

NEW JERSEY REGISTER



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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MARCH 16, 1987.
See the Register Index for Subsequent Rulemaking Activity.
NEXT UPDATE WILL BE DATED APRIL 20, 1987.

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INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **June 17, 1987**. Submission and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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June 15 issue:

- Proposals May 18
- Adoptions May 22

July 6 issue:

- Proposals June 8
- Adoptions June 12

July 20 issue:

- Proposals June 22
- Adoptions June 26

August 3 issue:

- Proposals July 6
- Adoptions July 13

NEW JERSEY REGISTER

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RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT Condominium and Cooperative Conversion Standards of Fair Dealing

Proposed Amendment: N.J.A.C. 5:24-1.12

Authorized By: Leonard S. Coleman, Jr., Commissioner,
Department of Community Affairs.

Authority: N.J.S.A. 2A:18-61.12.

Proposal Number: PRN 1987-161.

Submit comments by June 17, 1987 to:

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

The agency proposal follows:

Summary

N.J.A.C. 5:24-1.12 currently requires that discounts offered to tenants on conversions be continued throughout the exclusive right to purchase period (90 days). The rule is being amended to make it clear that any discounts offered after the 90-day period has begun must be continued to the end of that period.

Social Impact

The purpose of N.J.A.C. 5:24-1.12 is to protect tenants from being coerced into making a decision to purchase their unit before the last day of the 90-day exclusive right to purchase period. The issue has arisen as to whether this rule applies to discounts offered after the commencement of the 90-day period. Since the same rationale would apply to subsequent discounts applies to initial discounts, that is, to make certain that tenants are not pressurized to waive the benefit of the full 90-day period, this clarification of the rule is proposed.

Economic Impact

Converters wishing to offer discounts to tenants subsequent to the beginning of the 90-day exclusive right to purchase period will only be able to do so if they are prepared to offer the discount for the balance of the 90-day period. In some cases, this may make it more difficult for converters to sell units quickly, which may have an adverse economic impact upon them.

Regulatory Flexibility Analysis

There will be no differential impact upon any converter who qualifies as a "small business" under the statute. There is no reason why a converter who is a "small business" should have any more opportunity to coerce tenants than one who is not.

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

5:24-1.12 Standards of fair dealing

(a) Any discount or reduction in sales price offered to a tenant in occupancy in order to induce such tenant to agree to purchase his unit during the exclusive right to purchase period shall be available, without any change that would have the effect of raising the price to such tenant, or the entire exclusive right to purchase period. **Any subsequent discount or reduction in sales price, offered at any time during the exclusive right to purchase period, must be continued through the end of that period.**

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

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Planned Real Estate Development Full Disclosure Powers and Duties of Community Associations Proposed Amendment: N.J.A.C. 5:26-8.2

Authorized By: Arthur R. Kondrup, Director, Division of
Housing and Development, Department of Community
Affairs.

Authority: N.J.S.A. 45:22A-35.

Proposal Number: PRN 1987-180.

Submit comments by June 17, 1987 to:

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

The agency proposal follows:

Summary

This proposal amends the Planned Real Estate Development Full Disclosure rules to expressly require community associations to protect the health, safety and general welfare of community residents, to the extent that their jurisdiction allows, and to provide a fair and efficient means of resolving such disputes as may arise between unit owners and the association or between different unit owners.

Social Impact

When people purchase a unit or an interest in a planned real estate development, they necessarily become involved with other owners, and with the association that is responsible for the commonly owned property, and must be able to rely on the association to protect their legitimate interests as owners. Community associations thus have become a type of *quasi* local government. It is important that a purchaser have adequate assurance that the community association will discharge its responsibilities in an appropriate manner and will do all in its power to protect the legitimate interests of the unit owners. It is also important that some procedure exist to resolve the disputes that may occur from time to time so that both unit owners and the association may have an opportunity to be spared the cost, delay and aggravation that generally accompany lawsuits.

Economic Impact

To the extent that alternative dispute resolution procedures are established and are used by unit owners and associations, there may be greater fairness at less cost to all involved. General recognition of the obligation of the association to act, within the limits of its power, to protect the health, safety and general welfare of the residents of the community may lead to corrective measures being taken promptly when problems arise, so that greater costs are not incurred later as a result of litigation.

Regulatory Flexibility Statement

The proposed amendment regulates community associations which by themselves are not small businesses pursuant to the Regulatory Flexibility Act, P.L. 1986, c.169. However, community associations that are formed as business corporations may be "small businesses" as defined by the Act. No exception has been made for community associations that qualify as small businesses since they will benefit from avoiding litigation with the alternative dispute resolution procedure.

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

5:26-8.2 Powers and duties

(a) Subject to the master deed, declaration of covenants and restrictions or other instruments of creation, the association may do all that it is legally entitled to do under the laws applicable to its form of organization.

(b) The association shall discharge its powers in a manner that protects and furthers the health, safety and general welfare of the residents of the community.

(c) The association shall provide a fair and efficient procedure for the resolution of disputes between individual unit owners and the association, and between different unit owners, that shall be readily available as an alternative to litigation.

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

(a)

Affirmative Fair Housing Marketing

Proposed New Rules: N.J.A.C. 5:80-22

Authorized By: The New Jersey Housing and Mortgage Finance Agency, James L. Logue, Executive Director/Secretary.
Authority: N.J.S.A. 55:14K-5g and 55:14k-8e.
Proposal Number: PRN 1987-182.

Submit comments by June 17, 1987 to:

Susan N. Ferschmann
Director of Policy Development
3625 Quakerbridge Road, CN 18550
Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency was established to promote safe and affordable housing production in New Jersey. To fulfill its objective, the Agency provides low interest construction financing and permanent loans to sponsors wishing to develop single and multi-unit dwellings. The proposed Affirmative Fair Housing Marketing rules outline marketing plans and techniques which are designed to attract buyers and/or renters who are least likely to apply for such units.

Social Impact

Once a single family or multi-family dwelling is completed, the process of screening applicants and selecting future residents is a crucial one. On one hand, a sponsor must keep units occupied to minimize vacancy loss and maintain cash flow. On the other, the sponsor must also take the time to screen applicants and to select only those applicants who will be responsible residents. In addition, the sponsor must comply with all Federal, State or local fair housing laws, civil rights laws and Agency regulations regarding equal opportunity requirements. Furthermore, it is incumbent upon the sponsor to select residents from a pool in which individuals of similar income levels in the same housing market area have available to them a like range of choices in housing, regardless of the individual's race, color, religion, sex, or national origin. This overall goal can be achieved through the implementation of Affirmative Fair Housing Marketing requirements which includes sensitivity training for management staff, outreach efforts and marketing procedures.

Economic Impact

The proposed new rules are expected to impact on the New Jersey economy by employing marketing procedures which advertise the availability of affordable housing to New Jersey homebuyers and tenants. The rules are designed to attract low and moderate income families and individuals who may not otherwise apply or be aware of the availability of such housing.

Regulatory Flexibility Statement

The proposed new rules require all applicants for financial assistance from the New Jersey Housing and Mortgage Finance Agency to implement marketing plans and techniques to attract low and moderate income families and individuals who may not otherwise be aware of the availability of such housing. These applicants include public entities, which do not fall within the definition of a "small business" as defined at section 2 of the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169).

Other applicants may include individuals, corporations, partnerships, associations, or organizations which would fall within the statutory definition of "small business." Although small businesses are thus affected by the proposed new rules, the objective of safe and affordable housing production in New Jersey can be met only by imposing the compliance requirements in the proposed N.J.A.C. 5:80-22 upon all applicants, including small businesses.

Full text of the proposed new rules follows.

SUBCHAPTER 22. AFFIRMATIVE FAIR HOUSING MARKETING

5:80-22.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise
"Applicant" means one or more individuals, corporations, partnerships, associations, labor organizations, or public entities applying for financing or funding assistance from the New Jersey Housing and Mortgage Finance Agency.

"Disabled person" means a person who is unable, due to a physical or mental impairment, to engage in any gainful activity under a disability as defined in section 223 of the Social Security Act or a person who has a "Developmental disability" which is mental in nature as defined by the Developmental Disabilities Amendments of 1970 (42 U.S.C. 60001).

"Displaced person" means a family or individual who has been displaced by government action or other formally recognized action pursuant to Federal disaster or otherwise has been involuntarily displaced.

"Eligible household" means eligibility requirements are determined in accordance with the program regulations under which the project is financed.

"Housing market area" means that geographic region from which it is likely that renters/purchasers would be drawn for a given multifamily rental housing project or single family sales unit. For projects financed under the Affordable Housing Program the housing market area may be considered a housing region as determined by the Council on Affordable Housing. In most instances the housing marketing area consists of the county in which the project or homes will be located.

"Initial rent-up" means that period beginning with the date on which the applicant is granted permission by the local government and the Agency to begin occupancy or rent-up and ending on the date sustaining occupancy (usually 95 percent) is attained.

"Low income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and/or rental. Certain housing programs require a portion of the units to be occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the applicable housing market areas. Other housing programs require units to be affordable to the aforementioned population.

"Moderate income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and/or rental. Certain housing programs require that a portion of the units be occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the applicable housing market area. Other housing programs require units to be affordable to the aforementioned population.

"Minority" means an individual who is a member of one of the following racial or ethnic groups:

1. Black: An individual having origins in any of the Black Racial groups of Africa but not of Hispanic origin;

2. American Indian or Alaskan Native: An individual having origins in any of the original people of North America, and who maintains cultural identification through tribal affiliation or community recognition;

3. Hispanic: An individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race; or

4. Asian or Pacific Islander: An individual having origin in any of the original peoples of the Far East, Southeast Asia, and the Indian sub-continent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

"Target group" means identifiable segments of the eligible population identified by the applicant as least likely to apply for occupancy. An applicant undertakes special outreach to attract members of these groups to the housing being offered. Examples include specific racial/ethnic groups.

5:80-22.2 Purpose of the Affirmative Fair Housing Marketing Plan

(a) The Affirmative Fair Housing Marketing Plan (the Plan) is a marketing strategy designed to attract buyers and/or renters of all majority and minority groups regardless of sex, to rental projects and sales dwell-

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ings, which are being marketed by an applicant. The Plan describes initial advertising and other marketing activities which inform potential buyers and renters of the existence of the units.

(b) More than one Plan may be required in housing developments where there is a combination of market and low and moderate income units or where there is a combination of sales and rental housing.

(c) The Plan remains in force throughout the life of a multifamily project. For single-family dwellings located in subdivisions of five or more units, the Plan remains in effect until all of the dwellings are sold.

(d) No application for Agency assistance may be funded without an approved Plan.

(e) Upon approval, the applicant is required to make good faith efforts to carry out the provisions of the Plan.

(f) In formulating the Plan the applicant shall do the following:

1. Refer to the demographic statistics for the applicable housing market area and identify the segments of the eligible population which are least likely to apply for housing without special outreach because of such factors as neighborhood customs, price, institutionalized discrimination in the housing market and other factors which have the effect of denying housing choice.

2. Design an outreach program which will have the best chance of producing an applicant pool reflective of the racial/ethnic composition of the population of the housing market area and which includes special measures designed to attract those groups identified as least likely to apply and other efforts designed to attract persons from the total eligible population.

3. Establish as one indicator of marketing effectiveness the racial/ethnic composition of the low and moderate income population of the housing market areas, and identify any other indicators to be used to measure the effectiveness of the marketing program.

4. Demonstrate capacity to provide training and information to sales and/or rental staff on fair housing laws and objectives.

5:80-22.3 Who submits a plan

(a) The following applicants are required to submit an Affirmative Fair Housing Marketing Plan:

1. Any applicant applying for funding under the Affordable Housing Program;

2. Any applicant applying for funding under the Continuing Care Retirement Community Program;

3. Any applicant applying for funding under the Repair Loan Program;

4. Any applicant applying for funding under the Agency's Policies and Procedures for Housing Projects; and

5. Any applicant applying for funding allocations for special projects consisting of 25 or more units.

(b) Projects receiving assistance from the Federal government are subject to the Affirmative Fair Housing Marketing Guidelines established and enforced by the U.S. Department of Housing and Urban Development. However, copies of the HUD approved Affirmative Fair Housing Marketing Plan must be on file with the Agency prior to the issuance of a "firm commitment."

5:80-22.4 Plan submission deadlines

(a) The Plan must be submitted as part of the application for Agency financing for those projects financed under the Agency's Policies and Procedures for Housing Projects, Repair Loan Program and Continuing Care Retirement Community Program.

(b) Projects applying for assistance under the Affordable Housing Program must submit an approval Plan prior to fund reservation. The Agency will, however, defer to those procedures which are different from those procedures stated herein for projects subject to a court ordered settlement and/or consent order.

5:80-22.5 Format of the Affirmative Fair Housing Marketing Plan

(a) The applicant shall provide the following information:

1. Name and address of both the applicant and the proposed project;

2. Number of units and the application number;

3. Price and/or rent of units and range of affordability by household size of prospective purchasers and/or renters;

4. Census tract or affordable housing region in which the project will be located;

5. The household types to be served by the project, for example, the elderly, non-elderly;

6. The approximate starting date for advertising to target groups and for initial occupancy; and

7. Name of managing/sales agent.

5:80-22.6 Direction of marketing activity

(a) The applicant is responsible for the development and the implementation of the Affirmative Fair Housing Marketing Plan. For projects financed under the Affordable Housing Program, the municipality may work with the developer to help identify those persons who are least likely to apply. However, the applicant has ultimate responsibility for the units' marketing and sales/rental transactions. Employment of a sales or management agent does not relieve the applicant of his/her responsibilities and the applicant must assure that such agents will carry out affirmative marketing and non-discrimination requirements.

(b) The applicant shall identify the groups that are least likely to apply for housing. For these groups, special outreach is required to inform them of the upcoming housing opportunities.

(c) The applicant shall describe efforts to reach target groups that are not covered elsewhere in the Plan. Such groups may include female-headed households and the working poor.

(d) If the applicant believes that no single group will need special outreach, the applicant so indicates in the Plan and explains the reasons for such determination.

(e) In determining which groups may require special outreach, the applicant should consider, as appropriate, the following factors:

1. The possible existence of practices or policies of discrimination on the basis of race, color, creed, religion, sex, or national origin, which have historically affected the ability of members of particular groups to obtain the housing of their choice. These practices or policies can include exclusionary zoning practices which may have limited the construction of housing for lower income families; lending and/or appraisal practices and other practices which may have resulted in discrimination on the basis of race, color, creed, sex, or national origin. Information on these practices may be found in court decisions, compliance findings, newspaper articles or other sources which illustrate patterns relating to these practices.

2. Any known fact about the effects of the language barrier upon potential homeseekers and/or renters whose native language is not English. Examples of such homeseekers include Hispanic and Vietnamese.

3. The racial/ethnic composition of defined geographic areas and comparable projects of comparable size within the housing market. Information regarding these factors may be found in the Housing Assistance Plan (HAP), US Census Reports or Regional Housing Needs Reports approved by the Affordable Housing Council. Furthermore, the applicant should consider the income of the eligible population of the housing market area including, where applicable, those persons expected to reside in the community because of planned employment and current employment.

4. Income eligibility requirements affect the selection of tenants/purchasers from the segments of the eligible population that might be targeted for special outreach and effect the marketing technique to be used in attracting such persons to the housing.

5. The racial/ethnic composition of the group of persons who are not residents, but who may reasonably be expected to reside in the community in the future because of present or planned employment.

5:80-22.7 Marketing program

(a) The marketing program shall include the following:

1. The applicant shall describe the marketing program and outline the methods to be used in reaching all segments of the eligible population; and

2. The marketing program must include special outreach steps which will be taken to attract the groups identified in the Plan as persons least likely to apply for housing.

(b) The applicant shall indicate the commercial media to be used, if any, to advertise the availability of housing. The use of commercial media is not required; however, the applicant should publicize the availability of housing through the type of media customarily used by the applicant, including minority publications or other minority outlets which are available in the housing market area.

(c) If the applicant does not intend to use any commercial media, the Plan should explicitly indicate that no commercial media will be used and the reasons for this decision should be attached to the Plan.

(d) The applicant shall indicate the type of media to be used, including:

1. Newspapers for general circulation;

2. Radio stations;

3. Television stations; or

4. Other types of media, including publications of limited circulation such as neighborhood-oriented weekly newspapers, religious publications, and the publications of local real estate industry groups.

- (e) For each of the media selected, the applicant shall indicate:
1. The name of the media;
 2. The type (for example, classified, display) and size of the newspaper advertisement and the initial date of its appearance. If copies of such advertising are available, the applicant should submit them to the Agency. If no copies are available at the time the Plan is being prepared, the applicant shall submit them as soon as possible after the plan has been approved;
 3. The frequency and length of any radio and/or telephone advertising; and
 4. The identity of the racial/ethnic group within the audience or readership of the commercial media to be used.

(f) Applicants are encouraged to use minority-owned and/or operated media as part of their overall marketing program to publicize the housing to both majority and minority persons. Where Blacks, Hispanics, and other racial/ethnic minority groups have been identified as special outreach groups, minority-owned media may be a particularly effective outreach mechanism. Even when such groups are not being specifically targeted for special outreach efforts, the use of minority owned media is recommended as part of the outreach to the general population. In such cases, the applicant may consider factors such as data on the racial/ethnic composition of the majority-owned medias' readership or audience and applicant's past experience in utilizing such media.

(g) The applicant should consider using brochures as part of the total marketing program. Brochures can be tailored to meet specific housing information needs of those persons who are members of groups identified as least likely to apply for the housing. The brochure can also contain a greater quantity of information about the project or subdivision than that contained in mass media advertising.

1. A brochure may include a range of information which influences decisions regarding housing choice, for example, price/rent; proximity to schools; transportation; shopping, and employment centers; the availability of medical facilities for disabled persons.

2. The brochure should communicate the applicant's equal housing opportunity policy.

(h) Signs are another means of advertising. The applicant must indicate the size of any existing or proposed permanent project site sign. This sign must include the equal opportunity housing logo. The applicant must indicate the size of the logo. A photograph of the project sign must be submitted with the Plan or be submitted as soon as possible after erection of the sign.

5:80-22.8 Community contact

(a) Community contacts can supplement formal communications media for the purpose of soliciting tenants/buyers. The applicant shall include only those individuals or organizations that have direct and frequent contact with those groups identified earlier in the Plan as least likely to apply. The applicant shall choose community contacts on the basis of their position of influence within the general community and the particular target groups.

(b) Examples of suitable community contacts include:

1. Fair housing organizations and local non-profit housing associations, housing counseling agencies, regional tenant referral services;
2. Minority organizations (NAACP, Urban League), women's organizations, religious institutions, civil rights groups, editors of majority-owned and minority-owned newspapers;
3. Local government agencies which are in a position to make referrals of potential homeseekers and/or renters to the project or subdivision;
4. Real estate industry related groups such as local real estate boards, Community Housing Resource Boards, organized pursuant to HUD voluntary agreements with the National Association of Realtors and the National Association of Real Estate Brokers; and
5. Local employment centers, including large industrial and commercial employers, labor unions, hospitals, and educational institutions.

(c) The applicant shall give the following information regarding the community contacts:

1. Name of the organization or individual;
2. The racial/ethnic identification of the group or individual;
3. The approximate date the group or individual is to be contacted. This date should be consistent with the requirements for advance marketing to those persons least likely to apply where applicable;
4. The address and telephone number of the person to be contacted; and
5. The methods of contact, for example, community meetings, briefing sessions by the applicant and community organizations brochures, walking of bus tours of the proposed housing, radio talk shows.
6. The specific functions the group will perform.

5:80-22.9 Future marketing activities for rental units only

(a) The applicant shall describe the types of activities to be undertaken after the completion of initial occupancy of rental units in order to fill vacancies resulting from normal turnover.

(b) The applicant may undertake the same marketing activities which were performed during the initial occupancy. A modified Plan may reflect a reduced level of marketing activity as units are available only through turnover and may reflect changes in the media, community contacts or procedures in order to continue a marketing approach that is consistent with the Affirmative Fair Housing Marketing objectives.

(c) Examples of such marketing activities which may be performed following the initial rent-up can include the use of advertising media which may be targeted to the same groups previously identified as least likely to apply for the housing without special outreach, or to different groups chosen on the basis of need to encourage their greater representation in the applicant pool. The media advertising can be similar in content and format to that used during the initial rent-up or can be changed by adjusting the scale of the advertising program.

(d) The applicant may use brochures and/or site signs to publicize the project after initial rent-up has been completed. The applicant may elect to eliminate community contacts altogether or may use contacts such as churches, local businesses, civic groups, the local government or individual community leaders as distributors of brochures or as information sources about the project. Participation in the regional tenant referral clearing house operated by local real estate industry, Public Housing Authorities (PHA's), fair housing groups or public agencies is also encouraged. Such services match prospective homeseekers and/or renters with vacant units of suitable size or price.

5:80-22.10 Assessment of marketing efforts

(a) The applicant shall describe the indicators to be used in measuring the effectiveness of the marketing efforts. Measuring effectiveness is an integral part of the applicant's Affirmative Fair Housing Marketing strategy, and the indicators selected should be consistent with other actions the applicant plans to undertake.

(b) The applicant may estimate the possible racial/ethnic composition of the applicant pool which may be anticipated as a result of the marketing efforts including special outreach activities undertaken in accordance with the Plan. The applicant pool should reflect the racial/ethnic composition of the housing market area.

(c) The applicant may estimate the distribution by race/ethnicity of the projected tenant population or owner population resulting from both the implementation of marketing activities and the tenant or homeowner selection process. Under no circumstances is this statement of anticipated occupancy results to be used as a quota in the tenant/owner selection process.

5:80-22.11 Composition of applicant pool.

(a) In determining the anticipated racial/ethnic composition of the applicant pool or tenant/homeowner population the applicant must consider any of the following factors as appropriate:

1. Physical characteristics of the proposed project or subdivision including:
 - i. Project size, that is, number of units;
 - ii. Distribution of units by bedroom size;
 - iii. Household type to be served by the housing, that is, non-elderly families or elderly persons;
 - iv. Income eligibility requirements;
 - v. The demographic characteristics of the housing market area in which the project or subdivision is to be located including the racial/ethnic composition.

2. Demographic changes (social and economic) in the housing market area in which the project is to be located may result from publicly or privately financed revitalization activities which may displace lower income persons and encourage the immigration of higher income persons. Demographic changes may also result from housing practices which are illegal such as racial "redlining" by financial institutions, residential appraisals based on the racial composition of the neighborhood or the offering of financial incentives to sell homes because of racial or ethnic groups moving into the neighborhood (blockbusting).

5:80-22.12 Demographic characteristics of income eligible population in need

Applicants shall include data on any newly assisted project that may also be available at the time of occupancy of the proposed project. Such data should include project size and location, stage of construction, and anticipated dates of initial marketing activity and initial occupancy.

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:80-22.13 Residency preferences

(a) Residency preferences are generally prohibited in housing financially assisted by the Agency. The use of residency preferences as part of a project tenant selection and assignment procedure may be permitted under certain circumstances such as a court ordered settlement and/or consent order with prior approval of the Agency. In these instances, prior approval of the Agency is required, and the residency preferences may be used in such a manner that housing opportunity will not be denied to any particular group.

(b) In connection with housing assisted under the Fair Housing Act, residency preferences shall be limited to the indigenous need portion of the community's housing obligation. In connection with housing assisted under the Fair Housing Act, residency preferences shall be limited to the indigenous need portion of the community's housing obligation, but not more than 50 percent in any one project.

(c) In formulating the request for a residency preference, the applicant should calculate the size of the potential population of households eligible for the proposed housing and should also indicate the potential population of eligible households or families identified as expected to reside in the housing area because of present or planned employment. Using the results of this calculation, the applicant should then determine whether an eligible population of residents exist which contain sufficient numbers of households from both majority and minority groups to yield an applicant or tenant/homeowner pool. If such a population does exist, the owner may confine the marketing to that jurisdiction and all the units in the project can be subject to the preference. If, however, an insufficient number of one or more categories of eligible households exist within the jurisdiction the applicant should open marketing to the entire market area.

(d) In formulating the request for residency preference the applicant may use data on the housing assistance needs of particular segments of the eligible population contained in the local Housing Assistance Plan, the Census Bureau's census of population and housing reports which gives statistics on income for each SMSA by race, and other locally compiled data sources such as regional planning agency reports and locally performed census counts.

:80-22.14 Staff experience and instructions for fair housing training

(a) The applicant shall indicate whether it has had any experience in marketing housing to the group(s) identified as least likely to apply.

(b) The applicant is responsible for instructing all employees and agents in writing and verbally concerning non-discrimination in housing. Instructions regarding fair housing requirements and objectives should also be a continuing part of the agenda of staff meetings or other regular orientation activities carried on for sales and rental staff.

(c) The applicant shall submit a copy of the instructions given to sub-management staff on fair housing concerns such as Federal, State, or local housing laws, and the applicant's Affirmative Fair Housing Marketing Plan. These materials should indicate the date established for conducting such training and the name and title of the person responsible for developing the fair housing training program.

:80-22.15 Other indicators of successful implementation

The applicant may describe indicators other than the projected racial/ethnic composition of the applicant pool or the tenant population. These indicators can measure the effectiveness of various components of the Plan such as the advertising methods, the outreach activities targeted toward the group identified as least likely to apply or the use of community contacts.

:80-22.16 Approval of the Affirmative Fair Housing Marketing Plan

(a) In the event that the Plan is deficient, the Agency will notify the applicant of the nature of the deficiencies and request any additional information. Copies of approved plans will be distributed as follows:

1. Original to the applicant;
2. A copy to be maintained by the Agency's Minority Affairs Coordinator;
3. A copy to be maintained in the Management Division; and
4. For projects financed under the Affordable Housing Program, a copy to the respective community and the designated developer.

(b) The letter of approval to the applicant will include the following information:

1. The procedure to follow in notifying the Agency of intent to market;
2. Submission to the Agency of copies of the advertisements, project signs, brochures and letters used during the marketing period and developed as part of the marketing program; and
3. Submission of required occupancy reports, monthly sales reports, monthly rental reports.

5:80-22.17 The Management Plan

(a) The applicant shall submit a Management Plan setting forth roles, responsibilities, policies and procedures regarding all aspects of Management, including but not limited to parking and tenant selection. The Plan shall contain the applicant's plan for implementing the Affirmative Fair Housing Marketing Plan and for equal employment opportunities. The agency will review the Management Plan to determine consistency with the approved Affirmative Fair Housing Marketing Plan. Particular attention will be paid to the following in determining consistency with the Plan:

1. Advertising of units.

2. Tenant selection and assignment methods. Although the Affirmative Fair Housing Marketing requirements apply to advertising the availability of the housing, the selection procedures adapted by the managing agent affect the opportunity of eligible persons to exercise their housing choice. These selection procedures and methods of administration should not directly or indirectly discriminate against any person on the basis of race, color, religion, creed, sex, or national origin or the effect of hindering the achievements of the purposes of the plan objectives. Applicants are encouraged to adopt the Agency's Tenant/Owner Selection Guidelines as their own.

5:80-22.18 Notification of intent to begin marketing

The applicant shall notify the agency no later than 90 days prior to the commencement of any sales or rental marketing activities of his intent to begin sales or rental activities.

5:80-22.19 Preoccupancy conference

Upon receipt of the Notification of Intent to begin marketing, the Agency may schedule a pre-occupancy conference with the applicant's advertising firm, rental and/or sales agent.

5:80-22.20 Marketing for initial sales or rent-up

(a) In carrying out the provisions of the approved Affirmative Fair Housing Marketing Plan, the owner shall implement the following procedures which apply to advance marketing activities as well as marketing activities targeted to the general eligible population:

1. Prior to initiating general marketing, contact and commercial media, fair housing groups, employment centers and civil rights organizations which have been identified as resources for attracting persons who are "least likely to apply" for the housing.

2. Establish a system for documenting outreach activities and for maintaining records of applicants and approved eligible families which provide racial, ethnic and gender data.

3. Prior to the commencement of application taking or sales, provide training to all management or sales staff in Federal, State and local fair housing laws and with respect to the plan objectives.

4. Submit materials to the agency which document activities taken to implement the approved Plan; that is, copies of advertisements, brochures, leaflets, and letters to community organizations, fair housing groups, major employment centers, referral services, and other contacts utilized as part of the marketing program; photographs of project signs; a copy of the instructions used to train sales/rental staff in fair housing laws; anticipated dates of advertising and occupancy.

5. Prior to initiation of marketing, the applicant may compile a list of those persons who indicated an interest in applying for the housing. Such persons shall not be considered applicants and placed in the applicant pool until they have filed a formal application during the regular, publicized application-taking period. Application forms should not be provided to such persons in advance of other persons to whom the marketing program is directed.

5:80-22.21 Assessment of the Plan's implementation

(a) The applicant shall monitor and carefully evaluate the results of the special outreach and general marketing activities undertaken during the initial sales or rent-up period. Through such evaluation, the applicant can determine for himself whether the provisions of the Plan have been successfully implemented and how effectively the Affirmative Marketing Program has helped attract buyers or tenants of majority and minority groups. Examples of factors to be examined in the population of the relevant housing market area include:

1. The actual racial/ethnic composition of either the tenant/owner population or the applicant pool. The applicant should compare this data with the anticipated composition of applicants or tenants/owners the applicant has projected in the Plan. If the anticipated and actual compositions are similar, then the advertising program can be considered successful. If the actual occupant or applicant pool composition does not reflect the projected pattern, the marketing program should be carefully reviewed to determine, for example:

- i. Whether outreach efforts are yielding fewer or more applicants from the target groups;
- ii. Whether the projected occupant/applicant pool composition itself appears to be realistic in light of marketing experience related to the project in question;
- iii. Whether adjustments in the advertising strategy or other outreach efforts are warranted;
- iv. Whether tenant/owners selection criteria appear to be a factor in producing a racial/ethnic composition of occupants which is different from that of the applicant pool.

2. Measures relating directly to special outreach and other advertising techniques used in the marketing program. For example, the applicant may keep a running tabulation of responses to questions relating to the manner in which the prospective buyer or renter had heard about housing. Through such techniques, the applicant can determine whether, for example, foreign language or minority media are effective marketing mechanisms; whether the equal housing opportunity logo effectively conveys to such buyers or renters the message that they are welcome to apply and will not encounter discrimination; whether community contacts used by the applicant are advertising the housing effectively; whether members of groups targeted for special outreach activities are learning about the housing through informal means rather than commercial media.

5:80-22.22 Modification of the approved Affirmative Fair Housing Marketing Plan

(a) Modification to the approved Plan may be appropriate under certain circumstances prior to initial marketing, after commencement of initial marketing, or after rent-up is completed. Circumstances which may generate modifications in the Plan include:

1. Significant changes in the parties implementing the Plan, for example, sales company, management company or owner. If such changes occur, the owner should identify the new parties and inform the Agency of such changes.

2. Significant changes in the demographic or economic characteristic of the housing marketing area in which the project is located, for example, racial/ethnic composition. Such changes can affect the direction of the outreach activities, that is, the group or groups within the eligible population which have been identified as least likely to apply. If the demographic or economic characteristics of the area in which the proposed housing is to be located have changed very significantly, the owner should consider changing the group(s) to be targeted for special outreach activities as well as the specific aspects of the advertising program, for example, commercial media, brochures and signs, which relate to the choice of target groups. Similarly if new information with respect to community contacts which may be helpful in reaching the target groups, for example, establishment of a Community Resources Housing Board or the dissolution of a housing referral service previously listed in the approved plan comes to light then changes might be warranted.

(b) If the applicant concludes that changes would be appropriate, he or she should, as early in the marketing process as possible, discuss possible changes with the Agency and submit any proposed changes for Agency review and approval.

5:80-22.23 Recordkeeping and recording requirements

(a) The applicant shall collect and maintain information relating to sales and rental activities, including documentation connected with the outreach program, race and gender for both occupants and applicants. The applicant shall maintain this data for the most recent three year period of operation or portion thereof, if the project has not been in operation for more than three years. The applicant shall submit monthly reports on occupancy to the Agency, as follows:

1. The monthly sales report is to be submitted by all developers of single-family subdivisions and multifamily cooperative projects on or before the fifth day of the month following initial sales of any housing units and monthly thereafter until 95 percent of the units are sold. For housing units built in scattered sites, separate sales reports must be submitted for each type of area in which the units are built, that is, minority area, racially-mixed area, or non-minority area.

2. The applicant must submit monthly rental reports for rental housing programs on or before the fifth day of the month following the rental of the first unit. This report is submitted monthly until 95 percent of the units are occupied.

5:80-22.24 Future marketing activities for rental projects

(a) Upon completion of the initial rent-up, the applicant initiates appropriate marketing activities for filling vacancies resulting from normal turnover. The applicant may utilize the list of remaining applicants as the waiting list for the project. The applicant is encouraged to contact

the Agency for assistance in adapting the Plan to the post-initial occupancy period. The nature of this adaptation would normally depend on such factors as:

1. The size and racial/ethnic composition of the waiting list, if one is maintained;
2. The assessment by the Agency and the applicant of the effectiveness of the initial marketing Plan, especially with respect to participation by members of those groups identified as least likely to apply;
3. Any changes in the demographic and socio-economic composition of the housing market area.

