duplicate or preserve permanently, to the extent practicable, the existing arrangement and proportional extent of pools, flats, riffles, and cascades in the channel.

(m) Cover and shelter for fish, to the extent practicable is to be provided in the new or modified channel of perennial, trout production or trout maintenance streams to replace cover or shelter lost because of the channelization project.

#### 7:13-5.7 Projects affecting coastal fish resources

(a) Applicability: The requirements of this section apply whether or not stream encroachment projects are classified as "major" or "minor" in the 90-day construction permit rules (N.J.A.C. 7:1C) or are classified as Projects of Special Concern. The requirements of this section apply to all projects within the authority of the Act whether or not the project is located in the New Jersey Coastal Zone defined in the Department's Coastal Resource and Development Policies (N.J.A.C. 7:7E).

(b) Special standards: The Department or delegated agency may only approve stream encroachment projects in accordance with the provisions for protection of coastal fish resources in the Department's Coastal Resource Development Policies (N.J.A.C. 7:7E-1.1 et seq.) including, but not limited to, policies concerning finfish migration pathways (N.J.A.C. 7:7E-3.5), maintenance dredging, new dredging, and dredge spoil disposal (N.J.A.C. 7:7E-4.10), and marine fish and fisheries (N.J.A.C. 7:7E-8.2).

#### 7:13-5.8 Projects affecting shellfish areas

(a) Applicability: The requirements of this section apply whether or not stream encroachment projects are classified as "major" or "minor" in the 90-day construction permit rules

(N.J.A.C. 7:1C) or are classified as Projects of Special Concern. The requirements of this section apply to all projects within the authority of the Act whether or not the project is located in the New Jersey Coastal Zone defined in the Department's Coastal Resource and Development Policies (N.J.A.C. 7:7E).

(b) Special standards: The Department or delegated agency may only approve stream encroachment projects that are in accordance with the shellfish protection provisions of the Department's Coastal Resource and Development Policies (N.J.A.C. 7:7E), including policies concerning shellfish beds (N.J.A.C. 7:7E-3.2), maintenance dredging, new dredging, and dredge spoil disposal (N.J.A.C. 7:7E-4.10), and potentially productive shellfish areas (N.J.A.C. 7:7E-8.3).

#### 7:13-5.9 Projects exposing acid-producing deposits

(a) Applicability of this section follows:

1. The requirements of this section apply only to acid-producing deposits that are sometimes found in the following Coastal Plain geologic formations:

- i. Raritan Formation;
- ii. Magothy Formation;
- iii. Merchantville Formation;
- iv. Woodbury Clay;
- v. Englishtown Sand;
- vi. Marshalltown Formation;
- vii. Navesink Formation;
- viii. Red Bank Sand; and
- ix. Kirkwood Formation.

2. These formations are mapped on the "Geologic Overlay" maps published by the Department for the Department's topographic atlas sheets. A map showing the general location of these deposits can be found in the Manual.

(b) Except where otherwise provided in this section, the requirements of this section apply only to stream encroachments which result in:

1. Exposure of acid-producing deposits (to air or surface waters) within the stream channel or along the stream bank(s); or
2. Exposure of more than 1,000 square feet of acid-producing deposits within the floodway or encroachment lines.

(c) The requirements of this section are applicable to such stream encroachment projects whether or not such stream encroachments are classified as "major" or "minor" in the 90-day construction permit rules (N.J.A.C. 7:1C) or are classified or handled as Projects of Special Concern.

(d) Where it is known in advance that acid-producing deposits would be exposed by the proposed stream encroachment, the stream encroachment application shall include a written site evaluation prepared by a properly qualified person approved by the Department, that identifies the extent of exposure, a plan to mitigate the impacts of such exposure, and the result of the special laboratory analysis, if required by (h) below.

(e) If a stream encroachment application submitted directly to the Department does not include a site evaluation and mitigation plan and if the Department knows or has reason to believe that acid-producing deposits would be exposed by the proposed stream encroachment, the Department shall, within a maximum of 20 working days of receipt of the application, notify the applicant in writing that the application shall not be considered complete until a site evaluation and mitigation plan deemed acceptable for review is received by the Department.

(f) If the Department accepts as complete a stream encroachment application that does not include a site evaluation and mitigation plan, but subsequently determines that acid-producing deposits would be or have been exposed by the stream encroachment, the Department shall:

1. Request the applicant to submit a site evaluation and mitigation plan within an allotted time period; or
2. Disapprove the application if the application has not yet been approved and if a site evaluation and mitigation plan is not received; or

3. Order the applicant to desist from further exposure of acid-producing deposits and to apply mitigation procedures to deposits already exposed, pending submission to and approval by the Department of a site evaluation and a mitigation plan.

(g) The Department may specify the use of simple chemical tests for use in the field or laboratory to identify the presence of acid-producing deposits.

(h) Special laboratory analysis:

1. If a stream encroachment application has been submitted and the Department determines that a proposed stream encroachment would expose acid-producing deposits along more than 100 feet of stream channel or stream bank and if the Department determines that information about characteristics of such deposits is needed for the Department's decision to approve or disapprove the stream encroachment application, the department may require the site evaluation (see (d) above) to include the results of the following chemical analyses, performed using methods specified in the Manual by a certified lab, on samples of such deposits taken from preconstruction borings along such stream channel or bank:

- i. pH;
- ii. Cation exchange capacity;
- iii. Exchangeable cation content;
- iv. Potential acidity; and
- v. Extractable metals (Fe, Al, Mn, Cu, Zn, Ni, Cr, Cd, Pb) and sulfate.

2. The department may also require laboratory analyses of physical characteristics. These chemical and physical tests shall be performed by the applicant in accordance with procedures specified by the Department. Pending submission of the results of the tests to the Department, the application shall be considered incomplete or disapproved in accordance with the provisions of N.J.A.C. 7:13-2.8.

(i) When acid-producing deposits are to be exposed as the result of a stream encroachment, mitigation measures shall be taken to:

1. Minimize the extent and period of exposure of acid-producing deposits;
2. Minimize the spreading or mixing of acid-producing deposits onto or into soil free of such deposits and control the disposal of such deposits inside or outside the flood hazard area or the 100-year floodplain.
3. Cover acid-producing deposits with a sufficient quantity of limestone and of non-acid-producing soil to permit the establishment of vegetation; and
4. Provide for prompt, temporary and permanent stabilization of areas where acid-producing deposits were exposed.

(j) When acid-producing deposits are exposed within a stream channel or along stream banks as the result of a stream encroachment, mitigation procedures shall be applied in order to:

1. Minimize the period of exposure;
2. Keep post-construction oxidation rates from exceeding pre-exposure oxidation rates; and
3. Neutralize acid generated in the brief period of exposure.

#### SUBCHAPTER 6. IMPLEMENTATION

##### 7:13-6.1 Consistency with other requirements in permit review

(a) All project applications, in addition to complying with the standards set forth in this chapter, shall be consistent with all other relevant Federal, State and local statutes, rules and regulations, orders, standards, plans, and ordinances to the extent required by law.

1. The granting of a stream encroachment permit does not waive the requirement for Federal or other State or local government consent when necessary.

2. A stream encroachment permit is not effective and no work shall be undertaken until such time as all other required approvals and permits have been obtained.

(b) In cases where authority has not been delegated, no

application for development as defined in the "Municipal Land Use Law" (P.L. 1975, c.291 (C. 40:55D-1 et seq.)), for a structure or alteration within the area which would be inundated by the 100-year design flood of any non-delineated stream or for a change in land use within a delineated floodway or delineated flood fringe area may be granted by any local agency to any person without application to and approval by the Department or its agents as required pursuant to this chapter. Nor will any project application defined as a Project of Special Concern be approved by any agency other than the Department.

#### 7:13-6.2 Creation of a county water resources association

Any county governing body may, by ordinance or resolution, as appropriate, create a county water resources association which may include the chief administrative officer of any county planning agency, county engineers office, county utilities authority, county health department, county mosquito commission, county soil conservation district or county parks agency and any other public or private members. The county water resources association shall advise the county governing body, shall coordinate the flood control and water management programs for the county and shall have such powers as the county governing body may delegate to it concerning water management in the ordinance or resolution of creation.

#### 7:13-6.3 Delegation of power to counties

(a) Except as otherwise indicated in this chapter, the Department may delegate its power to approve or disapprove any application made to it pursuant to the Act and its power to enforce any aspect of the Act to a county governing body which agrees to accept such designation and in the Department's judgment is capable of utilizing the rules, regulations and standards adopted by the Department for the administration of this program.

1. The county must make application to the Department, by letter, for said delegation and must adopt an ordinance or resolution adopting this chapter and include provisions for enforcement and the administration of this program.

2. The Department may from time to time issue guidelines governing the county's administration of the program.

3. The Department shall review this delegation at least every two years and may revoke such delegation for failure to properly administer such delegated powers in the opinion of the Department.

4. The county governing body may charge the same fees promulgated by the Commissioner pursuant to P.L. 1975, c.232 (c. 13:1D-33), when such powers are delegated to it.

(b) The Department shall not delegate the powers to review any project application defined as a Project of Special Concern or any project being undertaken by a state agency.

(c) Any applicant, injured party or party claiming to be injured by the action of a delegated agency may appeal to the Department. The Department will handle the appeal as provided for in N.J.A.C. 7:13-2.11.

#### 7:13-6.4 Penalties

(a) Any person who knowingly violates a provision of this chapter adopted pursuant to the Act shall be subject to a penalty of not more than \$2,500 for each offense and any person who otherwise violates a provision of the Act shall be subject to a penalty of not more than \$1,500 for each offense, both to be collected by the Department in a summary proceeding under the Penalty Enforcement Law (N.J.S.A. 2A:58-1 et seq.), and in any court of competent jurisdiction wherein injunctive relief has been requested.

1. The Superior Court and county district court shall have jurisdiction to enforce said Penalty Enforcement Law.

2. If the violation is of a continuing nature each day which it continues shall constitute an additional, separate and distinct offense.

3. The Department is authorized and empowered to compromise and settle any claim for a penalty in such amount, in the discretion

of the Department, as may appear appropriate and equitable under all of the circumstances. All moneys recovered in any such action, together with the costs recovered therein, shall be paid to the Environmental Services Fund.

(b) If any person violates any of the provisions of this chapter promulgated pursuant to the provisions of the Act, the Department may institute an action in a court of competent jurisdiction for injunctive relief to prohibit and prevent such violation or violations, and the said court may proceed in the action in a summary manner.

#### SUBCHAPTER 7. DELINEATED FLOODWAYS

7:13-7.1 recodified from 7:13-1.11 with no change in text (see 15 N.J.R. 839(a), 15 N.J.R. 1374(b) ).

### (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

**Proposed New Rules: N.J.A.C. 7:20A-2.2, 2.7, 2.8, 2.9, 2.22**

**Proposed Amendments: N.J.A.C. 7:20A-1.3, 2.10, 2.11, 2.19, 2.21**

Authorized By: Robert E. Hughey, Commissioner,  
Department of Environmental Protection.  
Authority: Water Supply Management Act, N.J.S.A.  
58:1A-1 et seq.  
DEP Docket No. 065-83-11.

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

William Whipple, Administrator  
Water Supply and Watershed  
Management Administration  
Division of Water Resources  
CN 029  
Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-634.

The agency proposal follows:

#### Summary

The proposed amendments complete and further supplement the procedures governing issuance of water usage certifications for any person diverting 100,000 or more gallons of water per day for agricultural or horticultural purposes. Water usage certification regulations were originally proposed November 15, 1982 at 14 N.J.R. 1249(a). The majority of the November 15, 1982 proposal has been adopted with substantial changes not requiring additional public notice and comment in this issue of the New Jersey Register (see 15 N.J.R. 2154(b) in this Register). However, public comments and extensive discussion with the Department of Agriculture and other representatives of New Jersey's agricultural community determined that certain sections should be withdrawn and repropoed including new material.

Due to the largely negative response of New Jersey's agricultural community, the Department of Agriculture and the County Extension Service approached the Department with new proposals to rework the November 15, 1982 proposal. As a result, the Department has substantially revised the original proposal to allow for more direct action on water usage certification by appropriate county agricultural agents in specified cases.

New definitions have been added at N.J.A.C. 7:20A-1.3(e), (i) and (o) for "Coastal Plain", "Critical Water Supply Usage Area", and "Pinelands Area" respectively. These new definitions will be utilized to categorize proposed diversions and to determine whether water usage certification applications are issued directly by the appropriate county agricultural agent or by the appropriate county agricultural agent after utilization of the consultative procedure with the Department.

N.J.A.C. 7:20A-2.2 requires the Department to prepare and maintain a complete and current listing of all existing certifications and Water Policy and Supply Council Permits. This information will be utilized by the appropriate county agricultural agent to determine if an application requests an extension of an existing certification, Water Policy and Supply Council permit or privileges previously allowed pursuant to other lawful legislative or administrative action under the same conditions as previously allowed. The appropriate county agricultural agent may 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 usually required by N.J.A.C. 7:20A-2.8. Please note that if an application covers an area designated as a critical water supply usage area, the provisions of N.J.A.C. 7:20A-2.7(a) and (b) do not apply. N.J.A.C. 7:20A-2.8 sets forth the requirements for public notice of applications unless processed under N.J.A.C. 7:20A-2.7. Unless acceptable proof of public notice, when required, has been provided, no further action on the application shall be undertaken.

N.J.A.C. 7:20A-2.9 entitled "Verification of Agricultural Water Need and Determination of Appropriate Processing for Application" constitutes the major portion of the revised water usage certification program. N.J.A.C. 7:20A-2.9(a) requires the appropriate county agricultural agent to verify the need for the water usage requested and make a determination whether the applications for a water usage certification describes and includes proposed diversions:

1. Within critical water supply usage areas;
2. When objections concerning an application have been filed;
3. Within the pinelands area; or
4. Within the coastal plain outside the pinelands area for diversions of not more than 500,000 gallons per day.

Applications which fall within N.J.A.C. 7:20A-2.9(a)1 and 2 shall be processed pursuant to consultative procedure with the Department set forth at N.J.A.C. 7:20A-2.8 and 2.10. However, proposed diversions pursuant to N.J.A.C. 7:20A-2.9(a)3 and 4 shall be directly approved or disapproved by the appropriate county agricultural agent without 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. Any other applications not specified in N.J.A.C. 7:20A-2.7 or 2.9 shall be processed pursuant to N.J.A.C. 7:20A-2.8 and 2.10. The Department, supported by the Department of Agriculture, believes that this procedure will expedite issuance of water usage certification while insuring proper management of agricultural and horticultural water supply in New Jersey.

The majority of farmers who commented on the November 15, 1982 proposal were concerned about meritless objections being raised about their water usage certification applications, thus initiating expensive public hearing procedures. The Advisory Panel, established at N.J.A.C. 7:20A-2.11, was received favorably as a method of informally resolving potential disputes concerning

applications. The Department has clarified the duties of the Advisory Panel in this proposal. A new N.J.A.C. 7:20A:2-11(a)4 has been added which requires the Advisory Panel to include in its recommendations whether the objections raised are without merit or frivolous in nature and that the water usage certification should be approved or disapproved without resorting to the public hearing procedure pursuant to N.J.A.C. 7:20A-2.12. The appropriate county agricultural agent may then follow this recommendation. All persons objecting before the Advisory Panel shall receive notice of the decision on any application to provide adequate notice for said person still alleging to be adversely affected to appeal the decision to the Administrative Law Judge pursuant to N.J.A.C. 7:20A-2.20. This clarification of the Advisory Panel's duties protects the farmer while still allowing potential objectors several alternative actions to protect their interests.

Other than providing consistent language at N.J.A.C. 7:20A-2.10 and 2.19, the other significant change consists of the new 7:20A-2.22 entitled "Certification Programs including Constructing, Repair or Reconstruction of Dams and Other Related Structures." N.J.S.A. 58:1A-6(a)2 allows the appropriate county agricultural agent to include in a water usage certification the right to construct, repair or reconstruct dams or other related structures provided that any such work shall comply with N.J.S.A. 58:4-1 et seq. and all other applicable laws and regulations. Please note that N.J.A.C. 7:20A-2.22(b) expresses the Department's policy that stream encroachment permits shall not be required for irrigation headgates and tidegates along the banks of stream.

#### Social Impact

The proposed amendments represent the Department's best efforts to comply with the Legislature's mandate and streamline the water supply allocation system for agricultural and horticultural purposes as recommended by New Jersey's agricultural community. More important, though, it demonstrates the Department's determination to protect the State's water supplies and provide the citizens of New Jersey with an ample and effectively managed water supply in accordance with the Legislature's plan as set forth in the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

#### Economic Impact

The economic impact of this proposal will be directly upon those persons currently diverting, or who wish to divert, 100,000 or more gallons of water for agricultural or horticultural purposes. Such persons will be required to incur minimal costs necessary to file an application with the appropriate county agent. No fee schedule has been promulgated for agricultural or horticultural diversion privileges at this time.

#### Environmental Impact

The proposed amendments shall have a positive environmental impact by establishing a procedure to effectively administer and to insure proper management of the precious water resources used in the State of New Jersey for agricultural and horticultural purposes.

**Full text** of the current rule may be found at 14 N.J.R. 1249(a), 15 N.J.R. 2154(b).

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

#### 7:20A-1.3 Definitions

"Coastal Plain" means the southeasterly portion of the State of New Jersey described in the "Geologic Map of New Jersey" revised by Meredith E. Johnson in 1950 (scale 1:25000) with its boundaries indicated as the northernmost border (basal contact) of the Raritan Formation of the Cretaceous age, beginning in the west at Trenton junction trending northeasterly to Woodbridge.

“Critical water supply usage area” means any areas to be designated in which special water supply usage condition shall be mandated pursuant to regulations promulgated by the Department pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

“Pinelands area” means the area so designated by N.J.S.A. 13:18A-11(a) of the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.

#### 7:20A-2.2 Information and reports

(a) The Division shall prepare and maintain a complete and current listing of all existing certifications and Water Policy and Supply Council permits for agricultural or horticultural purposes.

(b) The list required pursuant to (a) above shall be provided by the Division to the Chairman, Department of Agricultural and Resource Management Agents, Cooperative Extension Service, Cook College, Rutgers University, New Brunswick, New Jersey 08903, for distribution to all county agricultural agents and shall be updated by the Division as appropriate.

(c) The list required pursuant to (a) above shall include the following information:

1. Name and address of existing certification and Water Policy and Supply Council permit holders;
2. Amount of water previously permitted to be diverted;
3. Dates for the term of the certification or Water Policy and Supply Council permit;
4. Whether location of the existing certification or Water Policy and Supply Council permit is within a critical water supply usage area; and
5. Other information deemed necessary by the Division.

(d) Copies of the existing certification or Water Policy and Supply Council permit documents will be provided to the appropriate county agricultural agent upon a written request to the Division.

(e) The appropriate county agricultural agent shall concurrently upon issuance of any water usage certification issued pursuant to this chapter provide the Water Allocations Office of the Division with a copy of the relevant water usage certification.

(f) 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. Annual water usage on December 31 of each year; and
2. All other information deemed necessary by the appropriate county agricultural agent.

#### 7:20A-2.7 Extension of existing certifications; Water Policy and Supply Council permits or privileges allowed pursuant to other lawful legislative or administrative actions by county agricultural agent

(a) The appropriate county agricultural agent shall consult the list established pursuant to N.J.A.C. 7:20A-2.2(a) to determine if an application requests an extension of an existing certification, Water Policy and Supply Council permit 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, Water Policy and Supply Council permit 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 any

increase in the amount of water diverted or any modification of the existing certification or Water Policy and Supply Council permit, 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.

(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) Copies of the application may be reviewed by interested parties at the office of the county agricultural agent.

(b) Unless a certification has been issued pursuant to N.J.A.C. 7:20A-2.7, the applicant shall have a notice of the application published in a newspaper circulating in the territory affected by the application within one week of the filing of the application.

1. The notice shall be published for one day per week for two weeks and shall summarize the application and describe the area affected.

2. The cost of publishing the notice of the application shall be paid by the applicant.

3. Unless acceptable proof of notice required by this section shall be furnished by the applicant to the appropriate county agricultural agent within a reasonable time period, no further action on the application shall be undertaken.

#### 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 critical water supply usage areas;
2. When objections have been filed concerning an application with the appropriate county agricultural agent;
3. Within the pinelands area; or
4. Within the coastal plain 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) If the application for a water usage certification concerns (a)1 above, the application shall be processed pursuant to N.J.A.C. 7:20A-2.8 and 2.10.

(c) If the application for a water usage certification concerns (a)2 above, the application shall be processed pursuant to N.J.A.C. 7:20A-2.8 and 2.10.

(d) Unless specified in (a)1 or 2 above, if the application for a water usage certification concerns either (a)3 or 4 above, 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-2.7 and 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 Water Allocations Office of the Division for all applications pursuant to N.J.A.C. 7:20A-2.9(b), (c) and (e) above:

- 1.-2. (No change. See adoption notice in this Register.)

(b)-(d) (No change. See adoption notice in this Register.)

7:20A-2.11 Advisory Panel

(a) (No change. See adoption notice in this Register.)

1.-3. (No change. See adoption notice in this Register.)

4. If the Advisory Panel determines that the objections concerning an application for a water usage certification are without merit or frivolous in nature, the Advisory Panel shall include in its written recommendation that the application for a water usage certification be approved or disapproved without utilization of the public hearing process set forth at N.J.A.C. 7:20A-2.12. If the Division concurs with this recommendation of the Advisory Panel, the Division shall recommend that the appropriate county agricultural agent issue either a water usage certification, drafted by the Division, or a letter of denial for the application for a water usage certification. All persons presenting objections before the Advisory Panel shall receive a copy of either the water usage certification or the letter of denial for the purposes of future actions pursuant to N.J.A.C. 7:20A-20.

(b) If no resolution can be achieved by the Advisory Panel or if the Advisory Panel determines that the objections have merit and are not frivolous in nature pursuant to N.J.A.C. 7:20A-11(a)4, then the public hearing process outlined in this subchapter shall be followed.

7:20A-2.19 Record of decision

(a) (No change. See adoption notice in this Register.)

(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. The applicable water usage certification information shall be added by the Division to the list required pursuant to N.J.A.C. 7:20A-2.2(a).

7:20A-2.21 Validity of water usage certifications issued

(a) Water usage certifications of any nature shall not be valid unless issued in compliance with and pursuant to this subchapter.

(b) The conditions and provisions of previously issued water usage certifications, Water Policy and Supply Council permits 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.

7:20A-2.22 Certification programs including constructing, repair or reconstruction of dams and other related structures

(a) A water usage certification program issued by an appropriate agricultural agent may include the right to construct, repair or reconstruct dams or other related structures provided that any proposed work to construct, repair or reconstruct dams or other related structures shall comply with N.J.S.A. 58:4-1 et seq. and all other applicable laws and regulations.

(b) In the case of a water usage certification program issued pursuant to (a) above, a stream encroachment permit for irrigation headgates and tidegates along the banks of a stream shall not be required by the Department.

# HUMAN SERVICES

(a)

## DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

### Manual for Hospital Services

#### Proposed Readoption: N.J.A.C. 10:52-1 Proposed Readoption with Concurrent Amendments: N.J.A.C. 10:52-1.1, 1.2, 1.4, 1.6, 1.7, 1.9, 1.11, 1.12, 1.13, 1.15

Authorized By: George J. Albanese, Commissioner,  
Department of Human Services.

Authority: N.J.S.A. 30:4D-6a(1) (2), 7 and 7b, Section  
1905(a) (1)(2) of the Social Security Act and 42 CFR  
440.10, 20.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Administrative Practice Officer  
Division of Medical Assistance  
and Health Services  
CN 712  
Trenton, NJ 08625

At the close of the period for comments, the Department of Human Services may adopt this proposal with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-35. Pursuant to Executive Order No. 66(1978), this rule would otherwise expire on February 16, 1984. The readoption of the existing rules becomes effective upon filing with the Office of Administrative Law of the notice of the readoption. The concurrent amendments to the existing rules becomes effective upon publication in the Register of a notice of its adoption.

This proposal is known as PRN 1983-639.

The agency proposal follows:

#### Summary

Hospital services, both inpatient and outpatient, are a required Title XIX service pursuant to 1905(a)(1)(2) of the Social Security Act, and the appropriate federal regulations (42 CFR 440.10 for inpatients; 42 CFR 440.20 for outpatients). The distinction between inpatient and outpatient is bed occupancy according to the definitions contained in state regulations (see N.J.A.C. 10:52-1.1), e.g., a person occupying a hospital bed is considered an inpatient.

Subchapter 1 defines both covered and non-covered inpatient and outpatient hospital services. In addition, the subchapter defines policies on rehabilitation services in an outpatient setting, take-home drugs, benefits in an approved private psychiatric hospitals, and Medicaid's reimbursement policy when the patient is covered by other insurance.

There have been several amendments to the rule as indicated by the following synopsis, including the number of the adopted rule and New Jersey Register citation. Professional Standards Review Organizations (PSRO) are now responsible for utilization review in a hospital setting (see: R.1981 d.51 at 13 N.J.R. 147(c)). Nurse-midwifery services are a covered Medicaid service (see R.1982 d.415 at 14 N.J.R. 1393(a)). This rule implemented section 1905(a)(17) of the Social Security Act, which required states to provide this service to the extent permitted under state law. Medical

day care services, which previously had been provided in an identifiable part of a long-term care (LTC) facility, were allowed to be provided in a hospital affiliated facility (R.1983 d.75 at 15 N.J.R. 442(a)). Friday-Saturday admissions would not be covered, unless the patient's condition came with one of the exceptions, such as emergency, same-day or next day surgery, or documented medical necessity (R.1981 d.126 at 13 N.J.R. 291(a)). A rule concerning reimbursement for out-of-state outpatient hospital services was adopted (R.1981 d.293 at 13 N.J.R. 497(a)). In essence, reimbursement will be based on the rate of reasonable covered charges approved by the Title XIX agency in the state in which the hospital is located.

An administrative review has been conducted, and the rule is necessary to insure that Medicaid patients receive both outpatient and inpatient hospital care and services. Hospitals must be aware of which services are considered covered and those that are classified as non-covered by the Medicaid program. The rule is adequate, reasonable, efficient, understandable and responsive to the purpose for which it was created.

On readoption, the rule is being amended as follows. With respect to sterilization, the definition of informed consent now contains the specific state and Federal requirements, or reference thereto, that must be followed whenever a hospital submits a claim for sterilization or hysterectomy. The Federal regulations entitled "sterilization" appear at 42 CFR 441 Subpart F. In addition, the manual has been revised to insure that the reader is referred to the section entitled "covered inpatient hospital services" (N.J.A.C. 10:52-1.2(a)18 and 19), for the specific criteria governing payment for sterilizations and hysterectomies. The text that appears in this cited section is the same as the one which appears in the Manual for Physicians Services (N.J. A.C. 10:54-1.20) which was proposed at 14 N.J.R. 1337(a) and adopted at 15 N.J.R. 339(c). It should be noted that these amendments do not represent a change in Division policy; they only represent a codification of existing policy.

Several sections were amended to reflect the fact that acute care general hospitals are now reimbursed under the DRG (Diagnosis Related Group) system. A brief definition of DRG has been added to 1.1; the list of covered inpatient hospital services includes procedures covered by DRG (1.2(b)); reimbursement for covered services in the outpatient department will reflect the current methodology (1.6(c)); and the section on third party reimbursement (1.15) will differentiate between the SHARE and DRG reimbursement methodologies.

The references to the Approval by Individual Diagnosis (AID) are being deleted because this method of utilization review is no longer utilized by Medicaid.

Section 1.12 is being amended to indicate that take-home pharmaceuticals for hospital outpatients is limited to a 60-day supply, or 100 unit doses, whichever is greater. This manual will now be consistent with the pharmacy manual (N.J. A.C. 10:51).

Section 1.11 contains an updated definition of a speech therapist, which is now "speech language pathologist".

Other changes, such as inserting the term Medicaid District Office in place of local medical assistance unit, are technical in nature.

#### Social Impact

The rule has had a positive social impact because Medicaid patients have been able to receive hospital care, and hospitals have been reimbursed for providing this care. The same social conditions still exist, and therefore the rule should be continued.

The public affected by this rule includes potentially every Medicaid recipient, all hospitals located in New Jersey and those out-of-state hospitals that treat New Jersey Medicaid patients. The rule also impacts on the New Jersey Department of Health, which is responsible for licensure.

The rule needs to be readopted to insure that Medicaid patients receive hospital treatment when there is a medical need for such treatment.

#### Economic Impact

Since hospitalization, both inpatient and outpatient, is a federally mandated service, the rule needs to be continued to insure receipt of Federal matching funds. The Division of Medical Assistance and Health Services spent \$234,509,156 in FY 1983 (Federal-State share combined) on hospital services.

There is no change in reimbursement associated with this proposal. Hospitals will continue to be reimbursed on the same basis as is currently in effect. Reimbursement to hospitals is another justification for continuation of the rule.

There is no charge to the Medicaid patient.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J. A.C. 10:52-1, as amended in the New Jersey Register.

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

#### 10:52-1.1 Definitions

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

"Approved hospital" (No change.)

**"Diagnosis Related Group" (DRG) is a term used to describe the reimbursement methodology for acute care general hospitals. Regulations governing reimbursement under the DRG System are published by the New Jersey Department of Health and appear in the New Jersey Administrative Code (N.J.A.C. 8:31B).**

"Informed Consent" means the voluntary, knowing assent from the individual on whom any sterilization is to be performed after he/she has been given (as evidenced by a document executed by such individual):

1.-6. (No change.)

[7. The documentation referred to in this subsection shall be provided by one of the following methods and should be bilingual as necessary:

i. Provision of a written consent document detailing all of the basic elements of informed consent as stated above;

ii. Provision of a short form written consent document indicating that the basic elements of informed consent have been presented orally to the patient. The short form document must be signed by the patient and by an auditor-witness to the oral presentation. The written summary shall be signed by the person obtaining the consent and by the auditor-witness. The auditor-witness shall be designated by the patient;]

**7. The documentation referred to in this subsection must meet all applicable State and Federal requirements, and should be bilingual as necessary:**

i. **Any claim for sterilization must be accompanied by a properly completed Federal Sterilization Consent Form as contained in the Federal regulations (see 42 CFR 441.258, appendix).**

**(1) This form is issued by the Division's Fiscal Agents, New Jersey Blue Cross and the Prudential Insurance Company;**

**(2) Hospitals may print their own copy of the required form only after obtaining written approval from the Division. The form must be identical in every respect to the federally required form;**

ii. **Any claim involving a hysterectomy procedure must have a properly completed Hysterectomy Receipt of Information Form (FD-189), unless one of the exceptions set forth in N.J.A.C. 10:52-1.2 (a) 19 occur. The proper method for claiming under one of the three enumerated exceptions also appears in this paragraph.**

iii. Each consent document shall display the following legend printed prominently at the top:

Notice: Your decision at any time not to be sterilized will not result in the withdrawal or withholding of any benefits provided by programs or projects.

"Inpatient" (No change.)

"Inpatient hospital Services" means:

1. (No change.)

2. Reimbursement for covered services furnished by unlicensed physicians employed directly or indirectly by a hospital shall not be made unless said unlicensed physician is lawfully practicing medicine and/or surgery pursuant to a specific statutory exemption under the laws of the State of New Jersey, and reimbursement in such instances is limited to reasonable costs which are made part of the facility's [per diem rate] **DRG (diagnosis related group) rate**. All other reimbursement for services rendered by an unlicensed physician is specifically prohibited.

"Medical Day" (No change.)

"Medical Day Care Center" (No change.)

"Nontherapeutic Sterilization" (No change.)

"Outpatient" (No change.)

"Partial hospitalization (No change.)

["PSRO" means a federally designated Professional Standards Review Organization which has a signed and federally approved Memorandum of Understanding (M.O.U.) with the New Jersey Medicaid Program to perform the specific functions authorized by the Federal Regional Office of the Health Care Financing Administration of the United States Department of Health and Human Services.]

"PSRO" means a federally designated Professional Standards Review Organization which has a signed and federally approved agreement with the New Jersey Medicaid Program to perform the specific functions authorized by the Federal Regional Office of the Health Care Financing Administration of the United States Department of Health and Human Services. In addition, a PSRO must be certified by the New Jersey Department of Health as a Utilization Review Organization (URO), as defined below.

"PSRO/DRG Hospital" means a New Jersey Hospital approved as a Medicaid provider which has signed a Memorandum of Understanding (M.O.U.) with a New Jersey PSRO/DRG and for which New Jersey Medicaid has been relieved of liability from Federal surveys and audits regarding Physician Certification, Plan of Care, and Review of Admission and Continued Stay.

"Qualified physical therapist" (No change.)

"Utilization Review Organization" (URO) means a State designated organization which has review authority under the DRG system for all admissions to acute care general hospitals regulated by the Hospital Rate Setting Commission.

10:52-1.2 Covered inpatient hospital services

(a) Subject to the general limitations and exclusions and those hereinafter specified, hospital care and services shall include:

1.-17. (No change.)

18. Sterilization, inpatient service: Payment will be made for sterilization procedures and hysterectomies only if the following requirements were met **(for hysterectomies, there are exceptions and additions to the following requirements, see 19. below):**

i. The individual is at least 21 years old at the time consent is obtained;

ii. The individual is not mentally incompetent or institutionalized;

iii. The individual has voluntarily given informed consent;

iv. At least 30 days, but not more than 180 days, have passed between the date of informed consent and the date of the sterilization, except in the case of premature delivery or emergency abdominal surgery, if at least 72 hours have passed since he or she gave informed consent for sterilization. In the case of premature delivery, the informed consent must be given at least 30 days before the expected date of delivery;

v. The Medicaid agency obtained documentation showing that all of these requirements were met. This documentation must include

a consent form or an acknowledgment of receipt of hysterectomy information.

**19. Payments will be made for a hysterectomy when the completed Receipt of Hysterectomy Information Form (FD-189) is received by the Medicaid Contractor and the following requirements have been met:**

i. A hysterectomy may not be performed solely for the purpose of rendering an individual permanently incapable of reproducing; or if there was more than one purpose to the procedure, would not be performed but for the purpose of rendering the individual permanently incapable of reproducing.

ii. A hysterectomy on a female of any age may be performed when medically necessary, provided that the person who secured authorization to perform the hysterectomy has informed the individual and her representative, if any, orally and in writing, that the hysterectomy will render the individual permanently incapable of reproducing; and the individual or a representative must have signed a written acknowledgment of receipt of that information.

(1) There is no 30 day waiting period required before a medically necessary hysterectomy may be performed.

iii. In the event a Receipt of Hysterectomy Information Form (FD-189) was not obtained, it is possible to submit, with the claim form, a written certification signed by the physician who performed the hysterectomy. This written certification is applicable if, and only if, one or more of the following conditions existed:

(1) The patient was sterile before the hysterectomy and the physician lists the cause of sterility;

(2) The patient required a hysterectomy because of a life threatening emergency in which the physician determined that prior acknowledgement was not possible and the physician describes, in the certification, the nature of the emergency;

(3) The hysterectomy was performed during a period of the patient's retroactive New Jersey Medicaid coverage and the patient was informed, before the operation, that the hysterectomy would make her permanently incapable of reproducing or that one of the conditions described in (1) or (2) above was applicable and the physician includes in the certification a statement that the patient was informed or describes which condition applied.

(4) Although a physician certification is acceptable for situations described in 19.iii. of the section, the New Jersey Medicaid Program recommends that the Hysterectomy Receipt of Information be used whenever possible.

(b) Services and/or items included in the DRG reimbursement methodology will be covered by the Medicaid program to the extent of the program's provisions.

10:52-1.4 Special provisions

(a) Entitlement to payment for each continuous period of hospitalization is subject to the following:

1. The hospital is responsible to give notice of admission to the [local medical assistance unit] **Medicaid District Office** within two working days following admission.

2. The admitting (attending) physician is required to certify concerning the reasons for admission. This requirement shall be considered to be satisfied when the admitting form, including diagnosis(es), is completed by the hospital and signed by the physician.

**3. All inpatient stays must be approved through the utilization review mechanism to be eligible for reimbursement.**

[3. The AID program (Approved by Individual Diagnosis) is a system whereby the initial number of days of hospitalization approved depends on the diagnosed condition for which the patient is treated. Instructions for determining number of days allowed are contained in the AID manual. For inpatient psychiatric services provided in an approved private psychiatric hospital, see section

1.14 of this subchapter; if in a general hospital, see paragraph 5 of this subsection.

4. Medical recertification is as follows:

i. Whenever the span of inpatient days allowed under AID is exceeded, the attending physician is required to certify the necessity of continued hospitalization on or before the expiration of the AID days. Use inpatient recertification form;

ii. The physician's recertification is considered approval of additional days; however, the maximum days allowed may not exceed those initially allowed under AID. Subsequent recertifications are required if hospitalization is medically necessary beyond this additional period. For inpatient psychiatric services provided in an approved private psychiatric hospital, see section 1.14 of this subchapter; if in a general hospital, see paragraph 5 of this subsection.]

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

5. [6.] (No change in text.)

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

7. [8.] Hospital benefits for physical rehabilitation treatment in an approved general hospital. The following procedures apply to physical rehabilitation services provided to Medicaid patients in general hospitals and are similar to procedures required in special class B rehabilitation hospitals:

i. Length of stay: Reimbursement for inpatient care for physical rehabilitation services is based upon the medical necessity of the admission and requires prior authorization from the [local medical assistance unit] **Medicaid District Office** if the stay exceeds 21 days;

ii. Prior authorization:

(1) The inpatient recertification form (MC-2) shall be used to request prior authorization from the medical consultant of the [local medical assistance unit] **Medicaid District Office** after the first 21 days of inpatient hospitalization. Initial or subsequent authorization shall not exceed 30 calendar days. Section 2 of the MC-2 must include a treatment plan in sufficient detail to support the authorization request. The request must be signed by the patient's attending physician and must specify the actual number of days for which the authorization is being requested. See subchapter 2 of this chapter for the proper disposition of the MC-2 form;

(2) (No change.)

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

10:52-1.6 Outpatient hospital services

(a) (No change.)

(b) (No change.)

[(c) Reimbursement for covered services in the outpatient department of the hospital shall be determined by the Commissioner of the Department of Human Services. The rates of reimbursement are established by the Commissioner at 100 percent of the lower of costs or charges defined and determined by Medicare principles of reimbursement.]

**(c) Reimbursement for covered services in the outpatient department of the hospital shall be determined based on controlled charges as submitted to and approved by the Hospital Rate Setting Commission, except for routine dental services, which will be reimbursed according to the Medicaid program's dental fee schedule.**

10:52-1.7 Covered outpatient hospital services

(a) Approved hospital outpatient departments may provide the following services to outpatients when medically necessary:

1.-10. (No change.)

11. Dental services (see N.J.A.C. 10:56 for prior authorization, treatment plan requirements and proper processing of the Request for Authorization and Payment of Dental Services form)[;]. **In addition, refer to subchapter 2 and 3 of this chapter for billing and procedures and reimbursement for dental services provided in the hospital outpatient department (N.J.A.C. 10:52-2.8A and 3.6).**

12.-14. (No change.)

15. Sterilization, outpatient services: Payment will be made for sterilization procedures and hysterectomies only if the [following] requirements **given in N.J.A.C. 10:52-1.2(a) 18. and 19.** were met[;].

[i. The individual is at least 21 years old at the time consent is obtained;

ii. The individual is not mentally incompetent or institutionalized;

iii. The individual has voluntarily given informed consent;

iv. At least 30 days, but not more than 180 days, have passed between the date of informed consent and the date of the sterilization, except in the case of premature delivery or emergency abdominal surgery. An individual may consent to be sterilized at the time of premature delivery or emergency abdominal surgery, if at least 72 hours have passed since he or she gave informed consent for sterilization. In the case of premature delivery, the informed consent must be given at least 30 days before the expected date of delivery;

v. The Medicaid agency obtained documentation showing that all of these requirements were met. This documentation must include a consent form or an acknowledgment of receipt of hysterectomy information.]

16. (No change.)

(b) (No change.)

10:52-1.9 Special provisions related to payment

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

(f) If it is medically determined that the patient will require further partial hospitalization beyond the first 30 calendar days, prior authorization must be obtained from the Chief, Mental Health Services, Division of Medical Assistance and Health Services, CN-712, Trenton, New Jersey 08625. It is recommended that the hospital request the authorization on or about the 20th day to allow ten days for processing the authorization by the State and return same to allow ten days for processing the authorization by the State and return same to the hospital. To request prior authorization, the physician must submit form FD-07 (Request For Authorization of Psychiatric Services) in quadruplicate to Chief, Mental Health Services, at the above address. All questions must be answered. If authorized, the hospital will receive two copies of the FD-07 from the State with the terms of the authorization. The original FD-07 must be attached to the contractor copy of the outpatient hospital claim (MC-4) when billing. [Authorization will be granted for a maximum of 30 days, therefore the process must be completed again if further treatment is planned beyond the 60th calendar day.] **See 10:52-1.7 (b) for more complete information on prior authorization for partial hospitalization.** If the Chief, Mental Health Services, does not authorize the treatment, written explanation will be provided to the hospital.

(g)-(h) (No change.)

10:52-1.11 Hospital outpatient rehabilitation services

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

"Qualified occupational therapist" (No change in text.)

"Qualified physical therapist" (No change in text.)

Rehabilitation services" (No change in text.)

["Speech therapist" means a person who is certified by the American Speech and Hearing Association, or has completed the academic requirements and is in the process of accumulating the necessary supervised work experience required for certification.]

**"Speech-language pathologist" means a person who holds the certificate of clinical competence in speech-language pathology granted by the American Speech-Language Hearing Association, or who has completed the academic requirements and is in the process of accumulating the necessary supervised work experience required for certification.**

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

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- 10:52-1.12 Take home drugs - outpatient only  
 (a) (No change.)  
 (b) (No change.)  
 (c) The quantity of medication prescribed should provide a sufficient amount of medication necessary for duration of the illness or an amount sufficient to cover the interval between visits, but may not exceed a 60-day supply[.] or 100 unit doses, whichever is greater.  
 (d) (No change.)  
 (e) (No change.)

- 10:52-1.13 Approved private psychiatric hospitals  
 (a) (No change.)  
**(b) These hospitals are reimbursed on an interim basis under the SHARE (Standard Hospital Accounting and Rate Evaluation) System. A final settlement is based in accordance with Medicare principles of reimbursement subject to the determination of excess costs by the Commissioners of the Department of Health, and the Department of Insurance.**

- 10:52-1.15 Medicaid reimbursement for third-party claim for hospital services  
**(a) On claims for hospital services rendered to Medicaid recipients who are also covered by another form of medical insurance, the New Jersey [Health Services] Medicaid Program shall pay the lower of the per diem rate established for the provider of services applied to the number of covered inpatient days claimed less the amount of total charges claimed less the amount of third-party reimbursement received by the provider. Final settlement will be determined by the applying of these third-party payments to the lower of Medicaid's total allowable cost or total allowable charges. This subsection applies to hospitals being reimbursed under the SHARE (Standard Hospital Accounting and Rate Evaluation) System.**  
**(b) On claims for hospital services rendered to Medicaid recipients who are also covered by another form of medical insurance, the New Jersey Medicaid Program will pay the difference between the DRG rate and the other insurer's payment for covered services. In no event will the Medicaid program be liable for more than the amount Medicaid would have reimbursed as the primary payor. This subsection applies to hospitals reimbursed under the DRG system.**

**(a)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Manual for Physicians' Services  
 Subchapter 1-General Provisions**

**Proposed Readoption: N.J.A.C. 10:54-1.3, 1.6 through 1.9, 1.11, 1.12, 1.19, 1.20 and 1.23**

**Proposed Readoption with Concurrent Amendments: N.J.A.C. 10:54-1.1, 1.2, 1.4, 1.5, 1.10, 1.13 through 1.18**

**Proposed Repeal: N.J.A.C. 10:54-1.21, 1.22**

Authorized By: George J. Albanese, Commissioner, Department of Human Services.  
 Authority: N.J.S.A. 30:4D-6(a)5, 7 and 7b: 1905(a)(5) of the Social Security Act and 42 CFR 440.50.

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Henry W. Hardy, Esq.  
 Administrative Practice Officer  
 Division of Medical Assistance  
 and Health Services  
 CN 712  
 Trenton, NJ 08625

At the close of the period for comments, the Department of Human Services may adopt this proposal with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-35. Pursuant to Executive Order No. 66(1978), this rule would otherwise expire on February 16, 1984. The re-adoption of the existing rules becomes effective upon filing with the Office of Administrative Law of the notice of the re-adoption. The concurrent amendments to the existing rules become effective upon publication in the Register of a notice of its adoption.

This proposal is known as PRN 1983-640.

The agency proposal follows:

**Summary**

Physicians' services are a required service under the Title XIX program, more commonly referred to as "Medicaid". The cited Federal regulation (42 CFR 440.50) defines "physicians' services" as services provided -

"(a) within the scope of practice of medicine or osteopathy as defined by State law; and

(b) by or under the personal supervision of an individual licensed under State law to practice medicine or osteopathy."

"Physicians' services" can be provided in an office, home, hospital, long term care facility or elsewhere. The definition of "physicians" and "physicians' services" as contained in the New Jersey Administrative Code (N.J.A.C. 10:54-1.1) reflect the Federal requirements.

The rule was written to explain the physicians' role in relation to the other services which Medicaid patients are entitled to receive. The rule defines the scope of services, identifies those that may require prior authorization, explains prescription policies, defines "specialists" (see N.J.A.C. 10:54-1.19), and indicates the basis of payment, which is generally fee-for-service.

An administrative review has been conducted, and a determination made that the rule should be continued. A primary reason for continuation is continued receipt of Federal matching funds for a Federally required Title XIX service. The rule is necessary, adequate, reasonable, efficient and responsive to the purpose for which it was promulgated, namely, to inform physicians about the requirements of the New Jersey Medicaid Program.

The rule has been amended several times. Several sections (1.2, 1.5, 1.7, 1.21, 1.22) were amended to indicate that physicians will bill using the HCFA-1500 claim form, which is a standardized billing form recommended by the Federal government. The rule was adopted as R. 1981 d. 249 at 13 N.J.R. 417(a). Section 1.2 was amended to indicate the diagnostic chest X-rays are a covered service (R. 1981 d. 125 at 13 N.J.R. 292(b)). The same section was amended twice to specify that certain surgical procedures required a second opinion. The first amendment was adopted as R. 1982 d. 73 at 14 N.J.R. 278. The second amendment, which modified the list of procedures requiring a second opinion, was adopted as R. 1982 d. 459 at 14 N.J.R. 1458(c). Section 1.3 was amended to insure that physicians keep sufficient records to document the services performed and support the procedure codes listed on the claim submitted for payment. (R. 1981 d. 329 at 13 N.J.R. 574(b)). Section 1.5 was amended to indicate that for psychiatric and psychological services rendered in boarding homes or long care facilities required prior authorization after an initial evaluation visit

(R.1981 d.374 at 13 N.J.R. 706(d)). Section 1.6 defined the basis for reimbursement for anesthesia time (R. 1981 d. 220 at 13 N.J.R. 417(b)). Section 1.20, entitled "Sterilization" was amended to insure the Medicaid regulations conformed with the amended Federal regulations (42 CFR 441.250-259). Essentially the amendments allowed for a waiver of required consent form for hysterectomies in certain situations, such as emergencies (R. 1983 d. 55 at 15 N.J.R. 339(c)).

The following amendments are being made as part of the proposed readoption. Section 1.1 is being revised to clarify some language in the "consultation" definition, and to delete the reference to item 13 which refers to a claim form no longer in use. Section 1.2 is being amended to indicate that injections and/or childhood immunizations may be billed to the Medicaid program when authorized by a specific procedure code with a corresponding fee schedule contained in the Procedure Code Manual (N.J.A.C. 10:54-3). Subsection (b) of this section is also being deleted because the procedure codes and fee schedules appear in the same Procedure Code Manual. The reference to radiological services is being deleted because it is inappropriate in this context. Hospital-based radiologists may be able to bill Medicaid for the professional component. All references to the Approval by Individual Diagnosis (AID) program are being deleted. The Division is no longer using this standard. Section 1.5 concerns psychiatric services that require prior authorization. Subparagraph iii is being added to indicate that partial hospitalization requires prior authorization after 30 days. Subparagraph vi, renumbered as vii, reflects the requirement that providers are responsible for submitting the contractor's copy of the authorization to Prudential Insurance Company for payment. Sections 10:54-1.10, 1.13 through 1.18 have been revised to conform with changes to the Pharmacy Manual (N.J.A.C. 10:51-1) which have already been adopted as Medicaid policy. Changes include telephone ordered prescriptions, less than effective drugs (commonly called DESI drugs), and quantity of medication that can be prescribed.

The Division proposes to repeal the text of N.J.A.C. 10:54-1.21 and 1.22. This text is redundant, because it already appears at 10:54-1.2(a)6 and 7.

In essence, the changes being made are to insure conformity with existing policies and procedures. There is no new material contained in this proposal.

#### Social Impact

The rule's social impact has enabled Medicaid patients to receive "physicians' services" on both an inpatient and outpatient basis, and in an institutional setting. Since the same social conditions still exist, the rule should be continued.

The public affected by this rule includes potentially every Medicaid recipient who may become ill and require medical treatment. The rule impacts on physicians who are bound to follow Medicaid policies and procedures when treating Medicaid patients.

The rule also impacts on other Medicaid providers, such as pharmacies, whose services are dependent on a prescription from the attending physician, i.e., the physician responsible for treating the patient.

Another State agency that may be affected by the rule is the New Jersey Board of Medical Examiners, who is responsible for licensure of doctors of medicine or osteopathy.

The rule should be readopted to insure that Medicaid patients continue to receive "physicians' services".

#### Economic Impact

There is no change in the physician fee schedule associated with this proposal. Physicians will continue to be reimbursed in accordance with the fee schedules contained in the Procedure Code Manual (see N.J.A.C. 10:54, subchapter 3).

Medicaid patients are not required to pay for "physicians' services".

The New Jersey Medicaid program spent approximately

\$60,000,000 (Federal-State share combined) in State Fiscal Year 1983 for "physicians' services".

Continuation of the rule is necessary to insure receipt of Federal funding for a required Medicaid service.

**Full text** of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:51-1.21 and 1.22.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:54-1.3, 1.6 through 1.9, 1.11, 1.12, 1.19, 1.20 and 1.23, as amended in the New Jersey Register.

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

#### 10:54-1.1 Definitions

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

"Concurrent care" (No change.)

"Consultation" means advice or counsel of qualified specialist as recognized by this program which is requested by the attending physician. This requires a personal examination of the patient with a written report of the history, physical findings, diagnosis, and recommendations of the consultant as noted under procedure codes 9029 and 9030 in N.J.A.C. 10:54-3. When the consultant assumes the continuing care of the patient, any subsequent services rendered by him/her will no longer be considered as consultation. Except where medical necessity dictates or where a hospital policy [(for example,) or State law [commitment to a mental institution]] dictates otherwise, multiple and simultaneous consultations in the same speciality for the same disease, illness or condition, whether in or out of a hospital, are not reimbursable. When consultation services are performed, the name of the referring physician must be included on the claim form and will be listed under [item 13 of that form] **the appropriate section of the claim form.**

Note: For applicable requirements of consultation services see N.J.A.C. 10:54-3.

"Physician" (No change.)

"Physician services" (No change.)

"Specialist" (No change.)

"Specialist in family practice or general practice", for purposes of the New Jersey Medicaid Program, means a fully licensed physician who limits his/her practice to his/her speciality and who is a diplomate of the Board of Family Practice, [whichever applies or,] a Fellow of the American Academy of Family Physicians, or a Diplomate of the American Osteopathic Board of General Practice.

"Transfer" (No change.)

#### 10:54-1.2 Scope of Service

(a) Payment will be made for the medically necessary services, subject to the following limitations:

1. **No additional payment will be made for [I]injections and drugs dispensed by the physician[:] except as outlined under specific procedure codes listed in subchapter 3 (Procedure Code Manual) of this chapter.**

[i. No additional payment will be made for drugs dispensed by a physician.

ii. Exception:

(1) Injections as outlined under procedure code 9072 in subchapter 3 of this chapter;

(2) Procedure code 9315: Preparation code 9315: Preparation of allergy extract by specialist (see subchapter 3 of this chapter.);]

2. (No change.)

3. Physician services provided in the hospital setting; inpatient:

i. For the hospitalized patient (inpatient), specific physician services for which the physician is customarily reimbursed directly

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by the hospital under contractual or other arrangements (that is ECG interpretation, [radiologic or] laboratory services, and so forth) are considered a reimbursable hospital cost and must be billed by the hospital not by the physician;

ii. (No change.)

4. through 7. (No change.)

[(b) Effective July 1, 1976, the following childhood immunizations will have individual procedures code numbers with individual fees which have been based on the cost of the vaccine plus a service charge. The fee is all inclusive for the cost of the vaccine and cost of its administration. No prior authorization is required. The new procedure codes and fees are listed below.

Procedure codes		Maximum fee
9450	(Immunization - measles)	\$4.50
9451	(Immunization - rubella)	4.50
9452	(Immunization - mumps)	5.20
9453	(Immunization - measles and rubella combined vaccine)	6.85
9454	(Immunization - measles, mumps, rubella combined vaccine)	9.60
9455	(Immunization - diphtheria, pertussis, tetanus combined vaccine)	2.50
9456	(Immunization - diphtheria, tetanus toxoid combined vaccine)	2.50
9457	(Immunization - diphtheria toxoid)	2.50
9458	(Immunization - pertussis vaccine)	2.50
9459	(Immunization - tetanus toxoid)	2.50
9460	(Immunization - oral polio vaccine)	2.50

1. Accordingly, the Medicaid injection policy (procedure code 9072) is amended to exclude all references to immunization, including measles, mumps, rubella combined vaccines MMR which are now reimbursable under code 9054.]

#### 10:54-1.4 Policies related to inpatient care

(a) (No change.)

(b) [Rules concerning the certification and utilization review - AID program are:

1. Patients will be admitted to the hospital only on the direction of a physician or in accordance with hospital policy consistent with the Joint Commission of Accreditation and Hospital Standards. Under the New Jersey Medicaid Program, the hospital record of admission will serve as the physician's certification of need. The physician's certification and recertification, and utilization committee's approval and reapproval must be on file at the hospital and must be kept available for audit;

2. The AID program (Approved by Individual Diagnosis) is a system whereby the initial number of days of hospitalization approved depends on the final diagnosed condition for which the patient is treated. Exception: Psychiatric Services:] The New Jersey Medicaid Program recognized as a covered service medically necessary inpatient services which are provided in an approved private psychiatric hospital or the psychiatric section of an approved general hospital with the following limitations:

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

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

[Note:] i. (No change in text.)

3. (No change.)

4. (No change.)

[5. The regulations of the New Jersey Medicaid Program require that the attending physician sign a statement on or before the expiration of AID days (recertification form) certifying the medical necessity of continued hospitalization beyond the AID days.]

(c) (No change.)

#### 10:54-1.5 Prior authorization

(a) (No change.)

(b) Prior authorization for certain services rendered by physicians are required as follows:

1. (No change.)

2. Psychiatric services:

i. (No change.)

ii. Exception: Psychiatric services rendered in an approved hospital outpatient department, to a registered clinic patient, shall not require prior authorization but, in accordance with [section 207 of] the Hospital Manual, shall require a physician's certification and plan of treatment after the first 30 days. Certification and/or recertification and plan of treatment shall consist of a typewritten statement, signed by the attending physician, which shall indicate the type, amount, frequency and duration of the services that are to be furnished, and must include the diagnosis and anticipated goals. The certification must be completed on a timely basis and the dates on the report must be applicable to the billing dates on the claim submitted by the hospital.

**iii. In general hospital outpatient departments, prior authorization is required for Partial Hospitalization (P.H.) services after 30 calendar days.**

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

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

[v.] vi. (No change in text.)

[vi.] vii. If request for authorization is approved, **both** the provider copy and [will be returned to the provider, and] the contractor copy will be [forwarded directly to the Prudential Insurance.] **returned to the provider, who is responsible for submitting the contractor copy along with the HCFA-1500 to the Prudential Insurance Company for payment.**

[vii.] viii. (No change in text.)

#### 10:54-1.10 Prescription policies

(a) This section is intended to describe the physician's responsibility in writing of prescriptions in order to maintain the traditional patient-prescriber-provider relationship and to insure the recipient free choice of provider. Physicians are urged to familiarize themselves with all aspects of this section in order to effect economics consistent with good medical practices and to facilitate prompt payment to the provider.

[1. The New Jersey Medicaid Program has an approved generic formulary. The prescriber should give preference to nonproprietary or generic named drugs of equal therapeutic effectiveness if available at a lower cost than proprietary or brand-named drugs. When prescribing a brand-named drug, the prescriber must indicate either "formulary alternate permitted" or "dispense as written" (may be abbreviated "FAP" or "DAW") on each written or telephone prescription.]

**1. The New Jersey Medicaid Program allows the choice of prescribed drugs to the prescriber, within the limits of applicable laws, rules and regulations of the program. The Prescription Drug Price and Quality Stabilization Act applies to the New Jersey Medicaid Program, and the formulary published by the Drug Utilization Review Council shall be used for all drugs listed therein.**

2. The practitioner's [Social Security] **Individual Medicaid Practitioner** number must appear on all written prescriptions and must be given to the pharmacist with all telephone orders. This number must be transposed onto the prescription claim form submitted by the pharmacy and serves to expedite the processing of these claims.

3. (No change.)

(b) (No change.)

(c) (No change.)

(d) The choice of prescription drugs remains at the discretion of the prescribing physician subject to **the observation of the following tenets:**

1. Oral medication **should be prescribed** when as effective as injectable preparations;

2. Nonproprietary or generic named drugs of equal therapeutic effectiveness **should be prescribed** if available at a lower cost than proprietary or brand named drugs;

3. The practitioner should note [under] the specific conditions [as] listed under subsections (f) and (g) of this section [with] regarding restriction [to] of payment [of] to pharmacies [under] for certain prescription drugs.

(e) The quantity of medication prescribed should provide a sufficient amount of medication necessary for the duration of the illness or an amount sufficient to cover the interval between visits, but may not exceed a 60-day supply or 100 unit doses, whichever is greater. Any drug used continuously (that is, daily, three times daily, every other day, and so forth) for 14 days or more is considered to be a sustaining drug or maintenance medication and should be prescribed in sufficient quantities to treat the patient for up to 60 days. In long-term medical care facilities (that is, skilled nursing facilities, infirmary section of home for aged, or public medical institution), if the quantity of sustaining drug or medication is not indicated in writing by the prescriber, the pharmacy provider [must] may dispense [a minimum of 100 tablets or capsules, a pint, or a 30-day's supply, whichever is less] up to a maximum of 30 day's supply.

1. Exceptions include the following:

i. Patients authorized as Level IV B in a long-term care facility, where the interval between physician visits may be 60 days, may have one refill, one time only, if a 60-day supply was authorized on the original prescription.

[i]ii. Oral contraceptives may be prescribed up to a supply for three ovulatory cycles;

[ii]iii. Vitamins and vitamin/mineral combinations may be prescribed and dispensed in quantities up to a 100-day supply.

[iii].iv. Hypodermic syringes and/or needles may be prescribed and dispensed in quantities to a 100-day supply.

(f) The following therapeutic classes and dosage forms require prior authorization obtained by the prescribing practitioner from the [local medical assistance unit] Medicaid District Office. If the request is approved, an authorization number will be provided and must appear on the prescriber's original prescription. The pharmacist cannot be reimbursed unless he has the authorization number to insert on the pharmacy claim form.

[1. Antiobesics and anorexics;]

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

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

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

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

(g) The following classes of prescription drugs will not be honored for payment:

1. through 11. (No change.)

12. Antiobesics and anorexics;

13. Drugs considered less than effective under the Drug Efficacy Study Implementation Program.

(h) Telephone orders from the prescriber for original prescriptions, in accordance with all applicable Federal and State laws and regulations, will be permitted.

Note 1: Telephone orders for refills are not permitted.

Note 2: [For drugs listed in the New Jersey Medicaid formulary, the prescriber must indicate either "formulary alternate permitted" (FAP) or "dispense as written" (DAW). For each prescription transmitted then, the pharmacists shall transpose this information onto the written prescription.] For drugs listed in the Drug Utilization Review Council (DURC) formulary, the prescriber must initial the statement "Substitution Permissible" or "Substitution Not Permissible." If neither statement is initialed, the pharmacist shall substitute from the formulary and bill Medicaid accordingly. For telephone prescriptions, this information must be put in writing immediately.

(i) (No change.)

10:54-1.13 Choice of prescription drugs

(Delete the current entire text and replace with the following text:)

(a) The choice of prescribed drugs shall be at the discretion of the prescriber within the limits of applicable law and as listed herein. However, no payment shall be made for certain drugs under specific conditions.

1. Exceptions:

i. Covered pharmaceutical services requiring prior authorization (see N.J.A.C. 10:54-1.10(f));

ii. Pharmaceutical services not eligible for payment (see N.J.A.C. 10:54-1.10(g));

iii. Non-legend drugs (see N.J.A.C. 10:54-1.16).

(b) The New Jersey Drug Utilization Review Council Formulary (hereafter referred to as the Formulary) dated July 9, 1979, and all subsequent revisions, distributed to all prescribers and pharmacists, supersedes the New Jersey Medicaid Formulary dated November 11, 1975.

(c) The Prescription Drug Price and Quality Stabilization Act (N.J.S.A. - 24:6E-1) shall apply to the New Jersey Health Services (Medicaid) Program. This law requires that every prescription blank contain the statements "Substitution Permissible" and "Do Not Substitute". The prescriber must initial one of statements in addition to signing the prescription blank.

1. When the prescriber does not initial either statement on a prescription for a drug product listed in the Formulary, the pharmacist shall substitute from the list of interchangeable products.

2. When the prescriber initials "Substitution Permissible", the pharmacist shall dispense and bill Medicaid for one of the less expensive products listed as interchangeable with the brand name prescribed. The Medicaid client must accept the interchangeable product unless the client is willing to pay the pharmacy's full usual and customary price.

3. When the prescriber initials "Do Not Substitute", the pharmacist shall dispense and bill Medicaid for the prescribed product.

4. When the prescriber orders by generic name, the Formulary does not apply. The pharmacist shall dispense the least expensive, therapeutically effective product available to him/her at the time of dispensing. The product need not necessarily be from the list of interchangeable products.

(d) The Federal Maximum Allowable Cost (MAC) regulations prescribe the upper limit Medicaid may reimburse for certain multi-source drugs. The limit shall apply to all MAC drugs, unless the prescriber indicates in his/her own handwriting on each written or telephoned prescription "Brand Necessary" or "Medically Necessary". The Department of Health and Human Services requires a handwritten statement and does not permit the use of alternatives, such as a check box, initials, or prescriber's signature next to a preprinted statement "Do Not Substitute". For purposes of reimbursement, the physicians override capability under N.J.S.A. 24:6E-1 does not apply to drugs which have a federal MAC limit.

(e) Blanket authorization denying substitutions will not be permitted. Each prescription order must state "Brand Necessary" or "Brand Medically Necessary" in the prescriber's own handwriting or his/her initials, if a printed statement or rubber stamp is used. (See N.J.A.C. 10:54-1.13(d)).

10:54-1.14 Quantity of medication

(a) The quantity prescribed should provide a sufficient amount of medication necessary for the duration of the illness or an amount sufficient to cover the interval between visits, but may not exceed a 60 day supply or 100 unit doses, whichever is greater.

(b) Any drug used continuously (that is daily, three times daily, every other day and so forth) for 14 days or more is considered to be a sustaining drug or maintenance medication and should be prescribed in sufficient quantities to treat the patient for up to 60 days or 100 unit doses, whichever is greater.

(c) In long-term care facilities (that is, skilled nursing home, infirmary section of home for the aged, a public medical institution), if the quantity of sustaining drug or maintenance medication is not indicated in writing by the prescriber, the pharmacy provider must dispense [a minimum of 100 tablets or capsules, a pint or a 30 day supply, whichever is less] **an appropriate quantity of medication not to exceed a one month supply.**

10:54-1.15 Drug services requiring prior authorization

(a) The following therapeutic classes and dosage forms require prior authorization obtained by the prescribing practitioner from the [local medical assistance unit] **Medicaid District Office**. If the request is approved, an authorization number will be provided and must appear on the prescriber's original prescription. The pharmacist must check the box in the space provided on the prescription claim form (MC-6) identifying a prior authorized item, and enter the authorization number in the proper space in this area.

[1. Antibiotics and Anorexics;]

[2.] **1.** Protein replacement products, such as (but not limited to) Prohance, Portagen, Nutramigen, Neo-Mullsoy;

[3.] **2.** Preventive drugs and biologicals listed in Appendix A [, Section 209,] when not available through listed distributing stations.

**3. Injectable medication to be administered to a patient by other than the prescriber or prescriber's employee.**

**4. Hymenoptera venom.**

**5. Methadone (not eligible when used for detoxification drug maintenance).**

**6. Non-legend medication not listed in Appendix B or C.**

10:54-1.16 Pharmaceutical services not eligible for payment

(a) The following classes of prescription drugs will not be honored for payment:

1.-3. (No change.)

**4. [Drugs directly furnished by practitioner;] Medication furnished by a prescriber or an employee of a prescriber;**

5. (No change.)

6. (No change.)

7. Prescribed non-legend (OTC) drugs for patients in long-term medical facilities (that is, skilled nursing facilities, infirmary sections of a home for the aged or public medical institutions[:];

i. Exceptions:

(1) Insulin;

(2) All vitamins, minerals, vitamin/mineral combinations listed in Appendix B as allowable for recipients in long-term medical care facilities.

Note: Recipients in long-term medical care facilities (that is, skilled nursing facilities, infirmary section of homes for the aged or public medical institutions) must be identified in the appropriate section of the claim form (MC-6).

ii. The above does not apply to recipients residing in boarding home.]

8. (No change.)

9. Prescribed nonlegend drugs unless specifically listed in Appendix B or C (Allowable Nonlegend Drugs). (Appendixes B and C [is] are furnished separately as a loose-leaf section of the New Jersey [Blue Cross Drug Code Register and should be inserted by the pharmacist into the Register] **Medicaid Manual.**) See **N.J.A.C. 10:54-1.15, Drug services requiring prior authorization.**

10. (No change.)

11. (No change.)

12. Methadone or any prescription containing Methadone; that is tablets, capsules, liquid, injectable or powder, **when used for drug detoxification or addiction maintenance.** See **N.J.A.C. 10:54-1.15.**

13. (No change.)

**14. Antibiotics and anorexics;**

**15. Drugs considered less than effective under the Drug Efficacy Study Implementation Program;**

**16. Drugs or drug products not approved by the Federal Food and Drug Administration, when such approval is required by Federal law and/or regulation;**

**17. Injectable drug products;**

**i. Exceptions:**

(1) Food and Drug Administration approved antineoplastic drugs;

(2) Gamma-globulin when not available from the Department of Health or other agencies. Prior authorization must be obtained by the prescriber;

(3) Medication to be administered to a patient by other than the prescriber or an employee of the prescriber. Prior authorization must be obtained by the prescriber and the written prescription must include the statement, "Medicaid authorized", and the assigned prior authorization number;

(4) Insulin;

(5) Hymenoptera venom preparations when prior authorized;

**18. Radiopaque contrast materials (Telepaque).**

10:57-1.17 Telephone-ordered original prescription

(a) (No change.)

(b) [The prescriber must indicate either "Formulary Alternate Permitted" or "Dispense as written" for each prescription transmitted and the pharmacist shall transpose this information onto the written prescription.] **When a prescriber chooses not to allow product interchange on a telephone order, the statement "Substitution not permitted by prescriber-telephoned Rx", plus the pharmacist's full signature next to or below the statement, must appear on the prescription order. A rubber stamp bearing the statement is acceptable.**

(c) **When a prescriber chooses to certify "Brand Necessary" or "Brand Medically Necessary" on a telephoned prescription for a product included on the Federal MAC list, a written signed prescription order containing the certification must be sent to the pharmacists within seven days of the date of the telephone order. The written prescription must be retained by the pharmacist as the original prescription. Failure to comply will result in the payment for the prescription being reduced to the MAC reimbursement level.**

(d) **For purposes of reimbursement, telephone authorization to refill an original prescription is considered a new order and requires a new written prescription number. Stamping or writing a new number on the original prescription order does not constitute a new prescription under the Medicaid Program.**

10:54-1.18 Prescription refill

(a) The pharmacist must initiate, complete and submit Prescription Claim Form (MC-6) to Blue Cross of New Jersey for payment of an allowable refill. The following instructions apply for allowable refills.

1. Refill instructions must be indicated by the prescriber on the original prescription. Prescriptions without such instructions are not refillable and are not eligible for payment.

2. Prescription refills will be limited to [two] a maximum of five times within a six-month period if so indicated by the prescriber on the original prescriptions.

i. Exceptions:

(1) Oral contraceptives originally prescribed for a three ovulatory cycle supply may be refilled [two] **up to three times** within [a nine-month period] **one year if so indicated on the original prescription;**

(2) Vitamins and vitamin-mineral combinations originally prescribed for a 100 day supply may be refilled two times within one year **if so indicated by the prescriber.**

3. Refill instructions indicating "refill prn" or indicating more than [two] **five refills** will be honored for payment only up to the limited imposed in (a) 2 above **and will be reimbursed up to these limits only.**

4. Payments will not be allowed for telephone authorized refills. **A new prescription is required.**

**5. Prescription refills shall not be dispensed until a reasonable quantity (approximately 75 percent) of the medication originally dispensed or refilled could have been consumed in accordance with the prescriber's written directions for use.**

**i. Exception: When medication has been lost or destroyed (for example, broken container), the pharmacist may refill the prescription. A note of explanation for the early refill must be stapled to the Medicaid Prescription Claim Form (MC-6), in order to be eligible for reimbursement.**

**(a)**

**DIVISION OF PUBLIC WELFARE**

**Public Assistance Manual  
Temporary Absence of Children from Home**

**Proposed Amendment: N.J.A.C. 10:81-3.34**

Authorized By: George J. Albanese, Commissioner,  
Department of Human Services.  
Authority: N.J.S.A. 44:7-6 and 44:10-3.

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Audrey Harris, Acting Director  
Division of Public Welfare  
CN 716  
Trenton, NJ 08625

At the close of the period for comments, the Department of Human Services may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1983-649.

The agency proposal follows:

**Summary**

Heretofore, the Division of Public Welfare, referred to in the regulation as the State office, retained jurisdiction in matters of eligibility related to the temporary absence of children from the home when the children were not institutionalized. This proposal would delete the regulation requiring State office approval for continued payment in all absences of 30 days or more. In its place are three alternative treatments of such situations. First, absences of 30 days or less will not cause any change in eligibility or payment. Second, in absences of more than 30 days where the child had been staying in a home where the family relationship would permit grants of Aid to Families with Dependent Children (AFDC), the local agency grant of AFDC would be discontinued. Finally, in absences of 60 days or more where the child is not known to have been in an AFDC type of home situation, the State office is to be consulted for instruction.

**Social Impact**

This amendment will allow families to make plans for children with assurance as to how their grants of public assistance will be influenced. It will also expedite eligibility decisions and responses to inquiries in matters involving temporary absence.

**Economic Impact**

This amendment changes the level of administration at which decisions are made in certain cases. It does not, however, change the basis or criteria of the decisions. Thus, other than a small saving in administrative cost, there is little or no change in dollar flow to or from any person or agency.

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

10:81-3.34 Absence for reasons other than institutional  
(a) [The county welfare agency shall obtain approval from the State office to continue a child in the grant during any visit, vacation or temporary absence from the home for reasons other than institutional placement which will continue for more than 30 days.] **Children: Temporary absence of a child which has not lasted more than 30 consecutive days does not affect eligibility or level of grant entitlement.**

**1. Temporary absence of a child which has lasted more than 30 days during which the child has been under the supervision of a different natural parent, adoptive parent or any other specified relative, as set forth in N.J.A.C. 10:81-3.11(a), constitutes a change in customary living arrangement for the child. The CWA will, subject to adverse action notice requirements, delete the child from grant entitlement.**

**2. Temporary absence of a child, such as for a visit or vacation, which has lasted more than 60 days during which the child is not known to have been under the supervision of a different natural parent, adoptive parent or another specified relative may constitute a change of customary living arrangement for the child. The CWA will continue such child in grant status only with the written approval of the State office.**

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

**(b)**

**DIVISION OF PUBLIC WELFARE**

**Food Stamp Program  
General Provisions, Application Process,  
Eligibility Factors Other Than Need,  
Financial Eligibility, Certification  
Procedures, Fair Hearings, Fiscal  
Procedures, Incorrect Issuances, Maximum  
Income and Coupon Allotments, and Benefit  
Determination and Proration Formulas**

**Proposed Readoption: N.J.A.C. 10:87-1, 2,  
3, 4, 5, 6, 7, 8, 9, 10, and 12**

**Proposed Readoption with Amendment:  
N.J.A.C. 10:87-11**

Authorized By: George J. Albanese, Commissioner,  
Department of Human Services.  
Authority: N.J.S.A. 30:4B-2, 48 FR 6836, and 48 FR 16828.