5:80-22.25 Monitoring

(a) Monitoring will be conducted to assess the degree to which the activities undertaken pursuant to an approved Affirmative Fair Housing Marketing Plan conform with the applicable Fair Housing Laws and Regulations. In conducting monitoring, the agency will determine:

1. Whether the applicant has made a good-faith effort to carry out the provision of the approved Plan and related Affirmative Fair Housing Marketing requirements; and

2. Whether progress has been made toward the achievement of the objectives of the Plan.

(b) Agency staff will conduct on-site monitoring which will entail an examination of records, visual inspection of the project and interviews with applicants, rental/sales agent and staff, occupants and community organizations identified in the Plan. Records which may be examined include applications (for both accepted and rejected applicants), and documentation relating to advertising.

(c) Failure to make a "good faith effort" to comply with the Plan could result in the loss of Agency financial assistance. All complaints regarding discrimination will be forwarded to the New Jersey Division on Civil Rights for formal criminal investigation.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Resale and Rental Affordability Control Proposed New Rules: N.J.A.C. 5:80-26

Authorized By: The New Jersey Housing and Mortgage Finance Agency, James L. Logue, Executive Director/Secretary.

Authority: N.J.S.A. 52:27D-321 and 324.

Proposal Number: PRN 1987-183.

Submit comments by June 17, 1987 to:

Susan N. Ferschmann

Director of Policy Development

3625 Quakerbridge Road

CN 18550

Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

Under the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), the New Jersey Housing and Mortgage Finance Agency (the Agency) is responsible for assisting communities in meeting their obligation to provide low and moderate income housing. The general types of assistance the Agency will provide include the making of grants or loans for the purchase of owner-occupied housing and for the construction of multi-family rental housing. The Fair Housing Act authorizes the Agency to establish controls to ensure that such housing remains affordable as low and moderate income housing. The Act also authorizes the Agency to administer affordability controls for municipalities developing such housing without financial assistance from the Agency. The proposed new rules are designated to ensure that housing assisted by the Agency remains affordable as low and moderate income housing and to establish procedures for the Agency to administer affordability controls for municipalities developing housing without the financial assistance of the Agency.

Social Impact

The proposed new rules will impact on low and moderate income households in New Jersey by providing them with opportunities to obtain affordable housing that will be constructed under the Fair Housing Act. The rules will continue to impact on such households by ensuring that the housing remains affordable to subsequent owners or renters of the housing.

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Economic Impact

The affordability controls established by the proposed rules will result in the sale or rental of housing at rates which are affordable to low and moderate income households. This provides an economic benefit to initial occupants of such housing, but also to subsequent owners and renters who will occupy the housing during affordability control periods. Owners of rental property for low and moderate income households are constrained in the amounts of rent and increases they may charge, as such must be approved by the Agency or an appropriate municipal entity. Additionally, the financing of such housing by the Agency will stimulate the housing construction industry throughout the State.

Regulatory Flexibility Statement

As these proposed new rules govern the provision by the Agency of grants and loans to municipalities, rather than to small businesses, the Regulatory Flexibility Act, P.L. 1986 c.169, does not apply.

Full text of the proposed new rules follows.

UBCHAPTER 26. RESALE AND RENTAL AFFORDABILITY CONTROL**5:80-26.1 Purpose**

The rules within this subchapter are promulgated to establish requirements and controls to ensure that housing assisted under the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) remains affordable to low and moderate income households for time periods established herein by the Agency, in consultation with the Council on Affordable Housing. The rules also establish procedures for the administration of affordability controls by the Agency for housing which has not been assisted under the Act.

5:80-26.2 Definitions

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

"Act" shall mean the Fair Housing Act, P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq.).

"Adjusted rent" shall mean the base rent for a rental unit adjusted by the index.

"Agency" shall mean the New Jersey Housing and Mortgage Finance Agency (NJHMFA) or its designee.

"Applicant household" shall mean a household whose preliminary application has been reviewed, whose unverified estimated total gross annual income is judged to be low or moderate pursuant to applicable guidelines and whose name has been placed on a waiting list for affordable housing.

"Base price" shall mean the initial sales price of a unit designated as owner-occupied affordable housing and restricted by affordability controls.

"Base rent" shall mean the charge for a rental unit at the time the unit is first restricted by affordability controls.

"Eligible household" shall mean any household that has submitted a preliminary application for an affordable housing unit, whose total gross annual income has been verified, whose financial references have been approved and which has received a determination by the Agency as a low or moderate income eligible household.

"Department" shall mean the Department of Community Affairs.

"First purchase money mortgagee" shall mean the holder and/or assigns of the first purchase money mortgage, which holder must be an institutional lender or investor, licensed or regulated by the State or the Federal government or an agency of the State or Federal government.

"Foreclosure" shall mean the termination through legal process of all rights of the mortgagor or the mortgagor's heirs, successors, assigns or grantees in a unit covered by a recorded mortgage.

"Gross annual income" shall mean the total amount of all sources of a household's income including but not limited to salary, wages, interest, dividends, alimony, pensions, social security, business and capital gains, tips and welfare benefits. Generally, gross annual income will be based on income reported to the Internal Revenue Service (IRS).

"Household" shall mean the person or persons occupying a housing unit.

"Low income housing" shall mean housing which is affordable to, according to U.S. Department of Housing and Urban Development or other standards recognized by the Agency for home ownership and rental costs, and occupied or reserved for occupancy by, households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Median income index" or "index" shall mean the percentage by which the median income figures, established by the U.S. Department of Housing and Urban Development, changes each year for every area in the State.

"Moderate income housing" shall mean housing which is affordable to, according to U.S. Department of Housing and Urban Development or other standards recognized by the Agency for home ownership and rental costs, and occupied or reserved for occupancy by, households with a gross household income equal to more than 50 percent, but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

"Owner" shall mean the title holder of record as same is reflected in the most recently dated and recorded deed for the particular affordable housing unit.

"Program" shall mean any of the Affordable Housing Programs as permitted under the Act which may include but not be limited to programs which receive assistance as a result of an Agency sale of bonds ("bond financed rental housing").

"Resale price" shall mean the base price of a unit designated as owner-occupied affordable housing as adjusted by the median income index. The resale price may also be adjusted to accommodate an approved home improvement.

"State" shall mean the State of New Jersey.

5:80-26.3 Length of controls on affordability

(a) All housing to be assisted financially, administratively or otherwise, under the Act by the Agency will be required to remain affordable to, and occupied by, low and moderate income households for the following minimum periods:

1. Rehabilitated owner-occupied single family housing units that are improved to code standard shall be subject to affordability controls for six years.

2. Rehabilitated renter occupied housing units that are improved to code standard shall be subject to affordability controls for 10 years.

3. Housing units created through conversion of a non-residential structure, or through new construction in municipalities receiving State aid pursuant to N.J.S.A. 52:27-178 et seq. which exhibit one of the characteristics delineated in N.J.A.C. 5:92-5.3(b) at the time of substantive certification, shall be subject to affordability controls for 10 years.

4. All other housing units shall be subject to affordability controls for 20 years.

(b) The Agency may adjust the affordability control periods established in (a) above in particular instances, upon a determination that the economic feasibility of the Program, is jeopardized by the requirement and the public purpose served by the Program outweighs the shorter period.

(c) All resale and rent restrictions shall expire at the end of the sixth, tenth, or 20th year from the date the initial restrictions encumbered the unit, as set forth in (a) 1, 2, 3 and 4 above, unless a lesser or greater period of time has been approved by the Agency as set forth herein.

(d) Whenever the Agency find through administrative determination that the rent increases permitted under N.J.A.C. 5:80-26.16 are insufficient to maintain the financial needs of housing financed under the Agency's bond financed rental housing program and such insufficiency would jeopardize the economic feasibility of the Program, the Agency may terminate the control periods established in (a) above until such financial jeopardy is resolved.

(e) Whenever the Agency is not providing financial assistance, it may administer affordability controls other than those provided in these rules, provided the controls are adopted pursuant to court order or approved settlement or consistent with the rules of the Council on Affordable Housing, N.J.A.C. 5:92.

5:80-26.4 Agreements regarding resale and rental controls

All owners of affordable housing units shall enter into agreements with the Agency which subject the owner to the resale and rental controls required by these rules in order to ensure that housing units remain affordable to households of low and moderate income. The agreement shall take the form of a deed restriction or other contractual agreement established by the Agency. Whenever the agreement is not in the form of a deed restriction, the agreement shall be recorded along with the deed.

5:80-26.5 Calculation of initial/purchase price: owner-occupied units

At initial sale, base prices for owner-occupied units shall be determined in accordance with contractual agreements approved by the Agency at levels that indicate affordability to households who qualify for low and moderate income housing. At initial sale, resale and rental controls shall

be incorporated into the deed or a separate agreement established by the Agency. The purchaser shall forward a copy of the recorded deed or, when applicable, the recorded agreement to the Agency.

5:80-26.6 Calculation of resale price: owner-occupied units

(a) When an owner wishes to sell an affordable housing unit, he or she shall forward written notice to the Agency. The Agency will calculate the resale price using the Index and will determine an estimated monthly mortgage payment. The approved resale price shall not be established at a level lower than the last recorded purchase price.

(b) A home improvement that renders the unit suitable for a larger household may be approved by the Agency for a resale price adjustment. In no case, however, shall the adjusted resale price exceed the limits of affordability for the larger household as determined pursuant to N.J.A.C. 5:92-12.

5:80-26.7 Referral of household to units: owner-occupied units

Generally, a household's monthly mortgage payment, including principal, interest, taxes, insurance, and condominium or association fees, where applicable, will not be expected to exceed 28 percent of gross monthly income. A minimum downpayment of at least five percent of the selling price will be required. Mortgage application is the responsibility of the household. Eligible households whose gross annual income is compatible with the estimated monthly mortgage payment and whose family size meets occupancy criteria will be referred to the owner for contract negotiations within 60 days of receipt of the initial notice.

5:80-26.8 Hardship waiver: owner-occupied units

(a) If no eligible household has executed a contract to purchase within 90 days of the Agency's notification to the owner of an approved resale price and referral of potential purchasers, the owner may request that the unit be sold to a household that exceeds the income eligibility criteria established for that unit by submitting a written request for a hardship waiver to the Agency, and a copy to the municipal entity.

(b) The owner must demonstrate that his request is consistent with one or more of the following reasons for a hardship waiver.

1. The cost of economic factors not related to household income, including but not limited to interest rates, taxes, or insurance, inhibits the ability of an income-eligible household to obtain a mortgage commitment for the unit.

2. The owner has made a good faith effort to sell the unit to a eligible household for 90 days and no eligible household has signed a contract to purchase the unit.

3. The Agency has not referred an eligible household who qualifies for a mortgage commitment as required by the unit.

(c) Upon receipt of a request for a hardship waiver, the municipal entity shall have the first option to purchase the unit at the approved resale price and to hold, rent or convey it to an eligible household. The municipal entity shall have 30 days in which to exercise this option.

(d) The Agency shall approve or deny a hardship waiver in writing within 30 days of receipt of the request. A copy of the waiver shall be provided to the purchaser at the time of closing and filed with the deed. The waiver of income eligibility requirements is only valid for the designated resale transaction. Even if such a waiver is granted, the sale shall be in accordance with the approved index resale price and all future resales will be in accordance with the deed restrictions and sold to income-eligible households at the indexed resale price.

(e) If the Agency denies a hardship waiver, an owner may submit a written request to appeal, within 15 days of receipt of the denial, to the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. If a written request for an appeal has not been received within 15 days after the owner's receipt of the denial, the order of denial shall be final.

5:80-26.9 Exempt transactions: owner-occupied units

(a) The following title transactions shall be deemed "non-sales" and the Agency shall provide the owner receiving title with written confirmation of the exemption to those restrictions that determine occupancy of the unit.

1. Transfer of ownership between husband and wife;

2. Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial decree of separation (but not including sales to third parties);

3. Transfer of ownership between family members as a result of inheritance;

4. Transfer of ownership through an executor's deed to any person.

(b) An exempt transfer of ownership does not terminate the resale restrictions or existing liens on the property. All liens must be satisfied in full prior to subsequent resale and all subsequent resale prices must be calculated using the resale price index in compliance with the terms of the deed restriction or other agreement with the Agency. The exempt transaction shall not be considered as a recorded transaction in calculating subsequent resale prices.

(c) The owner shall notify the Agency in writing of any proposed transaction that he or she wishes to qualify as an exempt transaction. The owner shall supply the Agency with all necessary documentation to demonstrate that the transaction qualifies as an exemption as delineated. The Agency may request additional documentation as it deems necessary. The Agency shall approve or deny in writing a request for a certificate of exemption within 15 days of the receipt of the request.

(d) If the Agency denies the exemption, the owner may submit a written request to appeal, within 15 days of receipt of the denial, to the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. If a written request for an appeal has not been received within 15 days after the owner's receipt of the denial, the denial of the certificate of exemption shall be final.

(e) A copy of the certificate of exemption shall be filed with the deed at the time of closing.

5:80-26.10 Owner-occupied rehabilitated units

(a) Income-eligible owner-occupants who are the beneficiaries of a grant or loan agreement for rehabilitation of a substandard unit shall have the following options at resale.

1. The unit can be sold to an eligible household at an affordable price and in standard condition, in which case, the deed restriction or applicable agreement shall be assumed by the purchaser as a condition of sale.

(b) Owners or subsequent owners who personally continue to occupy their rehabilitated units for a total period of six years will no longer be subject to resale restrictions or required to repay the loan.

5:80-26.11 Lease or rental of owner-occupied units

Unless otherwise prohibited by the terms of contractual documents entered into by the owner or other applicable controls, the owner may lease or rent the unit provided that the unit remains affordable. The owner shall submit a written request to the Agency or municipality administering affordability controls for approval of the rent amount. The Agency or municipality may limit the amount of rent to be charged for the unit. Once the rent amount is approved, any increases in the rent must be approved by the Agency or municipality.

5:80-26.12 Initial rents: rental units

(a) Initial rents shall be determined in accordance with contractual agreements approved by the Agency at levels that indicate affordability to households who qualify for low and moderate income housing. Generally, a household's monthly rental charge including utilities will not be expected to exceed 30 percent of their gross monthly income.

(b) Notwithstanding (a) above, whenever the Agency is not providing financial assistance, the Agency will administer controls for projects or programs when requested, which contain initial rents determined in a manner different from that outlined in (a) above, provided such determination is pursuant to a court order or approved settlement or is consistent with the rules of the Council on Affordable Housing, N.J.A.C. 5:92.

(c) At the time restrictions are initially placed on a rental unit, the resale and rental controls shall be incorporated into a deed restriction or other agreement established by the Agency. The owner shall record the deed or, if applicable, the agreement and forward a copy of the recorded deed or the agreement to the Agency for its files.

5:80-26.13 Vacancies: rental units

The landlord shall notify the Agency of any impending vacancy in any restricted rental unit not more than 60 days or less than 30 days in advance of the unit's availability.

5:80-26.14 Tenant selection: rental units

The Agency will refer a list of eligible households to the landlord for final selection within 30 days of receipt of this notification. The Agency will refer eligible households who meet income criteria for a vacant unit to landlords for lease negotiations. Landlords must select an eligible household for occupancy of an affordable rental unit. Final tenant selec-

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tion shall be the responsibility of the landlord. However, no referred household will be denied a lease for any reason that violates any applicable law or any provision thereof.

5:80-26.15 Leases: rental units

A written lease shall be required in all restricted rental units. Final lease agreements will be the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated on the lease. All lease provisions must comply with New Jersey Truth in Renting Act, N.J.S.A. 46:8-43 et seq., provisions.

5:80-26.16 Rent adjustments

(a) Rental charges may be adjusted at the annual anniversary date of the lease. Rent adjustments shall be determined by adjusting the base rent by the applicable index. The landlord will submit a written request for rent adjustment approval to the Agency or municipal entity administering the controls prior to any rent adjustment being made. The Agency or municipal entity shall approve all proposed rent adjustments provided they do not exceed the amount permitted when adjusting the base rent by the applicable index.

(b) Upon a demonstration of financial need, the landlord may apply for a rent increase in excess of the amount permitted in (a) above, provided that in no event may the increase exceed an amount by which the unit would no longer qualify as low or moderate income housing, whichever is applicable. All such increases are subject to the review and approval of the Agency in a manner consistent with the rent increase rules of N.J.A.C. 5:80-9 for market rate projects, after consultation with the Council on Affordable Housing.

5:80-26.17 Transfer of ownership: rental units

An owner of a restricted rental unit shall notify the Agency in writing of an intent to transfer ownership of the property. A copy of the recorded deed shall be forwarded to the Agency. The property shall be retained as affordable housing at resale subject to the terms of the deed restriction or other agreement with the Agency.

5:80-26.18 Determination of applicant households

(a) In order to be considered for an affordable housing unit, households must submit a preliminary application to the Agency. As a completed preliminary application is received, the Agency will review it to determine, without verification, if the declared household income is low or moderate within this subchapter. All applications for affordable housing will be accepted in accordance with any applicable law or any provision thereof.

(b) When the review of the preliminary application indicates that a household may be eligible, the household will be deemed an applicant household and the name of the head of the household shall be placed on a waiting list. The Agency will send a confirmation letter to the applicant household.

(c) When the review of the preliminary application indicates that a household's income is not low or moderate, the household will be so advised in writing and the preliminary application will be denied. If a household receives such a determination, the household may submit a written request for a redetermination to the Agency within 15 days of receipt of the denial. The request must set forth the basis for the claim of eligibility. The household will be required to produce documentation to support the claim at the time of redetermination. If the household's application is again denied, in writing, a written request to appeal may be filed with the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. If a written request for an appeal has not been received within 15 days after the household's receipt of this notice, the determination will be final and the application considered denied.

(d) Applicant households must still be determined to be eligible in accordance with N.J.A.C. 5:80-26.19.

5:80-26.19 Determination and referral of eligible households

(a) As units become available, the Agency will notify applicant households who satisfy the income criteria for an available unit who will then be scheduled for an interview to determine if they qualify as an eligible household. At the interview, the household will be requested to document all income. This determination process shall also include a credit background report. Every household member 18 years of age or older who will live in the affordable unit and who receives income shall be required to provide the required information, where applicable, identified at 1 below. All applicant households meeting the criteria shall be deemed an eligible household.

1. Each applicant household member as set forth in (a) above shall provide the following required information:

i. A copy of IRS Form 1040 (Tax Computation form) for each of the three years prior to the date of the interview;

ii. A letter from their employer(s) stating present annual income figure or four consecutive paystubs dated within 120 days of interview date;

iii. A letter or appropriate reporting form verifying benefits, including but not limited to, social security or pension;

iv. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant household;

v. Reports that verify income from assets to be submitted by banks or other financial institutions managing trust funds, money market accounts, stocks or bonds; and

vi. Reports that verify assets that do not earn regular income such as real estate and savings with delayed earnings provisions.

(b) Applicant households who are not determined to be eligible households shall be so notified in writing of the denial. This notice shall state the specific reason for the denial. If the applicant household disagrees with this finding, a written request for redetermination may be submitted to the Agency within 15 days of receipt of the notice. Applicant households shall be required to produce further documentation to support their claim request for a redetermination.

(c) Applicant households who are again denied status as an eligible household may submit a written request to appeal with the Executive Director of the Agency. Upon receipt of the request to appeal, the Agency shall hold a hearing or request the Office of Administrative Law to hold a hearing on the appeal. All hearings shall be conducted according to the rules established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. If a written request for an appeal has not been received within 15 days of the applicant household's receipt of this notice, the determination will be final and the application considered denied.

(d) Only eligible households shall have an opportunity to be considered for low and moderate income housing. The Agency shall have the authority to approve all eligible households.

(e) To the greatest extent possible, eligible household shall be referred to available units using the following accepted standards for occupancy, provided that in no case shall a household be referred to a unit that provides for more than one extra bedroom per family occupancy requirement:

1. A maximum of two persons per bedroom.

2. Children of same sex in same bedroom.

3. Unrelated adults or persons of the opposite sex other than husband and wife in separate bedrooms.

4. Children not in same bedroom with parents.

5:80-26.20 Assignment or sublease of rental units

Provided that assignment or sublease is permitted under the terms of the lease or rental agreement, the tenant may assign or lease the unit, provided the assignee or sub-lessee qualifies as an eligible household. Tenants shall submit a written request to the Agency or municipality administering affordability controls for approval to assign or sublease the unit. Any units which are assigned or sublet will remain subject to rent adjustment controls of 5:80-26.16.

5:80-26.21 Foreclosure: owner-occupied and rental units

(a) A judgment of foreclosure on any restricted unit will result in a termination of resale controls, unless otherwise ordered by the court.

(b) Upon notification of impending foreclosure, the municipality, in lieu of default on resale/rent restrictions, may exercise an option to purchase the unit at an approved price and hold, rent or convey the unit to an eligible household, if such right is exercised prior to a judgment of foreclosure.

(c) In the event of a foreclosure sale by the first purchase money mortgagee, after the first purchase money mortgage, including costs of foreclosure and any second mortgages have been satisfied, any surplus funds exceeding the maximum allowable resale price as calculated by the approved index, shall be paid to the Agency. Any remaining funds in excess of outstanding grants or loans will be returned to the municipality.

5:80-26.22 Agency grants or loans

(a) In order to receive approval for a grant or loan including, but not limited to, mortgage financing or set-asides of mortgage financing from the Agency a municipality must provide a plan for assuring that the assisted housing will remain affordable to and occupied by low and moderate income households for the time periods prescribed in these rules or pursuant to court order or court approved settlement. The municipality may adopt and administer its own plan for establishing affordability controls, provided the plan is approved by the Agency, or may request

that the Agency administer affordability controls on behalf of the municipality as provided by N.J.A.C. 5:80-26.23. The rules in this subchapter will be used as a standard for the review and approval of any affordability control plan adopted and to be administered by a municipality.

(b) Loans or grants made by the Agency may be subject to recapture if any unit(s) financed by such grant or loan is lost to the low or moderate income housing stock during the affordability control period established in N.J.A.C. 5:80-26.23.

5:80-26.23 Contractual agreements with municipalities or developers

(a) The Agency shall enter into contracts for the administration of resale and rent controls upon request by a municipality provided that the municipality has no appropriate administrative agency to administer the controls for a given project. The municipality shall adopt a resolution containing the following provisions:

1. A statement declaring that no appropriate administrative agency exists for a given project within the municipality to administer resale and rent controls;

2. A statement authorizing the municipality to enter into contractual agreements with the Agency whereby the Agency will administer resale and rent controls for the municipality;

3. A statement which identifies the municipal officer(s) who have authority to enter into contractual agreements on behalf of the municipality; and

4. A current inventory of the units to be subject to resale and rent controls.

(b) The Agency shall enter into contracts for the administration of resale and rent controls upon request by a developer of an inclusionary development in municipalities where no appropriate administrative agency exists to administer such controls. The developer shall submit a declaration of intent from the appropriate person or body (for example, corporate resolution, letter from its president) indicating its willingness to enter into contractual agreements with the Agency whereby the Agency will administer resale and rent controls on behalf of the developer.

(c) Whenever the Agency administers resale and rent controls on behalf of a municipality or developer of an inclusionary development, it will do so in accordance with the rules in this subchapter. In the event that a municipality is not receiving a grant or loan from the Agency and has an affordability control plan approved by the Agency under subchapter 12 of the rules of the Council on Affordable Housing (N.J.A.C. 5:92-12), the Agency may administer the plan approved under subchapter 12. In the event the municipality is implementing a program pursuant to court order, or court approved settlement, the Agency may administer the affordability control plan provided under such order or settlement.

(d) Municipalities and developers of inclusionary developments who enter into contractual agreements with the Agency for the administration of resale and rent controls shall pay a servicing fee to the Agency, said fee to be established by the Agency according to methods or schedules approved by the State Treasurer.

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rule: Drastic Alteration

Proposed Amendment: N.J.A.C. 5:92-7.1

Authorized By: Arthur R. Kondrup, Chairman, Council on Affordable Housing.

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Proposal Number: PRN 1987-171.

Submit comments by June 17, 1987 to:

Douglas V. Opalski, Executive Director
New Jersey Council on Affordable Housing
707 Alexander Road
CN 813
Trenton, NJ 08625-0813

The agency proposal follows:

Summary

The Fair Housing Act requires the Council on Affordable Housing to adopt criteria and guidelines to adjust municipal present and prospective fair share when "the established pattern of development in the community would be drastically altered." Given this power, the Council had previously adopted N.J.A.C. 5:92-7.1 that allowed a municipality to adjust its fair

share to 20 percent of its estimated 1987 occupied housing stock. The Council has decided to amend this rule by capping municipal present and prospective need at 1000 units.

The typical set-aside of four market units for each low and moderate income unit has the very real potential of drastically altering the development pattern in a community and/or severely straining the fiscal resources of New Jersey municipalities. The proposed amendment is necessary due to the lack of funds available to provide alternatives to addressing the low and moderate income need through builder's set-asides.

The municipalities affected by this rule will be responsible for another low and moderate income housing obligation at the end of the substantive certification period. At that time, the Council and the municipalities will have the benefit of 1990 U.S. Census data and data generated by the State Planning Commission. The Council has determined that it is wise to limit the excessively high municipal obligations until all parties have the benefit of these data.

Social Impact

The Council is convinced that the proposed amendment will not significantly diminish the amount of housing produced during the period of substantive certification. The amendment will allow municipal officials more flexibility in developing balanced comprehensive plans for their communities. This is consistent with the legislature's finding that "the interest of all citizens, including low and moderate income families in need of affordable housing, would be best served by a comprehensive planning and implementation response to this constitutional obligation."

Economic Impact

Rather than requiring long-term controls on land pursuant to phasing, thus rendering land unusable for periods of up to 20 years, the amendment removes long-term barriers to developments which will result in additional revenues for the municipal and State tax base. These revenues may be used to accommodate all the State's needs including housing.

Regulatory Flexibility Statement

As the amendment regulates the fair share requirement of some municipalities, rather than regulating small businesses, the Regulatory Flexibility Act, P.L. 1986 c.169, does not apply.

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

5:92-7.1 Drastic alteration

(a) After receiving the crediting provided in Subchapter 6, Credits, where a municipality's present and prospective fair share exceeds 20 percent of its total occupied housing stock as estimated as of July 1, 1987, the municipality may adjust its fair share to 20 percent of its estimated 1987 occupied housing stock.

(b) After receiving the crediting provided in Subchapter 6, Credits, where a municipality's present and prospective fair share exceeds 1,000 low and moderate income housing units, the municipality may adjust its fair share to 1,000.

ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

(b)

Water Supply Bond Loan Program

Take notice that the Department of Environmental Protection is extending until June 3, 1987, the period for submission of written comments on the proposed re adoption of the Water Supply Bond Loan Program regulations (N.J.A.C. 7:1A). The original proposal was published on March 16, 1987 in the New Jersey Register at 19 N.J.R. 437(b). Please refer to it for further information.

Interested persons may submit written comments on the proposed re adoption to:

David Weinsoff
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

(a)

DIVISION OF COASTAL RESOURCES

Coastal Permit Program Rules

Proposed Amendments: N.J.A.C. 7:7-2.1 and 2.3

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9; 13:19-17.

DEP Docket Number: 014-87-04.

Proposal Number: PRN 1987-175.

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

June 15, 1987 at 2:00 P.M.
Dover Township Municipal Building
33 Washington Street
Toms River, NJ

June 16, 1987 at 10:00 A.M.
City Hall
Council Chambers, 2nd Floor
280 Grove Street
Jersey City, NJ

June 17, 1987 at 10:00 A.M.
Division of Coastal Resources
Labor and Industry Building
Room 702
Trenton, NJ

Submit comments by June 24, 1987 to:

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

The agency proposal follows:

Summary

The Division of Coastal Resources in the Department of Environmental Protection implements the State's three coastal permitting laws: the Coastal Area Facility Review Act ("CAFRA", N.J.S.A. 13:19-1 et seq.), the Waterfront Development Act (N.J.S.A. 12:5-1 et seq.) and the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.). The Coastal Permit Program Rules (N.J.A.C. 7:7) provide the procedural requirements for the Department's review of permit applications. These requirements contain specific standards including definitions of terms and areas of jurisdiction for these statutory programs.

On November 3, 1986 at 18 N.J.R. 2156(a), the Department proposed amendments to the Coastal Permit Program Rules which, except for two provisions, have been adopted (see this issue of the New Jersey Register). The two provisions which were not adopted are being repropose.

Pursuant to the terms of CAFRA (at N.J.S.A. 13:19-5), the provisions of that act shall not apply to any facility for which on-site construction, including site preparation, was in process on or prior to its effective date of September 19, 1973. The Department issued exemptions to facilities which met this definition and the rules provide, at N.J.A.C. 7:7-2.1(b)5, that the program requirements shall not apply to those facilities for which such an exemption was obtained.

It was the intent of this provision to provide adequate opportunity for the completion of projects which were underway at or prior to the enactment of CAFRA. As of this time, CAFRA has been in effect for over 13 years and any project which has not been completed during this time must be presumed to have been abandoned. Accordingly, the Department is repropose changes to N.J.A.C. 7:7-2.1(b)6 which would terminate such exemptions. The proposed language will allow for the continuation of construction of a project in certain specific cases in which an applicant can show that significant construction has occurred at the site within the 12 month period prior to the proposed effective date of termination and that the project is being developed in accordance with the plans which were submitted to the Division at the time that the exemption was obtained.

The Department is also repropose changes to N.J.A.C. 7:7-2.3(a)2. This amendment, which was also originally proposed on November 3, 1986 at 18 N.J.R. 2156(a), would expand the waterfront development jurisdiction over large contiguous waterfront properties which have been combined to create a single development. In such cases, the waterfront

jurisdiction will include the entire project site. Because this change will affect the area within which the waterfront development program will apply, it is being repropose so as to afford additional opportunity for public comment.

Social Impact

The proposed change to the CAFRA exemption provision will require exemption holders who have not completed their project within the 13 years in which CAFRA has been in effect and who intend to do so, to show some significant progress toward completion. The proposal will provide a standard by which the Department will determine when construction of a project has been abandoned and impose the burden of proof upon the exemption holder to show that construction upon the project has not been abandoned. The amended provision will better allow the Department to determine the status of CAFRA-type construction and, as a consequence, be better able to plan for future needs in these areas.

The proposed modification to the waterfront development jurisdiction will result in additional lands being subject to the waterfront development standards imposed by the Department and, consequently, additional requirements being imposed upon certain property owners and developers.

In general, the proposed amendments to the waterfront development jurisdiction are anticipated to have a beneficial social impact. Large scale development in densely populated urban waterfront areas has a significant and sometimes detrimental effect upon waterfront commerce and ecology. The Waterfront Development Law (N.J.S.A. 12:5-1 et seq.) does not define the waterfront area in geographical terms but, rather, defines it as a function of need. The statutory purpose, which is "to promote the development and revitalization as well as to safeguard the port facilities and waterfront resources for the public's overall economic advantage" can only be served by extending the waterfront development jurisdiction as proposed.

The general intention of N.J.A.C. 7:7-2.3, which was adopted in 1980, was to regulate the first land use inland from the water's edge. The rule change proposed at this time would enable the Department to more fully meet this objective.

Economic Impact

The proposed amendments to the CAFRA exemption provision will result in an economic impact upon some exemption holders. Where a developer holds an exemption and intends eventually to complete construction on the original project, it will be required to take some immediate measures and thereby incur some expense to show that the project has not been abandoned. It is anticipated, however, that there will be a general economic benefit to the area as a result of better planning in the coastal area and the development of compatible land uses.

The expansion of the waterfront jurisdiction will have an economic impact upon certain developers and landowners as a result of increased regulatory demands upon some projects. The long term effect will be to lessen the adverse effects of poorly planned development upon waterfront commerce.

The Department has interpreted the current rule to require a review of an entire waterfront project if part of it is located within 300 feet of the water. The proposed change will clarify this interpretation. The use of a property line to determine jurisdiction has proven to be confusing. It has been applicable to only a small number of projects where it has shown the potential to exclude from jurisdiction certain projects which do have a significant impact upon the waterfront.

It is estimated that neither rule change will affect a large number of landowners.

Environmental Impact

The proposed amendments are anticipated to result in a favorable environmental impact upon the waterfront and coastal zone. Construction performed in accordance with the Department's coastal and waterfront regulations (see N.J.A.C. 7:7E) will provide a greater degree of protection to ecologically sensitive coastal areas.

Regulatory Flexibility Statement

The Department has determined, pursuant to the Regulatory Flexibility Act (P.L. 1986, c.169), that the proposed amendment to the CAFRA exemption provision may impose additional reporting, recordkeeping or other requirements upon small businesses. If an exemption holder desires to continue its exemption status, it must so notify the Department and provide supporting evidence of some significant on-going construction on-site.

The expansion of the waterfront jurisdiction will result in increased compliance requirements upon certain developers because the regulatory

standards will be imposed upon the entire project if a portion of it is located within the traditional waterfront area.

The increased compliance requirements in both cases are necessary to effectuate the purpose of the regulatory program.

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

7:7-2.1 CAFRA

(a) (No change.)