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Audrey Harris, Acting Director  
 Division of Public Welfare  
 CN 716  
 Trenton, NJ 08625

At the close of the period for comments, the Department of Human Services may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Pursuant to Executive Order No. 66(1978), this rule would otherwise expire on March 1, 1984. The re adoption of the rule becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of re adoption. The concurrent amendment to the existing rule becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-648.

The agency proposal follows:

#### Summary

In accordance with the "sunset" provisions of Executive Order No. 66(1978), the Department of Human Services proposes to re adopt subchapters 1 through 12 of N.J.A.C. 10:87. The proposed amendments contained in this re adoption can be found at N.J.A.C. 10:87-11.12, 11.13, 11.16, 11.23, and 11.29. Other revisions include two proposals now in process which are primarily directed at incorporating various technical amendments and policy interpretations and clarifications required by Federal regulations (see 15 N.J.R. 1821(a) and 15 N.J.R. 1918(a)). These two proposed amendments revise rules regarding administrative disqualification of authorized representatives, the certification process, procedures for alien individuals, identification of income exclusions for certain payments to Indian tribes, repeal of transfer provisions, and a technical revision to the proration formula. It is anticipated that these proposed amendments will be adopted prior to the re adoption of this entire chapter.

On January 12, 1979, pursuant to the authority of N.J.S.A. 30:4B-2 and in accordance with applicable provisions of the Administrative Procedure Act, the Department adopted amendments to the Food Stamp Program (N.J.A.C. 10:87-1.1 et seq.), as required by the Food Stamp Act of 1977 (Public Law 95-113), substantially as proposed in the Notice published December 7, 1978 at 10 N.J.R. 537(b). These amendments replaced the Food Stamp Manual in its entirety. An order adopting these amendments was filed on January 18, 1979 as R. 1979 d. 29 and became effective on March 1, 1979.

N.J.A.C. 10:87-1 sets forth the purpose of the Food Stamp Program and provides general rules regarding its administration. It further provides rules proscribing discrimination on the basis of age, race, color, sex, handicap, religious creed, national origin, or political belief and describes the complaint procedures for persons who feel they have been subjected to discrimination. The subchapter also provides regulations prohibiting the release of confidential information about program applicants and recipients.

N.J.A.C. 10:87-2 provides procedural requirements for the processing of an application for food stamp benefits. Rules regarding household composition, the filing of an application, interview and verification requirements, and application processing standards are furnished. It also specifies particular procedures in regard to recipients of Aid to Families with Dependent Children, recipients of Supplemental Security Income, drug addicts, and alcoholics.

N.J.A.C. 10:87-3 details the nonfinancial requirements for receipt of program benefits such as citizenship and alien status, work registration, job search, and the provision of social security numbers. It also provides special procedures for the eligibility determination of college students.

N.J.A.C. 10:87-4 defines resources for program purposes and specifies those that are counted and those that are excluded from consideration in the eligibility process. Rules are also provided which require disqualification from the Food Stamp Program for

knowingly transferring resources for the purposes of qualifying or attempting to qualify for program benefits.

N.J.A.C. 10:87-5 defines for program purposes, income, specifying that which is counted and that which is excluded. Income deductions are also defined, in particular, allowances for medical expenses of the elderly and disabled, expenses for dependent care, and shelter costs.

N.J.A.C. 10:87-6 prescribes procedures in regard to the certification of eligibility. The length of time of program certification and the treatment of income and income deductions within the certification period are also detailed.

N.J.A.C. 10:87-7 provides direction for treatment of households with special income circumstances such as self-employment income, income of a disqualified or other nonhousehold member, residents of drug and alcoholic rehabilitation centers, group living arrangements, battered women's shelters, and sponsored aliens.

N.J.A.C. 10:87-8 details procedures for fair hearings, including information on how to apply for a hearing, actual procedures at a hearing, household rights, continuation of food stamp benefits pending the outcome of the hearing, hearing decisions, and the county welfare agencies rights and responsibilities.

N.J.A.C. 10:87-9 contains other certification related procedures including recertification procedures, notices to clients, issuance of identification cards, replacement of ATPs (authorization to participate) and coupons, recordkeeping requirements, and security and control of ATPs.

N.J.A.C. 10:87-10 delineates fiscal operating procedures including a detailed explanation of computer printouts and a variety of technical functions such as claims for unused coupons and altered ATP cards.

N.J.A.C. 10:87-11 provides procedures to be followed when a household has received an incorrect issuance of food stamps; explains the circumstances under which a restoration of lost benefits is possible and how to compute the restoration amount, distinguishes between an intentional program violation, inadvertent client error and agency error claim, the calculation of the amount of a claim and the process to collect the overissuance.

N.J.A.C. 10:87-12 provides the formula, tables, and allowable deductions necessary to determine financial eligibility for food stamps and the level of benefits.

The entire Chapter 87 is under continual review by staff of the Department's Division of Public Welfare. The Division of Public Welfare conducted an internal review and evaluation of the rules prior to this proposal for re adoption. After such review of the rules, the agency determined the rules to be adequate, reasonable, and responsive to the purposes for which they were promulgated.

The following are significant changes to N.J.A.C. 10:87.

#### Food Stamp Act of 1977 (Public Law 95-113)

Due to the extensive revisions required by the Food Stamp Act of 1977, the Food Stamp Program required several amendments in 1979 to clarify policy and procedure and implement several other provisions of that act.

1. The revision at N.J.A.C. 10:87-3, adopted in August 1979, included an amendment prohibiting eligibility for two months for certain households in which the primary wage earner voluntarily quit employment without good cause.

2. In November 1979 the Department adopted amendments to N.J.A.C. 10:87-5 and 10:87-12.1 to implement a standard utility allowance (SUA) to be used in the determination of eligibility and benefit level in the Food Stamp Program.

3. It should be noted that the tables at N.J.A.C. 10:87-12 were first revised in July 1979. These tables have been revised each time updating was required by Federal regulation.

#### 1979 Amendments to the Food Stamp Act of 1977 (Public Law 96-58)

1. Several subchapters were amended in December 1979 to establish medical expenses as an allowable deduction and to delete

the maximum limitation on shelter deductions for the elderly and disabled in the determination of eligibility and benefits. These changes were made through the emergency rulemaking process in order to comply with Federal regulations which required enactment by January 1, 1980.

2. In March of 1981 an emergency adoption amended various subchapters to comply with P.L. 96-58 establishing procedures to be followed in the event of a federally mandated reduction, suspension, or cancellation of Food Stamp benefits.

#### **1980 Amendments to the Food Stamp Act of 1977 (Public Law 96-249)**

1. Various subchapters were amended in April 1981 to implement provisions regarding student eligibility requirements for participation in the program. These amendments substantially revised student eligibility requirements, restricted student participation, and simplified program administration by eliminating the student tax dependency determinations and certain work registration procedures.

#### **1979 Amendments to the Food Stamp Act of 1977 (Public Law 96-58) and 1980 Amendments to the Food Stamp Act of 1977 (Public Law 96-249)**

Extensive revisions to the program were adopted in September 1981 to incorporate changes enacted by the 1979 and 1980 amendments to the Food Stamp Act.

1. As required by the 1979 amendments, subchapters were amended to require, as a condition of eligibility, that each household member age 18 or over and all children receiving countable income provide the county welfare agency with his or her Social Security number.

2. These amendments provided regulations for the joint processing of applications for Supplemental Security Income and Food Stamps and required that county welfare agencies conduct needs assessments and develop service plans to ensure that the program addressed needs to potentially eligible individuals.

3. The limit on allowable resources was reduced to \$1500 from \$1750 and cars necessary to transport a physically disabled household member were excluded from consideration as resources. Additionally, income from Federal, State, or local energy assistance payments were excluded in the determination of program eligibility.

4. Also, those factors of eligibility subject to mandatory verification requirements were expanded to include residence and identity. The county welfare agencies were provided the authority and flexibility in verifying eligibility factors other than those subject to mandatory verification and those which could be verified only when questionable.

#### **Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35)**

Extensive revisions to the Food Stamp Program were implemented effective October 1, 1981 as required by the Omnibus Budget Reconciliation Act.

1. These amendments eliminated the requirement for outreach activities and specified that Federal funding of outreach activities was prohibited. The county welfare agencies were provided the option of continuing to provide informational materials to potential recipients.

2. The household definition was amended to specify that a spouse, parents, or children living together must be treated as one household unless one of the parents is 60 years of age or older, thereby precluding these individuals from claiming separate household status or boarder status.

3. Households with a member on strike became ineligible to participate in the Food Stamp Program unless the household was eligible prior to the strike. Such households could retain eligibility but were not to receive an increased allotment due to the decrease in income of the striking member.

4. The Federal rules required that income eligibility standards be

amended by implementing a new gross income limit test applicable to most food stamp households. Only households with an elderly or disabled member were to continue to have eligibility determined using the net income standards. Under the revised income standards, certain households were eligible for participation under the gross income test but ineligible for benefits because the household's net food stamp income was too high to entitle the household to benefits.

5. The earned income deduction of 20 percent was reduced to 18 percent.

6. Another major revision related to proration of initial month's benefits. A household's benefits are prorated based on the day of the month the household applies rather than the previous policy which permitted receipt of benefits for the full month. A formula was provided to calculate a prorated benefit proportionate to the number of days remaining in the month.

7. Specific instructions were also provided regarding how and when to round cents when calculating net income and benefit levels.

8. The formula for determination of the monthly coupon allotment was amended to reflect the revised rounding rules and provide for the determination of monthly benefits without use of the tables.

#### **Food Stamp Act of 1977 (Public Law 95-113), section 6(d)(1) of the act and 7 CFR 273.1 and 273.7**

The Food Stamp Act of 1977 requires that food stamp participants required to register for work must also search for employment on their own.

1. Subsequent to negotiations with the New Jersey State Employment Service (NJSES) these amendments were proposed on September 20, 1982 and adopted December 20, 1982. These amended rules provide procedures for participants to actively search for employment and delineates the roles of county welfare agencies, the NJSES, and food stamp participants in order to effect a work registration/job search system that carries out the intent of the act that able-bodied participants seek and find gainful employment.

#### **Food Stamp Act of 1977 (Public Law 95-113) and 7 CFR parts 272, 273, and 274**

1. These amendments, proposed October 4, 1982 and adopted January 3, 1983, modified Food Stamp regulations regarding the replacement of lost or stolen authorizations to participate (ATPs) and non-delivered, stolen or destroyed food coupons. These amended rules imposed limitations on the issuance of replacement ATPs and/or coupons reported as lost, stolen or destroyed before and after receipt. These rules were intended to reduce losses resulting from fraudulent or erroneous ATP or coupon replacement. Also incorporated were provisions regarding replacement of certain food losses through issuance of supplemental benefits.

#### **Omnibus Budget Reconciliation Act of 1982 (Public Law 97-253), Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) and the Food Stamp and Commodity Distribution Amendments of 1981 (Public Law 97-253)**

The enactment of these laws and the resulting amendments to Title 7 of the Code of Federal Regulations necessitated extensive revision to rules governing the Food Stamp Program. Final Federal regulations implementing changes required by these laws were promulgated in the November and December 1982, and February 1983 issues of the Federal Register and required emergency rulemaking in order to meet the January 1, February 1, and April 1, 1983 implementation dates.

1. The definition of household was further amended to treat all adult siblings living together, unless elderly or disabled, as one household for food stamp purposes. The household is defined according to relationship whether or not the family members purchase or prepare meals together.

2. The definition of a household was also amended to allow

elderly persons, clearly living as members of a family household, to be treated as a separate household if the individual is unable to purchase and prepare meals separately because he or she suffers from a permanent disability. A separate total gross household income test is established for this group of individuals and is set at 165 percent of the poverty guidelines.

3. The definition of elderly was amended to clarify that a person who becomes 60 years of age in the month of application shall be considered to be 60 years of age at time of application for purposes of determining eligibility.

4. The definition of disabled was clarified and expanded to include persons receiving disability or blindness benefits under other titles of the Social Security Act in addition to Title II as well as disabled veterans and their disabled survivors for purposes of the special considerations afforded the disabled in determining household composition, income eligibility, and income deductions.

5. Regulations regarding boarders were amended to specify that such individuals are ineligible to participate in the program separately, but may participate in the program as a member of the household providing boarder services, but only at such household's request.

6. Rules regarding households with a member on strike were amended to state that such households are ineligible to participate in the Food Stamp Program unless the household was, or would have been, eligible for benefits on the day prior to the strike. The regulation was also amended regarding the income to be counted when determining eligibility and benefits for such households.

7. Utility allowance regulations were revised to set separate standards for households responsible for heating costs (heating utility allowance (HUA)) and for households which incur major utility expenses for other than heating costs (standard utility allowance (SUA)).

8. All households without an elderly or disabled member must meet the gross income test as well as the net income eligibility test under the revised rule. Elderly or disabled households remain subject only to the net income test.

9. These amendments reflect that individuals having questionable citizenship status may be disqualified or excluded from participation. The income and resources of disqualified or excluded individuals shall be counted in determining eligibility and benefit level of any remaining household members.

10. Eligibility for expedited processing was amended to limit this procedure to households with liquid resources not exceeding \$100.00 and gross monthly incomes of less than \$150.00 and to households defined as destitute, the definition of which was limited to migrant or seasonal farmworker households.

11. Student eligibility was again revised restricting participation of students with dependents to those students with dependent children under the age of six or with dependent children age six, but under age 12, for whom adequate child care is not available.

12. Revised regulations mandated that the provision of Social Security numbers as a condition of eligibility, be expanded to include every household member, regardless of age. If a household member, such as a child, does not have a Social Security number, application for a number must be made as a condition of eligibility.

13. The resource exclusion for Individual Retirement Accounts (IRAs) and Keogh Plans was repealed. The definition of resources was expanded to include the value of IRAs and Keogh plans which do not involve a household member in a contractual relationship with a nonhousehold member, less the amount of penalty for early withdrawal.

14. A new rule was promulgated regarding the deeming of income and resources for sponsored aliens. The income and resources of an alien sponsor must be deemed available to the sponsored alien for whom an affidavit of support was signed on or after February 1, 1983.

15. Households which, without good cause, file an application for recertification after the end of their certification period will receive prorated benefits for the initial month of the new

certification period.

16. Proration rules were amended to require that prorated allotments in one through 99 cents be rounded down to the next lower whole dollar.

17. The amendment requires that initial month's benefits resulting in an allotment of less than \$10.00 or prorated to less than \$10.00 shall not be issued. The \$10.00 minimum benefit for one and two person households does not apply to initial month's benefits.

18. Clarifying language was added to numerous sections of the rules regarding the treatment of income and resources of disqualified or excluded individuals. Included in these changes was an amendment which requires that all of the income of an individual excluded for an intentional program violation continue to be counted in its entirety. The income of household members excluded for other reasons remains counted as available to the household after a pro rata share for the excluded member has been deducted.

19. Amended regulations prohibit any increase in benefits solely as a result of the disqualification of a household member for intentional program violation.

20. N.J.A.C. 10:87-11 was extensively revised to incorporate disqualification penalties for intentional program violation and improved recovery of overpayments. This amendment incorporates the revised mandatory disqualification for intentional program violation for a period of six months for the first offense, 12 months for the second offense, and permanent disqualification for the third offense. Individuals accused of intentional program violation are provided the option of signing a waiver of their right to an administrative disqualification hearing or a disqualification consent agreement thereby agreeing to the penalty and reduction of benefits.

The amendments redefined fraud as "intentional program violation" and expanded the definition to include the intentional making of false or misleading statements, misrepresentations, or concealment or withholding of facts as well as the commission of any act that violates the Food Stamp Program regulations.

Language was added to reflect that responsibility for conducting hearings rests with the Office of Administrative Law while reference to local level hearings was deleted.

Regulations were amended to revise language defining inadvertent household error and administrative error, the establishment of a claim for such errors and claim calculation. The revised rule allows that a claim may be established on an overissuance which occurred not more than six years prior to discovery of the overissuance.

Collection of claims is amended to allow the county welfare agency to reduce a household's coupon allotment if the household fails to respond to a written demand letter for repayment and to accept food coupons for payment of a claim as well as lump sum and installment payments.

Criteria for suspension of a claim was limited to situations in which the cost of further collection activity is likely to exceed the amount of the claim.

#### **1980 Amendments to the Food Stamp Act of 1977 (Public Law 96-249) 7 CFR 273.8 and 273.9**

Final Federal regulations amended certain resource exclusions in the Food Stamp Program. These amendments were proposed February 22, 1983 and adopted May 2, 1983.

1. These amendments provided for the resource exclusion of a specially equipped vehicle or special type vehicle necessary to transport a physically disabled household member and the exclusion from resources of payments made to certain American Indians as required by Federal law. The time-limited exclusion from resources of earned income tax credits was deleted.

2. This amendment also clarified conditions under which a trust fund may be considered inaccessible to the household and, therefore, excluded from consideration as a resource. Specifically, exclusions were provided for irrevocable trust funds established from household funds to pay for medical expenses of a household

member or a trust fund established by a third party when such trust fund is administered by a court or other specific entity.

#### **Omnibus Budget Reconciliation Act of 1982 (Public Law 97-253)**

Incorporated with this emergency adoption which revised the maximum coupon allotments and increased the income deductions, were the revised heating utility allowance (HUA) and standard utility allowance (SUA).

1. Of significant note are revisions regarding the HUA and SUA. Previously these amounts were adjusted seasonally. The amounts included in this adoption represent annualized utility allowances, an option selected by the Department in order to simplify administration of the program.

The proposed readoption of N.J.A.C. 10:87-11 with amendments revises regulations regarding restoration of lost benefits, claim determinations and collection activity. Amendments to N.J.A.C. 10:87-11.12, 11.13, and 11.16 limit restoration of lost benefits to a one year period, including restoration as a result of a reversal of an intentional program violation disqualification decision, calculated from the date the county welfare agency learns of the household's request for restoration. Under existing regulations restoration is calculated from the month, rather than the actual date, the county welfare agency learns of the request. These amended regulations specify the dates used to define the twelve-month period for purposes of restoration of lost benefits.

N.J.A.C. 10:87-11.23 reflects amendments that clarify procedures to be followed to determine the first month affected by a household's failure to report a change or a county welfare agency's failure to act on a reported change.

Methods of collection of claims at N.J.A.C. 10:87-11.29 is being expanded to clarify that county welfare agencies may pursue other collection action, as appropriate, to obtain restitution from households which fail to respond to written demand letters for repayment of a claim.

#### **Social Impact**

The Food Stamp Program was designed to promote the general welfare and to safeguard the health and well being of the population by raising the levels of nutrition among low-income households. The program is authorized by the United States Congress and regulated by the United States Department of Agriculture. These rules were enacted to delineate the policies and procedures applicable to the determination of eligibility and issuance of food stamp benefits for all households which apply for participation in the program.

The Department of Human Services is responsible for amending these rules as necessary to ensure that policies and procedures for administration of the program are revised in accordance with amendments to the Food Stamp Act and Federal regulations governing the program.

The Food Stamp Program provides an opportunity for low-income households to receive benefits, in the form of food stamp coupons, to supplement the household's budget for the purchase of food. The most recent data available indicates that 500,000 individuals participate in the Food Stamp Program each month. If the program were not available, a significant number of these low-income individuals would lack sufficient means to purchase adequate food to meet their nutritional needs.

The amendments contained in this proposal provide program clarification and simplify administration of the program. These changes will result in some decrease in benefits being restored to certain households.

As indicated in the "Summary", there have been significant changes made to the rules governing the Food Stamp Program. In general, these amendments were implemented to improve the integrity and administration of the program, restrict eligibility to truly needy households and extend special income and deduction

considerations to the elderly and disabled. Additionally, many of the changes, taken together, were intended to curb the growth of participation in the program, deter fraud, waste and abuse, and thereby reduce Federal expenditures.

#### **Economic Impact**

The Food Stamp Program provides for a positive economic impact on both individual recipients and the economy of the State as food stamp benefits are 100 percent federally funded and the Federal matching rate for administrative costs is 50 percent.

Individual recipients receive an average benefit of \$43.00 per month. In terms of Federal funds coming into the State, benefit dollars for State Fiscal Year 1983 exceeded \$286,600,000. It is anticipated that benefit dollars for State Fiscal Year 1984 will be \$290,000,000.

The amendments contained in this proposal are intended to reduce program costs. Any reduction in program benefit expenditures due to restrictions on restoration of lost benefits will not result in any fiscal savings to the Department or county governments as the Federal government fully funds such expenditures. These changes will not impact significantly on administrative costs of the Department or county welfare agencies.

Overall, the amendments identified in the "Summary" resulted in some decrease in food stamp participation and benefits contingent upon individual household circumstances. The numerous changes were enacted by the Federal government in order to restrain growth of the Food Stamp Program and thereby curtail Federal expenditures.

**Full text** of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:87, as amended and supplemented by the New Jersey Register.

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

10:87-11.12 Period of restoration

(a) [With the exception of benefits which are restored as a result of a reversal of an intentional program violation disqualification penalty, benefits shall not be restored if lost more than 12 months prior to the most recent of the following:]

**Benefits shall be restored for a period of not more than 12 months prior to whichever of the following occurred first:**

1. [Month] **Date** the CWA was notified: The [month] **date** the CWA was notified by the household or by another person or agency in writing or orally of the possible loss to that specific household;

2. [Month] **Date** CWA discovers loss: The [month] **date** the CWA discovers in the normal course of business that a loss to a specific household has occurred; or

3. [Date of fair hearing request: The date the household requested a fair hearing to contest the adverse action which resulted in the loss.]

**Date of household request: The date the CWA receives a request for restoration of lost benefits from a household.**

**(b) The CWA shall restore benefits to households which were found by any judicial action to have been wrongfully withheld. If the judicial action is the first action the recipient has taken to obtain restoration of lost benefits, then benefits shall be restored for a period of not more than 12 months from the date the court action was initiated. When the court action is a review of a CWA action, benefits shall be restored for a period of not more than 12 months from the earliest of the following dates:**

1. **The date the CWA received a request for restoration; or**

2. **If no request for restoration is received, the date the fair hearing action was initiated.**

**3. In no case shall benefits be restored for more than one year prior to the date the CWA is notified of or discovers the loss.**

10:87-11.13 Errors discovered by the CWA

(a) If the CWA determines that a loss of benefits has occurred, and the household is entitled to restoration of those benefits, the CWA shall automatically take action to restore any benefits that were lost. No action by the household is necessary.

1. Loss more than 12 months prior to discovery or notification: Benefits shall not be restored if the benefits were lost more than 12 months prior to the [month] date the loss was discovered by the CWA in the normal course of business, or were lost more than 12 months prior to the [month] date the CWA was notified in writing or orally of a possible loss to a specific household.

2. (No change.)

10:87-11.16 Individuals disqualified for intentional program violation

(a) Restrictions on restoration: Individuals disqualified for intentional program violation are entitled to restoration of any benefits lost during the months they were disqualified, not to exceed 12 months prior to the date of CWA notification, only if the decision which resulted in disqualification is subsequently overturned or reversed. For example, an individual would not be entitled to restoration of lost benefits for the period he or she was disqualified based solely on the fact that a criminal conviction could not be obtained, unless the individual successfully challenged the disqualification in a separate court action.

(b) **Calculating restoration due:** For each month the individual was disqualified, the amount to be restored, if any, shall be determined by comparing the allotment the household received with the allotment the household would have received had the disqualified member been allowed to participate. If the household received a smaller allotment than it should have received, the difference equals the amount to be restored. [Benefits shall be restored regardless of the length of time that has elapsed since the household was disqualified.] **Benefits shall not be restored for a period of more than 12 months prior to CWA notification. Participation in an administrative disqualification hearing in which the household contests the CWA assertion of intentional program violation shall be considered notification that the household is requesting that benefits be restored.**

10:87-11.23 Instances requiring a claim determination for inadvertent household errors or administrative errors

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

(e) Calculating amount of the inadvertent household error or administrative error claim: After excluding those months that are more than six years prior to the date the overissuance was discovered, the CWA shall determine the correct amount of food stamp benefits the household should have received for those months the household participated while the overissuance was in effect. If the household received a larger allotment than it was entitled to receive, the CWA shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

**1. If the household failed to report a change in circumstances within the required time frames, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been reported timely. However, in no event shall the CWA determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.**

**2. If the household reported a change timely, but the CWA did not act on the change within the required time frames, the first month affected by the CWA's failure to act shall be the first month the CWA would have made the change effective had it acted timely. However, in no event shall the CWA determine as the first month in which the change would have been effective, any month later than two months from the month in**

**which the change in household circumstances occurred. If a notice of adverse action was required but was not provided, the CWA shall assume for the purpose of calculating the claim that the maximum advance notice period would have expired without the household requesting a fair hearing.**

(f) (No change.)

10:87-11.29 Methods of collection

(a) The CWA shall collect intentional program [error] violation, inadvertent household error and administrative error claims as provided below:

1.-6. (No change.)

**7. Other collection action: The CWA may also pursue other collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of a claim.**

## INSURANCE

(a)

### DIVISION OF ADMINISTRATION

#### Automobile Insurance Personal Injury Protection Options

#### Proposed New Rule: N.J.A.C. 11:3-14

Authorized By: Joseph F. Murphy, Commissioner,  
Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984, P.L. 1983 c.362.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

W. Morgan Shumake  
Executive Director of Insurance  
Department of Insurance  
CN 325  
Trenton, NJ 08625

At the close of the period for comments, the Department of Insurance may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1983-651.

The agency proposal follows:

#### Summary

The New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984 (P.L. 1983, c. 362) requires that each automobile insurer provide, at appropriately reduced premiums, coverage options applicable to personal injury protection coverage (PIP). These options include: (1) Medical expense benefit deductibles; (2) Exclusion of all PIP benefits, such as income continuation or funeral expense benefits, other than medical expense benefits; and (3) Setoff provisions entitling an insurer paying medical expense benefits to be reimbursed under certain conditions up to 20 percent from any award, judgment or settlement.

Section 13 of the Act provides that, on or after December 3, 1983 each insurer shall offer optional medical expense deductibles in the amounts of \$500.00, \$1,000 and \$2,500. The exclusion and setoff options must be offered on all automobile policies issued on or after July 1, 1984. Where an existing policy is expected to be in force on July 1, 1984, the named insured must be provided by May 15, 1984 with the opportunity to select such options. This proposal provides rules for the implementation of the statutory requirements and includes procedural guidelines, notice requirements and filing requirements.

With respect to the offering of medical expense deductibles, the proposal at N.J.A.C. 11:3-14.3(b) provides that such deductibles shall apply on a per person/per accident basis. Further, it provides that notice of the deductibles be furnished to the insured in writing and be accompanied by a statement in a form prescribed by the Commissioner, concerning the possible coordination of other health benefit coverages with personal injury protection coverage. The proposal N.J.A.C. 11:3-14.3(d) sets forth the minimum language which must be included in the statement.

With respect to all PIP options, this subchapter, in accordance with the statute, specifies that such options shall apply only to the insured and any resident relative in the insured household and not to any other person eligible for required personal injury protection benefits. Notice of the availability of these options shall be incorporated into the Written Notice and Buyer's Guide required to be provided pursuant to Section 17 of the Act. Standards for this Written Notice and Buyer's Guide, are set forth in the Department's proposed new rule, N.J.A.C. 11:3-15 (see: 15 N.J.R.2142(a)).

The proposal also specifies that premium credits for PIP options shall be calculated and represented as a percentage of premium and shall be uniform by filer on a statewide basis. Finally, the proposal, at N.J.A.C. 11:3-14.7, requires that automobile filers submit for approval filings of rates or manual rules which provide for the personal injury protection coverage options specified by the Act and this implementing subchapter.

#### Social Impact

The personal injury protection option provided in this proposal will promote flexibility in coverage choices and will enable insureds to tailor their automobile insurance coverage to suit their desires and economical circumstances. The resulting elimination of unnecessary or duplicate coverages should result in more effective utilization of insurance. For example, the coordination of PIP benefits with other available health insurance benefits should prevent duplication of coverage. Similarly, the election of the option to exclude all PIP coverages (other than expense coverage) would enable a retiree to eliminate income continuation and related unnecessary coverages. The specific notice requirements of the proposal will help ensure that policyholders are apprised of the availability of the options and should encourage review and evaluation of coverage needs.

#### Economic Impact

The election of personal injury protection options as provided in this proposal can substantially decrease the cost of such coverages. For example, the maximum credit for selection of a \$2,500 medical expense deductible may be as much as 40 percent of the PIP premium. The availability of these options should enhance an insured's ability to select coverages which are cost-beneficial. The availability and selection of PIP options will also aid insurers in controlling automobile claim costs.

Insurers are expected to incur certain costs as a result of effecting compliance with the requirements of the statute and this implementing subchapter, particularly with respect to the notice requirements. The Department expects to absorb any costs resulting from the implementation of these rules within current budget resources.

Full text of the proposed new rule follows.

### SUBCHAPTER 14. PERSONAL INJURY PROTECTION OPTIONS

#### 11:3-14.1 Purpose

The New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984 requires each automobile insurer offering personal injury protection coverage to provide, at appropriately reduced premiums, optional deductibles, exclusions and setoffs. This subchapter establishes rules for the implementation of these requirements.

#### 11:3-14.2 Scope

This subchapter applies to every insurer authorized to transact the business of automobile insurance in this State and every rating organization engaged in the business of rate-making for such insurers.

#### 11:3-14.3 Optional medical expense benefit deductibles for personal injury protection coverage

(a) Effective with all new automobile policies issued and renewal policies prepared on and after December 3, 1983 which include personal injury protection coverage, insurers shall provide the named insured the option, at appropriately reduced premiums, to select medical expense benefit deductibles of \$500.00, \$1,000 and \$2,500.

(b) The medical expense deductibles shall apply on a per person/per accident basis.

(c) A medical expense deductible elected by the named insured shall apply only to the named insured and any resident relative in the named insured's household, and not to any other person eligible for personal injury protection benefits required to be provided in accordance with N.J.S.A. 39:6A-4.

(d) The notice of the deductibles shall be in writing and shall be accompanied by a statement of the possible coordination of other health benefit coverages, prescribed by the Commissioner of Insurance. The minimum language which must be included in the notice is as follows:

1. Under the terms of Ch. 362, laws of 1983, signed by Governor Thomas H. Kean on October 4, 1983, you may now choose your type of auto insurance coverage and may qualify for a reduction in premium cost.

2. The law permits you to select a deductible for the medical portion of your auto insurance coverage called personal injury protection coverage, commonly known as PIP. You can, under this law, select a deductible of \$500.00, \$1,000 or \$2,500. This option should be of interest to those persons who have other health insurance that will pay the deductible amount.

3. Is a PIP medical expense deductible the right choice for you? If you are willing to pay the amount of the deductible yourself, or if you have health insurance such as Blue Cross-Blue Shield, Medicare, or medical expense benefits from another source that covers you and your resident family members in auto accidents, you may wish to consider selecting a PIP deductible. Bear in mind health coverages may also contain deductibles.

4. If you select the \$500.00 deductible, it means that your auto insurance will not pay the first \$500.00 of any medical bills for you or any member of your immediate family which result from injuries suffered in an accident. Costs above that figure will continue to be met by your auto insurance carrier.

5. For example, if you and three family members are injured in an auto accident and you have selected a \$500.00 deductible, you will be responsible for up to the first \$500.00 in medical costs sustained by each person, or a maximum of \$2,000.

6. You are not required to select a deductible, of course, and you are free to continue to carry the identical coverage you now have.

7. Whether or not to choose a deductible should depend upon your ability to pay a portion of your medical costs, or whether your health insurance carrier will meet the cost.

8. *You should bear in mind that not all health insurance policies*

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*contain provisions for payment of a PIP medical expense deductible amount, so it is important that you examine your health policy or contact your health insurer or employer to determine your health policy's provisions.*

9. The average PIP premium in New Jersey is \$135.00. Your premium credit for each deductible will be approximately:

- i. \$500.00      \_\_\_\_\_% premium credit;
- ii. \$1,000      \_\_\_\_\_% premium credit;
- iii. \$2,500      \_\_\_\_\_% premium credit;

or

iv. The maximum credit for the deductible may be as much as 40% of the PIP premium.

v. Contact your Company, agent/broker/producer of record for information as to the applicable premium credit for your policy.

(e) The buyer's guide and written notice specified in section 17 of P.L. 1983, c.362 shall satisfy the requirements of this subchapter.

(f) Premium credits calculated and represented as a percentage of the applicable premium shall be provided for each deductible. The premium percentage shall be uniform by filer on a statewide basis.

(g) Should an applicant or policyholder fail to elect a deductible, full coverage shall be provided by the insurer and an appropriate premium shall be charged.

(h) The deductible option elected by the named insured shall continue in force as to subsequent renewal or replacement policies until the insurer or its authorized representative receives a properly executed written request to eliminate or change the deductible.

11:3-14.4 Optional exclusion of income continuation benefits, essential service benefits, death benefits and funeral expense benefits

(a) Automobile insurers offering personal injury protection coverage shall, at an appropriately reduced premium, provide the named insured the option to exclude all of the following benefits from such coverage:

- 1. Income continuation benefits;
- 2. Essential service benefits;
- 3. Death benefits;
- 4. Funeral expense benefits.

(b) Election of the exclusion shall result in the elimination of all elements of personal injury protection coverage except medical expense benefits.

(c) An exclusion elected by the named insured in accordance with this subchapter shall apply only to the named insured, and any resident relative in the named insured's household, but not to any other person eligible for personal injury protection benefits to be provided in accordance with N.J.S.A. 39:6A-4.

(d) Additional personal injury protection coverage pursuant to N.J.S.A. 39:6A-10 shall not be available to any named insured selecting the exclusion or to any relative resident in his household.

(e) No new automobile insurance policy shall be issued on or after July 1, 1984 unless the option to exclude personal injury protection benefits in accord with this section is made available to the applicant. In the case of any automobile policy expected to be in force on July 1, 1984, the named insured shall be provided not later than May 15, 1984 with the opportunity to elect, effective July 1, 1984, the personal injury protection coverage exclusion in accord with this section. Any notice of renewal of an automobile insurance policy with an effective date subsequent to July 1, 1984 shall be accompanied by a notice to the named insured providing the opportunity to elect personal injury protection coverage exclusion in accord with this subchapter.

(f) A premium credit calculated and represented as a percentage of the applicable premium shall be provided for the exclusion. The premium percentage shall be uniform by filer on a statewide basis.

(g) The buyer's guide and written notice specified in section 17 of P.L. 1983, c.362 shall satisfy the requirements of this subchapter.

(h) Should an applicant or named insured fail to elect the exclusion,

full personal injury protection coverage shall be deemed to have been selected and an appropriate premium shall be charged.

(i) The exclusion elected by a named insured shall continue in force as to subsequent renewal or replacement policies until the insurer or its authorized representative receives a properly executed written request for its elimination.

11:3-14.5 Setoff option entitling an automobile insurer paying PIP medical expense benefits to reimbursement under certain conditions

(a) Automobile insurers offering personal injury protection coverage shall, at appropriately reduced premiums, provide a setoff option whereby the named insured agrees to reimburse the insurer from any award, judgment or settlement for non-economic loss for the medical expense benefits paid by it, up to a maximum of 20 percent of the award, judgment or settlement.

(b) A setoff option elected by the named insured in accordance with this section shall apply only to the named insured, and any resident relative in the named insured's household, but not to any other person eligible for personal injury protection benefits to be provided in accordance with N.J.S.A. 39:6A-4.

(c) No new automobile insurance policy shall be issued on or after July 1, 1984 unless the setoff option in accord with this section is made available to the applicant. In the case of any automobile policy in force on July 1, 1984, the named insured shall be provided no later than May 15, 1984 with the opportunity to elect, effective July 1, 1984, the setoff option in accord with this section. Any notice of renewal of an automobile insurance policy with an effective date subsequent to July 1, 1984 shall be accompanied by a notice to the named insured providing the opportunity to elect the setoff option in accord with this subchapter.

(d) A premium credit calculated and represented as a percentage of the applicable premium shall be provided for the setoff option. The premium percentage shall be uniform by filer on a statewide basis.

(e) The buyer's guide and written notice specified in section 17 of P.L. 1983, c.362 shall satisfy the requirements of this subchapter.

(f) Should an applicant or named insured fail to elect the setoff option, a full appropriate premium shall be charged.

(g) The setoff option elected by a named insured shall continue in force as to subsequent renewal or replacement policies until the insurer or its authorized representative receives a properly executed written request to eliminate the option.

11:3-14.6 Refund or credit of unearned premium

Every automobile insurer offering personal injury protection coverage shall establish a fair, practicable and non-discriminatory plan for the refund or application of credit of any unearned premium resulting from the selection of any deductible, exclusion or setoff option pursuant to this subchapter.

11:3-14.7 Filing requirements

(a) Every automobile filer shall submit to the Commissioner for approval filings of rates or manual rules which provide the optional medical expense benefit deductibles for personal injury protection coverage.

(b) Within 30 days of the effective date of this subchapter, every automobile filer shall submit to the Commissioner for approval filings of rates or manual rules which provide the optional exclusion from personal injury protection coverage of income continuation benefits, essential service benefits, death benefits, and funeral expense benefits.

(c) Within 30 days of the effective date of this subchapter, every automobile filer shall submit to the Commissioner for approval filings of rates or manual rules which provide the setoff option entitling an insurer to reimbursement for medical expense benefits pursuant to section 13c of P.L. 1983, c.362.

(d) All filings submitted for approval pursuant to this subchapter,

and all changes and amendments thereto, shall be prepared in accordance with insurance laws and regulations, including the applicable provisions of N.J.S.A. 17:29A-1 et seq. and N.J.A.C. 11:1-2 and the Department's existing filing procedures.

(e) The filing of a rating organization shall be applicable to the members and subscribers of the organization who have authorized the organization to file on their behalf.

## (a)

### DIVISION OF ADMINISTRATION

#### Automobile Insurance Standards for Buyer's Guide/Written Notice

#### Proposed New Rule: N.J.A.C. 11:3-15

Authorized By: Joseph F. Murphy, Commissioner,  
Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), Section 17 of  
(P.L. 1983 c.362.) The New Jersey Automobile Insurance  
Freedom of Choice and Cost Containment Act of  
1984.

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

W. Morgan Shumake  
Executive Director of Insurance  
Department of Insurance  
CN 325  
Trenton, NJ 08625

At the close of the period for comments, the Department of Insurance may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1983-652.

The agency proposal follows:

#### Summary

Pursuant to section 17 of The New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984 (P.L. 1983, c.362), the proposed new subchapter establishes standards for the Written Notice and Buyer's Guide utilized in describing the available coverage, options and rate credits offered by insurers in any automobile insurance policies issued on or after July 1, 1984. Where an existing policy is expected to be in force on that date, the named insured must be provided with these documents by May 15, 1984.

The Written Notice is to contain an informational section and a selection form. The selection form may be incorporated into the application or renewal forms. The informational section will: (1) identify and briefly describe all available policy coverages and benefit limits; (2) indicate which coverage is mandatory and which is optional under state law; (3) identify and briefly describe all deductible, exclusion, setoff and tort limitation options offered by the insurer. A credit expressed as a percentage of the premium will be indicated for each option or combination of options.

The Buyer's Guide is to contain a description of the policy coverages, benefit limits and coverage options offered by the insurer. It may be combined with the informational section of the Written Notice into a single form.

Both the Written Notice and Buyer's Guide must contain a statement of possible coordination of other health benefit coverages with PIP options (see proposed new rule N.J.A.C. 11:3-14, this issue). Specific coverages and options that must be specified in the Written Notice and Buyer's Guide are enumerated.

Where an insured has failed to select any option, he will be deemed to have elected full coverage. Once an option is selected, it applies to subsequent renewals and replacement policies until the insurer or its authorized representative receives a properly executed written notice indicating that a change is desired.

#### Social Impact

It is anticipated that this proposal will encourage individuals to adjust their automobile insurance coverage to suit their personal needs. Information provided in the Written Notice and Buyer's Guide should enable individuals to evaluate the various options being offered. This should result in more personalized coverage, structured to each individual's choice of what best satisfies his requirements.

#### Economic Impact

The proposed new rules will enable individuals to exert greater control over the cost of their automobile insurance premiums. Through the selection of various options, individuals can adjust their automobile insurance coverage to their personal needs and financial situations. Cost efficiency may be promoted by the elimination of duplicate or unnecessary coverage and the possible coordination of PIP benefits with other health insurance coverage. Information provided in the Buyer's Guide and Written Notice should help individuals evaluate the cost factors of the various options.

Initially this proposal is expected to increase costs to insurers as they prepare and distribute the required documents. However, utilization of the options offered should eventually result in a reduction of actual claim costs.

The Department expects to absorb implementation costs in its annual budget.

Full text of the proposed new rule follows.

#### SUBCHAPTER 15. STANDARDS FOR WRITTEN NOTICE AND BUYER'S GUIDE

##### 11:3-15.1 Purpose

Section 17 of The New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984 requires the Commissioner of Insurance to promulgate standards for the written notice and buyer's guide to be provided to applicants for automobile insurance and policyholders. This subchapter establishes the necessary minimum standards companies shall use in giving notice of available coverages, options and rate credits.

##### 11:3-15.2 Scope

This subchapter applies to every insurer authorized to transact the business of automobile insurance in this State.

##### 11:3-15.3 Effective date

(a) No new automobile insurance policy shall be issued on or after July 1, 1984 unless the application for the policy is accompanied by a written notice. Each applicant shall also be provided with a buyer's guide.

(b) In the case of any automobile insurance policy in force on July 1, 1984, the named insured shall be provided not later than May 15, 1984 with a written notice and buyer's guide.

(c) Any notice of renewal of an automobile insurance policy with an effective date subsequent to July 1, 1984 shall be accompanied by a written notice.

## PROPOSALS

### 11:3-15.4 General content of written notice

(a) The written notice shall contain an information section which shall:

1. Identify and briefly describe all available policy coverages and benefit limits;
2. Indicate which coverages are mandatory and which are optional under State law;
3. Identify and briefly describe all deductible, exclusion, setoff and tort limitation options offered by the insurer. A percentage of premium rate credit shall be identified for each option or combination of options as the case may be;
4. Contain a statement on the possible coordination of other health benefit coverages with the personal injury protection coverage options, the form and contents of which shall be prescribed by the Commissioner of Insurance.

(b) The written notice also shall provide a selection form enabling the named insured to choose coverage options. Insurers may incorporate the selection form into the application or renewal forms.

### 11:3-15.5 General content of buyer's guide

(a) The buyer's guide shall contain a description of the policy coverages, benefit limits and coverage options offered by the insurer, and a statement on the possible coordination of personal injury protection coverage benefits with other health benefit coverages.

(b) The buyer's guide and informational section of the written notice may be combined into a single form to improve readership and understanding on the part of insureds.

### 11:3-15.6 Specific coverages and options to be included in written notice and buyer's guide

(a) At least the following coverages and options shall be included in the written notice and buyer's guide:

1. Optional higher limits of bodily injury and property damage liability, if available.
2. Tort threshold of \$200.00 with option to select \$1,500 in accord with sections 14 and 14.1 of P.L. 1983, c.362.
3. Personal Injury Protection Coverage:
  - i. Optional medical expense benefit deductibles of \$500.00, \$1,000 and \$2,500 applicable on a per person/per accident basis in accord with section 13a of P.L. 1983, c.362.
  - ii. Optional exclusion for all benefits except medical expense benefits in accord with section 13b of P.L. 1983, c.362.
  - iii. Setoff option in accord with section 13c of P.L. 1983, c.362.
  - iv. Additional personal injury protection coverage in accord with N.J.S.A. 39:6A-10.
4. Comprehensive and collision coverages with deductibles and copayment options in accord with P.L. 1983, c.359.
5. Higher limit uninsured and underinsured motorist coverage in accord with P.L. 1983, c.362.

### 11:3-15.7 Statement on the possible coordination of other health benefit coverages with the personal injury protection medical expense deductible options

(a) In accord with section 17a of P.L. 1983, c.362, the written notice and buyer's guide are to contain a statement on the possible coordination of other health benefit coverages with the personal injury protection medical expense deductible options, the form and contents of which shall be prescribed by the Commissioner.

1. For purposes of this statement, "coordination" shall mean the potential use of other health benefit coverages, including Medicare, as sources of full or partial payment or reimbursement for any personal injury protection medical expense benefit deductible selected.

2. When a PIP deductible has been selected and the insured has other applicable health benefits, such health benefits shall be the sole source of coverage up to the amount of the PIP deductible. Thereafter, the insured's PIP coverage shall apply for the payment

of medical expenses. The Commissioner will prescribe the form and content of the statement on the possible coordination of other health benefit coverages with the personal injury protection coverage options.

### 11:3-15.8 Selection of coverage options

(a) On and after July 1, 1984, each applicant for a new automobile policy shall be provided with a buyer's guide and written notice prepared in accord with this subchapter. The applicant is to complete, sign and return the selection form to the insurer. The options selected shall apply to the initial policy issued, subsequent renewals and replacement policies until such time as the insurer or its authorized representative receives a properly executed written notice indicating that a change is desired.

(b) For any automobile policy in force on July 1, 1984, the named insured shall be provided not later than May 15, 1984 with a buyer's guide and written notice prepared in accord with this subchapter. The named insured is to complete, sign and return the selection form to the insurer. When a properly executed selection form is received, the insurer shall change and, if necessary, re-rate the policy in accordance with the instructions of the named insured. These changes shall be effective July 1, 1984 or the date received if later than July 1, 1984. The options selected shall apply to the policy then in force as well as subsequent renewals and replacement policies until such time as the insurer or its authorized representative receives a properly executed written notice indicating that a change is desired.

(c) If the insurer does not receive a properly executed selection form:

1. The current policy coverages will continue in force. It will be deemed that the named insured has declined to make any changes in the current coverages.

2. The named insured will be deemed by law to have selected the \$200.00 tort threshold and will be charged accordingly.

### 11:3-15.9 Effect on other notice requirements

The buyer's guide and written notice incorporate and therefore satisfy any and all other notice requirements previously set forth for the coverage options required by the New Jersey Automobile Reparation Reform Act, the New Jersey Automobile Insurance Reform Act of 1982 and the New Jersey Automobile Insurance Freedom of Choice and Cost Containment Act of 1984.

## LAW AND PUBLIC SAFETY

(a)

### DIVISION OF MOTOR VEHICLES

#### Driver Control Service Administrative Hearing

**Proposed Amendments: N.J.A.C. 13:19-1.2,  
1.3, 1.5, 1.6, 1.7, 1.8 and 1.13**

**Proposed Repeals: N.J.A.C. 13:19-1.4, 1.9,  
1.10, 1.11 and 1.12**

Authorized By: Clifford W. Snedeker, Director, Division  
of Motor Vehicles.

Authority: N.J.S.A. 39:5-30 and N.J.S.A. 52:14B-1 et  
seq.

**Interested persons** may submit in writing, data, views or  
arguments relevant to the proposal on or before January 18, 1984.

These submissions, and any inquiries about submissions and responses, should be addressed to:

Clifford W. Snedeker, Director  
 Division of Motor Vehicles  
 25 South Montgomery Street  
 Trenton, NJ 08666

The Division of Motor Vehicles thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-647.

The agency proposal follows:

**Summary**

The proposed amendments update Title 13, Chapter 19 of the Administrative Code to be in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Prior to the enactment of the Administrative Procedure Act, the Division conducted hearings concerning proposed license suspensions. Subsequent to the Act, the hearings were held at the Office of Administrative Law with the Division conducting informal prehearing conferences. However, the regulations were not amended to reflect this change.

The proposed amendments amend the regulations to provide for the notice, adjournment, and conduct of the informal prehearing conferences conducted by the Division. Those regulations that pertain to the conduct of the hearing, as formerly held by the Division, have been repealed.

The proposed amendments also state the policy of the Division with regard to the abandonment of the request for a hearing for those persons who fail to appear at a prehearing conference.

**Social Impact**

These proposed amendments will make the public aware of the procedures and policies of the Division of Motor Vehicles with respect to the prehearing conference and in that way benefit those persons who appear before the Division pursuant to a suspension notice.

**Economic Impact**

There will be no economic impact on the State nor on the general public as a result of these proposed amendments.

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

13:19-1.2 Requests for hearings

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

**(d) Upon request for a hearing pursuant to this section, the Director may require the licensee to attend a prehearing conference conducted by designated employees of the Division.**

**(e) Where the Director does not require a prehearing conference, the matter shall be transmitted directly to the Office of Administrative Law pursuant to N.J.A.C. 1:1.**

13:19-1.3 Notification of [hearing] **prehearing conference** date

**In cases where a prehearing conference is required,**[Upon **upon** receipt of a request for a hearing, the Division shall notify the licensee of the date, time and place of the prehearing conference [or hearing].

13:19-1.4 [Subpoenas] **(Reserved)**

[(a) A licensee may insure the presence of any witnesses subject to the subpoena power of the Division by requesting the Division to subpoena such prospective witnesses.

(b) Applications for the issuance of subpoenas by the Division shall be made in writing by a licensee at least 15 days prior to the scheduled hearing date.

(c) These applications shall be sent to the following address:

Division of Motor Vehicles  
 Driver Improvement Bureau  
 25 South Montgomery Street  
 Trenton, New Jersey 08625  
 Attention: Hearing Scheduling Unit]

13:19-1.5 Adjournments; **Failure to appear**

(a) No [hearing] **prehearing conference** shall be adjourned from the scheduled [hearing] **prehearing conference** date except for good cause and upon order of the Director or [the assignment officer] **an employee** designated by the Director. All requests for adjournment must be made in writing, with the reasons specified therein, not later than seven days before the date scheduled for the [hearing] **prehearing conference**. All requests shall be sent to the following address:

Division of Motor Vehicles  
 Bureau of Suspensions and Restorations  
 25 South Montgomery Street  
 Trenton, New Jersey 08625  
 Attention: Prehearing Conference  
 Scheduling Unit

(b) No request shall be granted for an adjournment unless good cause is shown.

(c) No request shall be granted for the adjournment of a [hearing] **prehearing conference** that is made after the time as provided in [subsection (a) of this Section] **(a) above** unless the licensee can show good cause and upon order of the Director or [the assignment officer] **an employee** designated by the Director.

(d) In the event a licensee [is not ready to proceed at the time of a scheduled hearing] **fails to attend a prehearing conference** [(wherein an adjournment has not been granted)], the proposed action against [such] **the licensee** shall be taken without further opportunity for a [hearing] **prehearing conference and the licensee shall be deemed to have abandoned his request for a hearing.**

13:19-1.6 Representation by counsel

(a) [Any licensee in] **At** a prehearing conference [or a hearing] before the Division, **the licensee** may be represented by a licensed New Jersey attorney at law, or [the licensee] may appear [at a prehearing conference or hearing and present any defense] on his own behalf.

(b) No licensee, after having elected to represent himself at a [hearing] **prehearing conference**, shall be granted [a rehearing] **another prehearing conference** on the grounds that he lacked representation by counsel. Nor shall any licensee be entitled to [a rehearing] **another prehearing conference** upon any claim of inadequacy of representation by counsel at a [hearing] **prehearing conference**.

13:19-1.7 [Hearing officer] **Driver improvement specialist**

(a) The [hearing] **prehearing conference** shall be conducted by the Director or by such departmental employees as the Director may designate [in accordance with the provisions of N.J.S.A. 39:5-30].

(b) The person conducting such [hearing] **prehearing conference** shall be referred to as [the hearing officer] **a driver improvement specialist**.

13:19-1.8 [Conduct of hearing] **Prehearing conference; purpose; conduct; report; transmittal to the Office of Administrative Law**

[(a) The hearing officer shall conduct the hearing in an impartial manner and shall have the power to call, examine, cross-examine witnesses and introduce into the record relevant documentary and other evidence.

(b) The parties shall not be bound by rules of evidence whether statutory, common law or adopted by Rules of Court, except that the hearing officer shall give effect to the rules of privilege recognized by law.

**PROPOSALS**

**LAW AND PUBLIC SAFETY**

(c) The hearing officer may admit all evidence having reasonably probative value, but may exclude immaterial, irrelevant or unduly cumulative evidence or evidence which might necessitate undue consumption of time or might create substantial danger of undue prejudice or confusion.

(d) Stipulations of fact may be introduced in evidence with respect to any issues.

(e) Upon the conclusion of a hearing, the hearing officer may accept or request additional memoranda of law and facts within a reasonable time as prescribed by the hearing officer.

(f) The hearing officer shall have the power to rule upon motions and objections made by any party to the proceeding.

(g) The hearing officer may take notes at the hearing and submit a written report of findings and recommendations. The report submitted shall contain a summary of:

1. The testimony elicited at such hearing, including rulings made by the hearing officer;
2. An interview with respondent, when taken;
3. The hearing officer's opinion and analysis as to whether the charges alleged to have been violated are supported by the facts; and
4. The length of any suspension or revocation if recommended.

(h) The Attorney General or his duly qualified representative may present the case on behalf of the Division of Motor Vehicles.

(i) The hearing officer shall conduct the proceedings, as far as practicable, in the following order;

1. Testimony and evidence in support of the Division's charges and cross-examination thereon;
2. Testimony and evidence on behalf of licensee and cross-examination thereon;
3. Summation (optional).]

**(a) The purpose of the prehearing conference is to attempt to reach a settlement in order to dispose of the proposed suspension action in a manner that is satisfactory to both sides. If a settlement is not reached, the parties shall use the prehearing conference to prepare the issues and evidence for the hearing.**

**(b) The driver improvement specialist responsible for conducting the prehearing conference shall conduct an informal conference with the licensee and the licensee's attorney, if he is represented by an attorney, for the purpose of reaching a settlement. The driver improvement specialist shall produce any relevant materials the Division may have which relate to the proposed suspension action and the licensee shall be permitted to produce any document or other evidence which relates to the proposed suspension action.**

**(c) The driver improvement specialist shall prepare a conference report for each prehearing conference. The conference report shall contain information relevant to the proposed suspension. If a settlement is reached between the Division and the licensee, the licensee shall sign the conference report indicating that both parties agreed to be bound by the terms of the settlement contained therein. If a licensee accepts the settlement, the licensee is deemed to have abandoned any further right to a hearing.**

**(d) If the parties cannot agree as to a settlement, then the conference report shall so indicate. Where the parties cannot reach an agreement, the matter shall be transmitted to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1.**

**13:19-1.9 [Stenographic record] (Reserved)**

[(a) Ordinarily, a stenographic record is not taken at hearings. At the request and expense of any party to the proceedings, the hearing officer shall permit any certified shorthand reporter or other competent stenographer to take a stenographic record of the proceedings. A stenographer, other than a certified shorthand reporter, shall be duly sworn by the hearing officer to make an accurate stenographic record of the proceedings.

(b) In the absence of stenographic transcript, the hearing officer's

notes or report, together with any other evidence submitted during the hearing or properly before the Division, shall constitute a record of all the relevant and material information that is necessary for the director to arrive at a decision.

(c) A licensee filing exceptions to the hearing officer's report (see Section 1.11 (Final memorandum decision) of this Chapter) is not required to provide the Division with any copy of a transcript of a stenographic record that he may have taken at the hearing; but, in the event there are any references to the stenographic record or stenographic transcript in the exceptions, the licensee shall supply the Division with a copy of all relevant portions of the transcript relating to the exceptions raised.

(d) The Director or hearing unit may require such additional portions of the transcript as may be deemed necessary for a proper determination the exceptions raised.]

**13:19-1.10 [Exceptions] (Reserved)**

[(a) A copy of the hearing officer's report shall be given or sent to the licensee. Within 15 days from the receipt of such report, the licensee may file a statement in writing setting forth in detail exceptions to any part of this report.

(b) Although the hearing officer may make findings and recommendations as to any of the violations and underlying issues of a proceeding, these findings and recommendations are not binding upon the Director and can be overruled; thus, the statements filed by the respondent should include exceptions to any materially adverse section of a hearing officer's report in addition to supporting arguments of any material part of a hearing officer's report which finds that a licensee is in violation.]

**13:1.11 [Final memorandum decision] (Reserved)**

[The final memorandum decision of the Director will be based upon the hearing officer's report, together with any other evidence admitted during the hearing or properly before the Division and exceptions, if any, that are filed.]

**13:19-1.12 [Relaxation of rules] (Reserved)**

[The Director or hearing officer may relax or dispense with any of the aforesaid rules when the interest of justice requires.]

**13:19-1.13 Procedure as to when opportunities to be heard are granted**

(a) The Division shall not take administrative action against a person unless it has first afforded the person an opportunity [to be heard] **for a hearing** in conformity with these provisions except as set forth in [subsections] (b), (c), **and** (d) [and (e) of this Section] **below.**

(b) When the administrative action proposed by the Division against any person is one wherein the Division has authority to act without first [holding] **providing an opportunity for a hearing**, such action shall be valid, but the Division shall promptly afford the person an opportunity to be heard in conformity with the provision of this regulation.

(c) No hearing shall be provided [by the Division of Motor Vehicles] when the action taken by the Division is required by any law which prescribes a suspension or revocation of a license or a privilege and which requires no exercise of discretion on the part of the Division of Motor Vehicles. No hearing shall be provided [by the Division of Motor Vehicles] when a suspension or revocation of a license or privilege is suspended or revoked by order of a court **of competent jurisdiction.**

[(d) When the Division receives a report from a court of competent jurisdiction that a motorist has failed to appear in court after having been issued a summons for a traffic violation, the only issue to be heard at any hearing on that matter in the Division will be whether or not the outstanding summons has been satisfied to the satisfaction of the court that notified the Division of the failure to appear.]

[(e)] **(d)** When a license is **not suspended or is restored** with the distinct understanding that any subsequent moving violation will be

cause for a summary suspension, the issue of any hearing requested with respect to a proposed suspension for such subsequent moving violation will be limited to:

1. Whether or not the licensee has been convicted [for] of a subsequent moving violation; and
2. Determining whether or not the licensee received adequate notice that his license had been restored with that distinct understanding.

## (a)

## DIVISION OF CONSUMER AFFAIRS

## BUREAU OF SECURITIES

**Limited Registration for Broker-Dealers and Agents  
Direct Participation Securities**

**Proposed New Rule: N.J.A.C. 13:47A-12**

Authorized By: New Jersey Bureau of Securities, James McLelland Smith, Chief.  
Authority: N.J.S.A. 49:3-67 and L.1983 c.292.

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

James McLelland Smith, Chief  
Bureau of Securities  
80 Mulberry Street  
Room 308  
Newark, NJ 07102

At the close of the period for comments, the Bureau of Securities may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1983-645.

The agency proposal follows:

**Summary**

Recent amendments (L. 1983 c.292) to the statutes governing the Uniform Securities Laws (1967) N.J.S.A. 49:3-47 et seq. provides for:

1. A limited registration for broker-dealers and their agents who will limit their securities business in Direct Participation Securities. (See N.J.S.A. 49:3-49(g) and N.J.S.A. 49:3-57(g)).
2. An exemption from registration for any securities sold to an unlimited number of accredited investors and thirty-five additional investors who are believed to be capable of evaluating the merits and risks of the offering. (See N.J.S.A. 49:3-49(p) and 49:3-50(b)(12)); and
3. An exemption from agent registration for any employee of an issuer who can comply with the N.J.S.A. 49:3-50(b)(2) exemption.

**Social Impact**

The proposed new rules contain definitions and guidelines which will help to coordinate the legislation recently enacted by L.1983 c.292 with its intended Federal counterpart, the Securities Act of 1933, 15 U.S.C. 77(a) et seq., 17 C.F.R. 230.506, and will also facilitate and clarify compliance requirements for the securities bar.

In addition, the proposed report form will assist the Bureau of Securities in discovering violations of the Securities Law.

**Economic Impact**

The proposed new rules will have no adverse economic impact on the Bureau of Securities, other governmental bodies, or the public. It will quite positively decrease fraud and misrepresentation and the related economic cost related to investor losses and prosecutorial expense.

Full text of the proposed new rule follows.

SUBCHAPTER 12. LIMITED REGISTRATION FOR  
BROKER-DEALERS AND AGENTS

## 13:47A-12.1 Definitions

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

"Financial institution" or "institutional buyer" means any organization whose primary purpose is to invest its own assets, or assets held for others in a fiduciary capacity, in securities; provided:

1. Assets so invested constitute over 50 percent of the organization's gross assets;
2. Assets so invested aggregate over \$10,000,000.00; and
3. It has had in its last fiscal year a percentage of net profit or growth from such investments at least equal to the prime rate.

"Fiduciary capacity" means that capacity arising from an express formal trust in which the trustee receives compensation only for the trustee's duties as trustee and does not receive compensation indirectly in connection with activities incident to such trust. Fiduciary capacity shall not include the standard discretionary authority the average client may give to broker-dealers to buy or sell securities.

"Reasonable" or "reasonably" as used in N.J.S.A. 49:3-49(p) and 49:3-50(b)(12) means that degree of relief or inquiry necessary to satisfy all doubts by at least clear and convincing evidence. Failure to document and to retain documents of such efforts for at least three years after the filing of the report required by N.J.S.A. 49:3-50(b)(12) shall give rise to a presumption that the inquiry or belief in question was not reasonable.

"Issuer" means issuer as defined in N.J.S.A. 49:3-49(h). A corporation which is a general partner of a limited partnership is not deemed to be the issuer of such limited partnership.

"Director", "executive officer" and "general partner" as used in N.J.S.A. 49:3-49(p)(4) shall not include persons, such as shams or nominees, who have been given the title for the purpose of bringing such persons within the definition of accredited investor.

"Representative" as used in N.J.S.A. 49:3-50(b)(12) means any person who satisfies all of the following conditions or who the issuer reasonably believes satisfied all of the following conditions:

1. Will not receive, directly or indirectly from the issuer or anyone on its behalf any fee, commission or other remuneration in connection with the offer and sale of the securities of the issuer;
2. Is not an affiliate, director, officer or other employee of the issuer, or beneficial owner of 10 percent or more of any class of the equity securities or 10 percent or more of the equity interest in the issuer, except where the purchaser is:
  - i. A trust or estate in which the purchaser's representative has more than 50 percent of the beneficial interest (excluding contingent interest); or
  - ii. A corporation or other organization of which the purchaser's representative is the beneficial owner of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests.
3. Has such knowledge or experience in financial and business matters that he or she is capable of evaluating, alone, or together with other representatives of the purchaser, or together with the purchaser, the merits and risks of the prospective investment;

4. Is acknowledged by the purchaser in writing, during the course of the transaction, to be his or her representative in connection with evaluating the merits and risks of the prospective investment; and

5. Discloses to the purchaser in writing prior to the acknowledgment specified in 4. above any material relationship between the representative or the representative's affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

"Report of the offering" as used in N.J.S.A. 49:3-50(b)(12) means the report filed on Form 50B12, including all exhibits required by such form.

"The public" as that term is used in N.J.S.A. 49:3-50(b)(12) shall not include any investigative or enforcement agency of any state or subdivision thereof, or the Federal government; provided such agency undertakes not to make the information it may receive public except by order of a court or in a court proceeding.

"Court", as used in N.J.S.A. 49:3-50(b)(12), means any court in the State of New Jersey or any court in any state or any Federal court.

"Court proceeding" as used in N.J.S.A. 49:3-50(b)(12) means any proceeding brought in any court whether or not the Bureau is a party to or initiates such proceeding.

"Transactions in direct participation securities" as that phrase is used in N.J.S.A. 49:3-57(g) shall not include the purchase or sale as principal or agent of securities other than direct participation securities.

#### 13:47A-12.2 Disclosure requirements

In order to comply with the disclosure requirements of N.J.S.A. 49:3-50(b)(12), all offerees must receive, at least 48 hours prior to the sale, a prospectus or offering statement which shall include, in addition to the information required to adequately satisfy the requirements of N.J.S.A. 49:3-52, the same kind of information as would be required by the Bureau's Guidelines for Filing a Registration Statement, N.J.A.C. 13:47A-11.19, or in the alternative, 17CFR 230.502.

#### 13:47A-12.3 Persons offering and selling Securities

(a) The issuer claiming an exemption pursuant to N.J.S.A. 49:3-50(b)(12) and any person acting on its behalf, shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that all persons, including but not limited to broker-dealers, agents, "finders", representatives (as defined in N.J.A.C. 13:47A-12.1), attorneys and accountants, who offer or sell its securities pursuant to N.J.S.A. 49:3-50(b)(12), are registered pursuant to N.J.S.A. 49:3-56 or are entitled to a bona fide exemption from such registration.

1. There shall be a rebuttable presumption that any person, including those described in (a) above, who receives a fee, commission or other remuneration, directly or indirectly, from the issuer or any person on its behalf in connection with and contingent on the sale of a security to a particular person or persons is a broker-dealer.

#### 13:47A-12.4 Offering

1. Neither the issuer nor any person acting on its behalf claiming an exemption pursuant to N.J.S.A. 49:3-50(b)(12) in any transaction shall offer or sell the securities involved therein by any form of general solicitation or general advertising. General solicitation or general advertising shall include, but is not limited to, the following:

1. Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio, or mass mailing; and

2. Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising.

(b) Each offering statement or prospectus used in connection with

an offering claiming an exemption pursuant to N.J.S.A. 49:3-50(b)(12) shall specify a date on which the offering is to be completed. Offering statements or prospectuses which do not specify a completion date or which contain a completion date more than one year from the first offer of the securities in question shall, one year after the first offer, give rise to a presumption that the exemption is inapplicable because the issuer has not complied with the reporting requirements of N.J.S.A. 49:3-50(b)(12); provided, however, that the filing of Form 50B12 as an interim report before the expiration of one year shall effectively rebut such presumption.

#### 13:47A-12.5 Report form

In order to comply with the report requirement of N.J.S.A. 49:3-50 (b)(12) the issuer must file with the Bureau of Securities two copies of Form 50B12.

OFFICE OF ADMINISTRATIVE LAW NOTE: Report forms 50B12 and 50B12A were also filed with this proposal but are not reproduced herein.

(a)

## NEW JERSEY RACING COMMISSION

### Thoroughbred Rules Eligibility; Registration Required

#### Proposed Amendment: N.J.A.C. 13:70-6.53

Authorized By: Harold G. Handel, Executive Director of  
the New Jersey Racing Commission.  
Authority: N.J.S.A. 5:5-30.

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Bruce H. Garland, Deputy Director  
New Jersey Racing Commission  
CN 088 Justice Complex  
Trenton, NJ 08625

The New Jersey Racing Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-646.

The agency proposal follows:

#### Summary

The proposed amendment to N.J.A.C. 13:70-6.53 would set a deadline for the payment of the annual fee to the Thoroughbred Breeders' Association, allow for a stallion which dies prior to completion of one breeding season to be considered a New Jersey Stallion, and sets a deadline for the filing of a copy of the stallion report of mares bred with the Thoroughbred Breeders' Association of New Jersey.

#### Social Impact

The proposed amendment to N.J.A.C. 13:70-6.53 would greatly assist the Thoroughbred Breeders' Association in certifying foals by setting deadlines for the payment of fees and the filing of reports, thereby having a positive social impact.

#### Economic Impact

The proposed amendment to N.J.A.C. 13:70-6.53 would have

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a positive economic impact by allowing for a broader definition of a New Jersey bred thoroughbred which will make it simpler for stallions to be classified as New Jersey stallions. This should bring more mares into the State which will open new employment opportunities for persons in the racing industry.

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

13:70-6.53 Eligibility; registration required

(a) In order to be eligible to enter and start in races exclusively for horses bred in New Jersey, each horse must be registered with the Thoroughbred Breeders' Association of New Jersey. To qualify for such registration, the said horse must have been foaled in the State of New Jersey and, in addition, unless the breeder is a resident of the State, or one who maintains his breeding stock continually in the State, the said horse shall be either the produce of a mare having conceived in New Jersey the previous season or a mare sent into the State to foal and covered by a New Jersey stallion the season of the birth of said foal.

1.--2. (No change.)

3. To be considered a New Jersey stallion, it is required that the stallion be in the State of New Jersey for at least one full breeding season, commonly understood to be the period from February 1st through July 1st of any year, or if the stallion is brought in subsequent to the start of the breeding season he must be approved as a New Jersey Stallion by the New Jersey Racing Commission upon the recommendation of the Board of Trustees of the Thoroughbred Breeders' Association of New Jersey and the appropriate annual fee paid to [that] the Association **prior to serving the first mare in the State of New Jersey and annually thereafter prior to February 1st.**

i. **Should any stallion die in New Jersey prior to completion of one full breeding season he may also be considered a New Jersey stallion upon approval by the New Jersey Racing Commission upon recommendation of the Board of Trustees of the Thoroughbred Breeders' Association of New Jersey.**

ii. **A copy of the stallion report of mares bred as filed with the Jockey Club must be provided to the Thoroughbred Breeders' Association of New Jersey no later than September 1st.**

4. (No change.)

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

At the close of the period for comments, the Department of Transportation may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1983-637.

The agency proposal follows:

**Summary**

The proposed amendment and new rules will establish "No Passing" zones in the townships, boroughs and cities in the counties indicated.

The proposed amendment and new rules are summarized as follows:

N.J.A.C. 16:29-1.10 adds new "no passing" zones along Route 49 in the Townships of Stow Creek, Hopewell, Fairfield and Maurice River, Shiloh Borough and Cities of Bridgeton and Millville in Cumberland County.

N.J.A.C. 16:29-1.29 establishes "no passing" zones along Route 37 in Lakehurst Borough, Manchester and Dover Townships in Ocean County.

N.J.A.C. 16:29-1.30 establishes "no passing" zones along Route 68 in Mansfield and Springfield Townships and Wrightstown Borough in Burlington County.

N.J.A.C. 16:29-1.31 establishes "no passing" zones along Route 175 in Ewing Township, Mercer County.

N.J.A.C. 16:29-1.32 establishes "no passing" zones along Route 170 in Mansfield Township, Burlington County.

N.J.A.C. 16:29-1.33 establishes "no passing" zones along Route 52 in Somers Point City, Atlantic County.

N.J.A.C. 16:29-1.34 establishes "no passing" zones along Route 83 in Dennis Township, Cape May County.

The Department's Bureau of Traffic Engineering conducted studies in the areas designated. The results of these studies showed that the establishment of "no passing" zones were warranted.

As a result, the Department proposes to amend N.J.A.C. 16:29-1.10 and establish new rules N.J.A.C. 16:29-1.29 through 16:29-1.34. Copies of the drawings referred to in these rules are filed as part of this proposal and are on file in the Department's Bureau of Traffic Engineering, 25 Scotch Road, Trenton, New Jersey 08625.

The appropriate markings designating the "no passing" zones will be erected by the Department's workforce.

**Social Impact**

The proposed amendment and new rules will establish "no passing" zones along various State highways in Cumberland, Ocean, Burlington, Mercer, Atlantic and Cape May Counties for the safe and efficient flow of traffic and the enhancement of public safety. The appropriate markings will be posted to advise the motoring public.

**Economic Impact**

The Department will incur direct and indirect costs for its workforce for mileage, personnel and equipment requirements for the installation of appropriate markings along the highway system. Motorists who violate the rules will be assessed fines.

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

**TRANSPORTATION**

**(a)**

**TRANSPORTATION OPERATIONS**

**No Passing**

**Routes 49, 37, 68, 175, 170, 52 and 83**

**Proposed Amendment: N.J.A.C. 16:29-1.10**

**Proposed New Rules: N.J.A.C. 16:29-1.29, 1.30, 1.31, 1.32, 1.33 and 1.34**

Authorized By: David W. Gwynn, Chief Engineer,  
Transportation Operations and Local Aid.

Authority: N.J.S.A. 27A1-5, 27A1-6, 27A1-44, 39:4-6  
and 39:4-201.1.

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

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**16:29-1.10 Route 49**

(a) The [following] certain parts of State [H]highway Route 49 shall be [and hereby are] designated and established as "No Passing" zones[.]:

1.-2. (No change.)

3. Within the Townships of Stow Creek, Hopewell, Fairfield and Maurice River, Shiloh Borough and Cities of Bridgeton and Millville, Cumberland County and described in drawing number HNPZ-040 dated March 17, 1983.

**16:29-1.29 Route 37**

(a) The certain parts of State highway Route 37 within Lakehurst Borough, Manchester and Dover Townships in Ocean County and described in drawing number HNPZ-055 dated July 20, 1982 shall be designated and established as "No Passing" zones.

**16:29-1.30 Route 68**

(a) The certain parts of State highway Route 68 within Mansfield and Springfield Townships, and Wrightstown Borough in Burlington County and described in drawing number HNPZ-057 dated July 27, 1982 shall be designated and established as "No Passing" zones.

**16:29-1.31 Route 175**

(a) The certain parts of State highway Route 175 within Ewing Township, Mercer County and described in drawing number HNPZ-059 dated September 14, 1982 shall be designated and established as "No Passing" zones.

**16:29-1.32 Route 170**

(a) The certain parts of State highway Route 170 within Mansfield Township, Burlington County and described in drawing number HNPZ-060 dated September 22, 1982 shall be designated and established as "No Passing" zones.

**16:29-1.33 Route 52**

(a) The certain parts of State highway Route 52 within Somers Point City, Atlantic County and described in drawing number HNPZ-063 dated March 30, 1983 shall be designated and established as "No Passing" zones.

**16:29-1.34 Route 83**

(a) The certain parts of State highway Route 83 within Dennis Township, Cape May County and described in drawing number HNPZ-065 dated April 8, 1983 shall be designated and established as "No Passing" zones.