(b) The Department interprets the statutory term "facility" as defined by CAFRA 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. To that end, the following terms are interpreted, for the purposes of this section, as follows.

1.-5. (No change.)

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

6. All exemptions from this subchapter, which were obtained on the basis that on-site construction had taken place on or before September 19, 1973, shall terminate on November 20, 1987. The Division may authorize an extension of the exemption for a period of time not to exceed five years. All requests for extensions of exemptions shall comply with the following requirements.

i. All requests shall be submitted, in writing, on or before November 20, 1987 to:

Chief, Bureau Coastal Enforcement & Field Services
 Division of Coastal Resources
 New Jersey Department of Environmental Protection
 CN 401
 Trenton, N.J. 08625

ii. All requests shall be submitted with information which shall be sufficient to enable the Division to make a determination that significant construction has occurred on the site during the 12 month period prior to November 20, 1987 and that the project is being constructed in accordance with plans that were submitted to the Division at the time that the exemption was granted.

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:

1. (No change.)

2. In [all other areas of the State (that is 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[, or 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] tide line, except for large contiguous waterfront properties which have been combined to create a single development. In such cases, even if the development is to be designed and built in phases, the regulated waterfront area shall include the entire contiguous development proposal.

(b)-(g) (No change.)

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council

1987-88 Game Code

Proposed Amendments: N.J.A.C. 7:25-5

Authorized By: Fish and Game Council,

Anthony E. DiGiovanni, Chairman.

Authority: N.J.S.A. 13:1B-29 et seq., specifically 13:1B-30, and 23:1-1 et seq.

DEP Docket Number: 018-87-04.

Proposal Number: PRN 1987-179.

A public hearing concerning this proposal will be held on:

June 9, 1987 at 8:00 P.M.

Mercer County Community College

West Windsor Campus

1200 Old Trenton Road

Audio Visual Building, Room 110

West Windsor, New Jersey

Submit comments by June 17, 1987 to:

Russell A. Cookingham, Director

Division of Fish, Game and Wildlife

Department of Environmental Protection

CN 400

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed 1987-88 Game Code states when, under what circumstances, in what locations, by what means, and in what amounts and numbers, game birds, game animals and furbearing animals may be pursued, taken, killed or possessed.

N.J.A.C. 7:25-5 has provided a system for the protection, propagation, increase, control, and conservation of game birds, game animals, and furbearing animals in this State and for their use and development for public recreation and food supply. They are based on scientific investigation and research. The existing rules expire July 31, 1987.

The proposed amendments include the following revisions:

1. Season dates are adjusted to correspond with the 1987-88 calendar, including date changes for regular and early small game seasons.

2. The bobwhite quail season is closed in a portion of Sussex County where wild-trapped quail have been released in an effort to establish a viable population. (N.J.A.C. 7:25-5.3)

3. Four turkey hunting areas are added with an allocation of 750 additional hunting permits. The fourth hunting period will be extended to encompass 10 weekdays and opening dates will be adjusted resulting in simultaneous seasons throughout the State. One existing turkey hunting area boundary has been modified. (N.J.A.C. 7:25-5.7)

4. Beaver and otter trap tags are required to be placed above the waterline and to be exposed to view. Permit allocations for the trapping of beaver and otter are adjusted. (N.J.A.C. 7:25-5.9, 5.10)

5. Farmers are required to report all coyotes trapped when found damaging livestock, poultry, crops or property. (N.J.A.C. 7:25-5.11, 5.21)

6. Further restrictions are provided concerning the use of body-gripping restraining snares. An increase from five and one-half to six inches has been included as the maximum jaw size of conibear or killer-type traps set for species other than beaver and otter. (N.J.A.C. 7:25-5.12)

7. Wording changes clarify the meaning of portions of the migratory game bird section. Certain deletions concerning migratory game bird seasons will update the Game Code to comply with or complement Federal regulations. Provisions have been made to allow the use of FF steel shot for waterfowl hunting. (N.J.A.C. 7:25-5.13)

8. The designated steel shot area for waterfowl hunting is expanded to include all of Atlantic, Cape May, Cumberland, Middlesex, Monmouth, Ocean and Salem Counties as well as a greater portion of Burlington County. The use of lead shot, including its use in muzzleloader shotguns, is prohibited for waterfowl hunting in the steel shot area. (N.J.A.C. 7:25-5.14)

9. Season lengths and bag limits for the either-sex shotgun permit season in certain deer management zones are adjusted. Quotas for the shotgun and muzzleloader rifle permit deer seasons are adjusted. One day is added to the muzzleloader rifle permit season and provision is made for the issuance of second either-sex deer permits when available, to any licensed hunters or qualified farmers. (N.J.A.C. 7:25-5.24 to 5.26, 5.29, 5.30)

10. Provision is made to allow the taking of passage goshawks during migration by licensed falconers. Other changes will complement pending revisions in the endangered, nongame and exotic wildlife rules at N.J.A.C. 7:25-4 and provide for the revocation of falconry permits of falconers who have lost their hunting license privileges. (N.J.A.C. 7:25-5.16)

11. Changes in permit and application fees for special wild turkey, beaver, otter and deer permits reflect recent legislative changes affecting these fees. (N.J.A.C. 7:25-5.7, 5.9, 5.28, 5.29, 5.30)

12. Deletion of the reference to the killing of certain bats will bring the Game Code into conformity with the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq.

13. Certain hunting activities will be curtailed on 26 wildlife management areas on November 6. (N.J.A.C. 7:25-5.34)

14. Changes are included for clarification and correction of typographical errors.

Social Impact

No adverse social impact is anticipated from the amendment of this subchapter. Positive social impact anticipated includes the conservation, management and the enhancement of the wildlife resource for continued recreational opportunities.

The relatively limited changes proposed for hunting and trapping seasons, hunting and trapping methods, permit quotas, bag limits, and hunting areas should have minimal adverse social impact.

Additional hunting areas and times that have been established, including four new turkey hunting areas, should increase hunting opportunity. Adjustments that have been made to deer hunting permit quotas, season lengths, and bag limits should benefit all segments of the public in providing for healthier deer populations, long-term enhanced recreational hunting opportunities, and deer population levels compatible with other land uses. Adjustments in the dates of turkey and small game seasons are minor with no social impact anticipated.

The increase in the maximum allowable size of the conibear or killer type trap will provide trappers a greater choice in manufacturer of these devices.

Other minor changes in dates, bag limits and the issuance of special permits are designed to offer sportsmen additional recreational opportunity.

Economic Impact

No adverse economic impact is anticipated from the proposed amendments. Rather, continuation of the Game Code should further the conservation and enhancement of the wildlife resource upon which a significant recreational and commercial industry is dependent.

There may be minor economic impact as a result of changes in permit quotas, permit and application fees, added special permit seasons, restrictions on the use of snare devices, expansion of the designated steel shot only areas, some limited adjustments to hunting season dates and certain other new regulations. The Fish and Game Council does not, however, foresee any specific adverse economic impact arising from the proposed amendments.

Environmental Impact

The proposed amendments to the Game Code should have a positive environmental impact in continuing conservation, management and enhancement of the State's wildlife resource.

Annual revisions to the Game Code ensure the preservation and maintenance of the State's wildlife resources as changes in their populations, distributions and habitats occur.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, P.L. 1986, c.169, the Department has determined that these amendments would not impose reporting, recordkeeping, or other compliance requirements on small businesses because small businesses are not regulated by N.J.A.C. 7:25-5.

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

SUBCHAPTER 5. [1984-85] 1987-88 GAME CODE

7:25-5.1 General provisions

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

(c) This Code, when adopted and when effective, shall supersede the provisions of [1985-86] 1986-87 Game Code.

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

7:25-5.2 Pheasant—Chinese ringneck (*Phasianus colchicus torquatus*), English or [B]blackneck (*P.c. colchicus*), Mongolian (*P.c. mongolicus*), Japanese [G]green (*phasianus versicolor*); including mutants and crosses of above

(a) The duration for the male pheasant season is November [8] 7, to December [6] 5, 1987, inclusive, and December [15] 14, 1987 through January [3, 1987] 2, 1988, excluding December 16, 17 and 18 in those deer management zones in which a [special] shotgun permit deer season is authorized and also excluding any extra [Special] [P]permit [D]deer [S]season [D]day(s) if declared open.

(b) The duration for the male pheasant season for properly licensed persons engaged in falconry is September 1, to December [6] 5, 1987, inclusive, and December [15] 14, 1987 through March 31, [1987] 1988, excluding November [7] 6 and December 16, 17 and 18, 1987 in those management zones in which a [special] shotgun deer permit season is authorized and also excluding any extra [special] [P]permit [D]deer [S]season [D]day(s) if declared open.

(c) (No change.)

(d) The duration of the season for pheasants of either sex in the area described as Warren County north of Route 80, Morris County north of Route 80, Ocean County south of Route 70 and the counties of Sussex, Passaic, Bergen, Hudson, Essex, Camden, Atlantic and Cape May is November [8] 7 to December [6] 5, 1987, inclusive, and December [15] 14, 1987 through February [7, 1987] 6, 1988, excluding December 16, 17 and 18, 1987 in those deer management zones in which a [special] shotgun permit deer season is authorized and also excluding any extra [Special] [P]permit [D]deer [S]season [D]day(s) if declared open. Except for those [W]wildlife [M]management [A]areas located within the above described area, the pheasant season on wildlife management areas shall close on January [3, 1987] 2, 1988.

(e) The hours for hunting pheasants on November [8] 7, 1987 [will be] are 8:00 [a.m.] A.M. to 1/2 hour after sunset. All other days on which the hunting for pheasants is legal, the hours [shall be] are sunrise to 1/2 hour after sunset.

(f) (No change.)

(g) The opening of the season on semi-wild preserves [shall] coincides with the listed statewide opening of November [8] 7, 1987.

(h) (No change.)

7:25-5.3 Cottontail rabbit (*Sylvilagus floridanus*), black-tailed jack rabbit (*Lepus californicus*), white-tailed jack rabbit (*Lepus townsendii*), [e]European hare (*Lepus europeua*), chukar partridge (*Alectoris graeca*), and quail (*Colinus virginianus*)

(a) The duration of the season for hunting of chukar partridge and quail [shall be] is November [8] 7 through December [6] 5, 1987, inclusive, and December [15, 1986] 14, 1987 to February [7, 1987] 6, 1988, excluding December 16, 17 and 18, [1986] 1987 in those deer management zones in which a [special] shotgun permit deer season is authorized and also excluding any extra [Special] [P]permit [D]deer [S]season [D]day(s) if declared open.

(b) The duration of the season for the hunting of cottontail rabbit, white-tailed jack rabbit, black-tailed jack rabbit and European hare [shall be] is November [8] 7 through December [6] 5, 1987, inclusive, and December [15, 1986] 14, 1987 to February [16, 1987] 15, 1988, excluding December 16, 17 and 18, [1986] 1987 in those deer management zones in which a [special] shotgun permit deer season is authorized and also excluding any extra [Special] [P]permit [D]deer [S]season [D]day(s) if declared open.

(c) The duration of the season for the hunting of the animals enumerated by this section for properly licensed persons engaged in falconry [shall be] is September 1 to December [6] 5, 1987, inclusive, and December [15, 1986] 14, 1987 through March 31, [1987] 1988, excluding November [7] 6 and December 16, 17 and 18, [1986] 1987 in those deer management zones in which a [special] shotgun permit deer season is authorized and also excluding any extra [Special] [P]permit [D]deer [S]season [D]day(s) if declared open.

(d) The bobwhite quail season as described in (a) above [shall be] is closed within the area described as that portion of Hunterdon County lying within a continuous line beginning at the intersection of Rt. 519 and Rt. 12; then east on Rt. 12 to its intersection with Rt. 579; then south along Rt. 579 to its intersection with Rt. 523; then southwest along Rt. 523 to its intersection with Rt. 604 at Sergeantsville; then west along Rt. 604 to its intersection with Rt. 519; then north along Rt. 519 to the point of beginning and that portion of Sussex County lying within a continuous line beginning at the intersection of Rt. 519 and Rt. 618; then south and east along Rt. 618 to its intersection with Rt. 206; then south along Rt. 206 to its intersection with Rt. 517 at Andover; then south and west along

Rt. 517 to its intersection with Rt. 611 at Tranquility; then north and west along Rt. 611 to its intersection with Henry Road; then north and west along Henry Rd. to its intersection with Hibler Rd.; then west along Hibler Road to its intersection with Rt. 519; then northeast along Rt. 519 to the point of beginning. This closure [shall] does not preclude the hunting of bobwhite quail on commercial shooting preserves located within the closed area, provided they are licensed for quail.

(e) (No change.)

(f) The hunting hours for the animals enumerated in this section are as follows: November [8] 7, 1987, 8:00 [a.m.] A.M. to 1/2 hour after sunset. On all other days for which hunting for these animals is legal, the hours [shall be] are sunrise to 1/2 hour after sunset.

(g) (No change.)

7:25-5.4 Ruffed grouse (*Bonasa umbellus*)

(a) The duration of the season for the hunting of grouse in that portion of the [s]State situated north of Rt. 70 from Pt. Pleasant west to Camden [shall be] is October [11] 10 through December [6] 5, 1987, inclusive, and December [15] 14, 1987 to February [7, 1987] 6, 1988, excluding December 16, 17 and 18, [1986] 1987 in those deer management zones in which a [special] shotgun permit deer season is authorized and excluding any extra [Special] [D]deer [P]permit [S]season [D]day(s) that is declared open.

(b) The duration of the season for the hunting of grouse in that portion of the [s]State situated south of Rt. 70 from Pt. Pleasant west to Camden [shall be] is October [18] 17 through December [6] 5, 1987, inclusive, and December [15] 14, 1987 to February [7, 1987] 6, 1988, excluding December 16, 17 and 18, [1986] 1987 in those deer management zones in which a [special] shotgun permit deer season is authorized and also excluding any extra [Special] [D]deer [P]permit [S]season [D]day(s) that is declared open.

(c) (No change.)

(d) The hunting hours for ruffed grouse [shall be] are sunrise to 1/2 hour after sunset, with the exception of November [8] 7, 1987 when legal hunting hours [shall be] are 8:00 [a.m.] A.M. to 1/2 hour after sunset.

(e) (No change.)

7:25-5.5 Eastern gray squirrel (*Sciurus carolinensis*)

(a) The duration of the season for the hunting of squirrels in that portion of the [s]State situated north of Route 70 from Pt. Pleasant west to Camden [shall be] is October [11] 10 through December [6] 5, 1987, inclusive, and December [15] 14, 1987 to February [16, 1987] 15, 1988, excluding December 16, 17 and 18, [1986] 1987 in those deer management zones in which a [special] shotgun permit deer season is authorized and also excluding any extra [Special] [P]permit [S]season [D]day(s) if declared open.

(b) The duration of the season for hunting squirrels in that portion of the [s]State situated south of Rt. 70 from Pt. Pleasant west to Camden [shall be] is October [18] 17 through December [6] 5, 1987, inclusive, and December [15] 14, 1987 to February [16, 1987] 15, 1988, excluding December 16, 17 and 18, [1986] 1987 in those deer management zones in which a [special] shotgun permit deer season is authorized and also excluding any extra [Special] [D]deer [S]season [D]day(s) that is declared open.

(c) The duration of the season for the hunting of squirrels for properly licensed persons engaged in falconry [shall be] is September 1 to December [6] 5, 1987, inclusive, and December [15] 14, 1987 through March 31, [1987] 1988, excluding December 16, 17 and 18, [1986] 1987 in those deer management zones in which a [special] shotgun permit deer season is authorized and also excluding any extra [Special] [P]permit [D]deer [S]season [D]day(s) if declared open.

(d) (No change.)

(e) Hunting hours for squirrels [shall be] are sunrise to 1/2 hour after sunset, with the exception of November [8] 7, 1987 when legal hunting hours [shall be] are 8:00 [a.m.] A.M. to 1/2 hour after sunset.

(f) (No change.)

7:25-5.6 Black bear ([u]Ursus americanus), bobcat ([Lynx] Felis rufus)

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

7:25-5.7 Wild turkey (*Meleagris gallapavo*)

(a) The duration of the Spring Wild Turkey Gobbler hunting season [shall] includes five separate hunting periods of three, [or] five or ten days each. The hunting periods for all hunting areas [1-9] shall be:

1. Monday, April [27] 25, 1988—Friday, [May 1] April 29, 1988

2. Monday, May [4] 2, 1988—Friday, May [8] 6, 1988

3. Monday, May [11] 9, 1988—Friday, May [15] 13, 1988

4. Monday, May [18] 16, 1988—Friday May [22] 20, 1988 and Monday, May 23, 1988—Friday, May 27, 1988

5. Saturday, [May 2] April 30, 1988; Saturday, May [9] 7, 1988; Saturday, May [16] 14, 1988

[The hunting periods for hunting areas 14 through 18, 20 and 22 shall be:

1. Monday, April 20—Friday, April 24

2. Monday, April 27—Friday, May 1

3. Monday, May 4—Friday, May 8

4. Monday, May 11—Friday, May 15

5. Saturday, May 2; Saturday, May 9; Saturday, May 16]

(b) Bag limit: One male wild turkey may be taken with each special wild turkey hunting permit. **Only one turkey may be taken in a given day.**

(c)-(e) (No change.)

(f) Method: The taking of one male wild turkey per special turkey permit with firearm or bow and arrow [will be] is permitted in [16] any designated turkey hunting areas by holders of a special wild turkey permit.

1. Special wild turkey permits will be issued on an individual basis to holders of valid [1987] and current firearm or archery hunting licenses. Only one application per person may be submitted for the spring wild turkey season during the initial application period.

(g) (No change.)

(h) [Applying For a Wild Turkey Hunting Permit] **Wild Turkey Hunting Permits shall be applied for as follows:**

1. Only holders of valid [1987] and current firearm or archery hunting licenses, including juvenile licenses, may apply by detaching from the hunting license the stub marked "Special Spring Turkey", signing as provided on the back, and sending the stub together with an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iii. (No change.)

2. (No change.)

3. [Fill in the application form to include] **The application form shall be filled in to include:** Name, address, [1987] 1988 firearm or archery hunting license number, turkey hunting areas applied for, hunting periods applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of February 1-[14, 1987] 15, 1988, inclusive. Applications received after February [14] 15 will not be considered for the initial drawing. Selection of permits will be by random drawing.

i. If a fall turkey hunting season is authorized for [1987] 1988, application shall be made in conjunction with the spring season application procedures in a form as prescribed by the [d]Division.

4. Unless otherwise indicated, a permit fee of [\$5.00] **\$12.00** per applicant, in the form of a check or money order[,], made payable to "Division of Fish, Game and Wildlife," must accompany the completed application form.

5. Unsuccessful applicants will be notified by return of [their] permit fees **less a \$2.00 application fee.** Any permit obtained by fraud [will be] is void.

6. Nothing contained herein shall preclude the [d]Division from issuing unfilled permits on a first come-first served basis to any properly licensed bow and arrow hunter [or], firearm hunter or **qualified farmer after the regular permit selection day.**

(i) [Applying for the Special Farmer Spring Turkey Permit] **Special Farmer Spring Turkey Permits shall be applied for as follows:**

1.-2. (No change.)

3. [Fill in the application form to include] **The application form shall be filled in to include:** Name, age, address and any other information requested thereon. **THIS APPLICATION MUST BE NOTARIZED.** Properly completed application forms will be accepted in the Trenton office only during the period of February 1-[14, 1987] 15, 1988. There is no fee required and all qualified applicants will receive a [s]Special [f]Farmer [s]Spring [t]Turkey [p]Permit delivered by mail.

4. Only one application may be submitted per individual during the initial application period.

(j) [Use of] Spring Turkey Hunting Permits and Special Farmer Spring Turkey Permits shall be used as follows:

1.-2. (No change.)

(k) **The Turkey Hunting Area Map is [(on file at the Office of Administrative Law)] and is available from that agency or the Division. The 1988 Spring Turkey Hunting Season Permit Quotas are as follows:**

[TURKEY HUNTING AREA MAP]

[1987] 1988 SPRING TURKEY HUNTING SEASON PERMIT QUOTAS

Turkey Hunting Area Number	Weekly Permit Quota*	Season Total	Portions of Counties Involved
1	100[†]	500	Sussex
2	120[†]	600	Sussex, Warren
3	80[†]	400	Sussex, Warren
4	100[†]	500	Sussex, Warren, Morris
5	100[†]	500	Sussex
6	150[†]	750	Sussex, Passaic, Bergen
7	150[†]	750	Sussex, Morris, Passaic
8	50[†]	250	Warren, Hunterdon
9	50[†]	250	Warren, Hunterdon, Morris
10	25	125	Essex, Middlesex, Morris, Somerset, Union
11	25	125	Middlesex, Mercer, Hunterdon, Somerset
13	50	250	Burlington, Mercer, Monmouth, Ocean
14	50[††]	250	Burlington, Ocean
15	50[††]	250	Burlington, Camden, Atlantic
16	100[††]	500	Burlington, Atlantic
17	50[††]	250	Burlington, Ocean
18	50[††]	250	Atlantic, Cape May, Cumberland
20	50[††]	250	Cumberland, Salem
21	50	250	Atlantic, Cumberland, Salem
22	100[††]	500	Atlantic, Cape May, Cumberland
	[1,350] 1500	[6,750] 7500	

[†]*Applied to each of the five hunting periods (A,B,C,D,E) in all areas [1-9]:

- A. Monday, April [27] 25, 1988—Friday, [May 1] April 29, 1988
- B. Monday, May [4] 2, 1988—Friday, May [8] 6, 1988
- C. Monday, May [11] 9, 1988—Friday, May [15] 13, 1988
- D. Monday, May [18] 16, 1988—Friday, May [22] 20, 1988 and Monday, May 23, 1988—Friday, May 27, 1988
- E. Saturday, [May 2] April 30, 1988; Saturday, May [9] 7, 1988; Saturday, May [16] 14, 1988

[††]Applied to each of the five hunting periods (A,B,C,D,E) in areas 14 through 18, 20 and 22.

- A. Monday, April 20—Friday, April 24
- B. Monday, April 27—Friday, May 1
- C. Monday, May 4—Friday, May 8
- D. Monday, May 11—Friday, May 15
- E. Saturday, May 2; Saturday, May 9; Saturday, May 16]

(l) (No change.)

(m) [Location of] Turkey Hunting Areas are located as follows:

1.-9. (No change.)

10. Turkey Hunting Area No. 10: That portion of Essex, Middlesex, Morris, Somerset, and Union Counties lying within a continuous line beginning at the intersection of Routes 206 and 80; then east along Route 80 to its intersection with Route 287; then north along Route 287 to its intersection with Route 202; then north and east along Route 202 to its intersection with Route 23; then south and east along Route 23 to its intersection with Route 46; then east along Route 46 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Route 287; then north along Route 287 to its intersection with Route 206; then north along Route 206 to the point of beginning.

11. Turkey Hunting Area No. 11: That portion of Hunterdon, Mercer, Middlesex and Somerset Counties lying within a continuous line beginning at the intersection of Route 12 and the Delaware River at Frenchtown; then east along Route 202 to its intersection with Route 287; then south and east along Route 287 to its intersection with Route 1; then south and west along Route 1 to its intersection with the Delaware River at Trenton; then north along the east bank of the Delaware River to the point of beginning. the islands of Skyhawks, Rush, Bull, Treasure and Eagle are included in this area.

12. Turkey Hunting Area No. 13: That portion of Burlington, Mercer, Monmouth and Ocean Counties lying within a continuous line beginning at the intersection of Route 1 and the Delaware River; then east along Route 1 to its intersection with Route 206; then south along Route 206 to its intersection with Route 524; then east along Route 524 to its intersection with Route 195; then east along Route 195 to its intersection with Route

571; then south along Route 571 to its intersection with Route 70; then west along Route 70 to its intersection with Route 73; then north and west along Route 73 to its intersection with the Delaware River; then north along the east bank of the Delaware River to the point of beginning.

[10.]13. (No change in text.)

[11.]14. (No change in text.)

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

[13.]16. (No change in text.)

[14.]17. (No change in text.)

[15.]18. (No change in text.)

19. Turkey Hunting Area No. 21: That portion of Atlantic, Cumberland, Gloucester and Salem Counties lying within a continuous line beginning at the intersection of Routes 40 and 553; then east along Route 40 to Lincoln Ave., in Buena Vista; then south along Lincoln Ave. to its intersection with Route 55 in Vineland; then south along Route 55 to its intersection with Route 49; then west along Route 49 to the Maurice River; then south along the west bank of the Maurice River to its confluence with Delaware Bay; then west along the Delaware Bay shore to the Cohansey River; then north along the east bank of the Cohansey River to its intersection with Route 49 at Bridgeton; then east along Route 49 to its intersection with Route 553; then north along Route 553 to the point of beginning.

[16.]20 Turkey Hunting Area No. 22: That portion of Atlantic, Cape May and Cumberland Counties lying within a continuous line beginning at the intersection of Rt. 55 and Rt. 552 spur; then east along Rt. 552 spur to its intersection with Rt. 552; then east along Rt. 552 to its intersection with Rt. 557; then southeast along Rt. 557 to its intersection with Rt. 50; then southeast along Rt. 50 to its intersection with Rt. 9 at Seaville; then south along Rt. 9 to its intersection [with Rt. 83 at Clermont; then west along Rt. 83 to its intersection with Rt. 47; then west and north along Rt. 47 to its intersection with Dennis Creek; then west] with Sea Isle Boulevard; then east along Sea Isle Boulevard to the Atlantic Ocean at Sea Isle City; then south along the Atlantic Coast to the Delaware Bay shore then north and west along the shore of Delaware Bay to its intersection with the Maurice River; then north along the east bank of the Maurice River to its intersection with Rt. 49 at Millville; then east along Rt. 49 to its intersection with Rt. 55; then north along Rt. 55 to the point of beginning.

7:25-5.8 Mink (*Mustela vison*) [and], muskrat (*Ondatra zibethicus*) and [N]nutria (*Myocaster coypus*) trapping only

(a) (No change.)

(b) The duration of the mink, muskrat and nutria trapping season is as follows:

1. Northern Zone: 6:00 A.M. on November 15, [1986] 1987 through March 15, [1987] 1988, inclusive, except on State Fish and Wildlife Management Areas.

2. Southern Zone: 6:00 A.M. on December 1, [1986] 1987 through March 15, [1987] 1988, inclusive, except on State Fish and Wildlife Management Areas.

3. (No change.)

4. On State Fish and Wildlife Management Areas: 6:00 A.M. on January 1 through March 15 [1987] 1988, inclusive.

(c)-(e) (No change.)

7:25-5.9 Beaver (*Castor canadensis*) trapping

(a) (No change.)

(b) The duration of the trapping season for beaver shall be February 1 through February [28, 1987] 29, 1988, inclusive.

(c) Special Permit: A special [\$5.00] \$7.00 permit obtained from the Division of Fish, Game and Wildlife [is] shall be required to trap beaver. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders.) Applications [must] shall be received in the Trenton office during the period December 1, [1986] 1987—December 25, [1986] 1987. Applicants may apply for only one beaver trapping permit and [must] shall provide their [1986] 1987 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1—[6] 8, Zone 2—[7] 9, Zone 3—2, Zone 4—4, Zone 5—[2] 4, Zone 6—[4] 7, Zone 7—2, Zone 8—[6] 5, Zone 9—5, Zone 10—11, Zone 11—5, Zone 12—[5] 7, Zone 13—[1] 0, Zone 14—[2] 1, Zone 15—0. Total [62] 70. Successful applicants [must] shall provide their [1987] 1988 [T]rapping [L]icense [N]umbers to the Division before a permit will be issued.

(d) (No change.)

(e) A "beaver transportation tag" provided by the [d]Division [must] shall be affixed to each beaver taken immediately upon removal from the trap, and all beaver [must] shall be taken to a designated beaver checking station at the times and dates specified on the beaver permit and, in any case, no later than March [7, 1987] 5, 1988.

(f) Each beaver trapper [is] shall be restricted to a maximum of five traps and each trap [must] shall be tagged pursuant to N.J.A.C. 7:25-5.12 with the tag clearly visible above the level of the water or ice. The Division, in its discretion, may designate and suitably post certain beaver colonies and prohibit all trapping within their dams, or within 500 feet thereof, during the beaver trapping season as indicated in this section.

(g) (No change.)

7:25-5.10 River [O]tter (*Lutra canadensis*) trapping

(a) (No change.)

(b) The duration [for] of the trapping season for [of] otter shall be February 1 through February [28, 1987] 29, 1988, inclusive.

(c) Special Permit: A special [\$5.00] \$7.00 permit obtained from the Division of Fish, Game and Wildlife [is] shall be required to trap otter. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders.) Beaver permit holders will be given first opportunity for otter permits in their respective zones. Applications [must] shall be received in the Trenton office during the period December 1, [1986] 1987—December 25, [1986] 1987. Only [1] one application per person may be submitted for trapping otter and applicants [must] shall provide their [1986] 1987 trapping license number. Permits will be allotted on a zone basis as follows: Zone 1—[3] 5, Zone 2—[2] 5, Zone 3—2, Zone 4—4, Zone 5—4, Zone 6—4, Zone 7—3, Zone 8—6, Zone 9—3, Zone 10—[6] 7, Zone 11—5, Zone 12—9, Zone 13—[12] 14, Zone 14—5, Zone 15—10. Total [78] 86. Successful applicants [must] shall provide their [1987] 1988 [T]rapping [L]icense [N]umbers to the Division before a permit will be issued.

(d) (No change.)

(e) The "otter transportation tag" provided by the Division must be affixed to each otter taken immediately upon removal from the trap. All otter pelts and carcasses [must] shall be taken to a beaver-otter check station at dates specified on the otter permit[,] and, in any case, no later than March [7, 1987] 5, 1988, where a pelt tag will be affixed and the carcass surrendered.

(f) Any person trapping an otter must notify one of the [district] regional law enforcement offices within 24 hours.

(g) Each otter trapper is restricted to a maximum of three traps and each trap must be tagged pursuant to N.J.A.C. 7:25-5.12 with the tag clearly visible above the level of the water or ice.

(h) (No change.)

(i) Beaver and Otter Zones [Descriptions] are described as follows:

1. Zone 1: That portion of Sussex County lying within a continuous line beginning at the intersection of the New York-New Jersey state line with Rt. 519, then south on Rt. 519 to its intersection with Rt. 23, then south on Rt. 23 to its intersection with Rt. 519 at Colesville, then south

on Rt. 519 to its intersection with County Rt. 636 above Branchville, then west on 636 to its intersection with Rt. 206, then south on Rt. 206 to Rt. 521, then southwest on 521 to its intersection with County Rt. 617, then south on Rt. 617 to its intersection with Rt. 624 near Fairview Lake, then northwest on Rt. 624 to its intersection with Rt. 615, and then west on 615 to the Delaware River, then north along the Delaware River to the state line and south along the state line to Rt. 519, the point of beginning.

2. Zone 2: That portion of Sussex County lying within a continuous line beginning at the intersection of the New York-New Jersey state line with Rt. 519, then south on Rt. 519 to its intersection with Rt. 3, then south on Rt. 23 to its intersection with Rt. 519 at Colesville, then south on Rt. 519 to its intersection with County Rt. 636 above Branchville, then west on County Rt. 636 to its intersection with Rt. 206, then southeast [southwest] on Rt. 206 to its intersection with Rt. 15 at Ross Corner, then south on Rt. 15 to its intersection with Rt. 517 at Sparta, then north on Rt. 517 to its intersection with Rt. 23, then east on Rt. 23 to its intersection with Rt. 515 at Stockholm, then north on Rt. 515 to its intersection with Rt. 94 at Vernon, then north on Rt. 94 to the state line, then west along the state line to its intersection with Rt. 519, the point of beginning.

3. Zone 3: That portion of Sussex, Passaic and Bergen Counties lying within a continuous line beginning at the intersection of the state line and Rt. 94, then south on Rt. 94 to its intersection with Rt. 515 at Vernon, then south on Rt. 515 to its intersection with Rt. 23 at Stockholm then east on Rt. 23 to its intersection with Rt. 202 near Wayne, then north on Rt. 202 to the state line at Suffern, then west along the state line to its intersection with Rt. 94, the point of beginning.

4. Zone 4: That portion of Sussex and Warren Counties lying within a continuous line beginning at the intersection of Rt. 615 and the Delaware River at Flatbrookville, then east along 615 to its intersection with Rt. 624, then south on Rt. 624 to its intersection with Rt. 617, then north on 617 to its intersection with Rt. 521, then northeast on Rt. 521 to its intersection with Rt. 206, then south on Rt. 206 to its intersection with Rt. 94 at Newton, then south on Rt. 94 to its intersection with Rt. 608 at Marksboro, then south on Rt. 608 to its intersection with Rt. 521, then south on Rt. 521 to its intersection with Rt. 80 near Hope, then west on Rt. 80 to the Delaware River near Columbia, then north and northeast along the Delaware River to its intersection with Rt. 615, the point of beginning.

5. Zone 5: That portion of Sussex and Warren Counties lying within a continuous line beginning at the intersection of the Delaware River and Rt. 80 at Columbia, then east on Rt. 80 to its intersection with Rt. 521 near Hope, then north on Rt. 521 to its intersection with Rt. 608, then northeast on Rt. 608 to its intersection with Rt. 94 at Marksboro, then north and east on Rt. 94 to its intersection with Rt. 206 at Newton, then north on Rt. 206 to its intersection with Rt. 15 at Ross Corner, then south on Rt. 15 to its intersection with Rt. 517 at Sparta, then southwest on Rt. 517 to its intersection with Rt. 46 at Hackettstown, then west on Rt. 46 to the Delaware River, then north on the Delaware River to Rt. 80 at Columbia, the point of beginning.

6. Zone 6: That portion of Warren, Morris, Sussex[,] and Passaic Counties lying within a continuous line beginning at the intersection of Rt. 46[,] and Rt. 517 in Hackettstown, then north on Rt. 517 to its intersection with Rt. 23 at Franklin, then south on Rt. 23 to its intersection with Rt. 699 (Berkshire Valley Rd.) at Oak Ridge, then south on Rt. 699 to its intersection with Rt. 15, then south on Rt. 15 to its intersection with Rt. 80, then west on Rt. 80 to its intersection with Rt. 10 near Ledgewood, then east on Rt. 10 to its intersection with Rt. 513, then west on Rt. 513 to its intersection with Rt. 517 at Long Valley, then north on Rt. 517 to its intersection with Rt. 182, then north on Rt. 182 to its intersection with Rt. 46, then northwest on Rt. 46 to its intersection with Rt. 517 at Hackettstown, the point of beginning.

7. Zone 7: That portion of Morris, Passaic and Essex Counties lying within a continuous line beginning at the intersection of Rt. 699 (Berkshire Valley Rd.) and Rt. 23 at Oak Ridge, then southeast on Rt. 23 to its intersection with Rt. 80 near Singac, then west on Rt. 80 to its intersection with Rt. 287, then south on Rt. 287 to its intersection with Rt. 10 near Whippany, then west on Rt. 10 to its intersection with Rt. 80 at Ledgewood, then east on Rt. 80 to its intersection with Rt. 15, then north on Rt. 15 to its intersection with Rt. 699 at Mt. Hope, then north on Rt. 699 to its intersection with Rt. 23 at Oak Ridge, the point of beginning.

8. Zone 8: That portion of Ocean County lying within a continuous line beginning at the intersection of Rt. 537 and Rt. 539 at Hornerstown, then south on Rt. 539 to its intersection with Rt. 72 near Howardsville,

then east on Rt. 72 to its intersection with Rt. 532, then east on Rt. 532 to the Atlantic Ocean, then north along the Atlantic Ocean to its intersection with Rt. 528 at Mantoloking, then west along Rt. 528 (527/528) to its intersection with Rt. 195 near Jackson Mills, then west along Rt. 195 to its intersection with Rt. 537 near Holmeson, then southwest along Rt. 537 to its intersection with Rt. 539 at Hornerstown, the point of beginning.

9. Zone 9: That portion of Ocean and Burlington Counties lying within a continuous line beginning at the intersection of Rt. 537 and Rt. 539 at Hornerstown, then south on Rt. 539 to its intersection with Rt. 72 near Howardsville, then northwest on Rt. 72 to its intersection with Rt. 532, then west on Rt. 532 to its intersection with Rt. 206 near Tabernacle, then north on Rt. 206 to its intersection with Rt. 537 at Chambers Corner, then east on Rt. 537 to its intersection with Rt. 539 at Hornerstown, the point of beginning.

10. Zone 10: That portion of Burlington, Camden and Atlantic Counties lying within a continuous line beginning at the intersection of Rt. 623 (Taunton Rd.) and Rt. 541 near Medford, then southeast on Rt. 541 to its intersection with Rt. 532, then east on Rt. 532 to its intersection with Rt. 563 at Chatsworth, then south on Rt. 563 to its intersection with Rt. 30 at Egg Harbor, then northwest on Rt. 30 to its intersection with Rt. 561 near Hammonton, then northwest on Rt. 561 to its intersection with Rt. 73 at Blue Anchor, then north on Rt. 73 to its intersection with Spur 536 (Taunton-Hopewell Rd.) near Tansboro, then north on Spur 536 to its intersection with Rt. 623 near Taunton Lake, then north on Rt. 623 to its intersection with Rt. 541 near Medford, the point of beginning.

11. Zone 11: That portion of Ocean, Burlington and Atlantic Counties lying within a continuous line beginning at the intersection of Rt. 563 and Rt. 532 at Chatsworth, then east on Rt. 532 to its intersection with Rt. 72, then southeast on Rt. 72 to its intersection with Rt. 532 near Howardsville, then east on Rt. 532 to the Atlantic Ocean, then south along the Atlantic Ocean to the Absecon [light house] Lighthouse in Atlantic City, then northwest on Rt. 30 to its intersection with Rt. 563 in Egg Harbor, then north on Rt. 563 to its intersection with Rt. 532 at Chatsworth, the point of beginning.

12. Zone 12: That portion of Atlantic, Gloucester, Camden and Cape May Counties lying within a continuous line beginning at the intersection of Rt. 322 and Spur 536 at Williamstown, then northeast on Spur 536 to its intersection with Rt. 73 near Tansboro, then south on Rt. 73 to its intersection with Rt. 561 at Blue Anchor, then southeast on Rt. 561 to its intersection with Rt. 30 near Hammonton, then southeast on Rt. 30 to the Absecon Lighthouse in Atlantic City, then south along the Atlantic Ocean to Sea Isle Boulevard (Rt. 625) in Sea Isle, then west on Sea Isle Boulevard to its intersection with Rt. 50 at Seaville, then northwest on Rt. 50 to its intersection with Rt. 557 near Buck Hill, then northwest on 557/555 to its intersection with Rt. 322 near Williamstown, then east on Rt. 322 to its intersection with Spur 536 at Williamstown, the point of beginning.

13. Zone 13: That portion of Cape May, Atlantic and Cumberland Counties lying within a continuous line beginning at the intersection of Rt. 557 and County Rt. 671 at Buena, then southeast on Rt. 557 to its intersection with Rt. 50 near Buck Hill, then south on Rt. 50 to its intersection with Rt. 9 at Seaville, and south on Rt. 9 to its intersection with Sea Isle Boulevard (Rt. 625) at Ocean View[,], then east on Sea Isle Boulevard to the Atlantic Ocean, then south along the Atlantic Ocean, then north along the Delaware Bay to its intersection with East Point Rd. in Heislerville Management Area, then north on East Point Rd. to its intersection with Rt. 616 (Dorchester-Heislerville Rd.), then north on Rt. 616 to its intersection with Rt. 740, then northeast on Rt. 740 to its intersection with Rt. 47, then north on Rt. 47 to its intersection with Rt. 646 (Cumberland-Port Elizabeth Rd.) near Port Elizabeth, then north on Rt. 646 to its intersection with Rt. 49 near Cumberland, then west on Rt. 49 to its intersection with Rt. 671 (Union Rd), then north on Rt. 671/71 to its intersection with Rt. 557 near Buena, the point of beginning.

14. Zone 14: That portion of Cumberland, Salem, Gloucester and Atlantic Counties lying within a continuous line beginning at the intersection of Delaware Bay and the west bank of the Maurice River, then north along the west bank of the Maurice River to Rt. 631, then north along Rt. 631 to its intersection with Rt. 553, then north along Rt. 553 to its intersection with Rt. 536/322 at Glassboro, then east along Rt. 322/536 to its intersection with Rt. 555 near Williamstown, then south along Rt. 555/557 to its intersection with Rt. 71 (Union Rd.) near Buena, then south on Rt. 71/671 to its intersection with Rt. 49 at Cumberland, then east on Rt. 49 to its intersection with Rt. 646 (Cumberland-Port Elizabeth Rd.), then south on Rt. 646 to its intersection with Rt. 47 at

Port Elizabeth, then south on Rt. 47 to its intersection with Rt. 740, then southwest on Rt. 740 to Rt. 616 (Dorchester-Heislerville Rd.), then south on Rt. 616 to East Point Rd. in Heislerville [Mgt.] Management Area, then south on East Point Rd. to the Delaware Bay, then west along the Delaware Bay to its intersection with the west bank of the Maurice River, the point of beginning.

7:25-5.11 Raccoon (*Procyon lotor*), red fox (*Vulpes [fulva] vulpes*), gray fox (*Urocyon cinereoargenteus*), [and] Virginia opossum (*Didelphis virginiana*), striped skunk (*Mephitis mephitis*), long-tailed weasel (*Mustela frenata*), short-tailed weasel (*Mustela erminea*), and coyote (*Canis latrans*) trapping only

(a) The trapping of raccoon, red fox, gray fox, Virginia opossum, striped skunk, long-tailed weasel, short-tailed weasel and coyote shall be permitted as fur bearing animals under the authority of a proper and valid trapping license.

(b) The duration of the regular raccoon, red fox, gray fox, Virginia opossum, striped skunk, long-tailed weasel, short-tailed weasel and coyote trapping season [shall be] is 6:00 A.M. on November 15 [1986] 1987 to March 15, [1987] 1988, inclusive, except on State Fish and Wildlife Management Areas.

(c) The duration for trapping on State [f]Fish and [w]Wildlife [m]Management [a]Areas [shall be after] is 6:00 A.M. on January 1, [through] 1987 to March 15, [1987] 1988, inclusive.

(d)-(f) (No change.)

(g) Any person including a farmer trapping a coyote [must] shall notify one of the [district] regional law enforcement offices within 24 hours.

(h) (No change.)

7:25-5.12 General trapping

(a) (No change.)

(b) No trap of any kind shall be permitted to remain set on any property at the close of the trapping season. It shall be illegal to possess, in the woods or fields of this State any conibear or killer type trap with a jaw spread greater than [5 1/2] six inches except under permit for the trapping of beaver or otter.

(c) (No change.)

(d) No conibear or killer-type traps with a jaw spread larger than [5 1/2] six inches shall be used or set in this State except for the trapping of beaver or otter. No conibear or killer-type traps with a jaw spread larger than 10 inches shall be used, set or maintained at any time in this State for the purpose of trapping any animal. Jaw spread shall be measured across the trigger of a set trap to the outer edges of the jaws.

(e) (No change.)

(f) Body gripping restraining snares shall be subject to the following requirements:

1.-4. (No change.)

5. Except when submerged underwater, no body gripping snare shall be set, used, or maintained unless it is equipped with a stop six inches from the end to restrict loop closure to no less than six inches in circumference and a stop to restrict the average (arithmetic mean) diameter of the loop opening to no greater than eight inches.

(g)-(j) (No change.)

7:25-5.13 Migratory birds

(a) Should any open season on migratory game birds, including waterfowl, be set by Federal regulation which would include the date of November [8, 1986] 7, 1987, the starting time on such date will be 8:00 A.M. to coincide with the opening of the small game season on that date. However, this shall not preclude the hunting of migratory game birds, including waterfowl, on the tidal marshes of the State as regularly prescribed throughout the season by Federal regulations.

(b) (No change.)

(c) No person shall take, attempt to take, hunt for or have in possession, any migratory game birds, including waterfowl, except at the time and in the manner prescribed [by] in the [c]Code of Federal [r]Regulations [of] by the U.S. Department of the Interior, U.S. Fish and Wildlife Service, for the [1986-87] 1987-88 hunting season. The species of migratory game birds, including waterfowl, that may be taken or possessed and, unless otherwise provided, the daily bag limits shall be the same as those prescribed by the U.S. Department of the Interior, U.S. Fish and Wildlife Service, for the [1986-87] 1987-88 hunting season.

(d) Herring Island: There shall be no open season for hunting any game birds or animals, including migratory waterfowl, in the following designated area of Barnegat Bay including all of Herring Island in the Township of Brick and that portion of Barnegat Bay lying between the northern and southern tips of Herring Island easterly to the adjacent shoreline of the Borough of [and] Mantaloking in the County of Ocean.

(e) Shark River: There shall be no open season for hunting any game birds or animals, including migratory [water fowl] **waterfowl**, on the Shark River in Monmouth County, or the shores thereof.

(f)-(l) (No change.)

(m) [No] A person shall **not take or attempt to take** migratory game birds:

1. (No change.)

2. With a trap, net, snare, [cross bow] **crossbow**, rifle, pistol, shotgun larger than 10 gauge, fish hook, poison, drug or explosive.

3.-8. (No change.)

9. By the aid of baiting [, attracting birds to an area by sowing or distributing any corn, wheat or other grain, salt or other feed.] **(placing feed seeds such as corn, wheat, salt, or other feed to constitute a lure or enticement) in or over any baited area, with or without knowledge that the area is baited. The prohibition contained in this paragraph does not apply to crows (Corvus spp.). A baited area is considered to be baited for 10 days after the removal of the bait.**

10. (No change.)

11. Before 8:00 A.M. on November [8, 1986] **7, 1987**. However, this shall not preclude the hunting of migratory game birds on tidal waters or tidal marshes of the State.

12.-13. (No change.)

14. Except at the time and manner prescribed by the State or Federal regulation, or by the [1986-87] **1987-88** Game Code.

15. With shotgun shells loaded with pellets larger than No. 4 fine shot except those persons engaged in hunting waterfowl may use nothing larger than No. 2 lead fine shot or [BB] **FF (.230 inch)** steel shot.

16.-19. (No change.)

(n) Seasons and Bag Limits are as follows:

1. [Tundra swan (Cygnus columbianus), and] Mourning dove (Zenaida macroura) are protected. There will be no open season on these birds during [1986-87] **1987-88**.

2. Rail and [G]gallinule season and bag limits are as follows:

i. The duration of the season for hunting clapper rail (Rallus longirostris), Virginia rail (Rallus limicola), sora rail (Porzana carolina) and common gallinule or moorhen ([Gallinule] **Gallinula chloropus**) [shall be] is September 1 through November [8, 1986] **7, 1987**, inclusive.

ii. (No change.)

[3.](o) Woodcock Zones and hunting hours are as follows:

[i.-ii.]1.-2. (No change in text.)

[iii.]3. Hunting hours for woodcock are sunrise to sunset except on November [8] **7**, when the hunting hours are 8:00 A.M. to sunset.

[(o)](p) (No change in text.)

7:25-5.14 Special regulation limiting use of **shotguns and** shotgun shells containing lead pellets

(a) No person shall have in possession or use in hunting [water-fowl] **waterfowl** and coot or any snipe, rail or gallinules after the season for hunting waterfowl commences any shotgun shell containing lead shot or lead pellets or **have in possession or use any shotgun containing lead shot** in the following designated area of New Jersey.

1. The State [and Federal] designated steel shot area [is bounded on the north by the Shark River, on the west by the Garden State Parkway, on the south by the Cape May Canal, and on the east by the Atlantic Ocean] **for waterfowl hunting includes the counties of Atlantic, Cape May, Cumberland, Middlesex, Monmouth, Ocean, Salem and that portion of Burlington County lying to the south and east of the New Jersey Transit Railroad which runs from Atsion to Woodmansie.**

2. Only shotgun shells containing steel pellets and **only shotguns containing steel pellets** [will be permitted to] shall be used for hunting waterfowl in the designated steel shot area.

(b) A [P]person[s] found in [this area] **the designated steel shot area, in possession of any of the following items at 1 to 3 below, while hunting for, pursuing, taking, or attempting to take waterfowl, coot or any snipe, rail or gallinule after the waterfowl season commences is in violation of this section. Each violation shall constitute an additional, separate and distinct offense subjecting the person to a penalty of \$20.00 for each offense.** [with any shotgun shell containing lead shot or pellets in possession shall be subject to a penalty of \$20 for each prohibited shotgun shell in possession or use.]

1. Each **shotgun shell containing lead shot or pellets;**

2. Each **shotgun loaded with lead shot or pellets; or**

3. Any **lead shot or any pellets or each cartridge or each charge containing lead shot or pellets.**

(c) (No change.)

7:25-5.15 [Common crow] **Crow** (Corvus [brachyrhynchos] spp.)

(a) Duration for the season for hunting the [common] crow shall be Monday, Thursday, Friday and Saturday from August [18, 1986] **17, 1987** through March [28, 1987] **26, 1988**, inclusive, excluding December [8-13] **7-12** and December **17 and 18**, [1986] **1987** in those deer management zones in which a [special regular firearm] **shotgun permit** deer season is authorized.

(b) (No change.)

(c) The hours for hunting crows shall be sunrise to 1/2 hour after sunset, except on November [8] **7, 1987** when the hours are 8:00 A.M. to 1/2 hour after sunset.

(d) (No change.)

[(e) Authority: The authority for the adoption of the foregoing section is found in N.J.S.A. 23:4-50, 50 C.F.R. Part 10.1 and 20.1 et seq. and other applicable statutes.]

7:25-5.16 General falconry rules

(a) The following [regulations] **rules** govern the taking, possession, training, transfer, marking and housing facilities of raptors, the classification of permittees and the use of raptors for falconry, to take, kill, or pursue wild birds or wild animals.

[(a)]1. Definitions: **The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.**

[1.-13.]i.-xiii. (No change in text.)

[(b)]2. Classes of [P]permits are as follows:

[1.]i. Apprentice: Permittee shall be at least 14 years of age.

[i.-ii.](1)-(2) (No change in text.)

[iii.](3) Permittee shall possess only an American kestrel ([Falcon] **Falco sparverius**) or a red-tailed hawk (Buteo [J]jamaicensis).

[2.]ii. General: Permittee shall be at least 18 years of age.

[i.-ii.](1)-(2) (No change in text.)

[iii.](3) Permittee may not take, transport or possess any golden eagle (**Aquila chrysaetos**) or any species listed as endangered[,] or threatened by the U.S. Department of the Interior or the N.J. Division of Fish, Game and Wildlife provided, however, that captive bred Cooper's hawks (**Accipiter cooperi**), or one legally acquired from the wild from states outside New Jersey where it is not classified as endangered or threatened, may be possessed. **Notwithstanding the above**, [P]passage or captive bred red-shouldered hawks (**Buteo lineatus**) or goshawks (**Accipiter gentilis**) may be possessed [and captive bred may also be possessed]. Eyass birds or nestlings of threatened or endangered raptors may not be taken.

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

[3.]iii. Master: Permittee shall have at least five years of falconry experience in the practice of falconry at the general class. A raptor shall have been in possession for no less than 36 months during this time.

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

[ii.](2) A permittee may not take, transport or possess any species listed as endangered on a U.S. Department[,] of Interior or N.J. Division of Fish, Game and Wildlife list, provided, however, that captive bred birds, when legally acquired and possessed in compliance with Federal [A]authorization may be used. Captive bred Cooper's [H]hawks or Cooper's [H]hawks legally acquired from the wild from outside New Jersey where it is not classified as endangered or threatened may be possessed. **Notwithstanding the above**, [P]passage or captive bred red-shouldered hawks or goshawks may also be possessed. Eyass birds or nestlings of threatened or endangered species may not be taken.

[iii.](3) Permittee may not take, transport or possess any [G]golden [E]eagle for falconry purposes unless authorized in writing by both the U.S. Fish and Wildlife Service and the N.J. Division of Fish, Game and Wildlife.

[iv.-v.](4)-(5) (No change in text.)

[(c)]3. The [E]examination and [A]assignment of [C]class of [F]falconry [P]permit [H]holders are as follows:

[1.-3.]i.-iii. (No change in text.)

[(d)]4. Facilities and [E]equipment: Falconry equipment shall be inspected and certified by a representative of the Division as meeting the following standards:

[1.]i. Facilities[—]: The primary consideration for raptor housing facilities whether indoors (mews) or outdoors (weathering area) is protection from the environment, predators or undue disturbance. The applicant shall have the following facilities:

[i.-ii.](1)-(2) (No change in text.)

[2.]ii. Equipment[—]: The following items shall be in the possession of the applicant before he can obtain a permit or license:

[i.](1) Jesses[—]: At least one pair of [Alymeri] **Aylmeri** jesses or similar type constructed of pliable, high-quality leather or suitable synthetic material to be used when any raptor is flown free. This flying jess should have no slits, only one [hold] hole no longer than 0.1 inch in diameter. Traditional one piece jesses may be used on raptors when not being flown.

[ii.-vii.](2)-(7) (No change in text.)

[3.]iii. Maintenance[—]: All facilities and equipment shall be kept at or above the preceding standards at all times.

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

[5.]v. Veterinary care[—]: The falconer shall prove to the satisfaction of the Division that he has on call consultation for medical care of the raptor. (Name and telephone number of veterinarian [should] **shall** be supplied on application.)

[e.]5. Restrictions on [T]taking raptors **are as follows**:

[1.]i. No person shall take, possess, transport or obtain a raptor unless they are in possession of a current falconry permit, **nongame permit as described in N.J.A.C. 7:25-4.2(a) or endangered species permit as described in N.J.A.C. 7:25-4.10(b).**

[2.]ii. Young birds not yet capable of flight (eyasses) may only be taken by a general or master falconer and only during the period April 15 to June 29 inclusive. No more than two eyasses may be taken by the same permittee during the specified period. No more than one eyass per nest may be taken, leaving at least one eyass in the nest. A three foot metal flashing painted a dark color must be fastened completely around the nest tree at least four feet from the base of the tree. The flashing shall be removed after the nestlings have fledged.

[3.-6.]iii.-vi. (No change in text.)

[7.]vii. [Bal-chatri] **Bal-Chatri** type live traps, other live traps and nets may be used for taking raptors providing they are used in such a manner which would minimize any danger of injuring the raptor.

[8.]viii. (No change in text.)

[f.]6. Marking of raptors **shall be as follows**:

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

[2.]ii. No raptors may be acquired for falconry purposes unless the person acquiring the raptor first obtains a numbered, non-reusable marker supplied by the U.S. Fish and Wildlife Service to the N.J. [d]Division of Fish, Game and Wildlife. The marker may be obtained by direct written request to the Trenton office. This marker must be attached to the raptor immediately upon capture. Markers are not transferable.

[3.-5.]iii.-v. (No change in text.)

[g.]7. Hunting with [R]raptors **shall be as follows**:

[1.-3.]i.-iii. (No change in text.)

[h.]8. Rules for [N]non-[R]resident [F]falconers **are as follows**:

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

[i.-iii.](1)-(3) (No change in text.)

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

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

[i.]9. Miscellaneous rules **are as follows**:

[1.-3.]i.-iii. (No change in text.)

[4.]iv. Whoever, while engaged in the sport of falconry, should unintentionally kill any wildlife for which there is no open season, shall leave the killed specimen at the site and notify a [District] **Regional Law Enforcement [Officer] Office** or the Trenton Office of the Division of Fish, Game and Wildlife, within 12 hours of such killing.

[5.-7.]v.-vii. (No change in text.)

[8.]viii. A person who possesses a lawfully acquired raptor acquired before the enactment of these regulations and who fails to meet the permit requirements shall be allowed to retain the raptors provided facility requirements at 4 above are met and a permit is obtained pursuant to N.J.A.C. 7:25-4. All such birds shall be identified with markers supplied by the U.S. Fish and Wildlife Service and cannot be replaced if death loss, release, or escape occurs. These raptors may not be used for falconry.

[9.]ix. A person who lawfully possesses raptors before the enactment of these regulations, in excess of the number allowed under his class permit, shall be allowed to retain the extra raptors provided facility requirements are met and the birds are included on the falconry permit. All such birds shall be identified with markers supplied by the U.S. Fish and Wildlife Service and no replacement can occur, nor may an additional raptor be obtained, until the number in possession is at least one less than the total number authorized by the class of permit held by the permittee.

[10.-11.]x.-xi. (No change in text.)

[j.]10. (No change in text.)

[(k)]11. Penal Provisions: It shall be unlawful to hunt for, take, possess, transfer any raptor, or practice falconry contrary to the rules and regulations adopted by the Division or to make a false statement on any required report or document. Any person who violates any provision of [these rules and regulations] N.J.S.A. 23:1-1 et seq., N.J.A.C. 7:25-6, or this chapter, is subject to [the penalties] **the revocation of any permits issued pursuant to this section and any other penalties prescribed by law.**

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

7:25-5.17 Raccoon (*Procyon lotor*) and [v]Virginia opossum (*Didelphis virginiana*) hunting

(a) The duration for the season of hunting raccoons and Virginia opossum [shall be] is one hour after sunset on October 1, [1986] **1987** to one hour before sunrise on March 1, [1987] **1988**. The hours for hunting [shall be] are one hour after sunset to one hour before sunrise.

(b) (No change.)

(c) [No] A person shall **not** hunt for raccoon or opossum with dogs and firearms or weapons of any kind on December [8-13] **7-12** and on December **16, 17 and 18, [1986] 1987** in those deer management zones in which a [special] shotgun permit deer season is authorized and including any extra [special shotgun] permit deer season day(s).

(d) [No] A person shall **not** train a raccoon or opossum dog other than during the period of September 1 to October 1, [1986] **1987** and from March 1 to May 1, [1987] **1988**. The training hours [shall be] are one hour after sunset to one hour before sunrise.

(e) (No change.)

7:25-5.18 Woodchuck (*Marmota monax*) hunting

(a) Duration for the hunting of woodchucks with a rifle in this State [shall be] is March [14] **13—September [25, 1987] 23, 1988**. Licensed hunters may also take woodchuck with shotgun or long bow and arrow or by means of falconry during the regular woodchuck rifle season and during the upland game season established in N.J.A.C. 7:25-5.3.

(b)-(f) (No change.)

7:25-5.19 Red fox (*Vulpes vulpes*) and gray fox (*Urocyon cinereoargenteus*) hunting

(a) The duration of the red fox and gray fox hunting season is as follows:

1. Northern Zone: Bow and Arrow Only—September [27] **26** through November [7, 1986] **6, 1987**; Firearm or Bow and Arrow—November [8, 1986] **7, 1987** through February [28, 1987] **27, 1988**, inclusive, excluding December [8-13] **7-12** and December **16, 17 and 18, [1986] 1987** in those deer management zones in which a [special] shotgun permit deer season is authorized and also excluding any extra [special shotgun] permit deer season day(s), if declared open.

2. Southern Zone: Bow and Arrow Only—September [27] **26** through November [7, 1986] **6, 1987**; Firearm or Bow and Arrow—November [8, 1986] **7, 1987** through February [28, 1987] **27, 1988**, excluding December [8-13] **7-12, 16, 17 and 18, [1986] 1987** in those deer management zones in which a [special] shotgun permit deer season is authorized and also excluding any extra [special shotgun] permit deer season day(s), if declared open.

(b) The use of dogs shall not be allowed for fox hunting during the Statewide bow and arrow only season of September [27] **26—November [7, 1986] 6, 1987** and during the period of February [9] **8—February [28, 1987] 27, 1988** in the Southern Zone. There shall be no fox hunting during the firearm deer season, except that a person hunting deer during the firearm deer season may kill fox if the fox is encountered before said person kills a deer. However, after a person has killed a deer he must cease all hunting immediately.

(c) (No change.)

(d) The hours for hunting fox [shall be] are 8:00 A.M. to 1/2 hour after sunset on November [8, 1986] **7, 1987** and on other days from sunrise to 1/2 hour after sunset.

(e)-(f) (No change.)

7:25-5.20 Dogs

(a) [There] A person shall [be no exercising or training of] **not exercise or train dogs** on State Fish and Wildlife Management Areas from May 1 to August 31, inclusive, except on portions of various wildlife management areas designated as dog training areas, and there shall be no exercising or training of dogs on any Wildlife Management Area on November [7] **6** and on Clinton, Flatbrook, Black River, Assunpink and Whittingham [WMA's] **Wildlife Management Areas** on the following Sundays: November [9, 16, 23 and 30, 1986] **8, 15, 22, 29, 1987**.

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

7:25-5.21 Squirrel (*Sciurus* spp.), raccoon (*Procyon lotor*), opossum (*Didelphis virginianus*), skunk (*Mephitis mephitis*), weasel ([m] *Mustela* spp.) woodchuck (*Marmota monax*) and coyote ([c] *Canis latrans*) damage

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

(c) Farmers or their agents may control coyotes by lawful procedures at any time when found destroying livestock, crops or poultry, subject to State law and local ordinances and must notify one of the Regional Law Enforcement Offices within 24 hours.

(d) (No change.)

7:25-5.22 Wild [B]birds or mammals; possession, killing

(a) (No change.)

(b) This section shall not apply to the taking of English sparrows, European starlings, or blackbirds that are doing damage to crops or property; nor shall it apply to the taking of household pests such as Norway rats[,] and house mice [and little brown myotas or bats].

1. (No change.)

(c)-(e) (No change.)

7:25-5.23 Firearms and missiles, etc.

(a) Except when legally engaged in deer hunting during the prescribed firearm deer seasons no person shall have in his possession in the woods, fields, marshlands or on the water any shell or cartridge with missiles of any kind larger than [#] No. 4 fine shot. This shall not preclude a properly licensed person from hunting woodchuck with a rifle during the woodchuck season. Also excepted is the use of a [muzzleloading] muzzleloader rifle, .36 caliber or smaller, loaded with a single projectile during the late squirrel season in designated areas. Waterfowl hunters may possess and use shotgun shells loaded with [BB] FF (.230 inch) steel fine shot or [#] No. 2 or smaller lead fine shot and properly licensed persons hunting for raccoon or opossum with hounds or engaged in trapping for furbearing animals may possess and use a .22 caliber rifle and .22 short caliber cartridge only for the purpose of killing raccoon, or opossum or legally trapped furbearing animals other than muskrat.

(b)-(d) (No change.)

(e) Within the areas described as portions of Passaic, Mercer, Hunterdon, Warren and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 513 and the New York State line; then south along Rt. 513 to its intersection with the Morris-Passaic County line; then west along the Morris-Passaic County line to the Sussex County line; then south along the Morris-Sussex County line to the Warren County line; then southwest along the Morris-Warren County line to the Hunterdon County line; then southeast along the Morris-Hunterdon County line to the Somerset County line; then south along the Somerset-Hunterdon County line to its intersection with the Mercer County line; then west and south along the Hunterdon-Mercer County line to its intersection with Rt. 31; then south along Rt. 31 to its intersection with Rt. 546; then west along Rt. 546 to the Delaware River; then north along the east bank of the Delaware River to the New York State Line; then east along the New York State Line to the point of beginning at Lakeside; and in that portion of Salem, Gloucester, Camden, Burlington, Mercer, Monmouth, Ocean, Atlantic, Cape May and Cumberland counties lying within a continuous line beginning at the intersection of Rt. 295 and the Delaware River; then east along Rt. 295 to its intersection with the New Jersey Turnpike; then east along the New Jersey Turnpike to its intersection with Rt. 40; then east along Rt. 40 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Rt. 536; then east along Rt. 536 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 571; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south along the Garden State Parkway to its intersection with Rt. 9 at Somers Point; then south along Rt. 9 to its intersection with Rt. 83; then west along Rt. 83 to its intersection with Rt. 47; then north along Rt. 47 to its intersection with Dennis Creek; then south along the west bank of Dennis Creek to its intersection with Delaware Bay; then northwest along the east shore of Delaware Bay and the Delaware River to the point of beginning; persons holding a valid and proper rifle permit in addition to their [1986] 1987 firearm hunting license may hunt for squirrels between January [20] 19 and February [16, 1987] 15, 1988 using a .36 caliber or smaller muzzleloading rifle loaded with a single projectile.

(f) Except as specifically provided below for waterfowl hunters, semi-wild and commercial preserves, muzzleloader deer hunters and trappers, from December [8-13] 7-12, 1987, inclusive, it shall be illegal to use any firearm of any kind other than a shotgun. Nothing herein contained shall prohibit the use of a shotgun not smaller than 20 gauge nor larger than 10 gauge with a rifled bore for deer hunting only. Persons hunting deer

shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with the lead or lead alloy rifled slug or slug shotgun shell only or a shotgun not smaller than 12 gauge nor larger than 10 gauge with the buckshot shell. It shall be illegal to have in possession any firearm missile except the 20, 16, 12 or 10 gauge lead or lead alloy rifled slug or hollow base slug shotgun shell or the 12 or 10 gauge buckshot shell. (This does not preclude a person legally engaged in hunting on semi-wild or commercial preserves for the species under license from being possessed solely of a shotgun(s) and nothing larger than No. 4 fine shot, nor a person engaged in hunting waterfowl only from being possessed solely of shotgun and nothing larger than No. 2 lead fine shot or [T (.200") FF (.230 inch) steel shot.) A legally licensed trapper possessing a valid rifle permit may possess and use a .22 rifle and short rimfire cartridge only while tending his trap line.

1. Persons who are properly licensed may hunt for deer with a [muzzleloading] muzzleloader rifle during the [1986] 1987 six day firearm deer season and the [special] permit[,]. [muzzleloading] muzzleloader rifle deer season.