EDITOR'S NOTE: The following drawings depicting "No Passing" zones have been filed but are not reproduced herein. Copies may be obtained from the Bureau of Traffic Engineering, Department of Transportation, 1035 Parkway avenue, Trenton, NJ 08625:

- HNPZ-040
- HNPZ-055
- HNPZ-057
- HNPZ-059
- HNPZ-060
- HNPZ-063
- HNPZ-065

**(a)**

**NEW JERSEY TRANSIT CORPORATION**

**Private Carrier Capital Improvement Program**

**Proposed New Rule: N.J.A.C. 16:76**

Authorized By: New Jersey Transit Corporation, Jerome C. Premo, Executive Director.  
Authority: N.J.S.A. 27:25-5(e), 5(h) and 5(k).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Albert R. Hasbrouck, III  
Assistant Executive Director  
New Jersey Transit Corporation  
(NJ TRANSIT)  
P.O. Box 10009  
Newark, NJ 07101

NJ TRANSIT thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-641.

The agency proposal follows:

**Summary**

The New Jersey Transit Corporation (NJ TRANSIT) was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as the instrumentality of the State government responsible to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the programs by which NJ TRANSIT proposes to fulfill this responsibility is through the purchase of capital improvements for lease to eligible private bus carriers throughout New Jersey. The proposed new rules establish guidelines and procedures pursuant to which NJ TRANSIT will lease such capital improvements.

**Social Impact**

The purpose of NJ TRANSIT'S private carrier capital improvement program is to assist the private bus carriers in the State of New Jersey in maintaining healthy and efficient transportation services and providing improved and more reliable mass transit service to the public. The proposed rule is designed to distribute capital improvements to private carriers based on a variety of factors so that the capital improvements are made available to riders who will benefit the most from the new improvements. While it is anticipated that most private carriers will be allocated capital improvements, the proposed rule would also permit NJ TRANSIT to consider the capabilities (including financial) and responsibility of carriers requesting capital improvements and to consider whether the leasing of such improvements to specific carriers would be consistent with an efficient, effective, coordinated and coherent public transportation system. Thus, there may be situations where some private carriers will not receive capital improvements because the lease of such improvements to such carriers is not consistent with sound transportation policy. There are procedures for consideration of the impact of not leasing capital improvements in specific circumstances where NJ TRANSIT staff makes a preliminary determination that a carrier is not eligible to receive such improvements.

**Economic Impact**

The primary economic impact of this rule and the leasing of capital improvements pursuant to it would be to improve the financial condition of private bus carriers receiving such improvements from NJ TRANSIT. By reducing the need of carriers to use financial resources for capital improvements and by increasing ridership, the new improvements may result in holding fares down. It is possible that some carriers not receiving capital improvements may be at a disadvantage where they compete with carriers receiving such improvements. However, it is NJ TRANSIT'S intention to consider all potential private bus companies in the programs provided they meet the specific eligibility requirements and are not disqualified because of specific ineligibility actions.

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

CHAPTER 76  
PRIVATE CARRIER CAPITAL  
IMPROVEMENT PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

16:76-1.1 Purpose

NJ TRANSIT was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as the instrumentality of the State government to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the programs by which NJ TRANSIT proposes to fulfill this responsibility is through the leasing of capital improvements purchased with funds provided by the State, the federal government or the Port Authority of New York and New Jersey. This chapter is designed to provide guidelines and procedures pursuant to which NJ TRANSIT will allocate such capital improvements to private bus carriers.

16:76-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings.

"Additional Regular Route Service" means the operation of any new intrastate or interstate regular route or the extension or alteration of any such existing services which affects 10 percent or more of the number of route miles of that route.

"Affiliate" means any individual, company, proprietorship, corporation, trust or partnership where by reason of the relationship of such entity with the carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, stockholders, a voting trust or trusts, a holding or investment company or companies, family relationships, or any other direct or indirect means) there is a reason to believe that the affairs of the carriers may be managed in the interest of such individual, company, proprietorship, corporation, trust or partnership.

"Board" means the Board of Directors of the New Jersey Transit Corporation.

"Capital Improvements" means items including, but not limited to, electronic equipment (including fareboxes or other revenue handling equipment), radios and related equipment, revenue and non-revenue rolling stock, portable garage maintenance equipment, maintenance or garage facilities and any other equipment, facility or property useful for or related to the provision of regular route peak services by private bus carriers. The lease of revenue rolling stock under this program is also guided by N.J.A.C. 16:75.

"Executive Director" means the Executive Director of NJ TRANSIT or his designee.

"NJ TRANSIT" means the New Jersey Transit Corporation.

"Private Bus Carrier" means any individual, co-partnership,

association, corporation, joint stock company, trustee or receiver who is not receiving operating subsidies from or operating under contracts for service with NJ TRANSIT and is operating or controlling regular route bus peak service on established routes within this State or between points in this State and points in adjacent states.

"Regular Route Peak Services" means the operation of any motor bus or motor buses on streets, public highways or other facilities, over a fixed route and between fixed termini on a regular schedule for the purpose of carrying passengers for hire or otherwise, in this State or between points in this State and points in other states during the time of 6:00 A.M. to 9:30 A.M. and 4:00 P.M. to 7:00 P.M. Services which are exclusionary or personal in nature or are to special purpose areas such as to casinos or special events are not included within this definition.

SUBCHAPTER 2. GUIDELINES

16:76-2.1 Eligibility

(a) To be eligible to receive assistance pursuant to this program a private carrier must be registered with the New Jersey Department of Transportation and/or the Interstate Commerce Commission and provide regular route peak service.

(b) The funding for this program (except whatever local match is required) shall be provided generally by the Urban Mass Transportation Administration (UMTA) pursuant to its Section 9 and 9A programs and attributable to the total private carrier revenue including miles apportioned to urbanized areas in New Jersey.

1. For Federal fiscal years 1983 and 1984, apportionment is based on calendar years 1980 and 1981 regular route revenue mileage operated by the private carriers for those periods as reported to the New Jersey Department of Transportation.

2. Future year apportionments by UMTA will be based on appropriate data submissions by NJ TRANSIT to UMTA pursuant to 49 U.S.C. 1611 (Section 15).

3. A decision by an eligible carrier to participate or not in the program for one fiscal year will not affect its eligibility to participate in future fiscal years.

(c) Eligibility in this program is contingent upon the inclusion by NJ TRANSIT and acceptance by UMTA of a private carriers' annual revenue including mileage pursuant to Section 15. Revenue vehicle mileage includes only those miles attributable to New Jersey intrastate regular route service or to interstate regular route service which primarily services New Jersey residents.

(d) The allocation to each private carrier of capital improvements pursuant to this program shall be determined by a review of the following criteria:

1. A carrier's revenue vehicle mileage as a percentage of the total revenue vehicle mileage included in Section 15 submissions;

2. A carrier's demonstrated relative need for capital improvements as compared to the total need of all qualified carriers;

3. Consideration of the level of capital assistance the carrier has received under past programs, such as various bus allocations for transit, suburban, and cruiser type vehicles, including funds made available to that carrier because of assets replaced under other NJ TRANSIT'S programs;

4. Consideration of a carrier's financial ability to capitalize a program utilizing company funds, including depreciation reserves;

5. The determined public need for all or a portion of the regular route peak service operated by the carrier;

6. Consideration of facilities whose use is shared with non-regular route service affiliates or subsidiaries, or any type of shared or cross ownership of facilities with non-regular route service parties, with particular regard to charter/tour affiliates and school bus operations.

i. Capital improvements will be adjusted so as to equal the percentage of a carrier's facility dedicated in whole or substantial part for New Jersey regular route peak service.

ii. Capital improvements will only be eligible to the extent that the carrier offers regular route service which in whole or substantial

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part serves New Jersey residents. However, carriers may elect to fund that portion of a capital improvement not covered by the capital assistance program with their own monies. In this case, NJ TRANSIT shall retain a security interest in the portion of the capital improvements attributable to this program.

**16:75-2.2 Other requirements**

(a) Carriers must agree to abide by all requirements of NJ TRANSIT, UMTA, and The Port Authority of New York and New Jersey, to the extent applicable. A listing of requirements will be provided to qualified participants.

(b) Carriers must agree to comply with UMTA audit requirements pursuant to 49 U.S.C. 1607 and 1607A (Sections 9 and 9A). Audit requirements include an independently conducted annual review of conformity with various program aspects of Sections 9 and 9A.

1. In addition to the aforementioned annual review, UMTA statutory obligations require a triennial audit, to be conducted by UMTA, to ensure compliance with all Sections 9 and 9A program requirements.

2. Carriers must agree to provide any records or documentation that UMTA or NJ TRANSIT may require to facilitate completion of the audit process. The requirements specifically direct that such reviews ascertain the accuracy of data used for making annual apportionments, and will constitute certification that carriers are eligible to continue receiving capital improvements.

3. Any such audit shall be conducted at the carrier's expense and shall be completed in a timely fashion.

(b) Carriers will be required to certify to NJ TRANSIT that all allocated capital improvements are being satisfactorily maintained along accepted product standards throughout its useful lifespan. Carriers must agree to develop and submit to NJ TRANSIT a maintenance plan if required by UMTA or NJ TRANSIT.

(c) A carrier must agree to enter into a leasing arrangement with NJ TRANSIT for any items received through capital allocations. No disbursement of capital improvements will occur until a fully executed lease agreement between the carrier and NJ TRANSIT has been completed and appropriate insurance requirements met. The lease will clearly outline all obligations pertaining to the carrier and NJ TRANSIT.

**16:76-2.3 Disposal of capital equipment**

(a) If capital assistance results in the replacement of a carrier-owned equipment, the carrier must agree to remove the equipment from regular route service. The carrier may dispose of this equipment and keep the proceeds for recapitalization of its regular route services.

(b) A carrier must submit a plan for disposition of the equipment and use of the proceeds to NJ TRANSIT for its approval.

1. If the item was originally purchased through UMTA funding, the proceeds will revert to NJ TRANSIT for disposition per UMTA regulations. Disposition of funds from retired UMTA assets cannot occur without prior written approval from NJ TRANSIT.

2. If the equipment to be replaced is leased, the carrier must terminate the lease agreement for the equipment.

**16:76-2.4 Ineligibility**

(a) A carrier or any of its affiliates which is not current in any and all accounts it has with NJ TRANSIT and/or its predecessors, as well as with the State of New Jersey and all of its agencies, will not be able to receive any capital improvements through this program until such time as any outstanding sums are paid.

(b) Consideration will be given to the adequacy of performance by the carrier or any of its affiliates under prior vehicle leasing or other contractual arrangements with NJ TRANSIT and/or its predecessors. A carrier or any of its affiliates which have demonstrated a negative performance in the past may not be considered eligible under this program.

(c) Consideration will also be given to a carrier's ability to maintain and operate capital equipment that require sophisticated

and expensive maintenance systems. Carriers may be considered ineligible for the receipt of such capital equipment based on its apparent inability to maintain and operate such equipment.

(d) A carrier may be declared ineligible under this program if NJ TRANSIT determines that the lease of or the continued lease of capital equipment to the carrier is inconsistent with its statutory obligation to provide efficient, effective, coordinated and coherent state transportation systems.

**SUBCHAPTER 3. PROCEDURE****16:76-3.1 Notification**

(a) When NJ TRANSIT contemplates declaring an operator ineligible under its capital equipment program pursuant to N.J.A.C. 16:75-2.4, a designee of the Executive Director shall notify the carrier of the preliminary decision, the reasons therefor and allow the carrier the opportunity to respond. Such notification shall not be given without the prior written approval of the Chairman of the Board.

(b) The Executive Director shall consider the carrier's response and all other relevant material including the applicable provisions of N.J.S.A. 27:25-1 et seq. and any other applicable law and shall render a decision. A carrier may seek a review of such decision by the Board by filing a notice of such intention within 10 days after receipt of the Executive Director's decision.

(c) No final action shall be taken by NJ TRANSIT regarding an operator's eligibility for capital equipment until the operator has had the opportunity to exhaust its right to respond to NJ TRANSIT'S preliminary decision or seek review of the Executive Director's decision by appeal to the Board of Directors.

**16:76-3.2 Factors to be considered**

(a) The factors to be considered by the Executive Director in determining whether a carrier is eligible to lease capital equipment shall include, but not be limited to:

1. Whether a carrier or its affiliates are current in its accounts with NJ TRANSIT or its predecessor as well as with the State of New Jersey and all of its agencies;

2. The adequacy of performance by a carrier or its affiliates under prior leasing or other contractual arrangements with NJ TRANSIT or its predecessor;

3. Whether a carrier has the ability to maintain and operate technologically complex capital equipment;

4. The public need for all or a portion of the service operated by the carrier;

5. The impact of the service operated by the carrier on other carriers, the riding public and the taxpayers of the State;

6. The extent to which the carrier operates a complete array of service, or only operates on the more profitable routes and at the more profitable times, leaving other service to be operated by NJ TRANSIT or other carriers;

7. The extent to which the carrier has other equipment available for its use and not otherwise eligible for replacement under this program; and

8. Whether the lease should be conditioned on a carrier agreeing that it or any present or future affiliate shall not provide additional regular route services without NJ TRANSIT'S approval. This paragraph shall not apply to additional intrastate regular route service which is approved in accordance with the procedures of the New Jersey Department of Transportation.

# TREASURY-TAXATION

(a)

## DIVISION OF TAXATION

### Local Property Tax Farmland assessment

#### Proposed Amendment: N.J.A.C. 18:15-2

Authorized By: John R. Baldwin, Director, Division of Taxation.  
Authority: N.J.S.A. 54:4-23.1 et seq., specifically 54:4-23.21.

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Samuel Temkin  
Superintendent  
Local Property Tax Branch  
Division of Taxation  
50 Barrack Street  
Trenton, NJ 08646

At the close of the period for comments, the Division of Taxation may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1983-632.

The agency proposal follows:

#### Summary

This proposal is intended to amend existing regulations covering guidelines and instructions with respect to filing applications under the Farmland Assessment Act, N.J.S.A. 54:4-23.1 et seq. The proposal imposes the additional requirement that an applicant complete and submit a supplemental statement, Form FA-1S, (October 1983), Supporting Farm Information, together with the annual application form, Form FA-1 upon filing for assessment under the act.

#### Social Impact

The amendment of existing regulations to require the inclusion of the supplementary statement will provide taxing officials with valuable data respecting the many aspects of farmland which is subject to assessment under the act, thereby, enhancing their ability to more accurately administer the provisions of the law.

#### Economic Impact

The additional data base resulting from the inclusion of the supplementary statement will provide for fairer and more equitable treatment of land used for agricultural and horticultural purposes, and, in addition, aid in the solution of various problems attributing to the loss of farmland in this State.

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

18:15-2.1 Persons required to file

In order that land in agricultural or horticultural use may be assessed under the act, [for the tax year 1971 and any subsequent tax year], the owner of such land must file an application **and**

**supplemental form** requesting such assessment with the assessor of the taxing district in which such land is situated on or before August 1 of the pre-tax year.

18:15-2.2 Forms FA-1[,] **and FA-1S**, required

Application for assessment under the act may be made only upon **completion of the forms** prescribed by the Director, identified as Form FA-1 **and FA-1S**. Copies of the forms may be obtained, upon request, from the assessor of each taxing district who is required to provide such forms for use by applicants.

18:25-2.3 Form FA-2[,] **and FA-1S**, signature and verification

The application, Form FA-1 **and supplemental Form FA-1S** [is] **are** to be filed by the owner of the land at the time the application for farmland assessment is made. In the case of multiple ownership, (except corporate co-owners), one of the owners may sign on behalf of the other co-owners, and such signer will be presumed to have authority to sign on behalf of the other owners. In the case of a corporate owner or owners the full name of the corporation must be filled in, and accompanied by the signature and title of the corporate officer authorized to sign the application on its behalf.

18:15-2.4 Annual filing required

In order that land in horticultural or agricultural use continue to be assessed as farmland, the owner thereof must annually, on or before August 1 of the pre-tax year, **complete and file** [an Application on] Forms FA-1 **and FA-1S** with the assessor of the taxing district where such land is situated. See Form FA-1, revised March, 1974 **and Form FA-1S, October, 1983**. [This form supersedes Form FA-1 of prior dates.]

18:15-2.5 Extension of time for filing

The owner of land in horticultural or agricultural use may file [an] **the Application and Supporting Farm Information forms** [in duplicate on Form FA-1 between] **after August 1 [and], but before December 31** of the pre-tax year if the taxing district in which the land is located completes a revaluation of all property in time to be reflected in the assessments for the next succeeding tax year.

18:15-2.6 Application forms; original and duplicate

(a) The original copy of all [application] **FA-1 and FA-1S** forms submitted to the assessor shall be retained in the office of the assessor.

(b) the duplicate copy of each form shall be forwarded to the Local Property [tax bureau] **and Public Utility Branch** by the assessor on or before [January] **November 10** of the pre-tax year [to which they are applicable].

(c) **Copies of forms submitted to the assessor after August 1, but before December 31, under the provision for the extension of time to file shall be forwarded to the Local Property and Public Utility Branch by the assessor on or before January 10 of the year in which a revaluation becomes effective.**

[(c)] (d) Each duplicate copy of the application form[s] shall, in the space reserved for official use, be signed and dated by the assessor and be marked "approved" or "disapproved."

# OTHER AGENCIES

(a)

## GARDEN STATE PARKWAY

### Definitions

#### Proposed Amendment: N.J.A.C. 19:8-1.1

Authorized By: New Jersey Highway Authority, William F. Smith, Executive Director.

Authority: N.J.S.A. 27:12B-5(j) and (s), 27:12B-18, and 27:12B-24.

**Interested persons** may submit in writing, data, views or arguments relevant to the proposal on or before January 18, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

William F. Smith, Executive Director  
New Jersey Highway Authority  
Garden State Parkway  
Woodbridge, New Jersey 07095

At the close of the period for comments, the Highway Authority may adopt this proposal with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of the adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1983-633.

The agency proposal follows:

#### Summary

The proposed amendment changes the definition of vehicles permitted to use the Parkway from a gross weight of not more than 6,999 pounds to a "registered" gross weight of not more than 6,999 pounds.

#### Soical Impact

The regulation as presently worded requires State Troopers to bring suspect vehicles to off-Parkway weigh-in stations to determine whether or not a violation of the present regulation exists. The proposed amendment will permit a determination of violation or lack of violation by a review of the registration certificate. Reducing delays required by off-Parkway weighing should improve the service provided the motoring public by the New Jersey Highway Authority. In addition, the proposed change should reduce the time presently spent by State Troopers in enforcing this aspect of the regulation, thereby allowing for additional Trooper time to be spent protecting and providing services for users of the Garden State Parkway.

#### Ecnomic Impact

The proposed amendment, by reducing the time consumed in delays occasioned by off-Parkway weighing of vehicles, should reduce the cost of goods being transported and thereby reduce the cost to the ultimate consumer. The increased efficiency in enforcement permitted by the proposed change will increase overall efficiency and thereby reduce costs by conserving time presently expended by State Troopers.

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

#### 19:8-1.1 Definitions

"Car" means a passenger motor vehicle, including station wagons, hearses, funeral flower and funeral service vehicles for which issuance of passenger car plates is authorized, taxicabs, motorcycles and panel vans, pickup trucks and similar vehicles having a **registered** gross weight not exceeding 6,999 pounds.

# RULE ADOPTIONS

## COMMUNITY AFFAIRS

(a)

### DIVISION OF HOUSING AND DEVELOPMENT

#### Planned Real Estate Development Full Disclosure Budgets

##### Adopted Amendment: N.J.A.C. 5:26-8.7

Proposed: September 6, 1983 at 15 N.J.R. 1408(a).  
Adopted: November 23, 1983 by William M. Connolly,  
Director, Division of Housing and Development,  
Department of Community Affairs.  
Filed: November 29, 1983 as R.1983 d.576, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 45:22A-35.

Effective Date: December 19, 1983.  
Expiration Date pursuant to Executive Order No. 66(1978):  
April 1, 1986.

##### Summary of Public Comments and Agency Responses:

Comments were received from several developers protesting as excessive the proposed requirement that a bond in the amount of four times the annual budget be posted. The agency, upon reconsideration, has agreed that an amount equal to the annual budget in the first year and the annual budget plus accumulated reserves in each year thereafter will be sufficient. One comment protested the use of the undefined term "managing agent" in the proposal. This term is not used in the rule as adopted. The agency did not agree, however, with a comment recommending that the audit report be made available at the association's office but not be distributed free of charge to unit owners. In the judgment of the agency, the added cost of distribution is not unreasonable in view of the added opportunity which it provides for unit owners to be aware of information highly relevant to the maintenance and operation of the development.

**Full text** of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions from proposal shown in brackets with asterisks **\*[thus]\***).

5:26-8.7 Budgets  
(a)-(c) (No change from proposal.)

**(d) \*[The managing agent shall post a bond or other guarantee acceptable to the agency in an amount equal to four times the annual budget.]\* \*Until the expiration of any management contracts entered into while the developer maintains a majority of the executive board, the developer shall insure that a bond, or other guarantee acceptable to the Agency, is posted. For the first year of operation, the bond or other guarantee shall be in**

**an amount equal to the annual budget. For the second year and for succeeding years, the bond or other guarantee shall be in an amount equal to the annual budget plus accumulated reserves.\* The developer shall provide the agency \*with\* such proof of such bond or other guarantee as may be necessary at the time of registration and annually thereafter.**

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(b)

### DIVISION OF WATER RESOURCES

#### Standards for Procedures for Establishing Privileges to Divert Water and for Obtaining Water Usage Certifications for Agricultural or Horticultural Purposes

##### Adopted New Rule: N.J.A.C. 7:20A

Proposed: November 15, 1982 at 14 N.J.R. 1249(a).  
Adopted: November 15, 1983 by Robert E. Hughey,  
Commissioner, Department of Environmental Protection.  
Filed: November 15, 1983 as R.1983 d.562, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5 and see this Register at 15 N.J.R. 2122(a) for related proposal).

Authority: Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

Effective Date: December 19, 1983.  
Expiration Date pursuant to Executive Order No. 66(1978):  
December 19, 1988.  
DEP Docket No. 055-82-10.

##### Summary of Public Comments and Agency Responses:

The Department of Environmental Protection held four evening public hearings concerning the proposed new rule on November 29, 1982, in Morristown; December 1, 1982 in Trenton; December 13, 1982 in Toms River; and December 15, 1982 in Vineland. Furthermore, the Department extended the public comment period from December 15, 1982 until January 31, 1983 (see 15 N.J.R. 73(a)). Several written comments were received in addition to testimony from approximately 27 persons received at the four public hearings.

The Department of Agriculture, upon behalf of New Jersey's agricultural community, responded to the largely negative comments concerning its original November 15, 1982 proposal by instituting a dialogue with the Department that culminated in this adoption and the companion proposal appearing in this Register (see 15 N.J.R. 2122(a) in this Register). The Department, with the agreement of the Department of Agriculture and the County Extension Service, has substantially revised the original proposal

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to allow for more direct action on water usage certifications by appropriate county agricultural agents.

The original proposal envisioned the Department serving as a consultant to the appropriate county agricultural agent by providing recommendations concerning approval or disapproval of all water usage certifications. This concept has been significantly limited. Under the current procedures the appropriate county agricultural agent would directly issue new water usage certification under the following conditions:

1. Extensions of existing certifications, Water Policy and Supply Council permits or privileges previously allowed pursuant to other lawful legislative or administrative actions under the same conditions as previously allowed;

2. Certifications within the pinelands areas; and

3. Certifications within the coastal plain outside the pinelands area for diversions of not more than 500,000 gallons. However, if certifications fall within critical water supply usage areas to be designated pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., or if objections concerning an application have been filed with the appropriate county agricultural agent, the procedure outlined in the November 15, 1982 proposal will be utilized prior to issuance of a water usage certification by the appropriate agricultural county agent. The Department accepted and agreed to these suggested revisions to streamline the water usage certification procedures and better serve New Jersey's agricultural community while still insuring proper water supply management for agricultural and horticultural water users. Further information relevant to the proposed changes to the original November 15, 1982 proposal can be found in this Register.

Please note that the Department deleted Subchapter 3 "Fee Schedule for Water Usage Certifications" from this adoption and at this time does not intend to repropose a new fee schedule. The Department of Agriculture agreed to provide the necessary funding to implement the provisions of N.J.A.C. 7:20A as set forth in this adoption and the companion proposal found in this Register. N.J.S.A. 58:1A-7.2 provides the Department discretion concerning whether any fees shall be promulgated. In response to the agricultural community's comments and the Department of Agriculture's funding, the Department will defer any decision to promulgate water usage certification fees until a future date. The remaining changes from the original November 15, 1982 proposal now adopted clarify provisions that were not clear to the agricultural community. Also please note numbering changes caused by the inclusion of the companion proposal in this Register. The Department has summarized and responded to the comments received concerning the original November 15, 1982 proposal from the various components of New Jersey's agricultural community according to the following significant issues:

1. Several commenters felt that the Department should not apply experiences from droughts in Northeastern New Jersey to Southern New Jersey. In areas currently experiencing adequate water supply, farmers did not appreciate the need for water conservation or water management measures. The State, in fulfilling its responsibilities to manage the State's water resources, must give considerable attention to the northern counties and urban water shortages. Conservation has been, and will continue to be, an important part of the water management in such areas.

In rural areas, particularly in the southern counties, the State's primary concern is to avoid conflicting water use activities. Water is plentiful in many areas and conservation measures are not essential. However, where groundwater is drawn from deep aquifers, annual water level data will be required to make certain that withdrawals are not exceeding recharge. The State's primary concern is to protect existing users. The State's record keeping, supplemented by reporting farms, will help to identify possible problem areas where special conditions on water usage certifications may be necessary. We are especially concerned where there is a possible conflict between agriculture and urban or industrial development.

A good water management program is essential to protect all water users, including farmers, from potential water supply problems. The State's water supply management program must be the responsibility of all those who benefit from the privilege to divert water in New Jersey. Today's water supply management will help avoid tomorrow's water supply problems.

2. Many commentors felt that the scope of a single water usage certification should be enlarged. N.J.A.C. 7:1A-1.4(a)4 currently includes within the scope of a single water usage certification: a) contiguous agricultural or horticultural sites or groups of properties under common ownership or management; b) non-contiguous agricultural or horticultural sites or groups of properties under common ownership or management within the same municipality; or c) non-contiguous agricultural or horticultural sites or groups of properties under common ownership or management within an area of a square two miles on a side. Several alternative proposals were developed by farmers. Cranberry growers proposed a single water usage certification for agricultural properties within a county plus two miles only for farming activity in the Pinelands National Reserve. The cranberry growers pointed out that extensive State ownership of land in the Pinelands prevents many farmers from farming contiguous properties. Many commentors felt that the Department placed more weight on political boundaries rather than hydrological considerations.

In practice, the administration of the water usage certification program in a strong home rule state, such as New Jersey, means dealing with different local governments, and trying to answer varying needs and concerns. Hydrologic units are not easily defined in areas where most water comes from aquifers. Nor is there a fixed correlation between ground and surface water hydrologic units. The Department feels that the adopted new rule extends the scope of single water usage certification as much as possible while still insuring that certifications cover areas with the same hydrologic characteristics. Any further extension would defeat the purpose of considering local hydrologic factors in the State's water supply management efforts. Also, farmers main concern of having to obtain several certifications and pay the corresponding fees has been eliminated along with the fee schedule in this adoption.

3. Many farmers objected to paying any fees for water usage certifications. Fee amounts have been determined after a series of negotiations conducted between the Department, the Department of Agriculture, the Farm Bureau and other representatives of the agricultural community. The Department estimated that the adopted fee schedule would only provide less than ten percent of the revenue necessary to administer the water usage certification program for agriculture. The fee schedule has been eliminated based upon the Department of Agriculture's agreement to provide administrative funds to the Department. Farmers also objected to paying the cost of advertising their application for a water usage certification and the cost of transcribing any public hearing held. The Department believes costs should rightfully be absorbed by the person benefiting from the water usage certification and not be allocated to any other parties. Please note that the adopted new rule includes the Advisory Panel which should informally resolve many disputes without incurring the expenses of a public hearing. Agricultural interests must be required to share in the burdens of managing our State's precious water supply resources.

4. Many commentors, especially cranberry growers, asserted that as non-consumptive water users they should receive special treatment, such as certifications without hearings or fees. This opinion was expressed by at least 13 different written comments with extensive documentation of the non-consumptive nature of agricultural activities, especially cranberry growing. The Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., defines "non-consumptive use" at N.J.S.A. 58:1A-3(e). However, the definition of "diversion" at N.J.S.A. 58:1A-3(d) includes both consumptive and non-consumptive uses. Non-consumptive water use is mentioned only once in the Act as a permit condition specified at N.J.S.A. 58:1A-8(f). The Act requires no special treatment for

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non-consumptive uses and the water allocation permit program established pursuant to N.J.A.C. 7:19-1 et seq. does not allow special provisions for non-consumptive water uses at this time.

5. Many commentors questioned the method of calculating gallons of water per day used by farmers for the purposes of the adopted new rule. N.J.A.C. 7:20A-1.6(a) calculates the 100,000 gallons or more of water per day threshold established in the Act as the applicant's proposed or actual total gallons of water diverted during the maximum month for usage in the most recent calendar year. Farmers felt that annual average of water diverted should be utilized. If water usage was calculated on an annual average, most agricultural operations would fall below the 100,000 gallons or more threshold. Past water supply practices in New Jersey for many years have utilized peak season water use rather than annual averages. Annual average water use data would be meaningless and argue strongly for lowering the threshold to 10,000 gallons per day as earlier recommended by the Delaware River Basin Commission. Experience in New Jersey has established the fact that droughts can occur in any season, and may continue through several seasons. Resources planning must be based on the worst case scenario. No New Jersey farmer would be willing to rely on "average" supplies if water needs could not be met during critical seasons. Maximum month calculations are required to protect the farmer's water supply resources.

6. Several commentors, including several county agricultural agents, felt that the adopted new rules placed too much burden on the county agricultural agents. In fact, the New Jersey Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., requires the active involvement of the appropriate agricultural county agent. The companion proposal in this Register places even more burden on county agricultural agents. A few county agents noted that despite additional burdens, the Act failed to provide additional resources to carry out these functions. The Department sympathizes, and will endeavor to provide assistance whenever possible. The Department believes that the adopted new rule utilizes the expertise of all participants and distributes the administrative burden between the Department and the appropriate county agricultural agent as intended by the Legislature.

7. One commentor requested clarification on whether a single water usage certification could cover both ground and surface waters. The Department always intended both ground and surface water sources to be included in a water usage certification. Please note changes at N.J.A.C. 7:1A-1.3 and 1.4(a)4 to clarify this position.

8. Many commentors felt that a new owner or operator of agricultural or horticultural property should be allowed more than two months to transfer the existing water usage certification prior to termination. The Department agrees and has modified N.J.A.C. 7:20A-1.7(a)2 to allow for a six-month transfer period.

9. Many farmers had difficulty understanding the technical term "cone of depression" utilized at N.J.A.C. 7:20A-2.3(a)6. The Department removed this subsection and added a new definition to allow applicants with a non-technical background to more easily apply for water usage certifications.

10. The Department has standardized the notice publication requirements upon official filing of the application and prior to any public hearing held. N.J.A.C. 7:1A-2.8(b)1 requires publication for one day per week for two weeks in a newspaper circulating in the territory affected by the application.

11. The majority of the farmers were concerned about meritless objections being raised about their water usage certification applications initiating expensive public hearing procedures. The Advisory Panel, established at N.J.A.C. 7:20A-2.11, was received favorably as a method of informally resolving potential disputes concerning an application. The Department has clarified the duties of the Advisory Panel in the companion proposal in this Register. A new N.J.A.C. 7:20A-2.11(a)4 has been added which requires the Advisory Panel to include in its recommendations whether the objections raised are without merit or frivolous in nature and that

the water usage certification should be approved or disapproved without resorting to the public hearing procedure pursuant to N.J.A.C. 7:20A-2.12. The appropriate county agricultural agent may then follow this recommendation. All persons objecting before the Advisory Panel shall receive notice of the final decision on any application to provide adequate notice for said person still alleging to be adversely affected to appeal the decision to the Administrative Law Judge pursuant to N.J.A.C. 7:20A-2.20. This clarification of the Advisory Panel's duties in the companion proposal in this Register protects the farmer while still allowing potential objectors several alternative actions to protect their interests.

**Full text** of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions from proposal shown in brackets with asterisks **\*[thus]\***).

## 7:20A-1.2 Construction

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

(c) Any agricultural or horticultural uses of water in the State of New Jersey will be presumed **\*[by the Department]\*** to be in the public interest for the purpose of this chapter.

## 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.

"Act" means the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

"Agricultural or horticultural purposes" means the commercial activity of producing principally for sale food crops, plants, animals or their products for the use of the consumption by man including in a primary sense the growing, harvesting, storage and the on-farm preparation for use and marketing of food crops, plants, animals or their products.

"Applicant" means any person filing or required to file an application to establish a privilege to divert water or for a water usage certification pursuant to this chapter or the Act. An applicant may be the owner or operator of property or a person leasing property for agricultural or horticultural purposes.

"Appropriate county agricultural agent" means the county agricultural agency assigned jurisdiction over the area involved in the application.

"Commissioner" means the Commissioner of the Department of Environmental Protection or his designated representative.

**\*"Cone of depression" means an area where the groundwater has been drawn down to the point where the aquifer to be utilized is overstressed, threatened by saline intrusion or in a critical water supply area.\***

"County agricultural agent" means such person so designated by the New Jersey Cooperative Extension Service in each of the respective counties.

"Decision maker" means the person designated by the Division to make recommendations to the appropriate county agricultural agent on applications for water usage certifications and claims of privileges to divert water.

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

"Divert" or "diversion" means the taking of water from a river, stream, lake, pond, aquifer, well, other underground source, or other water body, whether or not the water is returned thereto, consumed, made to flow into another stream or basin, or discharged elsewhere.

"Diversion" means the Division of Water Resources in the Department of Environmental Protection.

"Person" means any individual, corporation, company, relationship, firm, association, owner or operator of an enterprise engaged in agricultural or horticultural purposes.

"Water" means any surface water or groundwater in the State.

"Water usage certification" or "Certification" means the

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document issued by a county agricultural agent pursuant to this chapter to a person granting that person the privilege to divert 100,000 gallons or more of water per day **\*from ground and surface water sources\*** for agricultural or horticultural purposes for a five-year period.

7:20A-1.4 Applicability

(a) This chapter applies to all persons who have been issued a water usage certification, a Water Policy and Supply Council permit, **\*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 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 from proposal.)
2. Water usage certifications shall not be required for a person diverting water from a water purveyor or for transfer from a water purveyor within the scope of an existing water usage certification or **\*Water Policy and Supply Council\*** permit. 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 or **\*Water Policy and Supply Council\*** permit regardless of the same or different ownership of the property.
3. This chapter shall not apply in cases of emergency as defined in State contingency plans; fire fighting; flood prevention; or any other emergency diversion of water. If such an emergency diversion is contemplated to continue for a period of more than three months, then a **\*[permit or]\*** certification shall be applied for within 30 days of the beginning of the emergency or of the determination that the emergency will last for more than three months, whichever is less, in accordance with this chapter.
4. An applicant with a total demand of 100,000 or more gallons of water per day may be issued a water diversion allocation **\*from ground or surface water sources\*** by a single water usage certification in cases where:
  - i-ii. (No change from proposal.)
  - iii. The non-contiguous agricultural or horticultural site or group of properties under common ownership or management lie within an area of **\*[two square miles on a side of each other.]\*** **\*a square two miles on a side.\***

7:20A-1.5-1.6 (No change from proposal).

7:20A-1.7 Procedure after transfer of ownership or operation of agricultural or horticultural property with existing water usage certification

(a) A certification for any property utilized for agricultural or horticultural purposes under an existing water usage certification, which has been transferred in ownership or operation without any change or modification in the specified conditions of water usage for agricultural or horticultural purposes, may be transferred upon application by the new owner or operator to **\*[the Department through]\*** the appropriate county agricultural agent for such a transfer of the existing water usage certification except that:

1. (No change from proposal.)
2. If the new owner or operator of the property does not apply for the privilege to transfer the existing water usage certification within **\*[60]\*** **\*180\*** days after the transfer of ownership or operation, then the privilege of the new owner or operator to divert water under the existing water usage certification shall cease **\*and will have to follow the procedures set forth in N.J.A.C. 7:20A-2 to establish their privilege to divert water\*.**

7:20A-1.8-1.9 (No change from proposal.)

7:20A-2.1 (No change from proposal.)