2. [Muzzleloading] Muzzleloader rifles used for hunting deer are restricted to single-shot single barreled weapons with flintlock or percussion actions, shall not be less than .44 caliber and shall fire a single missile or projectile. Only open iron sights and peep sights shall be attached or affixed to the [muzzleloading] muzzleloader rifle while engaged in hunting for deer. Only one [muzzleloading] muzzleloader rifle may be possessed while hunting. Double barrel and other types of [muzzleloading] muzzleloader rifles capable of firing more than one shot without reloading or holding more than one charge are prohibited. Persons who are properly licensed may hunt for deer with a smoothbore muzzleloader during the [special] permit [muzzleloading] muzzleloader rifle season. Smoothbore muzzleloaders are restricted to single-shot, single barreled weapons with flintlock or percussion actions, shall not be smaller than 20 gauge or larger than 10 gauge, and shall fire a single missile or projectile. No telescopic sights shall be attached or affixed to the smoothbore muzzleloader while engaged in hunting for deer. Only one [muzzleloading] muzzleloader rifle or smoothbore muzzleloader may be possessed while deer hunting. Double barrel and other types of smoothbore muzzleloaders capable of firing more than one shot without reloading or holding more than one charge are prohibited.

3. Properly licensed persons 14 years of age and older engaged in hunting with a [muzzleloading] muzzleloader rifle must have in possession a proper and valid rifle permit. Properly licensed persons 14 years of age or older, hunting during the [muzzleloading] muzzleloader rifle permit deer season with a smoothbore muzzleloader must also have in possession a proper and valid rifle permit. Rifle permits for 14 [and] to 17-year olds will be valid for muzzleloader deer hunting, muzzleloader squirrel hunting and woodchuck hunting.

(g)-(l) (No change.)

(m) The Division may issue special permits without fee, to shoot or hunt from a standing vehicle that is parked off the road, to licensed hunters who, after investigations, are found to be paraplegics. Permittees are subject to all applicable New Jersey Fish and Game laws and regulations.

(n) No person shall have both a firearm and a bow and arrow in his possession or under his control in the woods or fields or on the water while hunting any wild bird or [animal] mammal. This does not apply to duly constituted law enforcement officers.

(o) (No change.)

7:25-5.24 Bow and arrow, general provisions

(a) (No change.)

(b) No person shall use a bow and arrow for hunting, on December 16, 17 and 18, [1986] 1987 in those deer management zones in which a [special regular] permit shotgun deer season is authorized [or], on any [extra Special] additional [P]permit [D]deer [S]season [D]day(s) [is] if declared open, [or between 1/2 hour after sunset and 1/2 hour before sunrise during the Fall Bow and Arrow Deer Seasons or], during the [6-] Six Day Firearm Deer Season, or between 1/2 hour after sunset and sunrise during other seasons. Deer shall not be hunted for or taken on Sunday except on wholly enclosed preserves that are properly licensed for the propagation thereof.

(c) During the [Bow and Arrow] [S]seasons for taking deer[, September 27—November 7, 1986 in most deer management zones; September 27—December 6, 1986, excluding November 27, in zones 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 29, 35, 36, 41, 48, 49, 50 and 51; and, January 3-19, 1987, or any other time bow and arrow deer or turkey hunting is permitted,] or turkey with bow and arrow (as listed elsewhere in this subchapter), all arrows used for taking deer or turkey must be fitted with the edged head of the following specifications:

1.-5. (No change.)

(d) No person shall cast an arrow or discharge a firearm from or across a state, county or municipal highway or roadway, or, any law to the contrary notwithstanding, to have in possession a loading gun or nocked arrow within 450 feet of any occupied dwelling or of a school playground. No person shall use a bow and arrow from any vehicle moving or stationary.]

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

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

7:25-5.25 White-tailed deer (*Odocoileus virginianus*) fall bow [and arrow exclusively] season (either sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from September [27] **26**—November [7] **6**, [1986] **1987**, inclusive. Legal hunting hours shall be 1/2 hour before sunrise to 1/2 hour after sunset.

(b) Bag Limit: [One deer of either sex. Kill must be tagged immediately with completely filled in "transportation tag" and must be transported to a deer checking station before 8:00 p.m. EST on day killed. Nothing contained herein shall preclude a person who has legally killed and reported a deer from then procuring one valid and proper permit which will allow this person to continue hunting and take one additional deer of either sex during the 1986 fall bow and arrow deer season. This permit shall not be valid on the day of issuance.] **Two deer of either sex. Only one deer may be taken in a given day. Deer shall be tagged immediately with completely filled in "transportation tag" and shall be transported to a deer checking station before 8:00 P.M. E.S.T. on the day killed. Upon completion of registration of first deer, one valid and proper "New Jersey Second Deer Permit And Transportation Tag" (second tag) will be issued which will allow this person to continue hunting and take one additional deer of either sex during the current fall bow deer season. The second tag shall not be valid on the day of issuance and all registration requirements apply.**

1. Any legally killed deer which is recovered too late to be brought to the deer check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement [district] regional headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possession tag". If the season has concluded, said deer must be taken to a regular deer checking station on the following weekday to receive a legal possession tag.

(c) This season shall be open only to holders of a valid [1986] and current bow and arrow hunting license which contains an attached fall bow and arrow deer "transportation tag" or a proper and valid second tag. If the anticipated harvest of deer has not been accomplished during this season, additional days of bow and arrow deer hunting may be authorized by the Director. Such authorization and dates thereof shall be announced by press and radio. Handicapped individuals hunting with a modified bow must have a valid Special Bow Use Permit on their person while hunting in addition to a valid Bow and Arrow Hunting License.

(d) (No change.)

7:25-5.26 White-tailed deer [(*Odocoileus virginianus*)] winter bow [and arrow, exclusively] season (either-sex)

(a) Deer of either sex and any age may be taken by bow and arrow exclusively from 1/2 hour before sunrise on January [3] **2** to 1/2 hour after sunset on January [19] **18**, [1987] **1988**. Legal hunting hours shall be 1/2 hour before sunrise to 1/2 hour after sunset.

(b) Bag Limit: [One deer of either sex. Deer, must be tagged immediately with "transportation tag" appropriate for the season (special winter bow and arrow) completely filled in, and must be transported to a deer checking station before 7:00 p.m. EST on day killed. Any legally killed deer which is recovered too late to be brought to a check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement district headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possession tag". If the season has concluded, said deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag". Nothing contained herein shall preclude a person who has legally killed and reported a deer from then procuring one valid and proper permit which will allow this person to continue hunting and take one additional deer of either sex during the 1987 winter bow season. This permit shall not be valid on the day of issuance.] **Two deer of either-sex. Only one deer may be taken in a given day. Deer shall be tagged immediately with the "transportation tag" appropriate for the season, completely filled in, and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer**

Permit And Transportation Tag" (second tag) will be issued which will allow that person to continue hunting and take one additional deer of either sex during the current winter bow deer season. The second tag shall not be valid in the day of issuance and all registration requirements apply. Any legally killed deer which is recovered too late to be brought to a check station by closing time shall be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. This deer shall be brought to a checking station on the next open day to receive a legal "possession tag." If the season has concluded, this deer shall be taken to a regular deer checking station on the following weekday to receive a legal "possession tag."

(c) This season will be open only to holders of a valid [1987] and current bow and arrow hunting license which contains an attached winter bow season "transportation tag" or a proper and valid second tag, in addition to the regular fall bow season "transportation tag". If the anticipated harvest of deer has not been accomplished during this season, additional days of special winter bow and arrow deer hunting may be authorized by the Director. Such authorization and dates thereof shall be announced by press and radio. Handicapped individuals hunting with a modified bow must have a valid Special Bow Use Permit on their person while hunting in addition to a valid Bow and Arrow Hunting License.

(d) (No change.)

7:25-5.27 White-tailed deer [(*Odocoileus virginianus*)] six day firearm season

(a) Duration for this season will be December [8-13] **7-12**, [1986] **1987**, inclusive, with shotgun or [muzzleloading] muzzleloader rifle, exclusively.

(b) Bag Limit: [One deer, antlered only, except in those areas designated as "hunters choice" indicated in subsection (d) below. One deer for the season, with antler at least three inches in length. Kill must be tagged immediately with completely filled in "transportation tag" and must be transported to a deer checking station before 7:00 p.m. EST on day killed. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement district headquarters. Said deer must be brought to a checking station on the next day to receive a legal "possession tag". If the season has concluded, said deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag". Nothing contained herein shall preclude a person who has legally killed and reported a deer from then procuring one valid and proper permit which will allow this person to continue hunting and take one additional, legal deer during the 1986 firearm deer season. This permit shall not be valid on the day of issuance.] **Two deer, with antler at least three inches long, except in those areas designated as "hunters choice" indicated in (d) below, where the bag limit is two deer of either sex. Only one deer may be taken in a given day. Deer shall be tagged immediately with the "transportation tag" appropriate for the season, completely filled in and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit and Transportation Tag" (second tag) will be issued which will allow that person to continue hunting and take one additional deer with antler at least three inches long or one additional deer of either sex in the "hunters choice" area, exclusively, during the current, six-day firearm season. The second tag shall not be valid on the day of issuance and all registration requirements apply. Any legally killed deer which is recovered too late to be brought to a check station by closing time shall be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. This deer shall be brought to a checking station on the next open day to receive a legal "possession tag". If the season has concluded, this deer shall be taken to a regular deer checking station on the following weekday to receive a legal "possession tag."**

(c) [A person who has legally taken deer during the fall bow and arrow season can legally take an antlered deer with a shotgun or muzzleloading rifle during the interval of December 8-13, 1986 if he possesses his valid firearm license.] **This season shall be open only to holders of a valid and current firearm hunting license which contains an attached six-day firearm season transportation tag or a proper and valid second tag. If the anticipated harvest of deer has not been accomplished during this season, additional days of deer hunting may be authorized by the Director, with the approval of the Council. Such authorization and dates thereof shall be announced by press and radio.**

(d) (No change.)

(e) Hunting Hours: December [8] **7**—December [13, 1986] **12**, **1987**, inclusive, 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T., with shotgun or [muzzleloading] muzzleloader rifle.

(f)-(g) (No change.)

7:25-5.28 White-tailed deer [(*Odocoileus virginianus*) special permit season, muzzleloading] muzzleloader rifle permit season (either sex)

(a) The Director with the approval of the Council may authorize the issuance of [special muzzleloading rifle deer] permits for the taking of deer with a [muzzleloading] muzzleloader rifle or smoothbore muzzle[-]loader loaded with a single projectile anywhere within this [s]State or at any [s]State or [f]Federal installation.

(b) If the anticipated harvest of deer has not been accomplished during this season, additional days of [special] muzzleloader rifle permit deer hunting may be authorized by the Director. Such authorization and the date thereof shall be announced by press and radio.

(c) [One deer of either sex, and any age, may be taken with a special muzzleloading rifle deer permit. Nothing contained herein shall preclude a person who has legally killed and reported a deer from then procuring one valid and proper permit which will allow this person to continue hunting and take one additional deer of either sex during the 1986 special permit, muzzleloading rifle deer permit season. This permit shall not be valid on the day of issuance. It is unlawful to attempt to take or hunt for more than the number of deer permitted.] **Bag Limit: Two deer of either sex per permit. Only one deer may be taken in a given day. Deer shall be tagged immediately with the muzzleloader rifle permit season permit "transportation tag" completely filled in, and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit And Transportation Tag" (second tag) will be issued which will allow the person to continue hunting and take one additional deer of either sex during the current muzzleloader rifle permit season. The second tag shall not be valid on the day of issuance and all registration requirements apply. Any legally killed deer which is recovered too late to be brought to a check station by closing time shall be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement regional headquarters. This deer shall be brought to a checking station on the next open day to receive a legal "possession tag." If the season has concluded, this deer shall be taken to a regular deer checking station on the following weekday to receive a legal "possession tag". It is unlawful to attempt to take or continue to hunt for more than the number of deer permitted.**

(d) Duration of [special deer permit season for] the [muzzleloading] muzzleloader rifle[s] permit season [shall be] is from 7:00 [a.m.] A.M. E.S.T. to 5:00 [p.m.] P.M. E.S.T. on December [15, 16, 20, 22, 23, 26, 27, 29 and 30, 1986] 14, 15, 19, 21, 22, 23, 26, 28, 29, and 30, 1987 or any other time as determined by the Director.

(e) [Special deer p]Permits for [muzzleloading] muzzleloader rifle[s] permit season are valid only in the designated deer management zones or other designated areas and are not transferrable.

(f) Method: The taking of one deer of either sex with a muzzleloading rifle under a special deer permit for muzzleloading rifles, or a farmer deer permit for muzzleloading rifles in addition to legal antlered deer allowed under statewide six day firearm deer season and either-sex deer allowed under the statewide fall bow and arrow season and either-sex deer allowed during the winter bow season, will be permitted in designated deer management zones by holders of a special deer permit for muzzleloading rifles and on their own property by holders of a farmer muzzleloading rifle deer permit.

1. Special deer permits for muzzleloading rifles will be issued on an individual basis to holders of valid 1986 firearm licenses. Only one application per person may be submitted for the special either sex deer seasons for muzzleloading rifle or shotgun. Special farmer muzzleloader deer permits will be issued on an individual basis to owners or lessee of farms who reside thereon or to the immediate members of their families 14 years of age or older who also reside thereon, upon receipt of a notarized application form.)

(f) Method: The taking of two deer of either sex is authorized to holders of valid permits for muzzleloader rifle permit season in designated deer management zones. Only one deer may be taken in a given day. The taking of two deer of either sex is authorized to holders of valid farmer permits for muzzleloader rifle permit season only on the farm occupied and designated on the permit application. Only one deer may be taken in a given day.

1. Permits for muzzleloader rifle permit season will be issued on an individual basis to holders of valid and current firearm licenses and qualified farmers. Only one application per regular firearm license holder may be submitted, whether for muzzleloader rifle or shotgun permit seasons, during the initial application period. Duplicate or multiple applications will cause all applications to be void.

(g) [Special p]Permits for [muzzleloading] muzzleloader rifle[s] permit season consist of back display which includes a "[special permit] deer transportation tag" or proper and valid second tag. The back display portion of the permit will be conspicuously displayed on the outer clothing in addition to the valid firearm license. The "[D]deer [T]transportation [T]tag" portion of the permit must be completely filled out, and affixed to the deer immediately upon killing. This completely filled in "[special permit] deer transportation tag" allows legal transportation of the deer of either sex to an authorized checking station only. Personnel at the checking station will issue a "possession tag". Any permit holder killing a deer [of either sex on December 15, 16, 20, 22, 23, 26, 27, 29 and 30, 1986] must transport [this] the deer to an authorized checking station by 7:00 [p.m.] P.M. E.S.T. on the day killed to secure the legal "possession tag". The possession of a deer of either sex after 7:00 [p.m.] P.M. E.S.T. on the day killed without a legal "possession tag" shall be deemed illegal possession. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement [district] regional headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possession tag". If the season has concluded said deer must be taken to a regular deer check station on the following weekday to receive a legal possession tag.

(h) [Applying for a Special Muzzleloading] Muzzleloader Rifle [Deer] Permit Season Permits shall be applied for as follows:

1. Only holders of valid [1986] and current firearm hunting licenses may apply by detaching from their hunting license the stub marked "Special Deer Season [1986] 1987", signing as provided on the back, and sending the stub, together with a [\$10.00] \$17.00 permit fee per applicant and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

i.-iii. (No change.)

iv. Other Division field offices.

2. (No change.)

3. Only one application, whether for [special permit muzzleloading] muzzleloader rifle [season] or [the special permit] shotgun permit season, accompanied by the hunting license stub, may be submitted by any [one individual] regular firearm license holder during the initial permit application period. Duplicate or multiple permit applications made during the initial application period will cause all applications by an individual to be void.

4. [Fill in t]The application form shall be filled in to include: Name, address, [1986] current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 25—September 10, [1986] 1987, inclusive. Applications postmarked after [the] September 10[th] will not be considered for the initial drawing. Selection of permittees will be made by random selection.

5. Unsuccessful applicants will be notified [only] by return of permit fees, less a \$2.00 application fee. Any permit obtained by fraud [will be] is void.

6. Successful applicants will receive their permits by mail. Unless otherwise indicated a permit fee of [\$10.00] \$17.00 per applicant in the form of a check or money order, made payable to "Division of Fish, Game and Wildlife", must accompany the completed application form.

7. Nothing contained herein shall preclude the Division from issuing unfilled permits on a first come-first served basis to any properly licensed hunter or qualified farmer after the regular permit selection day.

(i) [Applying for the Special] Farmer [Muzzleloading] Muzzleloader Rifle [Deer] Permit Season Permits [.] shall be applied for as follows:

1. Only the owner or lessee of a farm, who resides thereon, or the immediate members of his family 14 years of age or older who also reside thereon, may apply on forms provided for a [special] farmer [muzzle loader] muzzleloader rifle [deer] permit season permit. Under this subsection a farm is an area of five acres or more and producing a gross income in excess of \$500.00 and is tax assessed as farmland. [Special] [f]Farmer [muzzle loading] muzzleloader rifle permit season permits will be issued only in those deer management zones where a [special muzzle loading] muzzleloader rifle permit [deer] season is prescribed.

2. Application forms may be obtained from the County Agricultural Agent, the Division of Fish, Game and Wildlife, CN 400, Trenton, N.J. 08625, [or the] conservation officers, or other Division offices.

3. [Fill in t]The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon.

THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August [25—September 10, 1986] 1 to 15, 1987. There is no fee required, and all qualified applicants will receive a [special] farmer muzzleloading muzzleloader rifle [deer] permit season permit, delivered by mail.

4. [Only one application, whether for special permit muzzleloading rifle season or special permit shotgun permit season may be submitted per individual.] Qualified farmers may apply for one shotgun permit season permit in any management zone in addition to one muzzleloader rifle permit season permit in any management zone where a muzzleloader rifle permit season is prescribed. Qualified farmers may not apply for more than one permit for the same season whether as a regular firearm license applicant or as a farmer applicant. Duplicate or multiple permit application made during the initial application period will cause all applications by an individual to be void.

5. Nothing contained herein shall preclude the Division from issuing unfilled or unclaimed permits on a first come-first served basis to any qualified farmer or properly licensed hunter after the regular permit selection day.

(j) [Use of Special Muzzleloading] Muzzleloader Rifle [Deer] Season Permits and [Special] Farmer [Muzzleloading] Muzzleloader Rifle [Deer] Season Permits [.] shall be used as follows:

1. The [special muzzleloading] muzzleloader rifle [deer] permit season permit is valid only in the deer management zone (DMZ) designated and is not transferrable. The [special] farmer [muzzleloading] muzzleloader rifle permit [deer] season permit is valid only on the farm occupied and designated in the application and is not transferrable. The DMZ quota and DMZ map follow. The [special] permit hunter is responsible for hunting in the correct DMZ or farm as indicated and in ascertaining the boundaries.

2. Neither the [special muzzleloading] muzzleloader rifle [deer] permit season permit nor the [special] farmer [muzzleloading] muzzleloader rifle [farmer deer] permit season permit is transferrable from [D]deer [M]management [Z]zone to [D]deer [M]management [Z]zone, [or] from farm to farm, or from individual to individual. The permit must be used on the farm, in the [D]deer [M]management [Z]zone, and by the individual to whom it was issued.

(k) The Deer Management Zone Map is [(on file at the Office of Administrative Law)] and is available from that agency or the Division. The 1987 Muzzleloader Rifle Deer Season Permit Quotas (either sex) are as follows:

[1986] 1987 [MUZZLELOADING] MUZZLELOADER RIFLE [DEER] PERMIT SEASON PERMIT QUOTA[,] (EITHER SEX)

Deer Mgt. Zone No.	Anticipated Deer Harvest		Permit Quota		Portions of Counties Involved
	[1986]	1987	[1986]	1987	
1	[88]	125	[435]	535	Sussex
2	[105]	142	[301]	420	Sussex
3	[93]	120	[465]	586	Sussex, Passaic, Bergen
4	[222]	367	[1160]	1335	Sussex, Warren
5	[278]	296	[887]	1065	Sussex, Warren
6	[114]	157	[515]	597	Sussex, Morris, Passaic, Essex
7	[178]	197	[560]	704	Warren, Hunterdon
8	[408]	442	[1275]	1484	Warren, Hunterdon, Morris, Somerset
9	[86]	115	[265]	305	Morris, Somerset
10	[233]	268	[670]	829	Warren, Hunterdon
11	[127]	130	[355]	491	Hunterdon
12	[271]	296	[800]	871	Mercer, Hunterdon, Somerset
13	[27]	34	[115]	145	Morris, Somerset
14	[78]	63	[370]	429	Mercer, Somerset, Middlesex, Burlington
15	[36]	56	[210]	285	Mercer, Monmouth, Middlesex
16	[64]	72	[305]	388	Ocean, Monmouth
17	[46]	53	[220]	191	Ocean, Monmouth, Burlington
18	[17]	27	[150]	187	Ocean
19	[16]	31	[140]	180	Camden, Burlington
20	[21]	38	[150]	177	Burlington
21	[64]	80	[460]	398	Burlington, Ocean
22	[9]	12	60		Burlington, Ocean
23	[72]	120	400		Burlington, Camden, Atlantic
24	[57]	108	300		Burlington, Ocean
25	[47]	60	[235]	301	Gloucester, Camden, Atlantic, Salem
26	[80]	124	[335]	432	Atlantic
27	[63]	104	[275]	362	Salem, Cumberland
28	[45]	56	[166]	220	Salem, Cumberland, Gloucester
29	[96]	121	[360]	448	Salem, Cumberland
30	[11]	13	[44]	57	Cumberland
31	[5]	4	[25]	40	Cumberland
32	[3]	11	[20]	44	Cumberland
33	[12]	29	[75]	91	Cape May, Atlantic
34	[68]	96	[320]	350	Cape May, Cumberland
35	[37]	67	[215]	329	Gloucester, Salem
41	[108]	132	[326]	361	Mercer, Hunterdon
42	[11]	7	[35]	46	Atlantic
43	[16]	21	80		Cumberland
44	[8]	6	[21]	36	Cumberland
45	[25]	31	[110]	136	Cumberland, Atlantic, Cape May
46	[28]	38	[85]	150	Atlantic
47	[3]	10	[30]	100	Atlantic, Cumberland, Gloucester
48	[12]	22	[120]	161	Burlington
49	0		0		Burlington, Camden, Gloucester
50	[10]	16	[83]	101	Middlesex, Monmouth
51	[8]	13	[80]	127	Monmouth, Ocean
Total	[3,406]	4,330	[13,608]	16,581	

(l) Muzzleloader[, either-sex] rifle permit[s] season permits not applied for by September 10[, 1986] will be reallocated to shotgun and bow [either-sex season] permit season applicants.

[(m) Authority: The authority for the adoption of the foregoing section is found in N.J.S.A. 23:3-56.2, 23:4-42, 23:4-43, 23:4-47, 23:4-48, and other applicable statutes.]

7:25-5.29 White-tailed deer [(*Odocoileus virginianus*) special] shotgun permit season[, shotgun only,] (either sex)

(a) The approval of the Council may authorize the issuance of [special] shotgun [deer] permit season permits for the taking of deer anywhere within the State or at any [s]State or Federal installation.

(b) If the anticipated harvest of deer has not been accomplished during this season, one additional day of [special] shotgun permit deer hunting may be authorized by the Director. Such authorization and date thereof shall be announced by press and radio.

(c) One deer of either sex[,] and any age[,] may be taken with a [special] shotgun [deer] permit season permit except in deer management zones where the limit will be [two] three deer of either[-]sex and any age[.]. [o]Only one deer may be taken in a given day. It is unlawful to attempt to take or hunt for more than the number of deer permitted.

(d) Duration of the [special permit] shotgun [deer] permit season [shall] is from 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T. on Wednesday, December [17, 1986] 16, 1987 except that in zones 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 41, 48, 50 and 51 the [special permit] shotgun permit season [will] also includes December [18] 17 and 18, [1986] 1987[.]; or at other times as determined by the Director.

(e) [Special deer permits] Shotgun permit season permits are valid only in the designated deer management zones or other designated areas and are not transferrable.

(f) Method: The taking of [one] deer of either sex with a shotgun under a [special] shotgun [deer] permit season permit or a farmer shotgun [deer] permit season permit[, in addition to the legal antlered deer allowed under statewide antlered deer season and either-sex deer allowed under the statewide fall bow and arrow season and either-sex deer allowed during the winter bow season, will be] is permitted in designated deer management zones by holders of a [special] shotgun [deer] permit season permit and, on their own property, by holders of a farmer shotgun [deer] permit season permit.

1. [Special] Shotgun [deer] permits for shotgun permit season will be issued on an individual basis to holders of valid [1986] and current firearm licenses and qualified farmers. Only one application [per person may be submitted for the special season whether as a farmer or a license holder. Farmer shotgun deer permits will be issued on an individual basis to owners or lessees of farms who reside thereon, or the immediate members of their families 10 years of age or older who also reside thereon, upon receipt of a notarized application form], whether for shotgun or muzzleloader permit season, accompanied by the hunting license stub, may be submitted by regular firearm license holders for the initial permit drawing. Duplicate or multiple applications made during the initial application period will cause all applications by an individual to be void.

(g) [Special] [p]Permits for shotgun permit season consist of back display which includes a "[special permit] deer transportation tag" or proper and valid second tag. The back display portion of the permit will be conspicuously displayed on the outer clothing in addition to the valid firearm license in the case of a [special deer] shotgun permit season permit, and without the license in the case of the farmer [deer] shotgun permit season permit. The "[D]deer [T]ransportation [T]ag" portion of the permit must be completely filled out, and affixed to the deer immediately upon killing. This completely filled in "[special permit] deer transportation tag" allows legal transportation of the deer of either sex to an authorized checking station only. Personnel at the checking station will issue a "possession tag." Any permit holder killing a deer of either sex during this season must transport this deer to an authorized checking station by 7:00 P.M. E.S.T. on the date killed to secure the legal "possession tag." The possession of a deer of either sex after 7:00 P.M. E.S.T. on the date killed without a legal "possession tag" shall be deemed illegal possession. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement [district] regional headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possession tag". If the season has been concluded said deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag". For deer management zones where the [special permit] shotgun permit season is [more than one] three days and the bag limit is [two] three deer, a second valid and proper "[special

permit transportation tag] New Jersey Second Deer Permit and Transportation Tag" (second tag) will be issued upon registration of the first deer[, provided the season is open on the following day(s). Said] . This [said] permit will allow this person to continue hunting and take one additional legal deer during the shotgun permit season, provided the season is open the following day(s) or on any additional days that shotgun permit season hunting is authorized. A third "New Jersey Permit and Transportation Tag" will be issued upon registration of the second deer. This permit will allow this hunter to continue hunting and take one additional legal deer during the shotgun permit season, provided the season is open the following day or on any additional days that shotgun permit season hunting is authorized. The second and third permits are not valid on the day of issuance, and are only available from check stations designated to be open for the extended shotgun permit [deer] season.

(h) [Applying for a Special] Shotgun [Deer] Permit Season Permits shall be applied for as follows:

1. Only holders of valid [1986] and current firearm hunting licenses including juvenile firearm license holders may apply by detaching from their hunting license the stub marked "Special Deer Season [1986] 1987", signing as provided on the back, and sending [in] the stub, together with a [\$10.00] \$17.00 permit fee per applicant, and an application form [which has been] properly completed in accordance with instructions. Application [cards] forms may be obtained from:

i.iii. (No change.)

iv. Other Division offices.

[2. No bow and arrow license holders are eligible.]

[3.]2. [Only one application whether for muzzleloading rifle deer season or for the regular shotgun deer season accompanied by the hunting license stub, may be submitted by any one individual. Duplicate applications will cause all applications by an individual to be void.] Permits for shotgun permit season will be issued on an individual basis to holders of valid and current firearm licenses. Only one application, whether for shotgun or muzzleloader permit season, accompanied by the hunting license stub, may be submitted by any one individual during the initial application period. Duplicate or multiple application made during the initial application period will cause all applications to be void.

[4.]3. [Fill the t]The application form shall be filed in to include: Name, address, [1986] current firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 25—September 10, [1986] 1987. Applications postmarked after [the] September 10[th] will not be considered for the initial drawing. Selection of permittees will be made by random selection.

[5.]4. Unsuccessful applicants will be notified [only] by return of permit fees, less a \$2.00 application fee. Any permit obtained by fraud [will be] is void.

[6.]5. Successful applicants will receive their permits by mail. Unless otherwise indicated, a permit fee of [\$10.00] \$17.00 per applicant in the form of a check or money order made payable to "The Division of Fish, Game and Wildlife" [must] shall accompany the completed application form.

[7.]6. Nothing herein contained shall preclude the Division from issuing unfilled and unclaimed permits on a first come-first served basis to any properly licensed hunter after the regular permit selection day.

(i) [Applying for the Special] Farmer Shotgun [Deer] Permit Season Permits shall be applied for as follows:

1. Only the owner or lessee of a farm, who resides thereon, or the immediate members of his family 10 years of age or older who also reside thereon, may apply on forms provided for a [special] farmer [deer] shotgun permit season permit. Under this section, a farm is an area of five acres or more and producing a gross income in excess of \$500.00 and is tax assessed as farmland. [Special] The Farmer Shotgun Permit Season Permit[s] will be issued [only] in [those] all deer management zones [where a special deer season is prescribed].

2. (No change.)

3. [Fill in t]The application form shall be filled in to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August [25—September 10, 1986] 1 to 15. There is no fee required, and all qualified applicants will receive a [special] farmer shotgun [deer] permit season permit, delivered by mail.

4. [Only one application, whether for muzzleloading rifle permit season or shotgun permit season may be submitted per individual.] Qualified farmers may apply for one shotgun permit season permit in any management

zone in addition to one muzzleloader rifle permit season permit in any management zone where a muzzleloader rifle permit season is prescribed. Qualified farmers may not apply for more than one permit for the same season whether as a regular firearm license applicant or as a farmer applicant. Duplicate or multiple permit application made during the initial application period will cause all applications by an individual to be void.

(j) [Use of Special] Shotgun [Deer Permit] and [Special] Farmer Shotgun [Deer] Permit Season Permits shall be used as follows:

1. The [special] shotgun [deer] permit season permit is valid only in the deer management zone (DMZ) designated and is not transferable. The [special shotgun] farmer [deer] shotgun permit season permit is valid only on the farm occupied and designated in the application and is not

transferable. The DMZ quota and DMZ map follow. The [special] shotgun permit season permit hunter is responsible for hunting in the correct DMZ or farm as indicated and in ascertaining the boundaries.

2. Neither the [special] shotgun [deer] permit season permit nor the [special shotgun] farmer [deer] shotgun permit season permit is transferable from [D]deer [M]management [Z]zone to [D]deer [M]management [Z]zone, or from farm to farm, or from individual to individual. The permit must be used on the farm, in the [D]deer [M]management [Z]zone, and by the individual to whom it was issued.

(k) The Deer Management Zone Map [(On file at the Office of Administrative Law[.])] and is available from that agency or the Division. The 1987 Shotgun Permit Season Permit Quotas (Either Sex) are as follows:

[1986] 1987 SHOTGUN [DEER] PERMIT SEASON PERMIT QUOTAS[,] (EITHER SEX)

Deer Mgt. Zone No.	Anticipated Deer Harvest		Permit Quota		Portion of Counties Involved
	[1986]	1987	[1986]	1987	
1	[225]	204	[1222]	1200	Sussex
2†	[254]	444	[980]	1480	Sussex
3	[91]	98	[794]	780	Sussex, Passaic, Bergen
4	[311]	354	[1505]	1893	Sussex, Warren
5†	[849]	1633	[2650]	4082	Sussex, Warren
6†	[303]	315	[1546]	1369	Sussex, Morris, Passaic, Essex
7†	[418]	478	[1323]	1448	Warren, Hunterdon
8†	[1167]	1757	[3647]	5020	Warren, Hunterdon, Morris, Somerset
9†	[261]	292	[1123]	973	Morris, Somerset
10†	[673]	813	[1680]	2032	Warren, Hunterdon
11†	[356]	421	[1150]	1403	Hunterdon
12†	[663]	896	[1780]	2240	Mercer, Hunterdon, Somerset
13†	[250]	220	[1152]	1023	Morris, Somerset
14†	[464]	465	[1740]	1550	Mercer, Somerset, Middlesex, Burlington
15	[65]	135	[488]	710	Mercer, Monmouth, Middlesex
16†	[59]	102	[477]	680	Ocean, Monmouth
17	[103]	154	[400]	513	Ocean, Monmouth, Burlington
18	[41]	32	[277]	320	Ocean
19	[35]	33	[225]	300	Camden, Burlington
20	[32]	47	[278]	361	Burlington
21	0	0	0	0	Burlington, Ocean
22	20	0	[164]	200	Burlington, Ocean
23	0	0	0	0	Burlington, Camden, Atlantic
24	0	0	0	0	Burlington, Ocean
25	[46]	90	[334]	600	Gloucester, Camden, Atlantic, Salem
26	0	0	0	0	Atlantic
27	[101]	130	[443]	600	Salem, Cumberland
28	0	51	[30]	227	Salem, Cumberland, Gloucester
29	[218]	182	[730]	810	Salem, Cumberland
30	[14]	0	[81]	0	Cumberland
31	0	0	0	0	Cumberland
32	0	0	0	0	Cumberland
33	[27]	34	[169]	202	Cape May, Atlantic
34	[10]	0	[57]	0	Cape May, Cumberland
35	[59]	60	[278]	500	Gloucester, Salem
41†	[280]	381	[710]	952	Mercer, Hunterdon
42	[0]	10	[0]	50	Atlantic
43	0	0	0	0	Cumberland
44	0	0	0	0	Cumberland
45	0	0	0	0	Cumberland, Atlantic, Cape May
46	0	0	0	0	Atlantic
47	0	0	0	0	Atlantic, Cumberland, Gloucester
48†	[69]	144	[260]	369	Burlington
49	0	0	0	0	Burlington, Camden, Gloucester
50†	[39]	52	[240]	322	Middlesex, Monmouth
51†	[30]	35	300	0	Monmouth, Ocean
Total	[7,533]	10,082	[28,203]	34,509	

†Indicates [two] three day zones (December 16, 17 and 18, [1986] 1987) with provision for [second deer tag] three deer (one deer per day).