7:20A-2.2 **\*(Reserved)\***

7:20A-2.\*[2]\*\*3\* General application procedures  
(a)-(d) (No change from proposal.)

7:20A-2.\*[3]\*\*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 **\*[set forth by the Department]\*** as follows:

1. (No change from proposal.)
2. Diversion of the quantity of water requested shall not unduly interfere with other existing **\*[supplies]\*** **\*or proposed diversions\*;**
- 3.-5. (No change from proposal.)
6. In the case of groundwater only, that the proposed diversion does not lie within a cone of depression **\*[where the aquifer to be utilized is overstressed or threatened by saline intrusion]\*** and that the location relative to hazardous waste disposal sites or other major source of pollution is not such as to be likely to result in groundwater contamination.

- (b) (No change from proposal.)
- \*[(c) If any of the conditions in (a) above are not met, a showing shall be required as to why some more suitable alternative source of water should not be used in the public interest.]\***
- \*[(d) Additionally, the applicant may be required by the appropriate county agricultural agent or the Department to submit any other information which would substantiate the proposed allocation and the appropriateness of the designated choice of water for the allocation.]\***
- \*[(c) The appropriate county agricultural agent shall review the application and make a determination concerning the accuracy of information submitted pursuant to (a) above, 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) 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.\*[4]\*\*5\* Conversion of existing **\*Water Policy and Supply Council\*** permits to water usage certifications and applications for renewal of existing water usage certifications

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

7:20A-2.\*[5]\*\*6\* Preliminary application review

**\*[(a) The appropriate county agricultural agent shall make a preliminary review of the material to determine whether or not the applicant has submitted with the application documents addressing N.J.A.C. 7:20A-2.2, and if it has been completely and properly prepared.]\***

- \*[(a) (Reserved) ]\***
- (b) (No change from proposal.)

**\*[7:20A-2.6 Opportunity to review application by interested parties**

- (a) Copies of the application may be reviewed by any interested parties at the offices of the county agricultural agent.
- (b) The Division, after the application has been officially filed pursuant to N.J.A.C. 7:20A-2.7(b), shall have a notice of the application published in a newspaper circulating in the territory

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affected by the application within one week of the filing of the application.

1. The notice shall be published for one entire week and shall summarize the application and describe the area affected.

2. The cost of publishing the notice of the application shall be paid by the applicant.]\*

7:20A-2.7-2.9 **\*(Reserved)\***

\*[7:20A-2.\*[7]\*\*10\* \*Verification from county agricultural agent to Division]\* **\*Applications referred to the Division\***

\*(a) The county agricultural agent shall verify the need for water usage requested and forward it to the Division's Water Allocation office along with other pertinent information.]\*

**(a) \*(Reserved)\***

1. (No change from proposal.)

2. The appropriate county agricultural agent shall forward the application and all other relevant data to the Division's water Allocations Office for evaluation and review of the application's compliance with the standards and procedures set forth in N.J.A.C. 7:20A-2.\*[3]\*\*4\*.

\*(b) The receipt by the Division's Water Allocation Office of the application, the verification of the need for water usage, and all other relevant data concerning a particular application shall constitute the official filing of the application for the purposes of N.J.A.C. 7:20A-2.6(b).]\*

\*(c)\*\*(b)\* The Division's Water Allocation Office shall review and evaluate the application and verification of the need for the water usage and complete the following activities:

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

\*(d)\*\*(c)\* (No change from proposal.)

\*(e)\*\*(d)\* If objections exist to the application from any source, the procedures outlined in N.J.A.C. 7:20A-2.\*[8]\* **\*11\*** shall be followed.

7:20A-2.\*[8]\*\*11\* **Advisory Panel**

(a) (No change from proposal.)

1.-3. (No change from proposal.)

**4. \*(Reserved)\***

\*(b) If no resolution can be achieved by the Advisory Panel, then the public hearing process outlined in this subchapter shall be followed.]\*

**\*(b) (Reserved)\***

7:20A-2.\*[9]\*\*12\* **Notice of public hearing requirements**

(a) When a public hearing on a water usage certification is required pursuant to \*[the]\* N.J.A.C. 7:20A-2.\*[2.7(e)]\* **\*2.11(b)\***, or the appropriate county agricultural agent \*[of]\* **\*or\*** the Division determines that a public hearing is required in the public interest, the Division shall:

1. (No change from proposal.)

2. Have a notice of the public hearing published \*[at least twice]\* **\*one day per week for two weeks\*** in a newspaper circulating in the territory affected by the application at least 30 days prior to the scheduled hearing.

i. If the Division determines that an emergency or other similar circumstances require an expedited hearing, the notice of the hearing need only be published in a local newspaper at least 14 days prior to the scheduled hearing \*[\*]; and]\*\*.\*

3. (No change from proposal.)

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

7:20A-2.\*[10]\*\*13\* **Expenses of hearing**

(No change from proposal.)

7:20A-2.\*[11]\*\*14\* **Public hearing**

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

7:20A-2.\*[12]\*\*15\* **Public hearing report**

(a) (No change from proposal.)

7:20A-2.\*[13]\*\*16\* **Decision maker's recommendation**

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

7:20A-2.\*[14]\*\*17\* **Notification of recommendation**

(No change from proposal.)

7:20A-2.\*[15]\*\*18\* **Approval by county agricultural agents**

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

7:20A-2.\*[16]\*\*19\* **Record of decision**

(a) (No change from proposal.)

\*(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.]\*

**\*(b) (Reserved)\***

7:20A-2.\*[17]\*\*20\* **Appeal procedure**

(a) The applicant, the Department or any person alleging to be adversely affected by the decision on a water usage certification application shall have a right to a hearing thereon if requested in writing within 20 days of receipt of a copy of the decision. **\*Any person or entity alleging to be adversely affected by the decision on a water usage certification shall be required to specify in writing and in detail the basis for its appeal.\***

(b) (No change from proposal.)

(c) If such efforts at settlement fail, the Department shall file the request for a hearing with the Office of Administrative Law **\*provided the conditions of (a) above have been satisfied by the person or entity alleging to be adversely affected by the decision on a water usage certification.\***

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

7:20A-2.\*[18]\*\*21\* **Validity of water usage certifications**

issued.

(No change from proposal.)

7:20A-2.22 **\*(Reserved)\***

\*[SUBCHAPTER 3. FEE SCHEDULE FOR WATER USAGE CERTIFICATIONS]\*

(Entire text of Subchapter 3 deleted from adoption.)

**(a)**

**DIVISION OF FISH, GAME AND WILDLIFE**

**Bureau of Shellfisheries  
Sale of Licensed Oyster Vessel**

**Adopted Amendment: N.J.A.C. 7:25A-1.2**

Proposed: September 6, 1983 at 15 N.J.R. 1415(a).

Adopted: November 22, 1983 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: December 5, 1983 as R.1983 d.591, **without change.**

Authority: N.J.S.A. 50:1-5.

Effective Date: December 19, 1983.

Expiration Date pursuant to Executive Order No. 66(1978): May 14, 1986.

**ADOPTIONS**

**ENVIRONMENTAL PROTECTION**

Summary of Public Comment and Agency Responses:  
No comments received.

planting of oyster shell and shall also include the necessary data collection, administrative, and enforcement support activities.\*

**(a)**

**DIVISION OF FISH, GAME AND WILDLIFE**

**Bureau of Shellfisheries  
Oyster Cultch Program**

**Adopted New Rule: N.J.A.C. 7:25A-4**

Proposed: September 6, 1983 at 15 N.J.R. 1416(a).  
Adopted: December 2, 1983 by Robert E. Hughey,  
Commissioner, Department of Environmental  
Protection.  
Filed: December 5, 1983 as R. 1983 d. 590, with substantive  
changes not requiring additional public notice and  
comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 50:1-5.

Effective Date: December 19, 1983.  
Expiration Date pursuant to Executive Order No. 66(1978):  
December 19, 1988.

Summary of Public Comments and Agency  
Responses:  
No comments received.

The Bureau of Shellfisheries has made several substantive changes to the proposal. More specific language, with regard to the intent of the program, is included in the "Scope" and "Definition" sections. The \$0.50 per bushel fee is reduced to \$0.35 per bushel. Specific language providing for annual review and change of this fee is added. A dedicated account, the "Oyster Cultch Fund," is identified. Specific language, permitting enforcement personnel to inspect records and premises for compliance with this rule, is added.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

**SUBCHAPTER 4. OYSTER CULTCH PROGRAM**

7:25A-4.1 Scope  
This subchapter is intended to provide for the reporting of all New Jersey oyster landings from Delaware Bay and the imposition \*,\*\* [and]\* collection \*, and dedication\* of \*[landings]\* fees \*[to be used]\* to finance an oyster cultch program to purchase and \*[transfer cultch to]\* **\*plant no less than 40 percent of the oyster shells from the previous year's harvest on \* the State's oyster seed beds \*and to provide support for shellfish research as directed by the Commissioner after consultation with the Delaware Bay Shellfish Council\*.**

7:25A-4.2 Definitions  
"Landing sites" shall include \*,[but not be limited to,]\* all \* **departmentally designated\*** Delaware Bay oyster shucking houses and existing significant off-loading sites \*,[ to be designated by the Department of Environmental Protection]\*.  
**\*\*"Oyster cultch program" shall mean the purchase and**

7:25A-4.3 \*[Landing fee]\*\*Fee\*  
(a) A \*[landing]\* fee shall be collected from harvesters by dealers\*[,]\* for each bushel of oysters landed at their permitted landing sites.  
1. The fee shall be **\*initially set at\* \*[\$.50]\*\* \$0.35\*** per bushel.  
**\*2) The fee shall be reviewed annually by the Delaware Bay Shellfish Council at a regularly scheduled meeting.**  
**3. The fee shall subsequently be fixed by the Commissioner with the approval of the Delaware Bay Shellfish Council.\***  
\*[2]\*\*4.\* Notice of revised fees shall be provided in the New Jersey Register \*, by mailing to each dealer,\* and \*in\* a news release \*[shall be]\* sent to the \*[official papers of the Delaware Bay Shellfish Council.]\* \*\* **Bridgeton Evening News and the Millville Daily.\***  
**\*5. The fees imposed hereunder, except as may otherwise be provided by law, shall be deposited in a fund to be known as the "Oyster Cultch Fund," kept separate and apart from all other department and State receipts, and appropriated only to defray in full the oyster cultch program defined in N.J.A.C. 7:25A.\***

7:25A-4.4 Designation of landing sites and dealers  
**\*(a)\*** The Department of Environmental Protection \*,\* upon application \*[,]\* made by letter \*[,]\* from the operator of a shucking house \*[on]\* **\*or\*** other off-loading sites \*,\* may designate the site as an official landing site and its operator as a dealer.  
**\*(b) No oysters shall be landed except at designated sites.\***

7:25A-4.5 Records required  
(a) (No change from proposal.)  
(b) Whenever oysters are landed at a permitted site, the dealer shall make an entry noting the date, time, vessel license number and the number of bushels received \*[,]\* and collect the required fee. **\*Each entry shall be signed by the dealer and the harvester at the time of landing.\***  
(c) The original form shall be sent by the dealer to the Bureau of Shellfisheries, Bivalve Shellfish Office, P.O. Box 432, Port Norris, New Jersey 08349, at the end of every week during which oysters are received, no later than five days after the end of the week, together with a check or money order representing the amount of the fee collected, made payable to \*["New Jersey Bureau of Shellfisheries"]\* **\*\*"Treasurer, State of New Jersey"**.

**\*(d) The Bureau of Shellfisheries may inspect the loading sites of all dealers and every entry referred to in (b) above.**  
(e) **The entries inspected, and the information contained therein, shall, except as otherwise provided in this section, be confidential and not be public record.**  
1. **Insofar as possible, the information contained in these entries shall be compiled or published only in such a manner so as not to disclose the business records of any person.**  
2. **The information contained in these entries can be provided to other states, Federal agencies, and regional fisheries agencies, provided that those entities have similar confidentiality provisions that do not disclose the business record of any person.\***

7:25A-4.6 Penalties  
(No change from proposal.)

(a)

## COMMISSION ON RADIATION PROTECTION

### Bureau of Radiation Protection General Provisions; Use of Sources of Ionizing Radiation and Special Exemptions

#### Adopted New Rules: N.J.A.C. 7:28-1 and 2 Adopted Repeal: N.J.A.C. 7:28-1 and 2

Proposed: March 21, 1983 at 15 N.J.R. 391(a).

Adopted: November 22, 1983 by Commission on Radiation Protection, Max Weiss, Ph.D., Chairman.

Filed: December 5, 1983 as R.1983 d.592, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1D-7, and specifically N.J.S.A. 26:2D-7.

DEP Docket No. 013-83-02

Effective Date: December 19, 1983.

Expiration Date Pursuant to Executive Order No. 66(1978):  
December 19, 1988.

#### Summary of Public Comments and Agency Responses: No comments received.

**Full text** of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions from proposal shown in brackets with asterisks **\*[thus]\***).

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 7:28-1.1 Purpose and scope

(a) The purpose of **\*[the following provisions]\*** **\*this chapter\*** is to prohibit and prevent the use or presence of unnecessary radiation in such manner as to be, or tend to be, injurious or dangerous to the health of the people or the industrial or agriculture potentials of the State, or to the ecology of the State and its wildlife.

(b) Unless otherwise provided by statute or codes, rules or regulations promulgated by the Commission on Radiation Protection, **\*[the following provisions]\*** **\*this chapter\*** shall constitute the rules of the Bureau of Radiation Protection, Department of Environmental Protection, and shall govern all persons installing, using, handling, transporting or storing sources of radiation.

##### 7:28-1.2 Construction

**\*[(a)]\*** These rules shall be liberally construed to permit the Department, the Bureau of Radiation Protection and its various agencies to discharge their statutory functions.

**\*[(b)]\*** The Department with the approval of the Commission may, upon notice to all parties, in the public interest, relax the application of these rules. **]\***

##### 7:28-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional words and terms, applicable to a specific subchapter only, will be found in that subchapter.

###### (a) General Terms:

"Absorbed dose" means the energy imparted to matter by ionizing

radiation per unit mass of irradiated material at the place of interest. The special unit for absorbed dose is the **\*rad\*** **\*[Rad]\***. (See "Rad" under (b) below.)

"Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be so arranged that no day in any year is omitted from inclusion within a calendar quarter. For purposes of this chapter, no **\*[license]\*** **\*licensee\*** or registrant shall change the method observed by him of determining calendar quarters except at the beginning of a calendar year.

"Department" means the New Jersey **\*[State]\*** Department of Environmental Protection.

"Radiation area" means an area which is accessible to a worker and in which there exists ionizing radiation at such levels that a major portion of the body would receive in any one hour a dose equivalent in excess of five millirems or in any workweek a dose equivalent in excess of 100 millirems; or levels of **\*[non-ionizing]\*** **\*nonionizing\*** radiation which **\*[exceeds]\*** **\*exceed\*** the maximum permissible levels of such radiation as specified in the rules and standards established by the Commission.

**\*["Shall"]\*** indicates a mandatory requirement. **]\***

###### (b) Ionizing radiation terms:

"Byproduct material" means any radioactive material **\*[,]\*** **\*(\* except special nuclear material \*)\*** **\*[,]\*** yielded in<sup>\*</sup>, or made radioactive by<sup>\*</sup>, exposure to the radiation incident to the process of producing or utilizing special nuclear material.

"Curie" means that amount of a specific radionuclide which disintegrates at the rate of 37 billion atoms per second.

i. The new International System of Units replaces **\*["Curie"]\*** **\*"curie"** with the **\*["Becquerel"]\*** **\*"becquerel"**, which means that amount of a specific radionuclide which disintegrates at the rate of one atom per second. One **\*[Curie]\*** **\*curie\*** equals  $3.7 \times 10^{10}$  **\*[Becquerel]\*** **\*becquerel\***.

"Diagnostic-type protective tube housing" means x-ray tube housing so constructed that the leakage radiation at a distance of one meter from the target cannot exceed  $100 \text{ mR}$  **\*milliroentgen\*** in one hour when the tube is operated at any of its specified ratings.

"High radiation area" means an area which is accessible to workers and in which there exists **\*[radiations]\*** **\*radiation\*** at such levels that a major portion of the body could receive in any one hour a dose in excess of 100 millirem.

"Medical radiographer" means any individual who, under the supervision of a licensed practitioner, uses medical radiographic equipment on **\*[humans]\*** **\*human beings\*** for diagnostic or therapeutic purposes.

"Primary protective barrier" means **\*a\*** barrier intended to **\*[attenuate]\*** **\*attenuate\*** the useful beam to the required degree.

"Rad" means the dose corresponding to the absorption of 100 ergs per gram: a measure of the dose of any radiation to body tissues in terms of the energy absorbed per unit mass of the tissue.

i. The new International System of Units replaces **\*["Rad"]\*** **\*"rad"** with the **\*["Gray"]\*** **\*"gray"**, which means the dose corresponding to the absorption of one joule per kilogram. One **\*[Rad]\*** **\*rad\*** equals  $10^2$  **\*[Grays]\*** **\*grays\***.

"Rem" means a measure of the dose of any ionizing radiation to body tissue in terms of its estimated biological effect relative to a dose of one rad of x-rays. For the purpose of this chapter, any of the following are considered to be equivalent to a dose of one rem:

i.-iii. (No change from proposal.)

**ADOPTIONS**

**ENVIRONMENTAL PROTECTION**

(1) The new International System of Units replaces the \*["Rem"]\* \***rem**\* with the \*["Sievert"]\* \***sievert**\*, which means a measure of the dose of any ionizing radiation to body tissue in terms of its estimated biological effect relative to a dose of one \*["Gray"]\* \***gray**\* of x-rays. One \*["Rem"]\* \***rem**\* equals 10<sup>2</sup> \*["Sieverts"]\* \***sieverts**\*.

(2) (No change from proposal.)

“Secondary protective barrier” means a barrier intended to attenuate ionizing radiation (\* other than the useful beam\*) to the required degree.

“Special nuclear material in quantities not sufficient to form a critical mass” means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; \*["uranium 233"]\* \***U-233**\* in quantities not exceeding 200 grams; plutonium \***(Pu)**\* in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula: for each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all the kinds of special nuclear material in combination shall not exceed “1”, that is, unity as illustrated in the following example:

$$\frac{[175 \text{ (grams contained U-235)} + 50 \text{ (grams Pu)}]}{[350] + [200]} = 1$$

<b>*175 grams Contained U-235 350</b>	<b>+</b>	<b>50 grams U-233 200</b>	<b>+</b>	<b>50 grams Pu 200</b>	<b>=1*</b>
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(c) Nonionizing radiation terms:

“Electric field strength” means a field vector quantity that represents the force on an infinitesimal unit positive test charge at a point divided by that charge. The electric field strength is expressed in units of \*["volt"]\* \***volts**\* per meter (V/m).

“Magnetic field strength” means a field vector that is equal to the product of the magnetic flux density and the reciprocal of the permeability. Magnetic field strength is expressed in units of \*["ampere"]\* \***amperes**\* per meter (A/m).

“Radio frequency protection guide (RFPG)” means the mean squared electric field strength, the mean squared magnetic field strength, and the equivalent plane wave power density which shall not be exceeded. The RFPG is an upper limit of exposure. \* [Exposure to levels slightly in excess of the RFPG are not harmful; however, they are not desirable and in all cases the exposure shall be reduced to values that are as low as reasonably achievable.]\* \* **Exposure to levels slightly in excess of the RFPG is not harmful, however, such exposure is not desirable. In all cases the exposure shall be reduced to a value that is as low as reasonably achievable.\***

“Specific absorption rate (SAR)” means the time derivative of the incremental energy (dW) absorbed by (dissipated in) an incremental mass (dm) contained in a volume element (dV) of a given density (d).

$$[SAR = \frac{dW}{dm \cdot dt} = \frac{d}{dt} \frac{dW}{dm \cdot dV}] \quad *SAR = \frac{d}{dt} \frac{dW}{dm \cdot dt \cdot dV}*$$

The specific absorption rate is expressed in units of \*["watt"]\* \***watts**\* per kilogram (W/kg). In view of the proliferation of terms for describing the electromagnetic radiation conditions in biological materials and the discipline oriented interpretation

of these terms, it is recommended that the name “specific absorption rate” be used for the quantity defined here, rather than such \*["names"]\* \***a name**\* as “absorbed power density per unit mass”.

7:28-1.5 Communications

(a) \*["All communication"]\* \***Communications**\* concerning \* [the rules in]\* this chapter, or matters relating to radiation protection, \*["should"]\* \***may**\* be addressed to the New Jersey \* [State]\* Department of Environmental Protection, Bureau of Radiation Protection, 380 Scotch Road, Trenton, New Jersey 08628.

(b) (No change from proposal.)

**SUBCHAPTER 2. USE OF SOURCES OF IONIZING RADIATION AND SPECIAL EXEMPTIONS**

7:28-2.1 Authorized use of sources of ionizing radiation

(a) No person shall use, operate, receive, possess, dispose, transfer, install, transport or store sources of ionizing radiation in a manner other than prescribed in \*["these rules or in a manner that does not comply with"]\* this chapter.

(b) No person shall cause, suffer, allow or permit any person to use, operate, receive, possess, dispose, transfer, install, transport or store sources of ionizing radiation in a manner other than prescribed in \*["these rules or are in a manner that does not comply with"]\* this chapter.

7:28-2.2 Supervision

(a) All sources of radiation, except those specifically exempted by other sections of this chapter, shall be under the supervision of \*["an individual(s)"]\* \***at least one person**\* who has demonstrated to the Department, or to any agency recognized by the Department, that the \*["individual(s)"]\* \***person's**\* training and experience satisfies the Department requirements in the following areas of radiation protection:

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

(b) \*["The qualified individual(s) shall be designated on the appropriate Department license, registration, or certificate.]\* \***Any person applying to the Department for a license, registration or certificate pursuant to this chapter, shall include in his application the name of at least one person who has satisfied the requirements of (a) above.\***

7:28-2.5 Protective devices \*[,]\* systems or mechanisms

(No change in text from proposal.)

7:28-2.6 Intentional human irradiation

(a) Only persons licensed or otherwise permitted by law shall arrange for irradiation, application \*[,]\* or administration of radiation to a human being or \*["integral"]\* \***any**\* part thereof, for the purpose of medical diagnosis or treatment.

7:28-2.8 Special exemptions

The Department, upon \*["request by an owner or on its own initiative"]\* \***application and a showing of hardship or compelling need,**\* with the approval of the Commission, may grant \*["a specific"]\* \***an**\* exemption from any requirement of these rules should it determine that such exemption will not result in any exposure to radiation in excess of the limits permitted by N.J.A.C. 7:28-6 (Permissible Dose Rates, Radiation Levels and Concentrations).

# HEALTH

(a)

## HEALTH ECONOMICS SERVICES

### Uniform Bill-Patient Summary (Inpatient) Guidelines for completing UB-PS; Function of Intermediaries; Penalties

#### Adopted Amendments: N.J.A.C. 8:31B-2.4 and 2.6

Proposed: August 15, 1983 at 15 N.J.R. 1325(a).  
 Adopted: November 22, 1983 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).  
 Filed: December 5, 1983 as R. 1983 d.598, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 26:2H-1 et seq. as amended.

Effective Date: December 19, 1983.  
 Expiration Date pursuant to Executive Order No. 66(1978): November 14, 1984.

#### Summary of Public Comments and Agency Responses:

#### COMMENT:

Two respondents replied to the proposal. Two changes were suggested for payer codes and payer descriptors. One commentor suggested that a dollar limit should be set, below which, corrections need not be made on the UB-PS upon final adjudication of the bill.

#### RESPONSE:

The Department agrees that the codes and language suggested is appropriate and the recommended changes will be made.  
 The Department is aware that there may be some costs associated with the correction of payer items on the UB-PS; however, without their correction Payer Reconciliation cannot be carried out. Even small discrepancies would work to the detriment of the payers.

**Full text** of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***, deletion from proposal shown in brackets with asterisks **\*[thus]\***).

#### 8:31B-2.4 Guidelines for completion of UB-PS Form

The following guidelines are to be followed in completing each UB-PS form. Separate instructions are provided, where necessary, for Medicare, Medicaid, Blue Cross and Commercial/other. Any non-starred item may be modified to conform to the needs of the individual payer. Starred items must be entered as described herein.

#### Items 15, 20, 35 - Payer Codes

Payer	Code
Government - 01-	
Title XVIII (Medicare) Part B	010
Title XVIII (Medicare) Part A	011
Title XIX (Medicaid)	012
Title V (Maternal & Child Health)	013
Champus	014
Department of Vocational Rehabilitation	016

Other Government	019
Blue Cross - 02-	
New Jersey Blue Cross	021
*[Other]* New Jersey Blue Cross - FEP	022
*[(Including all Host Bank and processed through New Jersey Blue Cross)]*	
New York Blue Cross	023
Philadelphia Blue Cross	024
Garden State Blue Cross	025
*[Other]* <b>*New Jersey*</b> Blue Cross - Host	026
Other Blue Cross	029
Patient - 03-	
Direct Pay	031
Other Source of Patient Pay	039
HMO - 04-	
Bergen County IPA	041
Co. Med., Inc.	042
Crossroads Health Plan	043
Cumberland Regional Health Plan	044
Health Care Plan of New Jersey	045
HIP of Greater New Jersey	046
Mercer Regional Medical Group	047

Relationship	Abbreviation
Stepfather	SF
Stepmother	SM
Fosterparent	FP
Grandparent	GP
Son	SO
Daughter	DA
Legal Guardian	LG
Uncle	UN
Aunt	AU
Employer	EM
Same (patient)	SA

Item EE - Readmission	Code
The patient has been admitted to this *[facility an]* acute care facility at another time during the last seven days.	
No	0
Yes	1
Unknown	9

Any hospital using a unit numbering system for medical records as of January 1, 1981, and so informing the Department of Health in writing, need not complete this item.

Item F - Referral Source Type	Code
Type	
Acute Care Hospital	1
Long Term Care Facility	2
Home Health Agency	3

8:31B-2.6 Functions of the UB-PS intermediaries  
 (a)-(d) (No change)  
 (e) The UB-PS Guidelines in \*[Section 4 of this subchapter]\* **\* N.J.A.C. 8:31B-2.4\*** indicate in a separate column those items required to be submitted to the Department of Health by the UB-PS Intermediary. These required data, edited pursuant to **\* [subsection]\* (c) \*above,\*** shall be submitted to the Department of Health in a computer processable format and medium, specified by

the Department of Health before July 1, 1980, within 90 days of the end of each calendar quarter. Each submission is to include the data on all patients covered by the UB-PS Intermediary pursuant to \*[subsection]\* (a) \*[of this section]\* **\*above\*** and discharged during the calendar quarter.

1. Records not received by the Department (including corrections of fatal errors) within the time frames specified may not be included in the hospital's Final Reconciliation, and the direct costs associated with them may be foregone by the hospital unless a penalty is paid to the Commission. The amount of the penalty will be up to \$200.00 times the number of working days from the date the records were due to the date the last record is received by the Department.

**\*2. The imposition of the penalty, and the amount to be paid (within the stated limit), will be at the discretion of the Commission.\***

**\*[2.]\*3.\*** All data submitted to the Department of Health will be edited upon receipt and any problems detected shall be corrected by the UB-PS Intermediary with any necessary assistance from the hospital.

(f) (No change.)

**(a)**

**HEALTH ECONOMICS SERVICES**

**1984 Procedural And Methodological Regulations**

**Adopted Amendments: N.J.A.C. 8:31B-3**

Proposed: August 15, 1983 at 15 N.J.R. 1326(a).  
 Adopted: November 22, 1983 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).  
 Filed: December 5, 1983 as R.1983 d.597, **with technical and language changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 26:2H-1, et seq., specifically 26:2H-5b. and 26:2H-18d.

Effective Date: December 19, 1983.  
 Expiration Date pursuant to Executive Order No. 66(1978): October 17, 1984.

**Summary of Public Comments and Agency Responses:**

**COMMENT:**

Many comments were received regarding the penalty to be imposed for late submission of cost data, citing the fact that the late submission of data is most often due to circumstances involving the intermediaries and does not represent negligence on the part of the hospital.

**RESPONSE:**

The Department agrees that late submission of cost data may not be entirely the fault of the hospitals; however, hospitals can attempt to exercise the same influence over the external problems. If the hospital can demonstrate that it is not at fault, the Department has changed the rule to allow the Commission to exercise discretion in the application of fines.

**COMMENT:**

The proposed rule to increase the number of full-time equivalent residents required to place a hospital in a major teaching category

was criticized by many respondents. The comments indicated that the rule would have a negative effect on the growth of medical education.

**RESPONSE:**

The Department has decided to defer the proposed increase in the number of residents needed to attain major teaching status until 1985 following an indepth review of the issue.

**COMMENT:**

The proposed revision of the Capital Facilities Allowance to place a 25 percent limit on the use of the Capital Facilities fund was found to be too restrictive by many respondents and they believed the previous 50 percent limit to be much more feasible to insure that a hospital would have sufficient funds for routine maintenance.

**RESPONSE:**

The Department will reinstate the 50 percent limitation on the use of Capital Facilities Allowance; however, a penalty of the 10 percent of the amount not funded will be applied if an overcollection situation exists. Expenditures from the Capital Facilities Allowance will be reported to the Department.

**COMMENT:**

Many respondents believed the proposed cross-subsidization corridors to be too restrictive and would cost the hospital high penalties and be difficult to monitor.

**RESPONSE:**

The Department is withdrawing the proposal and the cross-subsidization corridor will remain at 20 percent for all cost centers. The Department will still accept requests from hospitals seeking a cross-subsidization waiver for selected outpatient centers.

**COMMENT:**

The removal of the Conditional Accept option for the Certified Revenue Base raised strong objections from many respondents who believed that the right of appeal should be retained and hospitals having overall direct patient care disincentives would be unfairly penalized by this proposal.

**RESPONSE:**

The Department will reinstate the Conditional Accept option for the Certified Revenue Base with a slight modification of the rule. Any prior approved Commission adjustments for 1982 and 1983 that meet the Conditional Accept criteria can be appealed under that option.

**COMMENT:**

Many comments were received on the proposed Final Reconciliation rule stating that the methodology of using actual cost to charge ratio to determine approved costs is contrary to the intent of the Chapter 83 system. The respondents believed that the proposed method would reward inefficient hospitals and penalize efficient hospitals.

**RESPONSE:**

The Department will withdraw its proposed use of an actual cost to charge ratio and maintain the current approved cost to charge ratio which will be calculated on a departmental basis as suggested.

**COMMENT:**

The proposed rule for using one-fourth of the normally calculated economic factor for Class III hospitals who lacked adequate cost reporting and/or billing data for rate setting was considered by several respondents to be a very harsh penalty causing significant cashflow problems.

**RESPONSE:**

## HEALTH

## ADOPTIONS

The Department will allow the full economic factor to be used on alternate rates, however, it will not allow any overcollection attributed to those rates at final reconciliation.

A listing of all respondents, their comments and Department responses have been sent to the commentors and is on file at the Office of Administrative Law and the Department of Health.

**Full text** of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions from proposal shown in brackets with asterisks **\*[thus]\***).

#### 8:31B-3.2 Derivation of Preliminary Cost Base

(a) For a group of hospitals the Commissioner, on or before January 31<sup>st</sup> of the rate year shall propose to the Commission a Preliminary Cost Base for the initial rate period. The proposed Preliminary Cost Base for each hospital shall include:

1.-6. (No change from proposal.)

<sup>1</sup>For hospitals on a fiscal year beginning other than January 1, **\*[the rate year will be the 1984-1985 fiscal year.]\* **but before July 1, the rate year will be the year the fiscal year begins, for hospitals on a Fiscal Year beginning between July 1 and December 31, the rate year will be the year the fiscal year ends.**** A PCB for fiscal year hospitals will be proposed to the Commission at least 30 days prior to the hospital's "Fiscal" rate year.

#### 8:31B-3.3 Uniform Reporting: Current costs

(a) The Commissioner shall review the actual costs for the institutions as reported in accordance with the Financial Elements and Reporting (N.J.A.C. 8:31B-4). This review will be performed according to the methodology outlined below. Costs so reported shall be subject to revision due to subsequent audits in accordance with N.J.A.C. 8:31B-3.71 through 3.86.

(b) Late submission of current cost data, as defined in N.J.A.C. 8:31B-4.6 (c), shall result in a penalty, payable to the Commission, of up to two hundred \$200.00 per working day past the appropriate submission date. **\*The penalty shall be levied at the discretion of the Commission.\***

#### 8:31B-3.22 Standard costs per case

(a) (No change.)

(b) 1983 Classification of teaching (Major, Minor) and Non-teaching Hospitals.

1. Teaching hospitals are defined as those hospitals which, during the Current Cost Base Reporting period, met all of the following requirements:

i. (No change.)

ii. A minimum of **\*[75]\* **\*35\***** full time equivalent residents in all approved residencies combined;

iii. **\*[Fifty]\* **\*Twenty\***** full-time equivalent residents must be in the five clinical services listed in (b)1i(1) through (5) above, and half of these residents (at least **\*[25]\* **\*10\***** full time equivalents) must be in Internal Medicine, Family Practice and/or Pediatrics. The hospital must have the principal residencies for these core areas and not just rotating residencies.

2.-5. (No change.)

[6. In 1984 recognition of degree of teachingness will replace the three categories of teaching.]

(c) (No change.)

(d) Calculation of standards:

1. The calculation of standards will be based on the group of hospitals first receiving a PCB, or other appropriate sample of hospitals thereafter. The cost per case of each hospital's patients with UB-PS [or combined abstract/bill] records categorized by inpatient DRG are multiplied by each hospital's equalization factor. (See N.J.A.C. 8:31B-3.24(c)). The mean equalized cost of all such records in teaching or non-teaching hospitals, respectively, is the incentive standard for each DRG. Other standards to be calculated

shall be, but are not limited to, the Efficiency Standard (median hospital) or lowest cost per case in a hospital which has treated more than 10 patients. (See N.J.A.C. 8:31B-3.5.)

2. Determination of Labor Unequalization Factor to Calculate Standard Cost per Case of Each Labor Market Area.

i. (No change)

ii. The reciprocal of the hospital's equalization factor is the hospital's unequalization factor **\*and is applied to non-physician costs only\***.

iii. (No change.)

#### 8:31B-3.27 Capital Facilities

(a) Capital Facilities, as defined in N.J.A.C. 8:31B-4.42, shall be included in the Preliminary Cost Base in the following manner:

1. Building and fixed equipment:

i.-v. (No change.)

vi. For either option, the maximum expenditure from the Plant Fund for each year shall not exceed **\*50 percent\* **\*[25%]\***** of the difference between the CFA and the capital cash indebtedness. If the **\*[75]\* **\*50 percent\***** level per year is not maintained in the Plant Fund and the hospital has an overcollection at Final Reconciliation, a penalty of 10 percent of the amount not funded will be assessed against the institution **\*but not to exceed the overcollection.\*** A minimum of **\*[75]\* **\*50 percent\***** of the yearly amount of the CFFA must be maintained in the Internally Generated Plant Fund to be used only for future plant replacement **\*with approved Certificate of Need.\***

2. (No change.)

#### 8:31B-3.33 Alternate methodology

(a) Hospitals without adequate cost reporting and/or billing data for the base year for the Department to set DRG price per case rates will be required to continue to bill the most recent Schedule of Rates issued by the Department until this data becomes available. Such rates shall be adjusted by **\*[one-quarter of]\*** the normally calculated economic factor for that hospital. The discharges occurring during that time frame will be reconciled to those rates. **\*However, the hospital will not be allowed any overcollection attributed to those rates at reconciliation\*.**

(b) All other components of the hospitals' schedule of rates will be calculated in accordance with N.J.A.C. 8:31B-3.25 through 8:31B-3.29.

#### 8:31B-3.43 Adjustment of charges

(a) Unless otherwise ordered by the Commission, the proposed Schedule of Rates shall be implemented on the first day of the month (within) following 45 working days after receipt of the Schedule of Rates. Thirty working days prior to this implementation a hospital shall:

1. Adjust its current charges to reflect the Schedule of Rates and **\*[the appropriate]\* **\*a uniform hospital\***** charge to Direct Cost ratio across all revenue centers;

2.-3. (No change.)

(b) The hospital may, subject to analysis and approval by the Department, adopt **\*[the]\* **\*a\***** plus or minus **\*20 percent\*** variance applied to its charge to Direct cost ratio for **\*[each]\* **\*any specific\***** revenue center<sup>[:]\* **\*[in the appropriate group]\* **\*[Routine (ACU, BCU, ICU, CCU, NBN) is five percent, Ancillary (CCA, DEL, DRU, EDG, LAB/BBK, MSS, OPM, ORR/ANS, PHT, RAD, RSP, THR) is 15 percent and Ambulatory (CLN, HHA, EMR, DIA) is five percent. The following defines these groupings:****</sup>

1. Routine and Ancillary will be combined and will have an overall charge to cost ratio developed across these revenue centers. The appropriate variance will then be applied to each revenue center.

2. The Ambulatory revenue center will then have a separate charge to cost ratio calculated. The appropriate variance (five percent) will then be applied to each of these revenue centers]\*

## ADOPTIONS

## HEALTH

(c) The hospital must notify the Commissioner of any charges adjusted throughout the rate year which alter overall estimates of net revenue to be collected.

(d) The Commission may, permit cross-subsidies greater than those otherwise permitted herein so long as the hospital submits its request to the Commissioner in writing, providing documentation of the need for the subsidization and how it will be incorporated into the hospitals' revenue budget worksheet and Schedule of Rates.

#### 8:31B-3.45 Uniform bill-case mix determination-financial reports

(a) Hospitals shall submit to the Department through the UB-PS Intermediary(ies) and within 90 days of the end of the calendar quarter, information on all inpatients discharged for the quarter containing final diagnoses and such other patient specific information as set forth in the Rule on Hospital Reporting of Uniform Bill-Patient Summaries. The net cost to the hospital of any information provided to the Department by a UB-PS Intermediary for a hospital under a memorandum of understanding developed under N.J.A.C. 8:31B-2.1 of the Rule on Hospital reporting of Uniform Bill-Patient Summaries shall be considered by the Commission in the Preliminary Cost Base established for the hospital. Beginning with the first quarter of 1985 hospitals shall also submit Uniform Bill-Patient Summaries on all outpatients containing final diagnosis or reason for visit (as defined by the Department), for each outpatient. Included with such reporting shall be a statement of gross revenue by revenue center for patients discharged in the quarter (including in-house accounts of the previous period but excluding in-house accounts of the current quarter) for inpatient, emergency service, clinic, home health, outpatient dialysis, ambulatory surgery, same day psychiatry, and private referred patients. UB-PS records not received by the Department within the time frames specified *\*[will]\* \*may\** not be included in the hospital's Final Reconciliation unless the hospital pays to the Commission a fine as specified in the Uniform Bill-Patient Summary (inpatient) Regulation, section IV-E. **\*This decision will be at the discretion of the Commission.\***

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

#### 8:31B-3.51 Notification appeal and review

(a) (No change.)

(b) Notification by hospitals: Within 45 working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing, of their decision to:

1. Accept the Certified Revenue Base: Acceptance is contingent upon approval by the Commission of the Schedule of Rates. Following Commission approval, rates accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. Rates accepted shall include an additional one percent of all direct patient care costs. The amount will be fixed and included as an indirect cost in the mark-up factor. A hospital with an overall direct patient care disincentive will be required to present to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the hospital being allowed to accept the Certified Revenue Base. The reduction in its rates will reflect the hospitals 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. **\*[Costs for additional residents and chiefs of services may be appealed if the following criteria are satisfied:**

i. 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

ii. A 20 percent or greater increase in the number of third or fourth year medical students having clinical training in the hospital; or

iii. An increase in the number of LCGME or AOA accredited

principal residencies (not rotating) with at least five FTE residents participating in each additional program.

iv. Other costs related to an increase in the number of residents or residencies may not be appealed under this section.]\*

AGENCY NOTE: In recognition of the many comments received from the industry about the penalties that a hospital might suffer with the loss of appeal options under this proposed rule change, the Department has reinstated the conditional accept appeal option with modification.

2. *\*[Conditional]\* \*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 hospitals 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.-v. (No change from proposal.)

3. (No change.)

#### 8:31B-3.54 Operating costs: Prospective exceptions

(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 *\*[DRG]\* \*Clinical Rate\** Appeal if the following criteria are met:

i.-iii. (No change from proposal.)

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

#### 8:31B-3.75 Schedule of rates reconciliation

(a) (No change.)

(b) To the extent that an institution's actual Net Revenues Related to Patient Care differ from the Commission approved Preliminary Cost Base, an [automatic] adjustment to the current year PCB will be calculated. A compliance adjustment to the Rate Order will then be issued to include this adjustment and adjustments for actual uncompensated care, payor differentials, and net income from other sources, in order to align gross revenue and payors' payments with net revenue requirements for the new prospective year.

1. Commission approved revenue: On an annual basis, within 90 days of receipt of all reports set forth in N.J.A.C. 8:31B-3.42 through 3.45, the Schedule of Rates, as adjusted for economic factors and other adjustments issued by the Commission during the year, will be calculated for the hospital's actual discharges and patient visits for a reporting period. Reasonable direct patient care costs per case will be multiplied by the number of cases in each DRG, to determine reasonable direct patient care costs for patients assigned to a DRG. Actual outpatient volumes for EMR, CLN, HHA, Ambulatory Surgery, Home Dialysis, Same Day Psychiatry, and outpatient DIA groups will be determined from the Uniform Cost Reporting Regulations. The ratio of *\*[actual]\* \*reasonable\** direct patient care costs to gross charges will be used to determine the reasonable direct patient care costs for patients not included in the schedule of rates. Gross charges for those

patients will be multiplied by the ratio to arrive at the reasonable direct patient care costs. This amount is combined with the approved costs for patients with rates resulting in the total Reasonable Direct Patient Care Costs.

2. Hospital gross revenue related to patient care: The hospital's actual rate year charge to Direct Cost ratio shall be calculated for each revenue center. Next, the hospital's actual rate year total charge to total Direct Cost ratio shall be calculated \*[for the Routine (ACU, BCU, ICU, CCU NBN) and Ancillary (CCA, DEL, DRU, EDG, LAB/BBK, MSS, OPM, ORR/ANS, PHT, RAD, RSP, THR) revenue centers combined. A separate total charge to total Direct Cost ratio will be developed for the Ambulatory (CLN, HHA, EMR, DIA) revenue centers]\*. Each revenue center ratio will be compared to the total ratio, \*[for its group (for example, Routine and Ancillary, or Ambulatory),]\* adjusted by the discretionary subsidy of plus or minus \*[5]\* \*20\* percent. \*[for Routine, 15 percent for Ancillary revenue centers and 5 percent for Ambulatory revenue centers.]\* Any difference by revenue center (either positive or negative) shall be divided in half and multiplied by total rate year direct cost for the revenue center and deemed excess subsidized revenue.

3.-4. (No change.)

8:31B-3.76 Necessity and appropriateness of health care services

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

(c) Once designated by the Department as a qualified Utilization Review Organization, the URO shall have access to \*[whatever hospital patient records it may consider necessary to fulfill the review functions.]\* only those hospital patient records for which it has direct review responsibility.\*The URO shall be required to maintain the confidentiality of the hospital and patient records. \*Access to this data will be allowed for the purpose of fulfilling review responsibility under these regulations.\*

(d) (No change from proposal.)

(e) Reporting: Minimum standards for uniform reporting by the Utilization Review Organization utilizing the UB-PS data \* for those patients for which it has direct review responsibility\* shall be determined by the Department. Format and reporting timeframe will be reviewed with the Review Organizations.

8:31B-3.77 Definitions

**"Admission \*[Certification]\* \*review\* means a review of the medical necessity and appropriateness of a patient's admission to the hospital.**

**"Delegated" means authorization granted by a qualified utilization review organization \*(URO)\* to a hospital to conduct one or more review functions, subject to a finding of the hospital's capability and willingness to accept such responsibility and submission of an acceptable plan for the review by the hospital. The qualified utilization review system shall monitor the performance of the delegated hospital, maintain complete responsibility for the hospital's performance of the delegated review functions, and may withdraw delegation and conduct its own review.**

**"Denial" means a formal decision by a URO or a delegated hospital committee that all or part of a patient's stay \*[or proposed stay]\* is medically unnecessary and/or inappropriate, with consultation by physicians licensed to practice medicine in New Jersey (See Physician Advisor - Item y).**

**"Focussed review means a intensification \*of\* or an exemption from detailed review of certain groups of patients or common diagnoses where data indicate it is reasonable to do so. An application of sampling techniques.**

1. Focus-in describes an intensified review of a specified category of patients, \*diagnoses, procedures, and/or physicians\*.

2. Focus-out describes specific categories of patients, \* diagnosis, procedures and/or physicians.\* who are exempt from concurrent review, diagnosis, procedures, and/or physicians.

**"Outliers" means patients who display atypical characteristics relative to patients assigned to DRGs, \*or have been transferred from one New Jersey hospital to another. (See N.J.A.C. 8:31B-5.2).\*** Outliers have lengths of stay either above or below the LOS trim points established for any given DRG. Outliers are also patients who have expired during hospitalization, who have discharged themselves against medical advice, or whose length of stay is equal to zero.

**"Peer review \*[mechanism]\* \*organization\* means an organization which is composed of or governed by active physicians, and other professionals where appropriate, who are representative of the active physicians in the area in which the review mechanism operates, which is organized in a manner that insures professional competence in the review of services.**

**"\*[Physical]\* \*Physician\* Advisor (P.A.)" means a currently licensed physician who makes determinations and provides consultation on a referral basis to nonphysician reviewers in cooperation with the Attending Physician on the appropriateness, quality and/or necessity of an individual's admission to or continued stay in a hospital.**

**"Severity of illness" means the manifestation of disease or injury that clinically indicates the need for hospitalization \* [regardless of diseases]\*.**

**"Utilization review plan means a description of utilization review activities to be prepared by the URO and approved by DOH. The plan shall describe methodology for determining hospital delegated status; the criteria and description of the methodology \*for monitoring admission and discharge\* review; the criteria and description of the methodology to review the performance of delegated and non-delegated review and focus program.**

(a)

## HEALTH ECONOMIC SERVICES

### 1984 Financial Elements and Reporting

**Adopted Amendments: N.J.A.C. 8:31B-4.6, 4.25, 4.64, 4.66, 4.67 and 4.131**

Proposed: August 15, 1983 at 15 N.J.R. 1334(a).

Adopted: November 22, 1983 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: December 5, 1983 as R. 1983 d.596, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 26:2H-1 et seq. specifically 26:2H-5b.

Effective Date: December 19, 1983.

Expiration Date pursuant to Executive Order No. 66(1978): October 17, 1984.

### Summary of Public Comments and Agency Responses:

#### COMMENT:

Fourteen respondents objected to the requirement that all "not at arms' length" transactions with related organizations be reported to the Commission and requested further clarification to ensure that only those transactions relating to hospital reimbursement are reported.

Commentors believed that the proposed regulation to treat parking lot gains as Case B and losses as Case C is inconsistent and inequitable treatment of costs and revenues.

RESPONSE:

The Department intends to verify only those transactions that affect reimbursement under Chapter 83 and has added clarifying language to the proposal.

The Department is withdrawing the proposed regulation on parking lot costs and revenues until further study is completed, and the original language has been reinstated.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions from proposal shown in brackets with asterisks **\*[thus]\***).

8:31B-4.25 Related organizations

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

(c) **Disclosure of information by hospitals dealing with related firm(s)\*: \* [All "not-at-arms-length" transactions entered into by the hospital are to be reported to the Commission. Not-at-arms-length transactions occur when the hospital engages in any business transaction with another organization related to the hospital by either parital or full ownership or control.]\***

**\*1. For the purpose of insuring prudent buying, hospitals will report the existence of a related organization and each type of service provided, to the Department, if the total transactions amount to greater than \$10,000 per year.**

**2. Hospitals may be related to one or more separate organizations if:**

**i. The hospital controls through contracts or other legal documents the authority to direct the separate organizations management or policies;**

**ii. The separate organization controls through contracts or other legal documents the authority to direct the hospitals management or policies;**

**iii. The hospital is for all practical purposes the primary beneficiary of the separate organization.\***

(d) **At the Commission's request relevant information reported to the Commission may include:**

**1. The nature of the legal relationship between the hospital and the related firm(s).**

**2. Frequency of business transactions between the hospital and the firm(s); and**

**3. Purchase or lease contractual arrangements between the hospital and firms;**

**4. The amount of money involved.**

8:31B-4.64 Sales and services not related to patient care

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

(h) **Parking lot or parking garage expenses and revenues at the site of the hospital are to be netted and the remainder apportioned between employees and others per N.J.A.C. 8:31B-4.131. The provision of parking facilities to:**

**1.-2. (No change from proposal.)**

**3. Others are included (Case B) if the hospital's charge for parking is not substantially inconsistent with other parking facilities in the community where the hospital is located. If the Commisison determines that the hospital's parking charges are not competitive with other parking facilities, the provision of parking to others will be treated as Case C. **\*[all gains arising from the provision of parking to others will be included (Case B) while all losses will be excluded (Case C).]\*****

(i) **Non-Patient Room and Board expenses and revenues are to be netted and apportioned among employees, students and others per N.J.A.C. 8:31B-4.131. Sufficient accounting records should be maintained to identify all related expenses as well as number of persons housed. The provision of Room and Board to:**

**1. Employees and residents (including rotating residents who spend some portion of their residency at the hospital) is included. Losses incurred from housing an employee are included as an employee fringe benefit (Case B, N.J.A.C. 8:31B-4.61(a)2).**

2. **Students are included if in an approved educational program. Losses incurred from housing a student should be assigned to Nursing and Allied Health Education (EDU) and Graduate Medical Education (GME) Case B, N.J.A.C. 8:31B-4.61(a)2) or Non-Approved Education and Reserch (Case A).**

3. **Others not involved with the patient services of the hospital are excluded (Case A).**

(a)

HEALTH ECONOMICS SERVICES

Diagnosis Related Groups  
Groups and Outliers

Adopted Amendments: N.J.A.C. 8:31B-5.1  
and 5.2

Proposed: August 15, 1983 at 15 N.J.R. 1336(a).

Adopted: November 20, 1983 by J. Richard Goldstein, M.D., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: December 5, 1983 as R.1983 d.595, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 26:2H-1 et seq. specifically 26:2H-5b.

Effective Date: December 19, 1983.

Expiration Date pursuant to Executive Order No. 66(1978): February 1, 1987.

Summary of Public Comments and Agency Responses:

COMMENT:

The respondents expressed concern about the language used in the proposed definitions for patient admission and readmission and suggestions were submitted.

Four commentors believed that the proposed definition for Transfer patients introduces a disparity between the calculation of standards and the payment of rates.

RESPONSE:

The Department agrees with the respondents and the definitions for patient admission and readmission were clarified and confusing language was removed.

In reference to the definition of transfer patients the Department is concerned about inequitable treatment that might occur for consumer and/or payor if two price per case bills were rendered for the same course of treatment. The impact on the calculation of standards and the payment of rates would be minimal and appeale to the Hospital Rate Setting Commission if proven to be substantial.

Full text of the changes between proposal and adoption follows (aditions to proposal shown in boldface with asterisks **\*thus\***, deletions from proposal shown in bracket with asterisks **\*[thus]\***).

8:31B-5.1 Diagnosis Related Groups

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

(c) **Admission: Patient hospitalized for a condition related to a recent spell of illness.**

**1. Patients who are treated and subsequently admitted through the emergency room are considered admitted to the hospital at the time the physician orders the admission. The cause of the**

admission is considered the cause of the emergency room treatment, therefore the course of treatment shall be considered one admission. Services rendered in the emergency room shall be reflected in the inpatient record and the UB-PS.

2. Similarly, a patient admitted for a course of treatment as a Same Day Surgery (SDS) patient, who subsequently is admitted from that mode of treatment shall be considered one admission. Services rendered in the SDS mode shall be reflected in the inpatient record and the UB-PS.

\*[3. Hospitals reporting on a single patient data system shall satisfy the requirement of the Uniform Bill-Patient Summary - Inpatient rules N.J.A.C. 8:31B-2. Any patient who remains in the hospital beyond midnight shall be considered an admission. All admissions and discharges are subject to utilization review monitoring.]\*

\*[4.]\* \*3. Readmissions are patients admitted \*[for a condition related to a recent past admission. The cause of the re-admission may result from a previously diagnosed condition, a chronic condition requiring crisis intervention, and/or an indication of a premature discharge.]\* \*to an acute care facility at another time during the last seven days.\*

**8:31B-5.2 Outliers**

- (a) (No change)
- (b) Outliers are defined as:  
1.-6. (No change)

7. Transfer patients: The circumstances under medical advice in which a patient needing continued acute care is transferred from one New Jersey Acute General Hospital to another General Hospital for diagnostic and/or therapeutic reasons. Each hospital reporting on the UB-PS for the same patient shall reflect charges and the patient will be considered an outlier.

## HIGHER EDUCATION

### (a)

#### BOARD OF HIGHER EDUCATION

##### Public Colleges Auxiliary Organization Regulations

##### Adopted Amendment: N.J.A.C. 9:2-13.9

Proposed: October 3, 1983 at 15 N.J.R. 1626(a).  
Adopted: November 18, 1983 by New Jersey Board of Higher Education, T. Edward Hollander, Chancellor and Board Secretary.  
Filed: November 29, 1983 as R.1983 d.575, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 18A:64-42 and P.L. 1983 c.23.

Effective Date: December 19, 1983.  
Expiration Date pursuant to Executive Order No. 66(1978):  
November 21, 1984.

Summary of Public Comments and Agency Responses:  
**No comments received.**

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

9:2-13.9 Organizational personnel  
(a) (No change from proposal.)  
(b) Subsection (a) shall not apply to auxiliary organizations at \*[public]\* \*county\* colleges pursuant to P.L. 1983 c.23.

## HUMAN SERVICES

### (b)

#### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

##### Administration Manual, Physicians Manual, Long Term Care Services Manual, Home Health Services Manual Initial Visit for Rehabilitation Services

##### Adopted Amendments: N.J.A.C. 10:49-1.4, 10:54-1.7, 10:60-1.4, 10:63-1.4

Proposed: May 16, 1983 at 15 N.J.R. 782(a).  
Adopted: November 30, 1983 by George J. Albanese,  
Commissioner, Department of Human Services.  
Filed: December 1, 1983 as R.1983 d.583, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:4D-6b(5), 7 and 7b.

Effective Date: December 19, 1983.  
Operative Date: January 1, 1984.  
Expiration Date pursuant to Executive Order No. 66 (1978):  
Administration Manual (10:49), April 30, 1985;  
Physicians Manual (10:54), February 16, 1984; Home  
Health Services Manual (10:60), June 22, 1987; Long  
Term Care Services Manual (10:63), March 30, 1984.

Summary of Public Comments and Agency Responses:  
**No comments received.**

##### Summary of Changes Between Proposal and Adoption:

The changes being made with this adoption include additional language in the Administration Manual (N.J.A.C. 10:49-1.4) to make it consistent with the three manuals being amended. Since the Administration Manual is issued to all providers, including those providers primarily affected, e.g., physicians, home health agencies, and long term care facilities, they should be aware of the rule's basic requirement without the need for a separate proposal.

The Physician's Manual (N.J.A.C. 10:54-1.7) has been modified to delete the reference to speech-language or occupational therapy in a physician's office. It has been a longstanding Division policy that only physical therapy can be performed in a physician's office. The attending physician is still permitted to order an initial evaluation visit for all therapies in a community or long-term care setting.

Changes to the Home Health Manual (N.J.A.C. 10:60-1.4) and the Long Term Care Services Manual (N.J.A.C. 10:63-1.4) indicate that prior authorization, which was mentioned in the proposal, can be obtained from the Medicaid District Office. There is also a statement that all therapy after the initial evaluation visit must be prior authorized, which has always been the basic Medicaid policy.

## ADOPTIONS

## HEALTH

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

## 10:49-1.4 Authorized services for covered persons

(a) The items and services provided to covered persons will not normally be limited in duration or amount. Any limitation imposed will be consistent with the medical necessity of the patient's condition, as determined by the attending physician or other practitioner, in accordance with standards generally recognized by health professionals and promulgated through the New Jersey Medicaid Program. The following items and services, more specifically defined in subsequent sections of the provider manual, are authorized under the program:

1.-11. (No change.)

12. \*[Physical therapy and related services.]\* **\*Rehabilitation services.\***

i. Physical therapy: **\*An initial evaluation visit for physical therapy made by a qualified therapist does not require prior authorization. For all therapy treatment visits\*** prior authorization is required when provided by a home health agency, independent clinic or long-term care facility\***[.]\*** **\*or in a physician's office.\*** Services may also be provided in a hospital outpatient department **\*[or in a physician's office]\*** **\*The reimbursement fee for the initial visit will be the same as the allowance for the treatment visits.\*** No payments to privately practicing therapists. No other limitations.

ii. Occupational therapy: **\*An initial evaluation visit for occupational therapy made by a qualified therapist does not require prior authorization. For all therapy treatment visits\*** prior authorization is required when provided by a home health agency, independent outpatient health clinic or long-term care facility. Services may also be provided in a hospital outpatient department. **\*The reimbursement fee for the initial visit will be the same as the allowance for the treatment visits.\*** No payments to privately practicing therapists. No other limitations.

iii. Speech\* - Language\* therapy: **\*An initial evaluation visit for speech-language therapy made by a qualified therapist does not require prior authorization. For all therapy treatment visits\*** prior authorization is required when provided by **\*a\*** home health agency, independent outpatient health clinic or long-term care facility. Services may also be provided in a hospital outpatient department. **\*The reimbursement fee for the initial visit will be the same as the allowance for the treatment visits.\*** No payments to privately practicing therapists. No other limitations.

10:54-1.7 Physical medicine and [rehabilitative] **rehabilitation** services

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

(f) Rehabilitation services may be provided by the following:

1.-4. (No change.)

5. In the **\*[setting of a]\*** physician's office **\*setting, which is limited to physical therapy only;\***

**\*[6]\*** **\*i\*** Physical therapy performed in a physician's office is a reimbursable service under the following conditions:

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

**\*[ii]\*** **\*[2]\*** Except for the initial evaluation visit, all subsequent therapy visits have [has] been prior authorized by the Medicaid medical consultant. [of the local medical assistance unit (see subsection \*(g) of this section);]

**\*[iii]\*** **\*[3]\*** (No change.)

**\*[iv]\*** **\*[4]\*** (No change.)

(g) **If the attending physician orders an evaluation for physical** **\*[, speech-language or occupational]\*** therapy, an appropriate qualified **\*physical\*** therapist **\*[can]\*** **\*may\*** make an initial visit to evaluate the need for **\*[rehabilitation therapies (]\*** **physical** **\*therapy\*** **\*[, speech-language or occupation)]\*** without prior authorization. The reimbursement fee **\*paid to the physician\*** for the initial visit will be the same as the

**allowance for the subsequent treatment visits. All subsequent therapy visits require prior authorization which is granted by the Medicaid Medical Consultant of the Medicaid District Office.** [Except in a hospital setting, prior approval by the local medical consultant of the local medical assistance unit is required for rehabilitation services.] [Initial or subsequent] **Prior authorization, which is required in all settings except the hospital,** shall not exceed 60 calendar days and shall be granted only when the following conditions are met:

1.-4. (No change.)

## 10:60-1.4 Policies and requirements for authorization of covered services

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

(f) Prior authorization

1. The home health agency may bill the Medicaid Fiscal Agent for the [administrative] cost of one initial evaluation visit to eligible Medicaid patients without prior authorization. Prior authorization is required for all other visits and/or services. **If the attending physician orders an evaluation for physical, speech-language or occupational therapy, an appropriate qualified therapist** **\*[can]\*** **\*may\*** make an initial visit to evaluate the need for special therapies (physical, speech-language or occupational) without prior authorization. All subsequent therapy visits require prior authorization.

2.-3. (No change.)

(g) (No change.)

## 10:63-1.4 Additional services

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

(e) Rehabilitation services: (No change.)

1. **If the attending physician orders an evaluation for physical, speech-language or occupational therapy, an appropriate qualified therapist** **\*[can]\*** **\*may\*** make an initial visit to evaluate the need for physical, speech-language or occupational therapy without prior authorization. The reimbursement fee for the initial visit will be the same as the allowance for the subsequent treatment visits. Prior authorization by the Medicaid Medical Consultant of the Medicaid District Office is required for all subsequent therapy visits.

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

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

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

i. (No change.)

ii. Reimbursement for rehabilitation services is made to the LTCF and not to the therapist by this program. Prior authorization is required as outlined in (e)5 below.

(1) (No change.)

(2) Outpatient physical therapy, speech-language therapy and occupational therapy furnished only by a Medicaid LTCF to Medicaid eligible inpatients only may be billed by the facility to the Bureau of Claims and Accounts if prior authorization for the treatment visits has been given by the [LMAU] Medicaid District Office\*(MDO)\*. The facility must state to the **\*[LMAU]\*** **\* Medicaid District Office(MDO)\*** that it is not a Medicare provider and, therefore, no Medicare denial letter is needed.

(3) (No change.)

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

[5] 6. Medicaid patients not eligible for Medicare benefits: Prior authorization by the Medical Consultant of the [LMAU] Medicaid District Office is not required for [rehabilitation services] the initial evaluation visit. See N.J.A.C. 10:63-1.4(e)1. All subsequent rehabilitation therapy treatment visits require prior authorization. Authorization shall be considered only when the request includes a written prescription by a licensed physician who is the patient's attending physician, substantiating the need, type of therapy, objective of treatment, and an estimate of the number of treatment days. Prescriptions must be definitive as to type and scope. Orders such as "Physical Therapy three times a

**HUMAN SERVICES**

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week" will not be accepted. Prior authorization may be for a period not exceeding 60 days. Subsequent authorizations for periods not exceeding 60 days may be issued by the Medical Consultant of the [LMAU] Medicaid District Office when the request is supported by the written prescription of the attending physician, including a statement of the anticipated number of treatments required, and a progress report of the recipient's condition.

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

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

**(a)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Manual for Dental Services  
Orthodontic Treatment**

**Adopted Amendments: N.J.A.C. 10:56-1.14,  
1.21, 2.2, 3.3, 3.6, 3.7 and 3.15**

Proposed: July 18, 1983 at 15 N.J.R. 1160(a).  
Adopted: November 30, 1983 by George J. Albanese,  
Commissioner, Department of Human Services.  
Filed: December 1, 1983 as R.1983 d.584, **without change.**

Authority: N.J.S.A. 30:4B-6b(4), 7 and 7b.

Effective Date: January 1, 1984.

Expiration Date pursuant to Executive Order No. 66(1978):  
Subchapter 1 expires July 9, 1986; Subchapter 2 expires  
September 10, 1986; Subchapter 3 expires May 7,  
1986.

**Summary of Public Comments and Agency Responses:**

One comment was received from Charles H. Perle, D.M.D., President of the New Jersey Academy of General Dentistry. Dr. Perle's concern was that the fee schedule for orthodontic specialists and general practitioners should be the same because the cost of rendering orthodontic treatment does not vary between dental practitioners.

The Division's response is that the fee differential in payment, based on a practitioner's specialty, should be retained. The purpose is to provide additional compensation to those providers who have incurred additional costs while undergoing advanced training with concomitant loss of income during this period.

**(b)**

**DIVISION OF PUBLIC WELFARE**

**Assistance Standards Handbook  
Payments of Assistance Other Than Regular  
Grants**

**Readoption with Amendment: N.J.A.C. 10:82-  
5**

Proposed: October 3, 1983 at 15 N.J.R. 1628(a).  
Adopted: November 28, 1983 by George J. Albanese,  
Commissioner, Department of Human Services.  
Filed: November 29, 1983 as R.1983 d.578, **without change.**

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Effective Date (Readoption): November 29, 1983.  
Effective Date (Amendment): December 19, 1983.  
Expiration date pursuant to Executive Order No. 66(1978):  
November 29, 1988.

**Summary of Public Comments and Agency Responses:**

One comment was received from a legal service agency encouraging implementation of the amendment.

**(c)**

**DIVISION OF PUBLIC WELFARE**

**Food Stamp Program  
Revised Income Deductions, Utility  
Allowances, and Maximum Coupon  
Allotments**

**Readopted Amendments: N.J.A.C. 10:87-5.10,  
12.1, and 12.2**

Proposed: October 17, 1983 at 15 N.J.R. 1774(a).  
Readopted: November 28, 1983 by George J. Albanese,  
Commissioner, Department of Human Services.  
Filed: November 29, 1983 as R.1983 d.579, **with a technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:4B-2, the Food Stamp Act of 1977 as amended; 7CFR 273.9(d)(6), (7), and (8); 7 CFR 273.10(e)(4); and 48 FR 28190.

Effective Date: November 29, 1983.  
Expiration Date pursuant to Executive Order No. 66(1978):  
March 1, 1984.

**Summary of Public Comments and Agency Responses:  
No comments received.**

**Summary of changes subsequent to proposal:**  
Due to a publication error at 10:87-12.2 the "plus" sign for "each additional member" was omitted, therefore, it is being added.

**Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks \*thus\*).**

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10:87-12.2 Maximum coupon allotment table  
**TABLE II**  
 Maximum Coupon Allotment (MCA)

Household Size	MCA
1	[\$ 75] <b>76</b>
2	139
3	199
4	253
5	[300] <b>301</b>
6	[360] <b>361</b>
7	[398] <b>399</b>
8	[455] <b>457</b>
9	[512] <b>514</b>
10	[569] <b>571</b>
Each Additional Member	* <b>+57</b>

**(a)**

**DIVISION OF PUBLIC WELFARE**

**Medicaid Only Program  
 Eligibility Computation Amounts**

**Adopted Amendments: N.J.A.C. 10:94-5.4,  
 5.5, 5.6 and 5.7**

Proposed: October 17, 1983 at 15 N.J.R. 1733(a).  
 Adopted: December 5, 1983 by George J. Albanese,  
 Commissioner, Department of Human Services.  
 Filed: December 5, 1983 as R.1983 d.593, **with substantive  
 and technical changes** not requiring additional public  
 notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 44:7-87 and Section 1902(a) of the  
 Social Security Act.

Effective Date: December 19, 1983.  
 Operative Date: January 1, 1984.  
 Expiration Date pursuant to Executive Order No. 66 (1978):  
 August 22, 1988.

**Summary of Public Comments and Agency Responses:**

One letter of comment was received from a county welfare agency. The comment did not pertain directly to the proposal itself, but rather, concern was expressed relevant to the inadequacy of the current payment levels in the Aid to Families with Dependent Children Program.

**Summary of Changes Subsequent to Proposal:**

The changes to N.J.A.C. 10:94-5.7 were inadvertently omitted from the proposal. The allowable deductions in determining the amount of a sponsor's income to an alien are prescribed by Federal regulations to be based on the Federal payment levels in the Supplemental Security Income program. As those Federal payment amounts are increasing January 1, 1984, revision to the section is required.

At N.J.A.C. 10:94-5.4(a)12, a publication error deleted the dollar signs, therefore, they are being added.

**Full text** of the changes between proposal and adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***).

10:94-5.4 Includable income  
 (a) Any income which is not specifically excluded under the

provisions of N.J.A.C. 10:94-5.3 shall be includable in the determination of countable income. Such income shall include, but is not limited to, the following:

- 1.-11. (No change from proposal.)
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 household of another" in accordance with N.J.A.C. 10:94-5.6 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 household of another" who receive in-kind support and maintenance shall be considered to have unearned income in the amount of:
  - [ \$121.43 ] \* **\$124.67** for an individual
  - [ \$172.13 ] \* **\$177.33** for a couple
  - i. (No change from proposal.)
13. (No change from proposal.)
- (b) (No change from proposal.)

- 10:94-5.7 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 \*[\$304.30] \* **\$314.00**\* for the sponsor, \*[\$456.45] \* **\$471.00**\* for the sponsor if living with his or her spouse, \*[\$608.60] \* **\$628.00**\* for the sponsor if his or her spouse is a co-sponsor.
    3. Subtract \*[\$152.15] \* **\$157.00**\* for any other dependent of the sponsor who is or could be claimed for Federal Income Tax purposes.
    4. (No change.)
    - (f) (No change.)

**(b)**

**DIVISION OF PUBLIC WELFARE**

**Service Programs for Aged, Blind or  
 Disabled  
 Supplemental Security Income Payment  
 Levels**

**Adopted Amendment: N.J.A.C. 10:100,  
 Appendix A**

Proposed: October 17, 1983 at 15 N.J.R. 1734(a).  
 Adopted: December 5, 1983 by George J. Albanese,  
 Commissioner, Department of Human Services.  
 Filed: December 5, 1983 as R.1983 d.594, **without  
 change.**

Authority: N.J.S.A. 44:7-87 and Section 1618(a) of the  
 Social Security Act.

Effective Date: December 19, 1983.  
 Operative Date: January 1, 1984.

**Summary of Public Comments and Agency Responses:**

One letter of comment was received from a county welfare agency. The comment did not pertain directly to the proposal itself,

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but rather, concern was expressed relevant to the inadequacy of the current payment levels in the Aid to Families with Dependent Children Program.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**(a)**

**LAW AND PUBLIC SAFETY**

**COMMISSIONER**

**(c)**

**Social Services Block Grant (Title XX)**

**BOARD OF EXAMINERS OF MASTER PLUMBERS**

**Adopted New Rule: N.J.A.C. 10:5**  
**Adopted Repeal: N.J.A.C. 10:123-1, 10:125 and 10:126**

**General Rules and Regulations**  
**Bona Fide Representative, Responsibilities and Limitations**

Proposed: February 22, 1983 at 15 N.J.R. 208(a).  
Adopted: November 30, 1983 by George J. Albanese, Commissioner, Department of Human Services.  
Filed: December 5, 1983 as R.1983 d.587, **without change.**

**Adopted New Rule: N.J.A.C. 13:32-1.5**  
**Adopted Repeal: N.J.A.C. 13:32-1.5**

Authority: N.J.S.A. 30:1-12; P.L. 97-35.

Proposed: July 18, 1983 at 15 N.J.R. 1171(a).  
Adopted: October 31, 1983 by Sidney Crane, President of the Board of Master Plumbers.  
Filed: November 30, 1983 as R.1983 d.580, **without change.**

Effective Date: December 19, 1983.  
Expiration Date pursuant to Executive Order No. 66(1978): December 19, 1988.

Authority: N.J.S.A. 45:14C-7.

**Summary of Public Comments and Agency Responses:**

Effective Date: December 19, 1983.  
Expiration Date pursuant to Executive Order No. 66(1978): November 1, 1987.

A letter was received from the Center for Non-Profit Corporations cosigned by 41 other agencies proposing additional language to this amendment. This did not relate specifically to the point of the amendment itself. The point of the language proposed by the center was to provide additional public input in the Social Services Block Grant process. The Department has developed Human Services Advisory Councils to be the focal point of public input into decision making with regard to the Social Service Block Grant. The Department will be developing a formal process for public hearings to be held by these councils and for transmitting information from their review to the Department.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**(b)**

**(d)**

**DIVISION OF YOUTH AND FAMILY SERVICES**

**DIVISION OF CRIMINAL JUSTICE**

**Social Services Program for Individuals and Families**  
**Personal Needs Allowance: Residential Health Care Facilities and Boarding Homes**

**OFFICE OF THE STATE MEDICAL EXAMINER**

**Adopted Amendment: N.J.A.C. 10:123-3.2**

**Death Investigations**

**Adopted Amendments: N.J.A.C. 13:49-1, 2, 3**  
**Adopted New Rules: N.J.A.C. 13:49-1.5, 2.3, 3.3, 13:49-4 through 8**

Proposed: October 17, 1983 at 15 N.J.R. 1735(a).  
Adopted: December 5, 1983 by George J. Albanese, Commissioner, Department of Human Services.  
Filed: December 5, 1983 as R.1983 d.588, **without change.**

Proposed: August 15, 1983 at 15 N.J.R. 1351(a).  
Adopted: December 5, 1983 by Robert Goode, M.D., State Medical Examiner.  
Filed: December 5, 1982 as R.1983 d.589, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 44:7-87.

Authority: N.J.S.A. 52:17B-78, et seq. specifically 52:17B-80.

Effective Date: December 19, 1983.  
Expiration Date pursuant to Executive Order No. 66(1978): August 27, 1985.

Effective Date: December 19, 1983.  
Expiration Date pursuant to Executive Order No. 66(1978): December 19, 1988.

**Summary of Public Comments and Agency Responses:**

## ADOPTIONS

## LAW AND PUBLIC SAFETY

The State Medical Examiner published, on August 15, 1983, amendments to N.J.A.C. 13:49-1.1, 1.2, and 1.3 and proposed new rules N.J.A.C. 13:49-1.5, 2.3, 3.3 and 13:49-4 through 8, at 15 N.J.R. 1351 through 1355. Notice of the proposal was disseminated to all county medical examiners, county prosecutors, other interested individuals and organizations, and newspapers. The comment period was extended from September 14, 1983 to October 14, 1983.

The State Medical Examiner received 25 comments pertaining to the proposal. Many comments were general in nature and favored adoption of the proposal.