(l) Shotgun[, either-sex] permit season permit[s] not applied[s] for by September 10[, 1986] [will] may be reallocated to [muzzleloading] muzzleloader rifle[,] permit season applicants.

(m) (No change.)

(n) [Location of] Deer [M]management [Z]zones are located as follows:

1. Zone No. 1: That portion of Sussex County lying within a continuous line beginning at the intersection of Rts. 206 and 519 at Branchville; then northwest along Rt. 206 to its intersection with Rt. 521; the west along Rt. 521 to its intersection with the Delaware River at Dingman's Ferry; then north along the east branch of the Delaware River to the New York State line; then east along the New York State line to Rt. 519; the south along Rt. 519 to the [port] point of beginning at Branchville. **The islands of Namanock, Minisink and Mashapacong lying in the Delaware River are included in this zone.**

2. Zone No. 2: That portion of Sussex County lying within a continuous line beginning at the intersection of Rt. 94 and the New York State line; then south along Rt. 94 to its intersection with Rt. 23 at Hamburg; then southeast along Rt. 23 to its intersection with Rt. 517 at Franklin; then south along Rt. 517 to its intersection with Rt. 206 at Andover; then north along Rt. 206 to its intersection with Rt. 519 at Newton; then north along Rt. 519 to the New York State line; then east along the New York State line to Rt. 94 to the point of beginning.

3. Zone No. 3: That portion of Sussex, Morris, Passaic, and Bergen Counties lying within a continuous line beginning at the intersection of Rt. 94 and the New York State line; then east along the New York State line to its intersection with Rt. 202 near Suffern; then south along Rt. 202 to its intersection with Rt. 23; then west along Rt. 23 to its intersection with Rt. 94 at Hamburg; then north along Rt. 94 to the point of beginning on the New York State line.

4. Zone No. 4: That portion of Sussex and Warren Counties lying within a continuous line beginning at the intersection of Rt. 521 and the Delaware River at Dingman's Ferry; then southeast along Rt. 521 to its intersection with Rt. 206; then southeast along Rt. 206 to its intersection with Rt. 521 at Culvers Inlet; then south along Rt. 521 to its intersection with Rt. 94 at Blairstown; then southwest along Rt. 94 to the Delaware River at Columbia; then north along the east bank of the Delaware to the point of beginning at Dingman's Ferry.] **617 (Mountain Road); then south along Rt. 617 to its intersection with Rt. 521 at Stillwater; then south along Rt. 521 to its intersection with Rt. 94 at Blairstown; then southwest along Rt. 94 to the Delaware River at Columbia; then north along the east bank of the Delaware to the point of beginning at Dingman's Ferry. Depew, Tocks, Poxono and Labar Islands in the Delaware River are included in this zone.**

5. Zone No. 5: That portion of Warren and Sussex Counties lying within a continuous line beginning at the intersection of Rt. 521 and Rt. 206 at Culvers Inlet; then southeast along Rt. 206 to its intersection with Rt. 519 at Branchville; then south along Rt. 519 to its intersection with Rt. 206 at Newton; then south along Rt. 206 to its intersection with Rt. 517 at Andover; then south along Rt. 517 to its intersection with Rt. 46 at Hackettstown; then west along Rt. 46 to its intersection with Rt. 94 at Columbia; then northeast along Rt. 94 to its intersection with Rt. 521 at Blairstown; then north along Rt. 521 to [the point of beginning at Culvers Inlet] **its intersection with Rt. 617 at Stillwater; then north along Rt. 617 to its intersection with Rt. 521; then north along Rt. 521 to the point of beginning at Culvers Inlet.**

6. Zone No. 6: That portion of Morris, Sussex, Passaic and Essex Counties lying within a continuous line beginning at the intersection of Rt. 80 and Rt. 517 at Allamuchy; then northeast along Rt. 517 to its intersection with Rt. 23 at Franklin; then southeast along Rt. 23 to its intersection with Rt. 80; then west along Rt. 80 to the point of beginning at Allamuchy.

7. Zone No. 7: That portion of Hunterdon and Warren Counties lying within a continuous line beginning at the intersection of Rts. 31 and 78 at Clinton; then north along Rt. 31 **to its intersection with Rt. 46 at Buttsville; then west on Rt. 46** to the Delaware River at Manunkachunk; then south along the east bank of the Delaware to its intersection with Rt. 78 at Phillipsburg; then east along Rt. 78 to the point of beginning at Clinton.

8. Zone No. 8: That portion of Hunterdon, Morris, Somerset and Warren Counties lying within a continuous line beginning at the intersection of Rts. 22 and 206 near Somerville; then north along Rt. 206 to its intersection with Rt. 80 near Netcong; then west along Rt. 80 to its intersection with Rt. 517 at Allamuchy; then south along Rt. 517 to its intersection with Rt. 46 at Hackettstown; then west along Rt. 46 to its intersection with Rt. 31 at Buttsville; then southeast along Rt. 31 to its intersection with Rt. 22 at Clinton; then east along Rt. 22 to the point of beginning at Somerville.

9. Zone No. 9: That portion of Morris and Somerset Counties lying within a continuous line beginning at the intersection of Rts. 202 and 206 at Bedminster; then north along Rt. 206 to its intersection with Rt.

80 near Netcong; then east along Rt. 80 to its intersection with Rt. 46 at Denville; then east on Rt. 46 to its intersection with Rt. 511 near Boonton Reservoir; then south on Rt. 511 to its intersection with Rt. 202 at Morristown; then southwest along Rt. 202 to the point of beginning at Bedminster.

10. Zone No. 10: That portion of Hunterdon and Warren Counties lying within a continuous line beginning at the intersection of Rts. 31 and 12 in Flemington; then north along Rt. 31 to its intersection with Rt. 78 at Clinton; then west along Rt. 78 to the Delaware River at Phillipsburg; then south along the east bank of the Delaware River to Rt. 12 at Frenchtown; then east along Rt. 12 to the point of beginning at Flemington.

11. Zone No. 11[A]: That portion of Hunterdon County lying within a continuous line beginning at the intersection of Rts. 12, 31 and 202 at Flemington; then south along Rt. 31-202 to the intersection where Rts. 202 and 31 separate **at Ringoes; then southwest** along Rt. 202 to the Delaware River; then northwest along the east bank of the Delaware River to its intersection with Rt. 12 at Frenchtown; then east along Rt. 12 to the point of beginning at Flemington. **Shyhawks, Treasure, Rush, Bull and Eagle Islands lying in the Delaware River are in this zone.**

[Zone No. 41: That portion of Hunterdon and Mercer Counties lying within a continuous line beginning at the intersection of Rt. 31 and Rt. 202 at Ringoes; then south along Rt. 31 to its intersection with Rt. 546 at the Pennington traffic circle; then west along Rt. 546 to the Delaware River; then north along east bank of Delaware River to its intersection with 202; then north along 202 to the point of beginning at Ringoes.]

12. Zone No. 12: That portion of Somerset, Hunterdon and Mercer Counties lying within a continuous line beginning at the intersection of Rts. 31 and 22 at Clinton; then east on Rt. 22 to its intersection with Rt. 206 at Somerville; then south along Rt. 206 to its intersection with Rt. 546 at Lawrenceville; then west on Rt. 546 to its intersection with Rt. 31 at the Pennington traffic circle; then north along Rt. 31 to the point of beginning at Clinton.

13. Zone No. 13: That portion of Morris, Somerset and Union Counties lying within a continuous line beginning at the intersection of Rts. 22 and 287 at Somerville; then north on Rt. 287 to Bedminster; then northeast along Rt. 202 to its intersection with Rt. 24 at Morristown; then southeast along Rt. 24 to its intersection with Rt. 82; then southwest along Rt. 82 to its intersection with Rt. 22; then southwest along Rt. 22 to the point of beginning at Somerville.

14. Zone No. 14: That portion of Mercer, Middlesex, Somerset and Burlington Counties lying within a continuous line beginning at the intersection of Rts. 22 and 206 at Somerville; then east along Rt. 22 to its intersection with Rt. 287; then south on Rt. 287 to its intersection with Rt. 18; then south on Rt. 18 to its intersection with the New Jersey Turnpike; then southwest along the New Jersey Turnpike to its intersection with Rt. [206; then north along Rt. 206 to the city of Trenton; then north along the east bank of the Delaware River to Rt. 546 at Washington Crossing; then east on Rt. 546 to its intersection with Rt. 206 at Lawrenceville; then north along Rt. 206 to the point of beginning at Somerville.] **545; then northwest along Rt. 545 to its intersection with Delaware River at Bordentown; then northwest along the east bank of the Delaware to Rt. 546 at Washington's Crossing; then east on Rt. 546 to its intersection with Rt. 206 at Lawrenceville; then north along Rt. 206 to the point beginning at Somerville. Rotary and Blauguard Islands lying in the Delaware River are in this zone.**

15. Zone No. 15: That portion of Monmouth, Mercer and Middlesex Counties lying within a continuous line beginning at the intersection of [Rt. 520 and the Garden State Parkway to its intersection with Rt. 537 at new Shrewsbury; then southwest on Rt. 537 to its intersection with Rt. 95 near Holmeson; the west on Rt. 95 to its intersection with the New Jersey Turnpike; then north along the Turnpike to its intersection with Rt. 18 at New Brunswick; then south along Rt. 18 to its intersection with Rt. 9; then south along Rt. 9 to its intersection with Rt. 520; then east along Rt. 520 to the point of beginning on the Garden State Parkway.] **the New Jersey Turnpike and Rt. 522 near Jamesburg; then south on the Turnpike to its intersection with Rt. 195; then east on Rt. 195 to its intersection with Rt. 537 near Holmeson; then northeast on Rt. 537 to its intersection with Rt. 522 in Freehold; then northwest on Rt. 522 to its intersection with the New Jersey Turnpike, the point of beginning.**

16. Zone No. 16: That portion of Monmouth and Ocean Counties lying within a continuous line beginning at the intersection of Rt. 537 and [the Garden State Parkway near Eatontown; then south along the Garden State Parkway to its intersection with Rt. 571 near Toms River; then west along Rt. 571 to its intersection with Rt. 537 near Holmeson; then northeast along Rt. 537 to the point of beginning.] **Rt. 571 near**

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Holmeson; then southeast on Rt. 571 to its intersection with Rt. 547; then northeast on Rt. 547 through Lakewood to its intersection with Rt. 34; then north on Rt. 34 to its intersection with the fenced boundary of the Earle Naval Weapons Depot property; then westward along the fenced border of the Earle Depot to its intersection with Rt. 33; then west along Rt. 33 to its intersection with Rt. 537 in Freehold; then southwest on Rt. 537 to its intersection with Rt. 571 near Holmeson, the point of beginning.

17. Zone No. 17: That portion of Mercer, Monmouth, Burlington and Ocean Counties lying within a continuous line beginning at the intersection of the New Jersey Turnpike and the Mercer County line near Yardville; then north along the Turnpike to its intersection with Rt. 195; then east along Rt. 195 to its intersection with Rt. 537 near Holmeson; then southwest along Rt. 537 to its intersection with Rt. 539; then southeast along Rt. 539 to the border of the Fort Dix Military Reservation; then westward along the Fort Dix Military Reservation boundary to Rt. 545 near Wrightstown; then northwest along Rt. 545 to its intersection with the New Jersey Turnpike.

18. Zone No. 18: That portion of Ocean County lying within a continuous line beginning at the intersection of Rt. 530 and the Garden State Parkway at South Toms River; then west along Rt. 530 to its intersection with Rt. 539 near Whiting; then northwest along Rt. 539 to its intersection with Rt. 70; then west along Rt. 70 to the border of Fort Dix Military Reservation; then northward along the Fort Dix Military Reservation boundary to the northernmost intersection of the Fort Dix Military Reservation border and Rt. 539; then northwest along Rt. 539 to its intersection with Rt. 571 near Holmeson; then southeast along Rt. 571 to the Garden State Parkway; then south along the Garden State Parkway to the point of beginning near South Toms River.

19. Zone No. 19: That portion of Burlington and Camden Counties lying within a continuous line beginning at the intersection of Rt. 530 and Rt. 206 near Birmingham; then south along Rt. 206 to its intersection with Rt. 534 at Indian Mills; then west along Rt. 534 to its intersection with Rt. 73; then north along Rt. 73 to its intersection with the New Jersey Turnpike; then northeast along the New Jersey Turnpike to its intersection with Rt. 38[.]; then east along Rt. 38 to its intersection with Rt. 530; then east along Rt. 530 to its intersection with Rt. 206 near Birmingham, the point of beginning.

20. Zone No. 20: That portion of Burlington [County] and Ocean Counties lying within a continuous line beginning at the intersection of [Rt. 206 and the New Jersey Turnpike at Mansfield Square; then north along the New Jersey Turnpike to its intersection with Rt. 545; then southeast along Rt. 545 to its intersection with the border of Fort Dix Military Reservation; then southward along the Fort Dix Military Reservation boundary to its southernmost intersection with Rt. 545; then south along Rt. 545, to its intersection with Rt. 530 at Browns Mills; then east along Rt. 530 to its intersection with Rt. 70; then west along Rt. 70 to its intersection with Rt. 72; then southeast along Rt. 72 to its intersection with Rt. 532; then west along Rt. 532 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with the New Jersey Turnpike at Mansfield Square, to the point of beginning.] Rts. 206 and 530; then east along Rt. 530 to its intersection with the border of Fort Dix Military Reservation; then continuing east, north and east along the Fort Dix Military Reservation boundary to its intersection with Rt. 70; then southwest along Rt. 70 to its intersection with Rt. 72; then southeast along Rt. 72 to its intersection with Rt. 532; then west along Rt. 532 to its intersection with Rt. 206; then north along Rt. 206 to its intersection with Rt. 530, the point of beginning.

21. Zone No. 21: That portion of Ocean and Burlington Counties lying within a continuous line beginning at the intersection of Rt. 530 and the Garden State Parkway at South Toms River; then south along the Parkway to its intersection with Rt. 72; then northwest along Rt. 72 to its intersection with Rt. 70; then northeast along Rt. 70 to its intersection with Rt. 539 near Whiting; then south along Rt. 539 to Rt. 530; then east along Rt. 530 to its intersection with the Garden State Parkway at South Toms River, the point of beginning.

22. Zone No. 22: That portion of Ocean and Burlington Counties lying within a continuous line beginning at the intersection of the Garden State Parkway and Rt. 37 near Toms River in Ocean County; then south along the Garden State Parkway to its intersection with the Mullica River and Atlantic County line; then east to the Atlantic Ocean; then north along the Atlantic Ocean to Rt. 37 in Seaside Heights Boro; then along Rt. 37 to its intersection with the Garden State Parkway near Toms River, the point of beginning.

[Zone No. 42: That portion of Atlantic County lying within a continuous line beginning at the intersection of the Garden State Parkway and Mullica River at Chestnut Neck; then southwest along the Garden State

Parkway to its intersection with Rt. 322 (40); then southeast along Rt. 322 to Atlantic City; then northeast along the Atlantic Ocean to Great Bay; then west along the Atlantic County line to the intersection of the Garden State Parkway and the Mullica River, the point of beginning.]

23. Zone No. 23: That portion of Burlington, Atlantic and Camden Counties lying within a continuous line beginning at the intersection of Rts. 542 and 563 at Green Bank; then west along Rt. 542 to its intersection with Rt. 30 near Hammonton; then northwest along Rt. 30 to its intersection with Rt. 73; then north on Rt. 73 to its intersection with Rt. 534; then east along Rt. 534 to its intersection with Rt. 206 at Indian Mills; then north along Rt. 206 to its intersection with Rt. 532; then east along Rt. 532 to its intersection with Rt. 563 at Chatsworth; then south along Rt. 563 to Rt. 542 the point of beginning at Green Bank.

24. Zone No. 24: That portion of Burlington and Ocean Counties lying within a continuous line beginning at the intersection of Rt. 563 and Rt. 532 at Chatsworth; then east along Rt. 532 to its intersection with Rt. 72; then southeast along Rt. 72 to its intersection with the Garden State Parkway; then south along the Parkway to the Mullica River; then west along the north bank of the Mullica River to its intersection with Rt. 563 near Green Bank; then north along Rt. 563 to its intersection with Rt. 532 at Chatsworth, the point of beginning.

25. Zone No. 25: That portion of Gloucester, Atlantic and Camden Counties lying within a continuous line beginning at the intersection of Rts. 30 and 54 near Hammonton; then south on Rt. 54 to its intersection with Rt. 40 near Buena; then west on Rt. 40 to its intersection with Rt. 553; then north on Rt. 553 to its intersection with Rt. [322(536)] 47 at Glassboro; then [east on Rt. 322(536) to Williamstown; then north on the Rt. 536 spur to its intersection with Rt. 73 near Tansboro; then north on Rt. 73 to its intersection with Rt. 30 to its intersection with Rt. 54 at Hammontown, the point of beginning.] north on Rt. 47 to its intersection with County Road 635 (Hurville-Grenloch Road); then eastward on County Road 635 to its intersection with County Road 705 (Woodbury-Turnersville); then southeast along County Road 705 to its intersection with County Road 688 (Turnersville-Hickstown Road); then eastward along County Road 688 to its intersection with County Road 689 (Berlin-Crosskeys Road); then northeast along County Road 689 to its intersection with Rt. 73 at Berlin; then south on Rt. 73 to its intersection with Rt. 30; then southeast along Rt. 30 to its intersection with Rt. 54 near Hammonton, the point of beginning.

26. Zone No. 26: That portion of Atlantic County lying within a continuous line beginning at the intersection of Rts. 40 and 54 near Buena; then southeast on Rt. 40 (40-322) to its intersection with the Garden State Parkway; then northeast on the Garden State Parkway to its intersection with the Mullica River; then northwest along the south bank on the Mullica River to its intersection with Rt. 563 at Green Bank; then north on Rt. 563 to its intersection with Rt. 542, then west on Rt. 542 to its intersection with Rt. 54 to its intersection with Rt. 40 at Buena, the point of beginning.

27. Zone No. 27: That portion of Cumberland and Salem Counties lying within a continuous line beginning at the intersection of Rts. 77 and 40 at Pole Tavern; then northwest on Rt. 40 to its intersection with Rt. 48; then west on Rt. 48 through Penns Grove to the Delaware River; then south along the east bank of the river to Rt. 49 at Pennsville; then southeast on Rt. 49 to Pecks Corner; then east along Salem [c]County Rt. 32 to its intersection with Rt. 540; then east along Rt. 540 to its intersection with Rt. 77; then north on Rt. 77 to its intersection with Rt. 40 at Pole Tavern, the point of beginning.

28. Zone No. 28: That portion of Gloucester, [Atlantic,] Cumberland and Salem Counties lying within a continuous line beginning at the intersection of Rts. 77 and 40 at Pole Tavern; then east on Rt. 40 [to its intersection with Rt. 552; then west on Rt. 552 to spur 552; then west on spur 552 to Rt. 49 in Millville; then west on Rt. 49 to its intersection with Salem County Rt. 32 at Pecks Corner; then east on Salem County Rt. 32 to its intersection with Rt. 540; then east on Rt. 540 to its intersection with Rt. 77; then north on Rt. 77 to Pole Tavern, the point of beginning.] to its intersection with Rt. 47 at Malaga; then south on Rt. 47 to its intersection of Rt. 49 in Millville; then west on Rt. 49 to its intersection with Salem County Rt. 32 at Pecks Corner; then east on Salem County Rt. 32 to its intersection with Rt. 540; then east on Rt. 540 to its intersection with Rt. 77; then north on Rt. 77 to Pole Tavern, the point of beginning.

29. Zone No. 29: That portion of Salem and Cumberland Counties lying within a continuous line beginning at the intersection of Rts. 77 and 49 at Bridgeton; then northwest on Rt. 49 through Pennsville to the Delaware River; then south along the east bank of the Delaware River to the Cohansey River[.]; then along the northwest bank of the Cohansey River to Bridgeton, the point of beginning.

30. Zone No. 30: That portion of Cumberland County lying within a continuous line beginning at Fairton on the Cohansey River; then west along the south bank of the Cohansey River to the Delaware River; then southeast along the east bank of the Delaware River to the Maurice River; then north along the west bank of the Maurice River to Cumberland County Rt. 32 at Port Norris; then north on Cumberland County Rt. 32 to its intersection with Rt. 553; then northwest on Rt. 553 to Fairton, the point of beginning.

31. Zone No. 31: That portion of Cumberland County lying within a continuous line beginning at the intersections of [routes] Rts. 77 and 49 at Bridgeton; then east on Rt. 49 to the Maurice River near Millville; then south along the west bank of the Maurice River near Millville; then south along the west bank of the Maurice River to Buckshutem Creek; then west on the north bank of Buckshutem Creek to its intersection with Buckshutem Road (County Road 70); then northwest on Buckshutem Road to its intersection with Cedarville Road (County Road 10); then southwest on Cedarville Road to its intersection with Newport Centre Grove Road (County Road 29); then southwest on Newport Centre Grove Road to its intersection with Rt. 553; then northwest along Rt. 553 to the Cohansey River at Fairton; then north on the east bank of the Cohansey River to Bridgeton, the point of beginning.

[Zone No. 43: That portion of Cumberland County lying within a continuous line beginning at the intersection of Buckshutem Road (County Road 70) and Cedarville Road (County Road 10); then southwest on Cedarville Road to its intersection with Newport Centre Grove Road (County Road 29); then southwest on Newport Centre Grove Road to its intersection with the Central Railroad of New Jersey (C.R.R.N.J.); then east on the C.R.R.N.J. line to its intersection with Haleyville Road (County Road 15) at Maurice Station; then east on Haleyville Road to its intersection with Rt. 548; then east on Rt. 548 to its intersection with the Maurice River at Mauricetown; then north along the west bank of the Maurice River to the south bank of Buckshutem Creek at Laurel Lake; then west on the south bank of Buckshutem Creek to Buckshutem Road; the northwest on Buckshutem Road to its intersection with Cedarville Road, the point of beginning.]

Zone No. 44: That portion of Cumberland County lying within a continuous line beginning at the intersection of Rt. 548 and the Maurice River; then west on Rt. 548 to its intersection with Haleyville Road (County Road 15); then west on Haleyville Road to its intersection with the Central Railroad of New Jersey (C.R.R.N.J.) at Mauricetown Station; then west on the C.R.R.N.J. line to its intersection with Newport Centre Grove Road (County Road 29); and southwest on Newport Centre Grove Road to its intersection with Rt. 553; then south and east on Rt. 553 to Cumberland County Rt. 32; then south to the west bank of the Maurice River at Shell Pile; then north along the west bank of the Maurice River to Rt. 548 at Mauricetown, the point of beginning.]

32. Zone No. 32: That portion of Cumberland County lying within [the] a continuous line beginning at the intersection of Rt. 49 and the Maurice River at Millville; then south along the east bank of the Maurice River to Port Elizabeth; then east on Rt. 548 to its intersection with Cumberland-Port Elizabeth Road (County Road 46); then north on Cumberland-Port Elizabeth Road to its intersection with Rt. 49[.]; then northwest on Rt. 49 to its intersection with Union Road (County Rt. 76); then north on Union Road to its intersection with Rt. 552 (County Road 48); then southwest on Rt. 552 (and Rt. 552 spur) to Millville, Rt. 49 and the Maurice River, the point of beginning.

[Zone No. 45: That portion of Cumberland, Atlantic and Cape May Counties lying within a continuous line beginning at the intersection of Union Road (County Rt. 76) and Rt. 552; then east on Rt. 552 to its intersection with the Tuckahoe River at Milmay; then south along the west bank of the Tuckahoe River to its intersection with Rt. 49 at Hunter's Mill; then southeast on Rt. 49 to its intersection with Rt. 548; then west on Rt. 548 to its intersection with Cumberland-Port Elizabeth Road (County Rt. 46) at Port Elizabeth; then north on Cumberland-Port Elizabeth to its intersection with Rt. 49; then northwest on Rt. 49 to its intersection with Union Road; then north on Union Road to Rt. 552, the point of beginning.]

Zone No. 46: That portion of Atlantic and Cape May Counties lying within a continuous line beginning at the intersection of Rts. 49 and 50 at Tuckahoe; then north on Rt. 50 to its intersection with Rt. 40 at Mays Landing; then west on Rt. 40 to its intersection with Rt. 552; then west on Rt. 552 to its intersection with the Tuckahoe River at Milmay, then south along the east bank of the Tuckahoe River to its intersection with Rt. 49 at Hunter's Mill; then southeast and east on Rt. 49 to its intersection with Rt. 50, the point of beginning.]

33. Zone No. 33: That portion of Atlantic and Cape May Counties lying within a continuous line beginning at the intersection of Rts. 40 and 50 at Mays Landing; then south on Rt. 50 to its intersection with Rt. 31 (585) near Petersburg; then east on Rt. 31 to Rt. U.S. 9; then south on Rt. 9 to its intersection with Rt. 23 at Marmora; then east on Rt. 23 to the Atlantic Ocean at Ocean City; the northeast along the Atlantic Ocean to Atlantic City; then northwest along Rt. 322 (40) to McKee City; then west on Rt. 40 to its intersection with Rt. 50 at Mays Landing, the point of beginning.

34. Zone No. 34: That portion of Cumberland and Cape May Counties lying within a continuous line beginning at Port Elizabeth; then east on Rt. 548 to its intersection with Rt. 49; then continuing east on Rt. [59] 49 to its intersection with Rt. 50 at Tuckahoe; then south on Rt. 50 to its intersection with Rt. 31 (585) near Petersburg; then east on Rt. 31 to Rt. U.S. 9; then south on Rt. 9 to its intersection with Rt. 23 at Marmora; then east on Rt. 23 to the Atlantic Ocean at Ocean City; then southeast along the Atlantic Ocean to Delaware Bay; then north and west along the east bank of Delaware Bay to the Maurice River; then north along the east bank of the Maurice River to Port Elizabeth and Rt. 548; the point of beginning.

35. Zone No. 35: That portion of Salem [Gloucester, Camden, Burlington and Mercer Counties lying within a continuous line beginning at the intersection of Rts. spur 536 and 73 near Tansboro; then north on Rt. 73 to its intersection with the N.J. Turnpike; then northeast along the N.J. Turnpike to its intersection with Rt. 38; then east along Rt. 38 to its intersection with Rt. 530, then east on Rt. 530 to its intersection with Rt. 206; then north on Rt. 206 to the city of Trenton; then southwest along the east bank of the Delaware River to Penns Grove; then southeast on Rt. 48 to its intersection with Rt. 40; then southeast on Rt. 40 to its intersection with Rt. 553, then north on Rt. 553 to the intersection with Rt. 322(536) at Glassboro; then east on Rt. 322(536) to Williamstown; then north on the Rt. 536 spur to Rt. 73, the point of beginning.] and Gloucester Counties lying within a continuous line beginning at the east bank of the Delaware River at Penns Grove; then southeast on Rt. 48 to its intersection with Rt. 40; then southeast on Rt. 40 to its intersection with Rt. 553; then north on Rt. 553 to its intersection with Rt. 47 at Glassboro; then north on Rt. 47 to its intersection with Mantua Creek; then northwest along the Mantua Creek to the Delaware River; then southwest along the east bank of the Delaware River to Penns Grove, the point of beginning. Chester and Mond's Islands lying in the Delaware River are in this zone.

36. Zone No. 36: Hunter's Choice Area: That portion of Bergen, Hudson, Essex, Morris, Union, Somerset and Middlesex Counties lying within a continuous line beginning at the intersection of Rt. 202 and the New York State line near Suffern; then south on Rt. 202 to its intersection with Rt. 23 near Wayne; then south on Rt. 23 to its intersection with Rt. 80; then southwest on Rt. 80 to its intersection with Rt. 511; then south on Rt. 511 to its intersection with Rt. 510; then west on Rt. 510 to its intersection with Rt. 24 at Morristown; then southeast on Rt. 24 to its intersection with Rt. 82; then southeast along Rt. 82 to its intersection with Rt. 22; then southwest on Rt. 22 to its intersection with Rt. 287 near Somerville; then southeast on Rt. 287 to its intersection with Rt. 18 near South Bound Brook; then southeast on Rt. 18 to its intersection with the [NJ] New Jersey Turnpike; then north on the Turnpike to its intersection with the Raritan River; then east along the north bank of the Raritan River to Raritan Bay and the New York State line; then north along the New York State line to Arthur Kill and west bank of the Hudson River; then west along the [NJ-NY] New Jersey-New York border to the point of beginning near Suffern.

37. Zone No. 41: That portion of Hunterdon and Mercer Counties lying within a continuous line beginning at the intersection of Rt. 31 and Rt. 202 at Ringoes; then south along Rt. 31 to its intersection with Rt. 546 at then Pennington traffic circle; then west along Rt. 546 to the Delaware River; then north along east bank of Delaware River to its intersection with Rt. 202; then north along Rt. 202 to the point of beginning at Ringoes.

38. Zone No. 42: That portion of Atlantic County lying within a continuous line beginning at the intersection of the Garden State Parkway and Mullica River at Chestnut Neck; then southwest along the Garden State Parkway to its intersection with Rt. 322 (40); then southeast along Rt. 322 to Atlantic City; then northeast along the Atlantic Ocean to Great Bay; then west along the Atlantic County line to the intersection of the Garden State Parkway and the Mullica River, the point of beginning.

39. Zone No. 43: That portion of Cumberland County lying within a continuous line beginning at the intersection of Buckshutem Road (County Road 70) and Cedarville Road (County Road 10); then southwest on Cedarville Road to its intersection with Newport Centre Grove Road (Coun-

ty Road 29); then southwest on Newport Centre Grove Road to its intersection with the Central Railroad of New Jersey (C.R.R.N.J.); then east on the C.R.R.N.J. line to its intersection with Haleyville Road (County Road 15) at Mauricetown Station; then east on Haleyville Road to its intersection with Rt. 548; then east on Rt. 548 to its intersection with the Maurice River at Mauricetown; then north along the west bank of the Maurice River to the south bank of Buchshutem Creek at Laurel Lake; then west along the south bank of Buckshutem Creek to Buckshutem Road; then northwest on Buckshutem Road to its intersection with Cedarville Road, the point of beginning.

40. Zone No. 44: That portion of Cumberland County lying within a continuous line beginning at the intersection of Rt. 548 and the Maurice River; then west on Rt. 548 to its intersection with Haleyville Road (County Road 15); then west on Haleyville Road to its intersection with the Central Railroad of New Jersey (C.R.R.N.J.) at Mauricetown Station; then west on the C.R.R.N.J. line to its intersection with Newport Centre Grove Road (County Road 29); then southwest on Newport Centre Grove Road to its intersection with Rt. 553; then south and east on Rt. 553 to Cumberland County Rt. 32; then south to the west bank of the Maurice River at Shell Pile; then north along the west bank of the Maurice River to Rt. 548 at Mauricetown, the point of beginning.

41. Zone No. 45: That portion of Cumberland, Atlantic and Cape May Counties lying within a continuous line beginning at the intersection of Union Road (County Rt. 76) and Rt. 552; then east on Rt. 552 to its intersection with the Tuckahoe River at Milmay; then south along the west bank of the Tuckahoe River to its intersection with Rt. 49 at Hunter's Mill; then southeast on Rt. 49 to its intersection with Rt. 548; then west on Rt. 548 to its intersection with Cumberland-Port Elizabeth Road (County Rt. 46) at Port Elizabeth; then north on Cumberland-Port Elizabeth Road to its intersection with Rt. 49; then northwest on Rt. 49 to its intersection with Union Road; then north on Union Road to Rt. 552, the point of beginning.

42. Zone No. 46: That portion of Atlantic and Cape May Counties lying within a continuous line beginning at the intersection of Rts. 49 and 50 at Tuckahoe; then north on Rt. 50 to its intersection with Rt. 40 at Mays Landing; then west on Rt. 40 to its intersection with Rt. 552; then west on Rt. 552 to its intersection with the Tuckahoe River at Milmay; then south along the east bank of the Tuckahoe River to its intersection with Rt. 49 at Hunter's Mill; then southeast and east on Rt. 49 to its intersection with Rt. 50, the point of beginning.

43. Zone No. 47: That portion of Gloucester, Atlantic and Cumberland lying within a continuous line beginning at the intersection of Rts. 547 and 40 at Malaga; then southeast on Rt. 40 to its intersection with Rt. 552; then southwest on Rt. 552 to spur 552; then west on spur 552 to its intersection with Rt. 47 at Millville; then north on Rt. 47 to Malaga, the point of beginning.

44. Zone No. 48: That portion of Burlington County lying within a continuous line beginning at the intersection of the New Jersey Turnpike and Rt. 38 near Moorrestown; then east along Rt. 38 to its intersection with Rt. 530; then east along Rt. 530 through Pemberton to its intersection with the southern border of the Fort Dix Military Reservation boundary; then northward along the Fort Dix boundary to its intersection with County Road 670; then east on County Road 670 to its intersection with Rt. 545 at Wrightstown; then northwest on Rt. 545 to its intersection with the Delaware River at Bordentown; then southwest along the east bank of the Delaware River to Rt. 541 at the City of Burlington; then southeast along Rt. 541 to its intersection with Interstate 295; then southwest along [I-] Interstate 295 to its intersection with Rancocas Creek; then east along Rancocas Creek to its intersection with the [N.J.] New Jersey Turnpike; then southwest along the [N.J.] New Jersey Turnpike to its intersection with Rt. 38, the point of beginning. **New Bold and Burlington Islands lying in the Delaware River are in this zone.**

45. Zone No. 49: That portion of Gloucester, Camden and Burlington Counties lying within a continuous line beginning at the mouth of Mantua Creek on the Delaware River; then northeast along the east bank of the Delaware River to Rt. 541 at the City of Burlington; then southeast along Rt. 541 to its intersection with Interstate 295; then southwest along [I-] Interstate 295 to its intersection with Rancocas Creek; then east along the Rancocas Creek to its intersection with the [N.J.] New Jersey Turnpike; then southwest along the [N.J.] New Jersey Turnpike to its intersection with Rt. 73; then south along County Road 689 to its intersection with County Road 688; then west along County Road 688 to its intersection with County Road 705; then southwest on County Road 635 to its intersection with Rt. 47; then north on Rt. 47 to its intersection with Mantua Creek; then northwest along Mantua Creek to its mouth at the Delaware River, the point of beginning. **Petty Island lying in the Delaware River is in this zone.**

46. Zone No. 50: That portion of Monmouth and Middlesex Counties lying in a continuous line beginning at the intersection of the [N.J.] New Jersey Turnpike and Rt. 522 near Jamesburg; then southeast on Rt. 522 to its intersection with Rt. 537 at Freehold, then southwest on Rt. 537 to its intersection with Rt. 33; then east on Rt. 33 to its intersection with the western edge of the fenced boundary of the Earle Naval Weapons Depot; then north and east along the fenced boundary of the Earle Depot to its intersection with County Route 38 (Wayside Road); then south on County Route 38 to its intersection with Rt. 547; then north on Rt. 547 and to its intersection with the Garden State Parkway; then north on the Garden State Parkway to its intersection with Rt. 36 near Eatontown; then east on Rt. 36 to the Atlantic Ocean; then north along the Atlantic coast line to the Raritan Bay; then south and west along the shore of Raritan Bay to the Raritan River; then continuing west along the south bank of the Raritan River to its intersection with the [N.J.] New Jersey Turnpike; then southwest along the [N.J.] New Jersey Turnpike to its intersection with Rt. 522, the point of beginning.

47. Zone No. 51: That portion of Monmouth and Ocean Counties lying in a continuous line beginning at the intersection of Rt. 547 and Rt. 571 near Lakehurst; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south on the Garden State Parkway to Rt. 37 near Toms River; then east on Rt. 37 to the Atlantic Ocean; then north along the Atlantic coast line to its intersection with Rt. 36 in Long Branch; then west on Rt. 36 to its intersection with the Garden State Parkway; then south on the Parkway to its intersection with County Route 16 (Asbury Ave.) near Tinton Falls; then westward on County Route 16 to its intersection with the fenced boundary of the Earle Naval Weapons Depot; then westward along the fenced boundary of Earle Naval Weapons Depot to its intersection with Rt. 34; then south on Rt. 34 to the Collingwood Circle and Rt. 547 (Asbury Road); then south on Rt. 547 through Lakewood to its intersection with Rt. 571, the point of beginning.

7:25-5.30 White-tailed deer [(*Odocoileus virginianus*) special] **bow and arrow permit season, [bow and arrow,] either sex**

(a) The Director with the approval of the Council may authorize the issuance of [special] bow and arrow [deer] **permit season** permits for the taking of deer anywhere within this State or at any State or [f]Federal installation.

(b) If the anticipated harvest of deer has not been accomplished during this season, one additional day of [special] **bow and arrow permit deer** hunting may be authorized by the Director. Such authorization and date thereof shall be announced by press and radio.

(c) [One deer of either sex, any age, may be taken with a special bow and arrow deer permit. Nothing contained herein shall preclude a person who has legally killed and reported a deer from then procuring one valid and proper permit which will allow this person to continue hunting and take one additional deer of either sex during the 1986 special bow and arrow deer permit season. This permit shall not be valid on the day of issuance. It is unlawful to attempt to take or hunt for more than the number of deer permitted.] **Bag Limit: Two deer of either sex per permit. Only one deer may be taken in a given day. Deer shall be tagged immediately with the bow and arrow permit "transportation tag" completely filled in and shall be transported to a checking station before 7:00 P.M. E.S.T. on the day killed. Upon completion of the registration of the first deer, one valid and proper "New Jersey Second Deer Permit and Transportation Tag" (Second Tag) will be issued which will allow the person to continue hunting and take one additional deer of either sex during bow and arrow permit season, provided the season is open on the following day. The second tag shall not be valid on the day of issuance, and all registration requirements apply.**

(d) Duration of the [special permit] bow and arrow [deer] **permit season** [shall be] is from November [8] 7 to December 6, [1986] 1987, excluding November [27, 1986] 26, 1987, in designated deer management zones, or any other time as determined by the Director. Legal hunting hours shall be 1/2 hour before sunrise to 1/2 hour after sunset.

(e) [Special] [b]Bow and arrow [deer] **permit season** permits are valid only in the designated deer management zones or other designated areas and are not transferrable.

(f) Method: The taking of [one] two deer of either [-]sex with a bow and arrow under a [special] bow and arrow [deer] **permit season permit** or a farmer bow and arrow [deer] **permit season permit**, [in addition to the legal antlered deer allowed under statewide antlered deer season and either-sex deer allowed under the statewide fall bow and arrow season and either-sex deer allowed during the winter bow season, will be] is permitted in designated deer management zones by holders of a [special]

bow and arrow permit season permit and on the farm occupied and designated in the application by holders of a farmer bow and arrow [deer] permit season permit.

1. [Special bow] Bow and arrow [deer] permit season permits will be issued on an individual basis to holders of valid [1986] and current bow and arrow licenses and qualified farmers. Only one application per person may be submitted for the [special] bow and arrow [deer] permit season, whether as a farmer or a license holder, during the initial application period. Farmer bow and arrow [deer] permit season permits will be issued on an individual basis to owners or lessees of farms who reside thereon, or the immediate members of their families 10 years of age or older who also reside thereon, upon receipt of a notarized application form and only in zones where the season has been prescribed.

(g) [Special permits] Permits consist of back display which includes a [special permit] deer transportation tag[,] or proper and valid "second tag." The back display portion of the permit will be conspicuously displayed on the outer clothing in addition to the valid bow and arrow license [in the case of a special deer permit], and without the license in the case of the farmer [deer] bow and arrow permit season permit. The "[D]deer [T]ransportation [T]ag" portion of the permit must be completely filled out and affixed to the deer immediately upon killing. This completely filled in ["special permit] deer transportation tag["] allows legal transportation of the deer of either[-]sex to an authorized checking station only. Personnel at the checking station will issue a "possession tag." Any permit holder killing a deer of either[-]sex during this season must transport this deer to an authorized checking station by 7:00 [p.m.] P.M. E.S.T. on date killed to secure the legal "possession tag." The possession of a deer of either[-]sex after 7:00 [p.m.] P.M. E.S.T. on date killed without a legal "possession tag" shall be deemed illegal possession. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement [district] regional headquarters. Such deer must be brought to a checking station on the next open day to receive a legal "possession tag." If the season has been concluded, such deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag."

(h) [Applying for a Special] Bow and Arrow [Deer] Permit Season Permits shall be applied for as follows:

1. Only holders of a valid [1986] and current bow and arrow licenses including juvenile bow and arrow license holders may apply by sending a [\$10.00] \$17.00 permit fee per applicant and an application form which has been properly completed in accordance with instructions. Application forms may be obtained from:

- i.iii. (No change.)
- iv. Division Field Offices.

2. Application for a [special] bow and arrow [deer] permit season permit shall not preclude an individual from applying for either the [muzzleloading] muzzleloader rifle or shotgun [special] season permits.

3. Only one application may be submitted by any one individual during the initial application period. Duplicate application[s] during the initial application period will cause all applications by an individual to be void.

4. The application form shall be filled in to include: Name, address, [1986] current bow and arrow hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection which are received in the Trenton office during the period of August 25—September 10[, 1986]. Applications postmarked after September 10[,1986] will not

be considered for the initial drawing. Selection of permittees will be made by random selection.

5. Unsuccessful applicants will be notified only by return of permit fees, less a \$2.00 application fee. Any permit obtained by fraud [will be] is void.

6. Unless otherwise indicated, a permit fee of [\$10.00] \$17.00 per applicant in the form of a check or money order made payable to "Division of Fish, Game and Wildlife" must accompany the completed application form.

7. (No change.)

8. Nothing herein contained shall preclude the Division from issuing unfilled or unclaimed permits on a first-come, first-served basis to any properly licensed hunter or qualified farmer after the regular permit selection day.

(i) [Applying for the Special] Farmer Bow and Arrow [Deer] Permit Season Permits shall be applied for as follows:

1. Only the owner or lessee of a farm, who resides thereon, or the immediate members of his family 10 years of age or older who also reside thereon, may apply on forms provided for a [special] farmer bow and arrow permit season [deer] permit. Under this section a farm is an area of five acres or more and producing a gross income in excess of \$500.00 and is tax assessed as farmland. [Special] Farmer [B]bow and [A]rrow [Farmers] permit season [P]ermits will be issued only in those deer management zones where a [special deer] bow and arrow permit season is prescribed.

2. Application forms may be obtained from:

- i.iii. (No change.)
- iv. Division field offices.

3. The application form shall be filled in to include: [N]ame, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of August [25] 1 to 15 [September 10, 1986]. There is no fee required, and all qualified applications will receive a [special] farmer bow and arrow [deer] permit season permit, delivered by mail.

4. Only one application may be submitted per individual. Application for a [special] bow and arrow [deer] permit season permit shall not preclude an individual from applying for either the muzzleloader rifle or shotgun [special season] permit season permits.

(j) [Use of Special] Bow and Arrow [Deer Permit] and [Special] Farmer Bow and Arrow [Deer] Permit Season Permits shall be used as follows:

1. The [special] bow and arrow [deer] permit season permit is valid only in the deer management zone (DMZ) designated and is not transferrable. The [special bow and arrow] farmer [deer] bow and arrow permit season permit is valid only on the farm occupied and designated in the application and is not transferrable. The DMZ quota follows below at [3.] (k). The DMZ map is on file at the Office of Administrative Law. The [special] bow and arrow permit season permit hunter is responsible for hunting in the correct DMZ or farm as indicated and in ascertaining the boundaries.

2. Neither the [special] bow and arrow [deer] permit season permit nor the [special bow and arrow] farmer [deer permit] bow and arrow permit season permit is transferrable from DMZ to DMZ, or from farm to farm, or from individual to individual. The permit must be used on the farm, in the DMZ, and by the individual to whom it was issued.

(k) The Deer Management Zone Map is on file at the Office of Administrative Law and is available from that agency or the Division. The 1987 Bow and Arrow Deer Season Permit Quotas (Either Sex) are as follows:

[1986] 1987 BOW AND ARROW [DEER] PERMIT SEASON PERMIT QUOTAS (EITHER[-]SEX)

Deer Mgt. Zone No.	Anticipated Deer Harvest		Permit Quota		Portion of Counties Involved
	[1986]	1987	[1986]	1987	
1	[0]	85	[0]	850	Sussex
2	[71]	133	[710]	1144	Sussex
3	[0]	67	[0]	670	Sussex, Passaic, Bergen
4	0		0		Sussex, Warren
5	[206]	294	[2,060]	2935	Sussex, Warren
6	[114]	157	[1,140]	1570	Sussex, Morris, Passaic, Essex
7	[225]	162	[2,250]	1452	Warren, Hunterdon
8	[566]	404	[5,660]	3364	Warren, Hunterdon, Morris, Somerset
9	[177]	144	[1,770]	1042	Morris, Somerset
10	[253]	191	[2,530]	1855	Warren, Hunterdon
11	[215]	131	[2,150]	1146	Hunterdon
12	[189]	282	[1,890]	2415	Mercer, Hunterdon, Somerset
13	[120]	84	[1,200]	733	Morris, Somerset

14	[181]	177	[1,810]	1770	Mercer, Somerset, Middlesex, Burlington
15	0		0		Mercer, Monmouth, Middlesex
16	[47]	104	[470]	999	Ocean, Monmouth
17	[32]	56	[320]	485	Ocean, Monmouth, Burlington
18	0		0		Ocean
19	[0]	29	[0]	290	Camden, Burlington
20	0		0		Burlington
21	0		0		Burlington, Ocean
22	0		0		Burlington, Ocean
23	0		0		Burlington, Camden, Atlantic
24	0		0		Burlington, Ocean
25	[0]	37	[0]	370	Gloucester, Camden, Atlantic, Salem
26	0		0		Atlantic
27	[0]	55	[0]	550	Salem, Cumberland
28	0		0		Salem, Cumberland, Gloucester
29	[118]	111	[1,180]	1110	Salem, Cumberland
30	0		0		Cumberland
31	0		0		Cumberland
32	0		0		Cumberland
33	0		0		Cape May, Atlantic
34	0		0		Cape May, Cumberland
35	[21]	58	[210]	580	Gloucester, Salem
36	20		200		Bergen, Hudson, Essex, Morris, Union, Somerset and Middlesex
41	[122]	78	[1,220]	780	Mercer, Hunterdon
42	[0]	12	[0]	120	Atlantic
43	0		0		Cumberland
44	0		0		Cumberland
45	0		0		Cumberland, Atlantic, Cape May
46	0		0		Atlantic
47	0		0		Atlantic, Cumberland, Gloucester
48	[32]	50	[320]	501	Burlington
49	[5]	10	[50]	100	Burlington, Camden, Gloucester
50	[20]	31	[200]	305	Middlesex, Monmouth
51	[25]	33	[250]	375	Monmouth, Ocean
Total	[2,759]	2,995	[27,590]	27,711	

[(k)](1) Bow and arrow [either-sex] permit season permits not applied for by September 10[, 1986] may be reallocated to [muzzleloading] muzzleloader rifle or shotgun permit season permit applicants.

7:25-5.31 White-tailed deer [(Odocoileus virginianus)] [special] shotgun permit, [firearms only,] (either[-]sex), Great Swamp National Wildlife Refuge

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

(c) Duration of the Great Swamp [Special] Shotgun Permit Season shall be from 7:00 A.M. E.S.T. to 5:00 P.M. E.S.T. on the following dates: December [12, 13], 10, 11, 12, 1987 and January 8 and 9, [and 10, 1987] 1988 or as may otherwise be designated by the U.S. Fish and Wildlife Service.

(d) Bag Limit: Three deer of either sex, any age, may be taken with a Great Swamp [Special Deer] shotgun permit season [P]permit. Only one deer may be taken in a given day. [The third deer must be taken in that portion of the Great Swamp designated as the Wilderness Area.]

(e) Great Swamp [Special Deer] shotgun permit season [P]permits are valid only in designated portions of the Great Swamp National Wildlife Refuge and are not transferrable.

(f) Method: The taking of deer of either sex with a [firearm] shotgun under a Great Swamp [Special Deer] shotgun permit season [P]permit [, in addition to the legal antlered deer allowed under statewide antlered deer season and either-sex deer allowed under the statewide long bow and arrow season and either-sex deer allowed under the winter bow season.] will be permitted in designated areas of the Great Swamp National Wildlife Refuge by holders of a Great Swamp [Special Deer] shotgun permit season [P]permit. A total of 600 Great Swamp [Special Deer] shotgun permit season [P]permits will be issued. Daily hunter quotas, hunt procedures and hunting methods in this area shall be provided by the U.S. Fish and Wildlife Service.

(g) Procedures for applying for a Great Swamp [Special Deer] shotgun permit season [P]permit will be the same as outlined for the [Special Deer] shotgun permit season [P]permit (see N.J.A.C. 7:25-5.2[5]9(h)), with the exception that applicants for the Great Swamp [Special Deer] shotgun permit season [P]permit must indicate Zone 38 on the application card in the space reserved for deer management zone number.

(h)-(i) (No change.)

7:25-5.32 (No change.)

7:25-5.33 (No change.)

7:25-5.34 Controlled hunting—hunting restrictions on wildlife management [A]areas

(a) No wildlife management areas have been selected for limited hunter density for the [1986-87] 1987-88 season, however hunting with firearms shall be prohibited on November 6, 1987 on those wildlife management areas designated as pheasant and quail stamp areas in N.J.A.C. 7:25-5.33.

(b) (No change.)

7:25-5.35 Special wildlife salvage permit

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

(c) The scientific salvage permit issuance fee shall be [\$5.00] \$7.00 to defray expenses attending granting the permit and the permit shall be valid for one year only, from the date of its issuance and shall not be transferrable.

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

7:25-5.36 White-tailed Deer [(Odocoileus virginianus)] special biological permit

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

7:25-5.37 (No change.)

7:25-5.38 (No change.)

(a)

DIVISION OF SOLID WASTE MANAGEMENT
Resource Recovery and Solid Waste Disposal
Facility Fund

Proposed Amendment: N.J.A.C. 7:26-14.1
Proposed New Rules: N.J.A.C. 7:26-14A

Authorized By: Richard T. Dewling, Commissioner, Department
of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq., 13:1E-6, P.L. 1985, c.330,
331 and 335, and P.L. 1980 c.70.

DEP Docket No. 017-87-04.

Proposal Number: PRN 1987-178.

Public hearings concerning this proposal will be held on:

June 3, 1987
10:00 A.M. to 4:00 P.M.

New Jersey State Museum
Auditorium
205 West State Street
Trenton, New Jersey

June 4, 1987
4:00 P.M. to 8:00 P.M.

Essex County College
The Main Building
Lecture Hall No. 2132
303 University Avenue
Newark, New Jersey

Submit written comments on or before June 17, 1987 to:

Catherine A. Torney, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule will implement the "Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985", P.L. 1985, c.330 (the "1985 Act"). The 1985 Act gives the Department of Environmental Protection ("the Department") the authority to govern the disposition, after appropriation, of \$85,000 raised through the sale of bonds and deposited in the Resource Recovery and Solid Waste Disposal Facility Fund (the Fund) for the purpose of making loans to local government units for the construction of resource recovery facilities and environmentally sound sanitary landfill facilities.

The Department continues to govern the disposition of \$50,000,000 raised through the sale of bonds pursuant to the "Natural Resources Bond Act of 1980," P.L. 1980 c.70 ("the 1980 Act"). Those moneys were appropriated to the Fund by P.L. 1985 c.335. Funds derived from the 1980 Act will be loaned consistent with the provisions of the 1980 Act, and repayment of those loans will be made to the Resource Recovery and Solid Waste Disposal Facility Fund pursuant to P.L. 1985, c.331. The proposed new rules will therefore govern the disbursement of moneys appropriated to the Fund pursuant to both the 1980 and 1985 Acts and any appropriations from the General Fund. However, any loan agreement executed prior to the final adoption date of these new rules, N.J.A.C. 7:26-14A, will be loaned in accordance with the current rules governing the disbursement of funds under the 1980 Act. Those projects, however, for which appropriations have been approved prior to the adoption of these rules, but which result in loan agreements executed after final adoption of these new rules, are exempt from sections N.J.A.C. 7:26-14A.7, 14A.9, and 14A.10. The Department continues to reserve the right to request materials and information as necessary to review and develop the loan agreement for these projects.

Pursuant to the 1985 Act, the Commissioner is charged with the responsibility of submitting to the State Treasurer and the New Jersey Commission on Capital Budgeting and Planning a plan for the expenditure of funds from the Fund for each upcoming fiscal year. This plan shall include: a performance evaluation of the expenditures made from the fund to date; a description of programs planned during the upcoming fiscal year; a copy of the rules in force governing the operations of programs that are financed, in whole or in part, by funds from the Fund, and an estimate of expenditures for the upcoming fiscal year.

A summary of the text of each section in N.J.A.C. 7:26-14A follows:
N.J.A.C. 7:26-14A.1, Scope. Describes the scope of subchapter 14A, Resource Recovery and Solid Waste Disposal Facility Fund.

N.J.A.C. 7:26-14A.2, Construction.

N.J.A.C. 7:26-14A.3, Purpose. Sets forth the objectives of the subchapter.

N.J.A.C. 7:26-14A.4, Definitions. Contains the definitions applicable to the loan rules.

N.J.A.C. 7:26-14A.5, Eligibility for Project Loans. Establishes the criteria to be considered for eligibility for receipt of a loan to construct a resource recovery or environmentally sound sanitary landfill facility.

N.J.A.C. 7:25-14A.6, Preapplication procedures. Describes a preapplication seminar on application procedures and identifies a Departmental contact.

N.J.A.C. 7:26-14A.7, Application procedures. Contains the procedures for filing and processing an application for a loan.

N.J.A.C. 7:26-14A.8, Use and disclosure of information. Contains a notice that the loan application and associated materials are public records, available for public review.

N.J.A.C. 7:26-14A.9, Criteria for project loan priority. Establishes a point system for prioritizing loan applications, based upon a discrete set of criteria.

N.J.A.C. 7:26-14A.10, Determination by the Department. Stipulates that the Department will approve or disapprove the application and establishes a procedure to inform approved and disapproved applicants of their standing to receive loan funding.

N.J.A.C. 7:26-14A.11, Loan terms and administration of disbursements. Establishes the requirements which apply to the amount of, interest rate on and maturity period of the loan; the terms governing escrow agent services and disbursement of loan funds; the conditions precedent to which the borrower must certify compliance in order to receive loan funding; the changes by the borrower in the terms of the loan that may require a loan modification by the Department.

N.J.A.C. 7:26-14A.12, Payment procedures. Describes procedures for payment of funds by the Department and/or the escrow agent, as applicable.

N.J.A.C. 7:26-14A.13, State share of project cost. Contains a notice that the State share of the project cost shall be included in the agreement and shall represent the maximum loan amount.

N.J.A.C. 7:26-14A.14, Loan agreement. Sets forth procedures for the preparation and processing of the loan award document; establishes the conditions precedent to which the borrower must certify compliance in order to receive loan funding.

N.J.A.C. 7:26-14A.15, Effect of loan agreement. Contains notices that the execution of the loan award document shall obligate the Resource Recovery and Solid Waste Disposal Facility Fund and that the loan does not obligate the Department to award traditional funds for cost overruns.

N.J.A.C. 7:26-14A.16, Repaid funds. Provides that repaid funds may be reallocated by the Department to finance other approved projects.

N.J.A.C. 7:26-14A.17, Fraud and other unlawful or corrupt practices. Requires that the contracts associated with the loan be free of fraud or other corrupt practices and that the borrower must pursue available judicial and administrative remedies where such practices are alleged.

N.J.A.C. 7:26-14A.18, Administration and performance of loan. Places primary responsibility upon the borrower for the administration and success of the resource recovery or environmentally sound sanitary landfill facility project.

N.J.A.C. 7:26-14A.19, Access. Requires that loan agreements provide Department personnel with access to the facilities, premises and records of the borrower or records of any contractors/subcontractors; requires the borrower to submit requested information to the Department; subjects the borrower and all contractors and subcontractors which contract directly with the borrower to receive any State loan funds to financial audit; requires that records be maintained and be available to the Department for three years after submission of final requests for payment.

N.J.A.C. 7:26-14A.20, Assignment. Contains a notice that the rights and obligations of the parties may not be assigned.

N.J.A.C. 7:26-14A.21, Publicity and signs. Provides that the signs and public notices of the project acknowledge the State's loan support.

N.J.A.C. 7:26-14A.22, Debarment. Describes procedures for insuring that contracts for work on a loan project do not go to contractors who have been debarred, suspended or disqualified pursuant to N.J.A.C. 7:1-5.

N.J.A.C. 7:26-14A.23, Termination of loans. Sets the standards and procedures for loan termination.

N.J.A.C. 7:26-14A.24, Certifications. Sets forth the precise language which must be inserted in each certification required pursuant to this subchapter.

N.J.A.C. 7:26-14A.25, Administrative hearings. Describes the procedures for administrative hearings for disputes arising under a loan.

N.J.A.C. 7:26-14A.26, Severability. Contains a notice that should a specific provision of the rules be found unconstitutional or invalid, the remainder of the rules will not be affected.

Social Impact

It is anticipated that the adoption of this proposal will have a positive social impact on the people of the State of New Jersey. The proposed new rules further the interest of the Legislature and the people of the State in providing financial assistance to local governments to engage in an environmentally and economically sound program of solid waste management.

The public will benefit in a number of ways from the adoption of these rules. Principally, State aid provided to local government units will assist in the development of resource recovery facilities capable of recovering both valuable material and energy resources as well as financing environmentally sound sanitary landfill facilities. These resource recovery facilities and sanitary landfills will replace those existing disposal facilities that have either reached their designed capacity or present environmental problems.

Economic Impact

A positive economic impact will result from the issuing of State bonds to provide local government units with loans for the construction of resource recovery facilities and environmentally sound sanitary landfills. Such financial assistance will aid in the development of an environmentally acceptable program of solid waste disposal, reducing reliance on land-intensive and environmentally unsound landfills. This development of resource recovery and environmentally sound sanitary landfills will, however, result in disposal cost increases. These rules will advance a clear State policy of lessening the economic impact of such positive developments.

The Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., requires that each and every Solid Waste Management District plan for maximum practicable use of resource recovery technologies. The Department has developed estimates of the overall cost of complying with this mandate. These estimates, developed as part of the Environmental Infrastructure package—which formed the basis of the legislation establishing this Fund—anticipate development of approximately 16,000 tons of daily disposal capacity at resource recovery facilities statewide. On this basis, approximately \$2.25 billion will be required for capital investment. (This figure is in current dollars and includes the effect of inflation on construction costs. Expressed in 1987 dollars, costs are approximately \$1.75 billion.)

The capital required to implement this program is expected to come from three principal sources. Two of these are tax-exempt bonds issued by local governments and equity contributions from private vendors who enter into long term arrangements to provide solid waste disposal service to the public. (Recent Federal tax reform legislation has modified the ability of local governments to issue tax-exempt debt, as well as the ability of private entities to avail themselves of the tax benefits of public/private projects.) The third source of funding will be the financing provided under this loan program. The Department estimates that the revolving loan program will be able to provide loans for approximately 12 percent of the construction costs of these facilities; approximately 10 percent of total costs (including financing etc.) will be provided for the majority of projects. Several projects, including those in Essex County and Pennsauken in Camden County, have had funds appropriated for loans greater than this amount. (See P.L. 1985, c.332 and P.L. 1985 c.335.)

Since these loans will, in most cases, be provided at no or low interest, total direct project costs will be reduced by the amount of interest paid on the additional borrowing (in the public credit markets) which would be required in the absence of the State loans. This reduction in project costs will be reflected in reduced tipping fees. The initial capital for this revolving loan funds, however, will be derived from State-issued general obligation bonds. The overall economic benefit to residents of New Jersey will, therefore, be derived from two sources. The first shall be the difference in bond interest rates between that which would be paid by project sponsors if they issued their own bonds and that which is actually paid by the State. Since the funds provided under this program may replace short-term construction borrowings on the part of project sponsors, and since the State issues long-term debt in large amounts, this advantage may be significant.

Secondly, the funds in the revolving loan program will be used more than one time, but need only be borrowed once by the State. This creation of a permanent pool of capital, in multiple uses of the same funds, further

increases the differences between State borrowing costs and those which, in aggregate, would be faced by project sponsors in the absence of the program. The Department estimates that over the period 1987-1997 approximately \$250 million will be loaned by the Fund. In effect, each dollar will be used one and one-half times over that period, and will be available for subsequent use.

Environmental Impact

The proposed new rules promote the Legislature's interest in an environmentally sound strategy for the disposal of solid waste which is necessary for the protection of the public health and safety and the preservation of the State's natural resources. In addition, the proposed new rules further the State's interest in curtailing its virtually exclusive reliance on traditional landfills as a solid waste disposal method and encourages the utilization of resource recovery facilities designed to simultaneously dispose of and recover the materials and energy contained in solid waste.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, P.L. 1986, c.169, the Department has determined that this proposal would not impose reporting, recordkeeping, or other compliance requirements on small businesses because they are not impacted by the requirements of these rules. The rules will impact local government units eligible for financial assistance under the Resource Recover and Solid Waste Disposal Facility Bond Act of 1985 (P.L. 1985, c.330).

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

SUBCHAPTER 14. RESOURCE RECOVERY GRANTS OR LOANS

7:26-14.1 Scope

This subchapter shall constitute the rules of the Department of Environmental Protection governing the disposition of appropriations pursuant to the Natural Resources Bond Act, P.L. 1980, c.70 for the development and implementation of resource recovery projects as described within the approved District Solid Waste Management Plans developed under N.J.S.A. 13:1E-1 et seq. **Any loan agreement which is executed pursuant to P.L. 1985, c.220, c.331 and c.335 prior to the effective date of N.J.A.C. 7:26-14A shall be in accordance with this subchapter, 7:26-14. Any loan agreement executed pursuant to P.L. 1985, c.330, c.331 and c.335 after the effective date of N.J.A.C. 7:26-14A shall be in accordance with that subchapter, 7:26-14A.**

Full text of the proposed new rules follows.

SUBCHAPTER 14A. RESOURCE RECOVERY AND SOLID WASTE DISPOSAL FACILITY LOANS

7:26-14A.1 Scope

This subchapter shall constitute the rules of the Department of Environmental Protection governing the disposition of appropriations from the Resource Recovery and Solid Waste Disposal Facility Fund established pursuant to P.L. 1985, c.330, c.331 and c.335. P.L. 1985, c.335 appropriate to the Resource Recovery and Solid Waste Disposal Facility Fund \$50,000,000 from the Natural Resources Bond Fund established pursuant to P.L. 1980 c.70. Appropriations from the Fund shall be used for loans to local government units for the construction of resource recovery facilities and environmentally sound sanitary landfill facilities which are identified and included in a district solid waste management plan approved pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. Any loan agreements which are executed pursuant to P.L. 1985, c.330, c.331 and c.335 after the effective date of this subchapter, shall be in accordance with this subchapter. Loan agreements entered pursuant to P.L. 1985, c.330, c.331 and c.335 and which are executed prior to the effective date of this subchapter, shall be in accordance with N.J.A.C. 7:26-13.

7:26-14A.2 Construction

This subchapter shall be construed so as to permit the Department to discharge its statutory functions and to effectuate the purposes of the law.

7:26-14A.3 Purpose

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

1. To implement the purposes and objectives of the Natural Resources Bond Act, P.L. 1980, c.70, and the Resource Recovery and Solid Waste Disposal Facility Bond Act, P.L. 1985, c.330, c.331, and c.335;

2. To establish policies and procedures for the distribution of funds appropriated from the Resource Recovery and Solid Waste Disposal Facility Fund as loans to local government units within the State to help

defray the costs of constructing resource recovery facilities and environmentally sound sanitary landfill facilities. This includes local government unit contracts with vendors who contract with the local government unit to undertake such projects to service the local government unit's recovery and disposal needs;

3. To protect the public and the State by insuring that funds appropriated are spent in a proper manner and for the intended purposes;

4. To assure that the distribution and use of funds are consistent with the laws and policies of the State;

5. To establish minimum standards of conduct to prevent conflicts of interest and to insure proper administration of loans; and

6. To establish accounting procedures for the administration of loans.

7:26-14A.4 Definitions

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

"1980 Act" means the Natural Resources Bond Act of 1980, P.L. 1980, c.70;

"1985 Act" means the Resource Recover and Solid Waste Disposal Facility Bond Act of 1985, P.L. 1985, c.330, c.331 and c.335;

"Bonds" means the bonds authorized to be issued, or issued, under the 1980 and 1985 acts;

"Commissioner" means the Commissioner of the Department of Environmental Protection or his designee;

"Construct" and "construction" means, in addition to the usual meanings thereof, the designing, engineering, financing, extension, repair, remodeling, or rehabilitation, or any combination thereof, of a resource recovery facility or an environmentally sound sanitary landfill facility or any component part thereof;

"Construction costs" means, for the purpose of determining loan amounts, those costs associated with the putting together or building of a resource recovery facility or an environmentally sound sanitary landfill facility including the construction and/or rehabilitation of building and equipment, site preparation and landscaping, roads and parking, and utilities and does not include such things as engineering and design, legal and financial, insurance, other professional services and land acquisition. This shall not include the acquisition of an existing previously constructed facility.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Solid Waste Management in the Department of Environmental Protection.