Concerning specifics of the proposal, some comments suggested changes in N.J.A.C. 13:49-1.1 and 1.2. One comment pointed out that the phrase "deaths resulting from the following causes" was awkward since the remainder of the sections dealt with circumstances of death and not causes thereof. Accordingly, the proposal has been modified to read, "deaths occurring in the following circumstances" in both N.J.A.C. 13:49-1.1 and 1.2. A number of commentators pointed out that proposed N.J.A.C. 13:49-1.1(a)4, which would have mandated postmortem examinations in all deaths involving witnesses or jurors in criminal court proceedings, was overly broad, both as to time and scope. Because the State Medical Examiner recognizes that sudden and unexpected deaths of jurors and witnesses can become mandatory under N.J.A.C. 13:49-1.1(a)2 and 6, the phrase "and all witnesses or jurors in court proceedings involving criminal offenses" has been deleted from the proposal. In view of the fact that these deaths are covered under other provisions of the proposal, the changes are not substantial and do not enlarge or curtail the scope of the rule.

Some commentators focused on the proposal concerning jurisdiction between county medical examiners, N.J.A.C. 13:49-1.3. Several commentators favored the adoption of a proposal granting primary jurisdiction for death investigations to the county medical examiner of the county wherein the incident suspected of having caused the death occurred where the death occurred in another New Jersey county. Other commentators suggested that the language of the proposal was confusing. The original proposal was designed to facilitate coordination of death investigations between county medical examiner offices and county prosecutors. The proposal has been reworded to clarify the statutory mandate that the county medical examiner of the county of death has primary jurisdiction which can, in appropriate cases, be transferred to the county medical examiner of the county of incident. The change does not alter the concept of dual jurisdiction. The language of N.J.A.C. 13:49-1.3 has further been clarified to reemphasize the duties of the medical examiner upon notification of a death, including making a determination of jurisdiction and cooperating, in appropriate cases, with out-of-state authorities. These changes do not expand or curtail the requirements imposed by existing laws and regulations.

With respect to the standards for medical examiner autopsies, N.J.A.C. 13:49-1.5, some commentators believed the requirements for complete inspection, removal and dissection of the cranial compartment and contents, the neck viscera and tongue and the thoracic, abdominal and pelvic compartments were unduly burdensome. Others were concerned that the requirements to conduct x-ray examinations and to store microscopic slides would impose a financial burden on medical examiner offices. The State Medical Examiner disagrees that these aspects of the proposal are unduly burdensome, financially or otherwise. The standards for performing autopsies recognized throughout the profession require completeness. Unless certain organs are removed, one cannot see that portion of the body which is behind or covered by those particular organs, and significant findings may be overlooked. The proposal also recognizes that the use of x-rays, microscopic examinations, and standard laboratory tests are common ordinary tools for forensic pathologists. The storage of slides should impose no financial burden as 60,000 slides can be stored in the space equivalent to one five-drawer legal sized filing cabinet.

A commentator noted that N.J.A.C. 13:49-2.1(a) should more precisely refer to alcohol content of the blood, rather than "alcoholic". This cosmetic change has been accomplished. Many commentators also believed that the requirement of N.J.A.C. 13:49-2.3 to retain specimens for 10 years was excessive. The State Medical Examiner believes that 10 years represents a practical limit for the retention of this kind of medical evidence while still retaining its intrinsic value for slide preparation.

N.J.A.C. 13:49-4.1, requiring county medical examiners to establish and maintain refrigerated storage space, and to maintain access to facilities for radiographic, toxicologic and other examinations was questioned by some commentators as imposing a great financial burden on counties. The State Medical Examiner disagrees. This portion of the proposal does not require all county medical examiners to establish their own facilities, but rather to maintain access to such facilities on a regular and continuous basis. Access to such facilities is essential if the county medical examiners are to properly perform their statutory duties to fully investigate the medical causes of death.

A number of county prosecutors expressed concern that the subchapter on the conduct of death investigations, N.J.A.C. 13:49-5, would interfere with law enforcement officers at the scene of a suspected homicide. Accordingly, the proposal has been clarified by the addition of N.J.A.C. 13:49-5.1(c)1, -5.1(e)1iv, -5.1(h) and the rewording of -5.1(f)3 to stress the need for coordination of efforts between the county prosecutor and the county medical examiner as respects removal of the body, recovery of physical evidence, and interviewing of witnesses. These changes do not enlarge or curtail the scope of the rule, but simply make clearer the need for cooperation at the scene of a suspected homicide. Another cosmetic change was made in N.J.A.C. 13:49-5.1(e) to make clear that the duty of the county medical examiner to inspect the scene of death arises only when the death is otherwise reportable.

Other commentators asserted that the subchapters on eligibility standards and the enforcement thereof, N.J.A.C. 13:49-7 and 8, would deprive counties of the control of their medical examiner personnel. However, these provisions do not give the State Medical Examiner any power of appointment or removal over county medical examiner employees. The power of appointment remains with the counties. These sections are merely designed to establish minimum training and education requirements and to insure that the individuals entrusted with performing the important duties of medical examiners are capable and qualified. A cosmetic change has been made in N.J.A.C. 13:49-7.1(a)3 to permit equivalent training to the seven-day internship requirement to substitute for same.

Except as stated above, the proposed rules were adopted as originally published.

Full text of the changes between proposal and adoption follows.

## 13:49-1.1 Mandatory postmortem examination

(a) Postmortem examinations shall be performed in all cases of human death \*[resulting from]\* **\*occurring in\*** the following **\* [causes]\* \*circumstances\***:

1.-3. (No change from proposal.)

**4. All deaths of inmates of a jail, prison, or penitentiary; all prisoners and suspects who were in the process of being detained, arrested, or transported by guards, police and law enforcement or court officers \*[\*]; and all witnesses or jurors in court proceedings involving criminal offenses]\*.**

5.-6. (No change from proposal.)

## 13:49-1.2 Discretionary postmortem examination

(a) Postmortem examinations may be performed when it appears in the discretion of the county medical examiner to be in the public interest to do so in all cases of human deaths \*[from]\* **\*occurring in\*** the following **\* [causes]\* \*circumstances\***:

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

**TRANSPORTATION**

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13:49-1.3 Jurisdiction between counties

\*(a) Where an [injury] **incident which is suspected of being the proximate cause of death** has occurred in one county followed by death in another county, the county medical examiner of the county wherein the [accident] **incident** occurred shall also have jurisdiction to [conduct] **participate in** the investigation and to perform the postmortem examination of the deceased.

(b) [Notwithstanding,] [j] Jurisdiction to conduct the investigation and perform the postmortem examination may be transferred [to] by the county medical examiner of the county wherein the death occurred **to the medical examiner wherein the incident occurred** by written agreement signed by both medical examiners.]\*

\*(a) **When the medical examiner of the county wherein the death occurred determines that the incident which is suspected of being the cause of death has occurred in a New Jersey county other than his own, he may transfer jurisdiction to that county medical examiner immediately for the continuance of the investigation. Any county medical examiner to whom jurisdiction is transferred pursuant to this section shall immediately take charge of the continuance of the investigation and shall perform any examinations, autopsies or other functions required by the State Medical Examiner Act.**

(b) **Whenever any county medical examiner office shall have been notified of a death, that office shall take the name and address of the decedent if known, the time of notification, time of death, time of onset of illness or injury if known, or time found, and the name and station of the person reporting the death.**

1. **He shall then determine jurisdiction, and either report the death properly to the medical examiner of the county wherein the death occurred if necessary; or retain jurisdiction and complete the investigation if applicable; or transfer jurisdiction if required.**

(c) **When an incident which is suspected of being the proximate cause of death has occurred outside this State, and the death occurs in a New Jersey County, the medical examiner of said county shall investigate the death completely, including the authorization or performance of an autopsy if necessary, and shall offer all cooperation possible to the out-of-state agencies and authorities.\***

13:49-2.1 Collection of specimens for \*[alcoholic]\* **\*alcohol\*** determination

(a) All county medical examiners, or the person designated by the State Medical Examiner or county medical examiner to conduct investigations and perform postmortem examinations in a county shall collect suitable specimens for determination of the \*[alcoholic]\* **\*alcohol\*** content of the blood [or] **and** brain tissue in all cases of violent death or death under unusual circumstances **where death has occurred within 48 hours of the incident suspected of being the proximate cause of death.**

(b) (No change from proposal.)

13:49-5.1 Death investigation; conduct

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

\*1. **In cases of suspected criminal homicide, the medical examiner shall coordinate the removal of the body with the county prosecutor and shall not order the removal of the body from said scene until such coordination has been accomplished.\***

(d) (No change from proposal.)

(e) **The office of the county medical examiner shall be required to inspect the scene of homicidal, unusual or suspicious deaths, decomposed bodies \*[,]\* or unwitnessed and unexpected deaths \*which are reportable to the office\*, when the body still lies there dead.**

1. (No change from proposal.)

i.-iii. (No change from proposal.)

\*iv. **Recovery of physical evidence from the scene of suspected**

**criminal homicides shall be the responsibility of the prosecutor.\***

(f) (No change from proposal.)

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

3. **\*[In homicide investigations suspects or probable suspects are to be interviewed by law enforcement personnel with guidance as may be desirable from the medical examiner, and copies of the statements are to be obtained by the medical examiner.]\* \*In criminal homicide investigations, witnesses and potential suspects shall be interviewed by law enforcement personnel, and the medical examiner shall coordinate with the prosecutor to obtain the information that is required as part of the medical death investigation.\***

(g) (No change from proposal.)

\*(h) **The responsibility of the medical examiner to investigate the medical cause of death as set forth in this subchapter, shall also oblige him to cooperate and coordinate with the county prosecutor in the conduct of a criminal investigation.\***

13:49-7.1 Eligibility standards of county medical examiner, deputy or assistant county medical examiner and forensic pathologist

(a) (No change from proposal.)

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

3. **Successful completion of seven full days of internship training at the New Jersey State Medical Examiner Office \*or equivalent approved by said office\*.**

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

**TRANSPORTATION**

**(a)**

**TRANSPORTATION OPERATIONS**

**Restricted Parking and Stopping  
Routes US 1 and 9, US 27, 28, 35, and 41**

**Adopted Amendments: N.J.A.C. 16:28A-1.2,  
1.7, 1.18, 1.19, 1.25 and 1.64**

Proposed: October 17, 1983 at 15 N.J.R. 1739(a).

Adopted: November 22, 1983 by David W. Gwynn,  
Chief Engineer, Transportation Operations and Local  
Aid.

Filed: November 30, 1983 as R.1983 d.581, **without  
change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-6, 39:4-138.1,  
39:4-139 and 39:4-199.

Effective Date: December 19, 1983.

Expiration Date pursuant to Executive Order No. 66(1978):  
November 7, 1988.

**Summary of Public Comments and Agency Responses:  
No comments received.**

**(a)**

**(c)**

**TRANSPORTATION OPERATIONS**

**DIVISION OF TAXATION**

**Restricted Parking and Stopping  
Routes US 22 and 45**

**Gross Income Tax  
Credit for Excess Contributions**

**Adopted Amendments: N.J.A.C. 16:28A-1.13  
and 1.31**

**Adopted New Rule: N.J.A.C. 18:35-1.17**

Proposed: October 17, 1983 at 15 N.J.R. 1740(a).  
Adopted: November 17, 1983 by David W. Gwynn,  
Chief Engineer, Transportation Operations and Local  
Aid.  
Filed: November 29, 1983 as R.1983 d.577, **without  
change.**

Proposed: September 19, 1983 at 15 N.J.R. 1570(a).  
Adopted: December 5, 1983 by John R. Baldwin, Director,  
Division of Taxation.  
Filed: December 5, 1983 as R.1983 d.586, **with technical  
changes** not requiring additional public notice and  
comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-6, 39:4-138.1,  
39:4-139 and 39:4-199.

Authority: N.J.S.A. 54A:4-4 and 54A:10-9.

Effective Date: December 19, 1983.  
Expiration Date pursuant to Executive Order No. 66(1978):  
November 7, 1988.

Effective Date: December 19, 1983.  
Expiration Date pursuant to Executive Order No. 66(1978)  
August 12, 1988.

Summary of Public Comments and Agency Responses:  
**No comments received.**

Summary of Public Comments and Agency Responses:  
**No comments received.**

**TREASURY-TAXATION**

**(b)**

**DIVISION OF TAXATION**

**Full text** of the changes between proposal and adoption follows  
(additions to proposal shown in boldface with asterisks **\*thus\***;  
deletions from proposal shown in brackets with asterisks **\*[thus]\***).

**Local Property Tax  
Farmland Assessment; Filing Date**

18:35-1.17 Credit for excess contributions

**Adopted Amendment: N.J.A.C. 18:15-3.3**

(a) (No change from proposal.)  
(b) The later two numbers referred to in **\*[(a)1i]\*\*(a)1iii\*** and iv  
above are assigned by the New Jersey Division of Unemployment  
and Disability Insurance in the Department of Labor.  
(c)-(d) (No change from proposal.)

Proposed: September 6, 1983 at 15 N.J.R. 1459(b).  
Adopted: November 28, 1983 by John R. Baldwin, Director,  
Division of Taxation.  
Filed: November 29, 1983 as R.1983 d.574, **without  
change.**

Authority: N.J.S.A. 54:4-23.13, specifically 54:4-23.21.

Effective Date: December 19, 1983.  
Expiration Date pursuant to Executive Order No. 66(1978):  
August 12, 1988.

Summary of Public Comments and Agency Responses:  
**No comments received.**

# EMERGENCY

# ADOPTIONS

## AGRICULTURE

### (a)

#### DIVISION OF ANIMAL HEALTH

#### Quarantines and Embargoes Area Quarantine for Avian Influenza

#### Adopted Emergency New Rule and Concurrent Proposal: N.J.A.C. 2:5-4

Emergency New Rule Adopted: November 28, 1983 by  
Arthur R. Brown, Jr., Secretary, Department of  
Agriculture.  
Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): November  
30, 1983.  
Emergency New Rule Filed: December 1, 1983 as R.1983  
d.585.

Authority: N.J.S.A. 4:1-21.5 and 4:5-13 through 5-17.

Emergency New Rule Effective Date: December 1, 1983.  
Emergency New Rule Expiration Date: January 30, 1984.

**Interested persons** may submit in writing, data, views or  
arguments relevant to the proposal on or before January 18, 1984.  
These submissions, and any inquiries about submissions and  
responses, should be addressed to:

Robert E. Horton, DVM, Director  
Division of Animal Health  
New Jersey Department of Agriculture  
CN 330  
Trenton, New Jersey 08625  
(609) 292-3965

This new rule was adopted on an emergency basis and became  
effective upon acceptance for filing by the Office of Administrative  
Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-  
4.4). Concurrently, the provisions of this emergency new rule are  
being proposed for readoption in compliance with the normal  
rulemaking requirements of the Administrative Procedure Act,  
N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective  
upon acceptance for filing by the Office of Administrative Law (see  
N.J.A.C. 1:30-4.4(d)).

The concurrent proposal is known as PRN 1983-654.

The agency emergency adoption and concurrent proposal  
follows:

#### Summary

An outbreak of highly pathogenic Avian Influenza in a New  
Jersey poultry flock places the New Jersey poultry industry in  
imminent peril due to the severity of this virus infection.  
Pennsylvania flocks have been experiencing mortality of up to 50  
percent and loss of egg production to zero. To protect the poultry  
industry it is imperative that a quarantine be placed on those  
portions of Salem, Cumberland, Gloucester and Atlantic counties  
to prohibit the movement of live fowl, table eggs, hatching eggs and  
poultry litter in order to control and eradicate Avian Influenza. The  
new rules also provide for permits to safely move live fowl to  
slaughter and eggs to processors and retail outlets.

#### Social Impact

These rules will affect poultry slaughtering establishments, egg  
producing poultry farms, broiler and roaster operations, and  
exhibition birds by preventing the spread of Avian Influenza to New  
Jersey flocks thus preventing losses of birds and production.

#### Economic Impact

Due to the restriction of movement of eggs and live poultry,  
spread of Avian Influenza can be controlled and prevent loss of  
birds and reduced egg production. With a permit system for  
movement of birds to slaughter the establishment will be able to  
function without layoffs and economic hardships on the employees.

Failure to adopt these rules would result in spread of Avian  
Influenza throughout the poultry industry of New Jersey with losses  
of production and increase of egg and dressed poultry prices.

**Full text** of the emergency adoption and concurrent proposal  
follows.

#### SUBCHAPTER 4. AREA QUARANTINE FOR AVIAN INFLUENZA

##### 2:5-4.1 Definitions

(a) As used in this subchapter, the "quarantined area" shall consist  
of that portion of Salem, Gloucester, Atlantic and Cumberland  
Counties as follows:

1. That portion of New Jersey beginning at the Intersection of New  
Jersey Highway 45 and New Jersey Highway 49; then  
northeasternly along New Jersey Highway 45 to its intersection  
with US Highway 322; then southeasternly along US Highway 322  
to its intersection with New Jersey Highway 54; then  
southwesternly along New Jersey Highway 54 to its intersection  
with New Jersey's secondary road 557; then southeasternly along  
New Jersey's secondary road 557 to its intersection with New  
Jersey secondary road 552; then westernly along New Jersey  
secondary road 552 to its intersection with New Jersey Highway 47;  
then southernly along New Jersey Highway 47 to its intersection  
with New Jersey Highway 49; then westernly along New Jersey 49  
to its intersection with New Jersey Highway 45.

(b) The term "Task Force" means that organization established by  
the United States Department of Agriculture to control and  
eradicate highly pathogenic Avian Influenza.

##### 2:5-4.2 Area quarantine restrictions

(a) No poultry or poultry products, including but not limited to  
chickens, ducks, geese, turkeys, guinea fowl, exotic fowl and game  
birds raised in captivity, shall be moved within the quarantine area  
nor removed from the quarantine area except by permit of the New  
Jersey Department of Agriculture.

(b) No live birds or eggs may be removed from flocks and  
premises infected with highly pathogenic avian influenza.

(c) This section shall not apply to processed eggs and processed  
poultry.

##### 2:5-4.3 Permit conditions

(a) Conditions for the issuance of permits for movement of poultry  
or poultry products within or from the quarantine area shall be as  
follows:

1. Permits may be issued for transportation of live birds from  
flocks, other than those infected with Avian Influenza of high  
pathogenicity direct to slaughter plants under Federal inspection.

i. Birds moving from the above flocks shall be transported in  
vehicles covered so as to prevent contamination along the route.

ii. Equipment and vehicles utilized to transport the above birds shall be considered under quarantine until proper cleaning and disinfection has been certified by an official representative of the task force at the slaughter establishment.

2. Permits may be issued for the transportation of pullets from healthy flocks to approved egg layer operations in the quarantine area after an onsite inspection of the flock of origin. Permits shall be valid for 72 hours.

i. Equipment and vehicles utilized to transport the above birds shall be considered under quarantine until cleaning and disinfection has been certified by an official representative of the Task Force at the destination.

3. Permits may be issued for transportation of live day old chicks originating from healthy flocks to approved grower operations which shall be placed under special quarantine.

i. Permits may be issued only following two onsite inspections of the flock of origin at least seven days apart by an authorized representative of the Task Force who will take random blood samples on the initial inspection. These samples are to be tested negative to Avian Influenza at a State or Federal approved laboratory and determination that the above flock and all other flocks on the premises are not infected with Avian Influenza.

ii. Equipment and vehicles utilized to transport the above birds shall be considered under quarantine until cleaning and disinfection has been certified by an official representative of the Task Force at the destination.

4. Permits may be issued for transportation of hatching eggs originating from healthy breeder flocks to approved hatching facilities according to guidelines established by the Federal Quarantine Order, 9CFR Part 81.

5. Permits may be issued for transportation of table use eggs which have been sanitized and packed in unused or sanitized flats and crates. Nest run eggs may be moved by permit to approved facilities for sanitizing and packing in compliance with 9CFR Part 81.

6. Permits may be issued for transportation of dead poultry, poultry parts and litter from infected flocks to approved disposal sites only when suitable disposal is not available within the quarantine area.

i. Equipment and vehicles utilized in transportation of dead poultry, poultry parts and litter must be maintained in a proper sanitary condition.

ii. Equipment and vehicles utilized in transportation of dead poultry, poultry parts and litter must be constructed and maintained so as to prevent contamination of the transportation route.

iii. Equipment and vehicles utilized to transport the above material shall be considered under quarantine until cleaning and disinfection has been certified by an official representative of the Task Force.

**2:5-4.4 Quarantine flocks**

(a) Poultry, poultry parts, eggs, litter and any other potentially contaminated materials may be removed from flocks and premises infected with non-highly pathogenic Avian Influenza by permit only.

(b) Live poultry may be moved to approved slaughter facilities by permit only.

(c) Table eggs sanitized and packed in unused or sanitized flats, papers, racks and crates may be moved by permit only. Nest run eggs may be moved by permit to an approved facility for sanitizing and packing in compliance with 9CFR Part 81.

(d) Dead poultry, cull eggs, refuse and litter may be removed from the quarantined premises by permit only when proper disposal cannot be accomplished on the quarantined premises.

(e) No live birds or eggs may be removed from flocks and premises infected with highly pathogenic Avian Influenza.

**TREASURY-TAXATION**

(a)

**DIVISION OF TAXATION**

**Homestead Rebate Act  
Extension of Time to File Homestead Rebate  
Claim**

**Adopted Emergency Amendment: N.J.A.C.  
18:12-7.12**

Emergency Amendment Adopted: November 30, 1983 by John R. Baldwin, Director, Division of Taxation.   
Governatorial Approval (N.J.S.A. 52:14B-4(c)): November 30, 1983.

Emergency Amendment Filed: December 1, 1983 as R.1983 d.582.

Authority: N.J.S.A. 54:4-3.80 and 54:50-1.

Emergency Amendment Effective Date: December 1, 1983.

Emergency Amendment Expiration Date: January 16, 1984.

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 amendment will be effective until January 16, 1984.

**Summary**

On November 30, 1983, John R. Baldwin, Director of the Division of Taxation in the Department of the Treasury, pursuant to the authority of N.J.S.A. 54:4-3.80 and 54:50-1 and the applicable provisions of the Administrative Procedure Act, and upon certification by the Governor of the State of New Jersey that an imminent peril exists (see N.J.S.A. 52:14B-4(c)), adopted an emergency amendment to N.J.A.C. 18:12-7.12 concerning an extension of time to file an Application for Homestead Rebate.

To respond to the imminent peril, a change in the rule is being made to insure that approximately 190,000 persons be given additional time to file an Application for Homestead Rebate. Without this adoption, a large number of persons would forfeit their right to an average of \$180.00 per claim for homestead rebate. This additional time is given to people who for some reason did not file their application prior to December 1, 1983.

**Social Impact**

This emergency rule will only affect approximately 190,000 property owners who failed to file a timely application for homestead rebate.

**Economic Impact**

The economic impact upon the general treasury of the State of New Jersey will approximate 190,000 applications at an average of \$180.00 each.

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

18:12-7.12 Extension of filing date  
(a)-(f) (No change.)

**(g) The time for property owners to file their applications for a homestead rebate payable in 1984 pursuant to P.L.1976, c.72, including applications by shareholders in cooperative associations and those residing in properties of certain mutual housing corporations, has been extended to January 15, 1984.**

# MISCELLANEOUS NOTICES

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF WATER RESOURCES

#### Amendment to the Upper Raritan Water Quality Management Plan

##### Notice of Public Comment

Raritan Township Municipal Utilities Authority (RTMUA) has applied to the New Jersey Department of Environmental Protection for an amendment to the Upper Raritan Water Quality Management (WQM) Plan. RTMUA has requested permission to expand the Raritan Township treatment plant from the current design capacity of 1.6 million gallons per day (mgd) to 2.2 mgd. The increased capacity will be used to serve planned residential development in Raritan Township for which there are signed contracts for wastewater treatment. The Flemington Borough, a service customer of RTMUA, has a treatment plan with a permitted treatment capacity of 1.0 mgd. The Flemington Borough plant currently treats approximately 0.3 mgd and sends up to 0.5 mgd to the RTMUA facility. This plant, however, can only treat 0.3 mgd and meet its NJPDES permit restrictions. Therefore the WQM Plan and the NJPDES permit should be amended to require a design capacity of 0.3 mgd at the Flemington Borough plant, with 0.5 mgd still going to RTMUA. In addition, the Flemington plant experiences significant wastewater bypasses into Bushkill Creek during storm events. Flemington has agreed to work with RTMUA to find a solution to this problem.

This notice is being given to inform the public that the New Jersey Department of Environmental Protection has prepared an amendment to the Upper Raritan WQM Plan. This plan was adopted pursuant to the "Water Quality Planning Act" (N.J.S.A. 58:11A-1 et seq.) and the "Federal Water Pollution Control Act, as amended" (33 U.S.C. 466 et seq.). This amendment allows the RTMUA to expand the Raritan Township treatment plant from 1.6 mgd to 2.2 mgd, downgrades the capacity of the Flemington Borough wastewater treatment plant to 0.3 mgd (with 0.5 mgd to go to RTMUA), and states the intention of Flemington Borough to address the stormwater overflows at the treatment plant which result in untreated wastewater entering the Bushkill Creek.

All information dealing with the aforesaid Water Quality Management Plans and the "Water Quality Planning Act" is located at the office of New Jersey Department of Environmental Protection, Division of Water Resources, Bureau of Planning and Standards located at 25 Artic Parkway in the Township of Ewing, Mercer County. The information is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendments to Mr. George Horzepa, Bureau of Planning and Standards, at the New Jersey Department of Environmental Protection address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by New Jersey Department of Environmental Protection with respect to the amendment request.

Any interested person may request in writing that New Jersey

Department of Environmental Protection hold a nonadversarial public hearing on the amendments. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

## OTHER AGENCIES

(b)

### CASINO CONTROL COMMISSION

#### Petition for Rulemaking Casino Hotel Registration Fee Waiver

##### Petitioner: Harrah's Atlantic City

Authority: N.J.S.A. 5:12-69(c), N.J.A.C. 19:42-8.1, N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6

**Take notice** that on November 23, 1983, the Casino Control Commission rejected the petition of Harrah's Atlantic City to adopt an amendment to N.J.A.C. 19:41-9.15 concerning the waiver of casino hotel employee registration fees for persons having a "currently valid application for a casino employee license pending before the Commission." The amendment, which was proposed for public comment in the September 19, 1983 New Jersey Register at 15 N.J.R. 1571(a), was rejected by the Commission because it was considered to be inconsistent with the purposes and provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and the regulations of the Commission. Specifically, the Commission is statutorily obligated to recover the costs which it incurs in the licensing and registration process. See N.J.S.A. 5:12-143 and N.J.A.C. 19:41-9.1(a). Since the registration process requires the Commission to incur certain administrative costs irrespective of whether there exists a "currently valid application for a casino employee license pending before the Commission," the proposed waiver is inappropriate.

# INDEX OF PROPOSED RULES

The *Index of Proposed Rules* contains rules which have been proposed in the New Jersey Register between December 20, 1982, and December 5, 1983, and which have not been adopted and filed by December 6, 1983. **The index does not contain rules proposed in this Register and listed in the Table of Rules in This Issue. These proposals will appear in the next Index of Proposed Rules.**

A proposed rule listed in this index may be adopted no later than one year from the date the proposal was originally published in the Register. Failure to timely adopt the proposed rule requires the proposing agency to re-submit 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 of the Office of Administrative Law (N.J.A.C. 1:30).

The *Index of Proposed Rules* appears in the second issue of each month, complementing the *Index of Adopted Rules* which N.J.A.C.

appears in the first Register of each month. Together, these indices make available for a subscriber to the Code and Register all legally effective rules, and enable the subscriber to keep track of all State agency rulemaking activity from the initial proposal through final promulgation.

The proposed rules are listed below in order of their Code citation. Accompanying the Code citation for each proposal is a brief description of its contents, the date of its publication in the Register, and its Register citation.

The full text of the proposed rule will generally appear in the Register. If the full text of the proposed rule was not printed in the Register, it is available for a fee from:

Administrative Filings  
CN 301  
Trenton, New Jersey 08625

CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
<b>ADMINISTRATIVE LAW--TITLE 1</b>			
1:1-1.3	Reaching the merits	9-6-83	15 N.J.R. 1398(a)
1:6A-5.2	Special Education hearings: record keeping	9-6-83	15 N.J.R. 1402(a)
<b>AGRICULTURE--TITLE 2</b>			
2:5-3	Poultry embargo (with Emergency Adoption)	12-5-83	15 N.J.R. 2048(a)
2:69-1.11	Commercial values for fertilizers and conditioners	5-2-83	15 N.J.R. 658(a)
<b>BANKING--TITLE 3</b>			
3:1-13.1	Public hearing: insurance tie-in prohibition by lenders	8-1-83	15 N.J.R. 1207(a)
3:6-2.1	Readopt Approved Depositories for Security Funds Investments	12-5-83	15 N.J.R. 1974(a)
3:6-3.2, 3.3	Limitations on loans to bank executive officers	11-7-83	15 N.J.R. 1786(a)
3:11-5	Bank investments and domestic operating subsidiaries	11-7-83	15 N.J.R. 1787(a)
3:19-2.1	Repeal maximum interest rate on home repair contracts	11-7-83	15 N.J.R. 1788(a)
3:22-1	Repeal maximum finance rate on insurance premiums	10-17-83	15 N.J.R. 1707(a)
<b>CIVIL SERVICE--TITLE 4</b>			
4:1-7.6	Title reevaluation requests and appeals (State)	8-15-83	15 N.J.R. 1290(b)
4:1-14.6	Interim appointments	12-5-83	15 N.J.R. 1975(a)
4:1-18.9, 18.10	Flexitime and operation hours (State)	3-21-83	15 N.J.R. 373(a)
4:1-18.11	Alternative workweek programs (State)	3-21-83	15 N.J.R. 374(a)
4:2-14.1	Interim appointments	12-5-83	15 N.J.R. 1975(a)
4:3-8.2	Repeal county welfare board promotion rules	11-7-83	15 N.J.R. 1788(b)
4:3-14.2	Interim appointments	12-5-83	15 N.J.R. 1975(a)
<b>COMMUNITY AFFAIRS--TITLE 5</b>			
5:3-2.1	Nonpublic records: rental assistance applications	11-21-83	15 N.J.R. 1910(a)
5:10	Readopt Hotel and Multiple Dwellings rules	5-16-83	15 N.J.R. 727(a)
5:23-1.4, 4.5, 4.19	Uniform Construction Code: record keeping and standard forms	11-7-83	15 N.J.R. 1789(a)
5:23-4.14	Uniform Construction Code: private on-site inspection	9-6-83	15 N.J.R. 1406(a)
5:23-4.20, 5.5, 5.9	Uniform Construction Code: Department fees, licensing	11-21-83	15 N.J.R. 1911(a)
5:23-6.2, 6.3, 6.5	UCC: Solar facilities tax exemption	12-5-83	15 N.J.R. 1977(a)
5:27-11.7	Home energy assistance payments and boarding house residents	10-3-83	15 N.J.R. 1622(a)
5:30-10.1, 10.2	Local finance: municipal port authorities	8-15-83	15 N.J.R. 1304(a)
5:37-11.6	Municipal and county employees deferred compensation programs: annual audit	9-6-83	15 N.J.R. 1408(b)
5:70	Congregate Housing Services Program for aged	11-7-83	15 N.J.R. 1791(a)
5:80-2	Private investment in HFA-financed housing	8-1-83	15 N.J.R. 1208(a)
<b>EDUCATION--TITLE 6</b>			
6:2-1.1-1.20	Appeals to the State Board	12-5-83	15 N.J.R. 1977(b)
6:28	Special Education rules	12-5-83	15 N.J.R. 1981(a)
6:28-11	Programs for preschool handicapped children	4-4-83	15 N.J.R. 556(a)

N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
6:39-1.1-1.4	Statewide testing program	6-20-83	15 N.J.R. 979(b)
<b>ENVIRONMENTAL PROTECTION-TITLE 7</b>			
7:1D-1	Emergency water projects: Allocation of costs	2-7-83	15 N.J.R. 117(a)
7:6	Readopt Boating Regulations	11-7-83	15 N.J.R. 1799(a)
7:11-2.10-2.13	Sale of water from D/R Canal and Spruce Run/Round Valley	8-15-83	15 N.J.R. 1311(a)
7:13-1.11(c)30	Delineated floodways for Delaware Bay tributaries	9-19-83	15 N.J.R. 1541(a)
7:13-1.11(d)	Floodway delineation in Roseland, Essex County	8-15-83	15 N.J.R. 1313(a)
7:13-1.11(d)	Floodway delineation along Third River in Clifton	9-6-83	15 N.J.R. 1412(a)
7:13-1.11(d)42	Delineated floodways for Green Brook and Bound Brook	9-19-83	15 N.J.R. 1540(a)
7:14-4.4	NJPDES: local control over dischargers	7-5-83	15 N.J.R. 1059(b)
7:14A-1.9, 10.1, 10.5, 13.1, 13.2, 13.5-13.8	NJPDES: local control over dischargers	7-5-83	15 N.J.R. 1059(b)
7:14A-4.4, 4.7, 6.1, 6.2, 6.15	Hazardous waste land disposal	12-5-83	15 N.J.R. 1997(a)
7:14A-4.5	Hazardous waste management: interim authorization	11-7-83	15 N.J.R. 1800(a)
7:14A-14	NJPDES: oil and grease effluent limitations	8-15-83	15 N.J.R. 1313(b)
7:15	Water quality management planning and implementation process	5-16-83	15 N.J.R. 765(b)
7:25-11.1, 20.1	Endangered species and status of nongame species	10-3-83	15 N.J.R. 1623(a)
7:25-15.1	Relay of hard clams (with Emergency Adoption)	11-21-83	15 N.J.R. 1959(a)
7:26-1.1-1.4	Readopt certain solid and hazardous waste rules	12-5-83	15 N.J.R. 2017(a)
7:26-1.1, 1.4, 7.6, 9.1-9.6, 9.8-9.14, 11.4, 12.2, 12.12	Hazard waste management: interim authorization	11-7-83	15 N.J.R. 1800(a)
7:26-1.4, 9.1, 12.1	Hazardous waste recycling	12-20-82	14 N.J.R. 1435(a)
7:26-1.4, 10.6, 10.8, 11.3, 12.2	Hazardous waste land disposal	12-5-83	15 N.J.R. 1997(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow	9-6-83	15 N.J.R. 1417(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow	11-21-83	15 N.J.R. 1914(a)
7:26-8.14	Delist leather tanning and TiO <sub>2</sub> wastestreams	11-7-83	15 N.J.R. 1816(a)
7:26-8.15(f)	Delist Indomethacin as hazardous waste	11-7-83	15 N.J.R. 1817(a)
7:30-3.2, 4.2, 4.4	Pesticide Control Code: dealers and dealer businesses	12-5-83	15 N.J.R. 2017(b)
7:36-5.2	Green acres additional funding	12-20-82	14 N.J.R. 1436(a)
<b>HEALTH-TITLE 8</b>			
8:21-2.31-2.33	Repeal (see 8:21-13)	8-15-83	15 N.J.R. 1318(a)
8:21-13	Wholesale food establishments	8-15-83	15 N.J.R. 1318(a)
8:21A-2.45	Retention period for radioactive drug samples	11-7-83	15 N.J.R. 1818(a)
8:31A-7	Readopt SHARE Rate Review Guidelines	9-19-83	15 N.J.R. 1542(a)
8:31A-8.1	Hospital reporting: readopt medical discharge abstract rule	10-17-83	15 N.J.R. 1708(a)
8:33	Readopt Certificate of Need Application and Review Process	10-17-83	15 N.J.R. 1708(b)
8:43-6	Residential health care facilities: Dietary Services	10-17-83	15 N.J.R. 1710(a)
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8:43B-17	Readopt Cardiac Diagnostic and Surgical Services rules	10-17-83	15 N.J.R. 1713(b)
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8:43E-4	Children's acute psychiatric beds: need certification	10-17-83	15 N.J.R. 1723(a)
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8:71	Generic drug list additions (see 15 N.J.R. 691(b), 1100(a))	2-7-83	15 N.J.R. 127(a)
8:71	Additions to generic drug list (see 15 N.J.R. 846(a))	6-6-83	15 N.J.R. 846(a)
8:71	Generic drug list additions	11-7-83	15 N.J.R. 1819(a)
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10:60-1.1-1.3, -2, 3.4	Person care services: Home Health Services Manual	10-17-83	15 N.J.R. 1726(a)
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10:63-1.6	Long-term care: authorization process	11-21-83	15 N.J.R. 1917(a)
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10:85-5.3	GAM: DRG rates for outpatient services	5-2-83	15 N.J.R. 666(a)
10:85-9	GAM: Readopt legally responsible relatives rules	12-5-83	15 N.J.R. 2019(b)
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13:49-1-8	Death Investigations rules: extension of comment period	10-3-83	15 N.J.R. 1672(a)
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