"Environmentally sound sanitary landfill facility" means a sanitary landfill facility which is equipped with a liner or liners, a leachate control and collection system, and a groundwater pollution monitoring system, or any other pollution control or other engineering device required by the Department pursuant to law or rule and regulation, and which is identified and included in a district solid waste management plan pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1, et seq.

"Escrow account" means the account established with the escrow bank for receipt, investment and disbursement of the Fund loan monies.

"Escrow agent" means the entity or individual responsible for authorizing disbursements from the escrow account pursuant to the terms of the Fund loan agreement and the escrow agreement.

"Escrow bank" means the financial institution designated as the escrow bank pursuant to an escrow agreement entered into by the borrower.

"Full scale operation" means the point of time at which a facility becomes commercially available to operate at the facility for which it was designed.

"Fund" means the Resource Recovery and Solid Waste Disposal Facility Fund established pursuant to P.L. 1985, c.330.

"Local government unit" means a county, municipality, municipal or county utility authority, an implementing agency pursuant to an approved Solid Waste Management Plan, or any other political subdivision of this State authorized to construct, operate, or arrange for the construction or operation of a resource recovery facility or an environmentally sound sanitary landfill facility.

"Project" means any work relating to the construction of a resource recovery facility or an environmentally sound sanitary landfill facility by a local government unit.

"Project cost" means the expenses incurred in connection with:

1. The acquisition by purchase, lease, or otherwise of a project; the development of a project; and the construction of any project authorized by the 1985 Act;

2. The acquisition by purchase, lease or otherwise and the development of any real or personal property for use in connection with any project authorized by the 1985 Act, including any rights or interests therein;

3. The execution of any agreements and franchises deemed by the Department to be necessary or useful and convenient in connection with any project authorized by the 1985 Act;

4. The procurement of engineering, inspection, planning, legal, financial, geological, hydrological or other professional services, including the services of a bond registrar or an authenticating agent;

5. The issuance of bonds, or any interest or discount thereon;

6. The administrative, organizational, operating or other expenses incident to the financing, completing and placing into service of projects authorized by the 1985 Act or any related contractual arrangements for providing resource recovery or environmentally sound sanitary landfill facility services;

7. The establishment of a reserve fund or funds for working capital, operating, maintenance or replacement expenses and for the payment or security, principal or interest on bonds, as the State Treasurer may determine; and

8. Reimbursement to any fund of the State of moneys which may have been transferred or advanced therefrom to any fund created by the 1985 Act, or of any moneys which may have been expanded therefrom for or in connection with any project authorized by the 1985 Act.

"Residual landfill" means an environmentally sound sanitary landfill facility which is designed primarily for the disposal of residuals from resource recovery facilities, non-processable wastes for an emergency backup disposal when resource recovery facilities are shut down for repair or maintenance.

"Resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse, or a mechanized composting facility, or any other solid waste facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production, and which is identified and included in a district solid waste management plan pursuant to the provisions of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

"Vendor" means a private or public entity qualified and selected by a local government unit in accordance with any applicable law resulting in an agreement whereby the vendor agrees to design, construct, and/or operate a resource recovery facility and/or an environmentally sound sanitary landfill facility or to provide resource recovery facility and/or environmentally sound sanitary landfill facility services to the local government unit.

7:26-14A.5 Eligibility for project loans

(a) Any local government unit is eligible to apply for and receive a loan for a resource recovery facility or environmentally sound sanitary landfill facility from the Fund provided it satisfactorily completes and submits the local application, meets the criteria set forth in this subchapter and ranks high enough on the priority list to obtain available funding. Only a county governing body, however, is eligible to receive a loan from moneys transferred to the Fund pursuant to P.L. 1985, c.335 from the Natural Resources Fund which was established pursuant to P.L. 1980, c.70.

(b) To receive a loan, the project shall meet the following criteria to the satisfaction of the Department:

1. The project for which the loan application is being made has been included (by lot and block number, and if applicable, by type of technology, for example, landfill, mass burn, composting, etc.) in the appropriate district solid waste management plan adopted and approved in accordance with N.J.S.A. 13:1E-1 et seq.;

2. If applicable, the project shall have received the approvals required under N.J.S.A. 13:1E-26; and

3. The local government unit shall not be in current default on any State loan. If a local government unit is in current default on a State loan, a Fund loan pursuant to this subchapter will not be executed between the Department and the local government unit unless the Department determines that repayment of the defaulted loan will be received.

(c) Those projects for which appropriations have been approved prior to the effective date of this subchapter are exempt from the requirements of N.J.A.C. 7:26-14A.7, 14A.9, and 14A.10. The Department, however, reserves the right to request materials and information as otherwise required by those sections necessary to review and develop the loan agreement for these projects.

7:26-14A.6 Preapplication procedures

(a) Prior to the close of the application period and scheduled so as to allow sufficient time to develop and submit a project application, the Division shall conduct a resource recovery facility and environmentally sound sanitary landfill facility financing seminar. The purpose of the seminar shall be to describe to public agencies the resource recovery and solid waste disposal loan program established pursuant to P.L. 1985, c.330 and the loan application process set forth in this subchapter. Notice of the seminar shall be published in the New Jersey Register and further provided through mailings and public notices. The seminar shall not be part of the formal application procedure and, therefore, verbal statements made during the seminar shall not be binding upon the Department.

(b) Questions concerning the financial seminar referenced at (a) above and the loan application process should be directed to:

Chief
Bureau of Solid Waste and Resource Recovery Financing
Division of Solid Waste Management
Department of Environmental Protection
CN 028
Trenton, New Jersey 08625

7:26-14A.7 Application procedures

(a) Each application for a resource recovery or environmentally sound sanitary landfill facility loan shall be submitted to the Department on forms available from the Department for that purpose.

(b) Each application submitted to the Department shall include the following information:

1. A full description of the project, including, at a minimum, the type of resource recovery or sanitary landfill facility, project goals and objectives, budget, identification of consultants and contractors (if known), scheduling of major project construction phases and related costs, proposed disbursement schedule and public participation activities;

2. Certification by the appropriate Solid Waste Management District that the project is in conformance with the approved District Solid Waste Management Plan developed under the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.;

3. A written statement describing the project's readiness to proceed, including, at a minimum, status of waste stream evaluation (quantity and composition), facility sizing, engineering design, site selection and acquisition, marketing commitments, Federal, State and local permits required for the project, environmental assessments, the contracts the local government unit enters into for the design, construction, acquisition and/or operation of the facility and, in the case of a resource recovery facility, provisions for emergency back-up and residue disposal;

4. A written statement describing the technical feasibility of the project, including, at a minimum, the history of the development and utilization of the specific technologies/procedures involved, the likely ability of the project to meet environmental requirements, the ability of the proposed facility to meet the specifications and needs of material and energy users and the compatibility of the proposed project with other existing or proposed material and energy recovery programs within the solid waste management district;

5. A written statement describing the financial feasibility of the project, including, at a minimum, a cost/revenue analysis, a description of the applicant's financial plan to repay the loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan, and steps it plans to take before receiving the loan that will guarantee that at the time of the signing of the loan award document it will be irrevocably committed to repay the loan. The statement shall describe the roles and responsibilities of all participants in the project, including the vendor, and all contracts entered into or contemplated for the project. The Department reserves the right to review all such contracts for purposes of prioritizing applications. This description shall include a detailed outline of the contractual commitments which will ensure project completion, as well as contingencies in the event of non-completion or completion at less than full capacity. Sources and uses of all funds to be used in the project, including the potential State loan, shall be fully described;

6. A written estimate of all project and construction costs;

7. A written statement describing the applicant's need for loan funding and how the receipt of a loan will impact the project; and

8. All other information, forms, agreements and subagreements the Department may require to assign priority points.

(c) Applications shall be signed for the applicant by a person authorized by resolution or ordinance to file an application for a State loan, to represent the applicant in all matters relating to the application process, and to obligate the application to the terms and conditions of the loan.

1. Each resolution or ordinance shall constitute an undertaking to accept the requirements of this subchapter and the terms and conditions of the loan award document.

2. A copy of the signed resolution or ordinance shall be submitted with the application.

(d) Complete applications shall be submitted in advance of the application closing date for the application period in which the applicant wishes to be awarded a loan. There shall be at least one application period in each fiscal year, which application period shall be announced in the New Jersey Register sufficiently in advance of the application period to enable all eligible local government units to apply.

1. Additional application periods may be established as deemed necessary by the Department upon publication of a notice of the details of the additional application period in the New Jersey Register.

2. The application closing date for any application period may be extended, if deemed necessary by the Department, upon publication of a notice of extension in the New Jersey Register.

(e) The Division shall notify the applicant that it has received the application and is evaluating it pursuant to this section. Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application. The applicant will be notified of the completeness or deficiency of the application;

2. Programmatic, technical, and scientific evaluation to determine the merit and relevance of the project to the Department's program objectives; and

3. Budget evaluation to determine whether proposed project costs are reasonable, applicable, and allowable.

(f) No loan shall be awarded until an appropriation is made for the project to be financed.

(g) All applications shall be sent to:

Chief
Bureau of Solid Waste and Resource Recovery Financing
Division of Solid Waste Management
Department of Environmental Protection
CN 028
Trenton, New Jersey 08625

(h) It is the responsibility of the applicant to insure that the Department has received all necessary documentation in a timely manner and in advance of the closing date for receipt of applications. If a submitted application is determined by the Department to be incomplete because not all necessary documentation has been received by the Department as of the application closing date, then that application will not be considered for funding for that loan period.

7:26-14A.8 Use and disclosure of information

All loan applications and other submissions, when received by the Division, are public records pursuant to N.J.S.A. 47:1A-1 et seq. The Division shall make them available to persons who so request, to the extent required by New Jersey and/or Federal law and consistent with the confidentiality provisions therein.

7:26-14A.9 Criteria for project loan priority

(a) Each year, project loan applications shall be assigned priority points by the Department in accordance with the provisions outlined in this section. A project shall be ranked according to the number of priority points it receives. Loan awards, depending on the amount of funds available in the Fund, shall be offered to projects in order of ranking unless the Legislature appropriates funds otherwise. This subchapter provides the terms and conditions under which application will be evaluated and prioritized and funding awards will be recommended by the Department. It is possible that the provisions of this subchapter will be superseded by legislation appropriating funds to specific projects. The Priority Criteria and corresponding Priority Points shall be as follows:

Priority Criteria	Priority Points
1. Project is already under construction. (NOTE: A project already into the construction phase is also entitled to priority points for activities such as permitting and procurement which were completed prior to the construction phase.)	50
2. The project has received all permits and approvals as determined by the Department, necessary to proceed with construction and operation.	20

- 3. The procurement process for the project has been successfully completed in accordance with appropriate statutes and a contract has been awarded for the design and construction of the project. 20
- 4. Long term (minimum 20 years) contracts/arrangements have been executed for the disposal of process residues, non-processable wastes and emergency backup disposal. 20
- 5. The site for the project has been obtained by purchase or long term (minimum 20 years) lease. 20
- 6. Long term (minimum 20 years) contracts have been awarded for the sale of materials and/or energy recovered by the project. 20
- 7. The project has the capability of recovering or reducing the weight of the solid waste stream directed to the project by the following percentages via material and energy recovery processes (includes solid waste types 10, 13, 23, 25 and 27):
 - i. Material Recovery:
 - (1) 25 percent or more 50
 - (2) 20 percent to 24 percent 40
 - (3) 15 percent to 19 percent 30
 - (4) 10 percent to 14 percent 20
 - (5) 5 percent to 9 percent 10
 - ii. Energy Recovery:
 - (1) 70 percent or more 50
 - (2) 60 percent to 69 percent 40
 - (3) 50 percent to 59 percent 30
 - (4) 40 percent to 49 percent 20
 - (5) 30 percent to 39 percent 10
- 8. The project is a residuals landfill designed primarily to service a resource recovery facility by providing for the disposal of process residues and non-processable and emergency by-pass solid wastes. 25
- 9. The project is a sanitary landfill designed primarily to serve as a solid waste disposal facility for non-processable wastes. (Note: A sanitary landfill project combined with a comprehensive source separation/recycling program can also receive priority points under priority criteria (a)6 above.) 15
- 10. The percentage of the county's solid waste stream that will be serviced by the project:
 - i. 80 percent or more 40
 - ii. 60 percent to 79 percent 20
 - iii. 40 percent to 59 percent 20
 - iv. 20 percent to 39 percent 10
- 11. The degree of technical feasibility and fitness of the project for its intended purpose as measured by the number of total years a commercial facility(ies), excluding sanitary landfills, of similar size and design has successfully operated in the United States:
 - i. 25 or more years 50
 - ii. 20 to 24 years 40
 - iii. 15 to 19 years 30
 - iv. 10 to 14 years 20
 - v. 5 to 9 years 10

(b) In the event that two or more projects are assigned an equal number of priority points, the Department shall determine which project(s) will be recommended for funding. This determination shall be based on the Department's assessment of the need for the project as it relates to the State's overall solid waste management needs. Also, the Department may, at its discretion, award a portion of the priority points for a particular priority criteria. For example, if a materials and energy recovery project applicant has executed a materials recovery sales contract, but not an energy recovery sales contract, the Department may award a portion of the priority points assigned to priority criteria (a)6 above.

(c) Applicants can apply for and receive funding for project costs which have been incurred on or after November 5, 1985. Such applicants must follow the procedures, meet the requirements and maintain all the records required by this subchapter.

7:26-14A.10 Determination by the Department

(a) Upon completion of a full review, evaluation and prioritization of each application received during each application period, the Department shall take one of the following action:

- 1. Approve the application as meeting the application requirements;
- 2. Approve the application and recommend for funding; or
- 3. Disapprove the application.

(b) The Department shall then review the list of projects and requested loan amounts, and shall determine which projects it will recommend for funding based upon the financial condition and projections of the Fund and previous legislative appropriations. The Department shall then establish a priority rank list, which list, and any amendments thereto, shall be published in the New Jersey Register.

(c) The Department shall send a Notice of Intent to Award to those approved applicants for which it recommends funding. Such notice shall state the intent of the Department to recommend the passage of legislative appropriating funds for the loan. Without passage of a specific legislative appropriation, the project will not receive funding.

(d) The Department shall notify applicants whose applications meet minimum application requirements but which are not recommended for funding in that particular application/funding period. Applicants may file for reconsideration in future funding periods pursuant to (i) below.

(e) The Department shall notify applicants in writing of any disapproval. A disapproval of an application shall not preclude reconsideration of the application by the Department following revision and resubmission by the applicant provided that the resubmission or revision is completed in advance of the closing date for applicants. If the application period has already closed, the applicant shall not be precluded from re-applying for a loan in the next annual application period.

(f) The applicants receiving a Notice of Intent to Award a loan shall obtain all necessary Federal, State and local permits and approvals within one year of receipt of the Notice of Intent to Award a loan. Failure to obtain the required permits within the required time period shall make the project ineligible for a loan for that application period unless prior approval for an extension has been granted by the Division.

(g) If subsequent to the issuance of a Notice of Intent to Award, the applicant discovers that costs will exceed those previously estimated, or any other circumstances appear which affect the award of priority points, the applicant shall immediately notify the Department. The Department shall then recalculate, if appropriate, the applicant's priority determination utilizing the new information submitted, adjust the ranking of the application, and assess its impact on the Department funding recommendation.

(h) Any applicant receiving a Notice of Intent to Award who decides not to proceed with a project shall notify the Department as soon as this decision is made.

(i) Applicants with approved projects on a priority list that are not awarded loans in any application period, as applicable, who wish to apply for a position on any subsequent priority list in any subsequent application period, may apply by a timely filing of a letter, signed by the appropriate party, notifying the Department that the applicant requests a renewal of its application for a resource recovery or environmentally sound sanitary landfill facility loan. Where there are changes in the original application, the applicant shall update the appropriate documents required by N.J.A.C. 7:26-14A.7. The application shall be treated as a new application for a resource recovery or sanitary landfill loan and evaluated in accordance with this subchapter.

7:26-14A.11 Loan terms and administration of disbursements

(a) The following requirements apply to the amount of, interest rate on and maturity period of the loan:

1. Loan amounts shall be determined as a percentage of construction costs. This percentage, which may vary according to project type, and which shall be established by the Department annually or for each application period and published in the New Jersey Register at the same time that the application period is announced pursuant to N.J.A.C. 7:26-14A.7(d), shall be based upon estimated construction costs at the time of application. Increases or decreases in actual costs with respect to these estimates shall not result in loan amount modifications.

2. Loan proceeds may be used to pay any project costs authorized in the loan agreement, which agreement shall be consistent with the provisions of the 1985 Act and this subchapter.

i. Loan proceeds may be used for project costs associated with the construction of resource recovery facilities and/or environmentally sound sanitary landfill facilities to service the needs of local government units.

ii. Loan proceeds may be used directly by the local government unit to undertake project costs associated with the development of a resource recovery and/or environmentally sound sanitary landfill facility.

iii. Loan proceeds may be used by the local government unit to defray project costs associated with an agreement it has entered into with a vendor.

3. The proposed interest rate on the loans for each application period shall be set forth in the notice setting forth the priority list, which list is to be published in the New Jersey Register pursuant to N.J.A.C.

7:26-14A.10(b). The interest rate shall be dependent upon legislation and/or the financial condition of the Fund. The loan interest rate shall be established annually by the State Treasurer.

4. The loan maturity period shall be for a period of 23 years from the date the funds are delivered to the escrow agent by the Department. Repayment shall begin no later than the sixth year of the loan maturity period or one year following the full scale operation of the facility, whichever comes first. Equal semi-annual loan repayments shall be made starting on or before the first of February and August for every year that repayments are due. The Department may, at its discretion, negotiate an individual repayment schedule. Principal and accrued interest, if applicable, may be repaid without penalty prior to the end of the loan maturity period.

5. There shall be due and owing by the local government unit to the Fund a late fee of five percent of any payment when such payment is 15 calendar days or more past due, 10 percent of any payment when such payment is 30 calendar days or more past due. Failure of the local government unit to make any repayment within 45 calendar days of the scheduled repayment date shall constitute default of the loan agreement and all outstanding principal, interest and penalty amounts shall become immediately due and owing to the State.

(b) The following terms of the loan shall be incorporated into the loan agreement to be executed by the Department and the applicant:

1. Execution of the loan agreement constitutes an irrevocable agreement to repay the loan on the part of the borrower;

2. Counties and municipalities shall place general obligation bonds with the State in order to receive the loan proceeds. Other local government units lacking general taxing powers shall secure their loans with service/deficiency agreements with a local government unit having the ability to levy taxes, a surety bond, or other security acceptable to the Department;

3. A list of the required contents of the county or municipal bond resolution, which list shall be subject to Department approval;

4. Loans may be disbursed by the Department on a single or multiple sum basis at the discretion of the Department. Loan disbursements may be based upon adherence to the project schedule included in the loan agreement;

5. Disbursement may only be made to an escrow agent selected by the borrower and approved by the Department. In the case of comparatively small loans or where the local government unit, after using its best efforts, cannot retain an escrow agent which will act in accordance with this subchapter, the Department shall act as the escrow agent. The borrower shall enter into an agreement with the escrow agent specifying the escrow agent's duties and responsibilities, which agreement shall be consistent with the terms and conditions of the loan agreement and the requirements of this subchapter. Any escrow agent shall only disburse loan funds in accordance with the executed loan agreement, the escrow agreement and this subchapter;

6. Where there is an escrow agent other than the State, the escrow agent shall submit an annual report to the Department which includes a disbursement report for the previous year, a certified statement by the licensed project engineer for the local unit or the vendor in accordance with N.J.A.C. 7:26-14A.24, confirming the percentage of project construction which is completed, and an estimate of expenditures for the upcoming fiscal year;

7. Interest earned on the funds in the borrower's loan escrow account shall accrue to the benefit for the project and may only be used for project costs as defined in N.J.A.C. 7:26-14A.4; and

8. The borrower shall be responsible for paying for the services of the escrow agent.

(c) The borrower shall promptly notify the Division of Solid Waste Management in writing (certified mail, return receipt requested) of events or proposed changes which may require a loan modification. Changes in the project which shall require such notification shall include but are not limited to:

1. Rebudgeting;
2. Changes in approved technical plans or specifications for the project;
3. Changes which may affect the approved scope or objective of a project;
4. Significant changed conditions at the project site;
5. Deceleration in time for the performance of the project, construction schedule, or any major phase thereof; and
6. Changes which may increase or substantially decrease the total cost of the project. There shall be no loan modification increasing the funding amount.

(d) If, on the basis of information submitted pursuant to (c) above, the Department determines that a formal loan amendment is necessary, it shall notify the borrower and a written amendment to the loan award document will be prepared in accordance with this subchapter.

(e) Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted by the borrower, constitute changes to the loan award document (but not necessarily to the project work) and do not affect the substantive rights of the Department or the borrower. The Department may issue such change unilaterally. Such changes shall be in writing and shall be effected by a letter (certified mail, return receipt requested) to the borrower.

7:26-14A.12 Payment procedures

(a) The escrow agent shall only make payments in accordance with the escrow agreement which shall be consistent with the loan agreement and this subchapter. A retainage may be held in accordance with the loan agreement.

(b) The escrow agent shall not authorize disbursement unless he or she has received the following:

1. A requisition for payment from the borrower stating the net amount requested, by item;

2. A certification in accordance with N.J.A.C. 7:26-14A.24 from the borrower signed by its Chief Financial Officer or other individual authorized to perform this duty on behalf of the borrower, stating that for each item for which funds are requested:

i. All of the requisitioned money will be used for Project Costs as defined in N.J.A.C. 7:26-14A.4 and the loan agreement;

ii. The costs have been incurred or will be incurred within a reasonable time pursuant to (g) below; and

iii. The borrower has submitted to the Department all documentation and information required pursuant to (d) below.

3. A written confirmation from the Department stating that the previous disbursement, if any, has been reviewed by the Department pursuant to (e) below, and has been found to be a project cost as set forth at N.J.A.C. 7:26-14A.4 and the loan agreement.

(c) When the requirements of (b) above are met, the escrow agent shall authorize disbursement and, at the same time, submit to the Department four copies of the requisition and certification submitted by the borrower in accordance with (b)1 and (b)2 above, along with any other documentation submitted by the borrower to support payment.

(d) At the same time that the borrower submits to the escrow agent the documentation and information required by (b) above, the borrower shall submit to the Department sufficient information and documentation which shall enable the Department to determine whether the item for which loan funds are requisitioned is eligible as a project cost pursuant to N.J.A.C. 7:26-14A.4 and the loan agreement.

(e) Upon receipt by the Department of the documentation and information required to be submitted pursuant to (c) and (d) above, the Department shall have 30 days in which to conduct its own review of the requisition, certification, and supporting documentation to determine if the items for which payment was requested by the borrower are project costs pursuant to N.J.A.C. 7:26-14A.4 and the loan agreement. Upon completion of that review, the Department shall take one of the following actions:

1. If the items for which payment was requested are found to be project costs, the Department shall notify the escrow agent, in writing, of this affirmative determination, which determination shall then serve to satisfy the requirement of (b)3 above, for the next disbursement; or

2. If any item for which payment was requested by the borrower is determined by the Department not to be a project cost, the Department shall notify the escrow agent and the borrower, in writing, of this negative determination. The Department shall specify which item or items was determined not eligible for payment pursuant to N.J.A.C. 7:26-14A.4. Where deemed necessary to assist in its determination of cost eligibility, the Department may invoke its right to perform a financial audit pursuant to N.J.A.C. 7:26-14A.19(a). The Department shall then instruct the escrow agent to withhold from the next authorized disbursement an amount equal to the total dollar amount of ineligible project costs which were paid by the escrow agent in the previous disbursement. If the borrower decides to contest the Department's determination, the matter shall be handled pursuant to N.J.A.C. 7:26-14A.25.

(f) If at any time, the total amount of project costs previously paid by the escrow agent pursuant to (c) above, and later determined not to be project costs by the Department pursuant to (e)2 above, exceeds the balance remaining in the escrow account, the Department shall instruct

the escrow agent to withhold the remaining balance in the escrow account and the Department shall then pursue any available remedies, including termination of the entire loan agreement pursuant to N.J.A.C. 7:26-14A.23, to recover the remaining amount already disbursed for ineligible project costs.

(g) In the event that the borrower submits a requisition for payment, along with all other required documentation pursuant to (b) above, for prospective project costs, that is, payment for items which have not yet been purchased/acquired by the borrower or its vendor, then the project cost must be incurred, using the designated disbursement, within a reasonable time. Failure to spend the disbursed sum of money for the specified project cost within a reasonable time, as determined by the Department, may result in withholding of future disbursements pursuant to (e)2 above, and/or invocation of any remedies available to the Department, including termination of the loan agreement pursuant to N.J.A.C. 7:26-14A.23.

(h) In the event that no monies are requisitioned by the borrower or disbursed from the escrow account within five years of the loan closing date of the loan agreement, all monies in the escrow account, including all investment earnings from the monies in the escrow account, shall revert to the Fund and be credited as repayment of the principal of the loan by the borrower.

(i) In those cases in which the Department is to act as escrow agent pursuant to N.J.A.C. 7:26-14A.11(b)5, all requirements of this section shall apply to the Department except that (c) above, shall not apply. Whenever in this section reference is made to an escrow agent as a separate entity from the Department, the same term shall mean and refer to the Department which shall mean and refer to the Department which shall then carry out all functions of the escrow agent.

7:26-14A.13 State share of the project cost

The State share of the total project cost shall be expressed as a dollar amount and set forth in the loan agreement. This dollar amount shall be the maximum amount awarded to the applicant for the project.

7:26-14A.14 Loan agreement

(a) The Department may impose conditions precedent to each payment under the loan agreement as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985 which conditions shall include but not be limited to the following:

1. The borrower shall submit proof that it and its contractors and subcontractors will comply with any hazard insurance requirements of the loan agreement and that it will be able to certify that the insurance is in full force and effect and that the premiums have been paid;

2. The borrower shall certify that it and its contractors and subcontractors are maintaining their financial records in accordance with generally accepted accounting principles;

3. The borrower shall certify that it and its contractors and their subcontractors will comply with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), and the rules promulgated pursuant thereto, including but not limited to N.J.A.C. 17:27-1 et seq.; the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 through 34:11-56.46; the Civil Rights provisions of N.J.S.A. 10:1-1 et seq. and the rules promulgated pursuant thereto; and

4. The borrower shall certify in accordance with N.J.A.C. 7:26-14A.24 that it is in compliance with all other requirements and conditions of the loan agreement and this subchapter.

(b) The Division shall prepare and transmit four copies of the loan agreement to the applicant.

1. The applicant shall execute all four copies of the loan agreement and return them within 45 calendar days after receipt. The Department may, in its discretion, extend the time for execution. The loan agreement shall be signed by a person authorized by resolution or ordinance to obligate the applicant to the terms and conditions of the loan agreement. A copy of the resolution or ordinance shall be forwarded immediately to the Department.

2. The loan agreement shall set forth the terms and conditions of the loan, which may include but not be limited to, as applicable: approved project scope including construction plans and specifications where applicable, budget, approved project costs, escrow agent requirements, construction and disbursement schedules, and the approved commencement and completion dates for the project or major phases thereof.

3. After the Department has completed its internal processing of the loan agreement, it shall transmit a copy of the executed loan agreement to the borrower.

7:26-14A.15 Effect of loan agreement

(a) At the time of execution of the loan agreement by the Department and the applicant, the loan shall become effective and shall constitute an obligation of the Resource Recovery and Solid Waste Disposal Facility Fund in the amount and for the purposes stated in the loan agreement.

(b) The award of the loan shall not commit or obligate the Department to award any continuation loan to cover cost overruns of the project. The Department shall not in any way be held responsible for cost overruns.

(c) A determination of eligibility by the Department shall not be used as a defense, by the applicant, to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates.

7:26-14A.16 Repaid funds

(a) All loan repayments and any interest on loans shall be deposited into the Fund. Upon a specific legislative appropriation, the Department may lend all moneys deposited in the Fund to local government units to finance other approved resource recovery or environmentally sound sanitary landfill facility projects in accordance with P.L. 1985, c.330.

7:26-14A.17 Fraud and other unlawful or corrupt practices

(a) The borrower shall administer loans, acquire property, award contracts and subcontracts pursuant to the loan agreement from bribery, graft, and other corrupt practices. The borrower bears the primary responsibility for the prevention, detection and cooperation in the prosecution of any such conduct. The State may also pursue administrative or other legally available remedies.

(b) The borrower shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The borrower shall immediately notify in writing the Division of Solid Waste Management when such allegation or evidence comes to its attention, and shall periodically advise the Division of the status and ultimate disposition of any related matter.

7:26-14A.18 Administration and performance of loan

The borrower bears primary responsibility for the administration and success of the project, including any subagreements made by the borrower for accomplishing loan objectives. Although borrowers are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions from the borrower to the Department. The primary concern of the Department is that loan funds awarded be used in conformance with this subchapter and the loan agreements to achieve loan objective and to insure that the purposes set forth in the Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985 are fully executed.

7:26-14A.19 Access

(a) The borrower and its contractors and subcontractors shall provide to Department personnel and any authorized representative of the Department access to the facilities, premises and records related to the project. The borrower shall submit to the Department such documents and information as requested by the Department. The borrower, and all contractors and subcontractors which contract directly with the borrower or receive a portion of the State funds under the Acts, may be subject to a financial audit as to the use of the State funds. Records shall be retained and be made available to the Department for a minimum of three years after submission of the final requests for payment.

(b) The loan agreement shall contain provisions which set forth the access requirements of (a) above.

7:26-14A.20 Assignment

The rights and obligations of the parties to the loan agreement shall not be assigned.

7:26-14A.21 Publicity and signs

(a) Press releases and other public dissemination of information by the borrower concerning the project work shall acknowledge State loan support.

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the New Jersey Department of Environmental Protection shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, State loan support, and other information as required by the Department.

7:26-14A.22 Debarment

(a) No borrower shall enter into a contract related to the development of a project for work with any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5.1 et seq.

(b) Borrowers shall insert in every contract related to the development of a project a clause stating that the contractor may be debarred, suspended or disqualified from contracting on any project financially assisted by the State or the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1-5.2.

(c) The borrower, prior to acceptance of State funds, shall certify that no contractor or subcontractor is included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders as a result of action by a State agency other than the Department.

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the borrower may take into account the loss of Department loan funds under these rules which result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsible bidder pursuant to law; and the borrower may advise prospective bidders that these procedures will be followed.

(e) Any person included on the Treasurer's List of Debarred, Suspended or Disqualified Bidders as a result of action by a State agency other than the Department, who is or may become a bidder on any contractor which is or will be funded by a loan under this subchapter, may present information to the Department on why this section should not apply to such person. The Commissioner, pursuant to N.J.A.C. 7:1-5, may grant an exception from the application of this section with respect to a particular contract. The Commissioner may only take this action following a determination that such an exception is essential to the public interest and after filing a finding thereof with the Attorney General. In the alternative, the Department, pursuant to N.J.A.C. 7:1-5, may suspend or debar any such person, or take such action as may be appropriate.

7:26-14A.23 Termination of loans

(a) Termination of loans by the Department shall be as follows:

1. The Department may terminate a Fund loan in whole or in part for events of non-performance which shall include but not be limited to:

- i. Failure to comply with any of the terms and conditions of the loan agreement;
- ii. Default by the borrower;
- iii. A determination that the loan was obtained by fraudulent practices;
- iv. Gross abuse or corrupt practices in the administration of the project have occurred;
- v. Funds have been expended for non-allowable costs; and/or
- vi. Failure to comply with a corrective action/correction schedule entered into pursuant to (a)4 below.

2. The Department shall give written notice to the borrower (certified mail, return receipt requested) of intent to terminate the loan in whole or in part. Such notice shall be given to the borrower at least 30 days prior to the intended date of termination.

3. The Department shall afford the borrower an opportunity for consultation prior to any termination. After such opportunity for consultation the Department may, in writing, terminate the loan in whole or in part. Upon termination, the full amount of the outstanding balance of the loan shall be immediately repaid in full.

4. Where the Department deems it appropriate, the following procedures may be used following an event of non-performance pursuant to (a)1 above:

i. The Department shall notify the borrower of the event of non-performance pursuant to (a)1 above. Within 30 days of receipt of such notification of non-performance, the borrower shall submit to the Department a compliance schedule which schedule shall require approval by the Department. The schedule shall identify how and when the borrower will remedy the non-compliance identified by the Department.

ii. If the borrower fails to remedy the non-performance in accordance with the approved schedule or fails to submit the compliance schedule pursuant to (a)4i above, the Department shall notify the borrower (certified mail, return receipt requested) of such failure, which failure shall itself be considered an event of non-performance pursuant to (a)1 above and shall then trigger the termination procedure in (a)2 and 3 above.

5. The Department shall maintain sole discretion to determine the appropriate remedy for non-performance. Within that discretion the Department may invoke remedies which include, but are not limited to, the following:

- i. Withholding of loan disbursement;
- ii. Acceleration of loan agreement;
- iii. Conversion to an interest-bearing loan; and
- iv. Immediate loan repayment in accordance with procedures outlined in (a)2 and 3 above.

(b) Project termination by the borrower shall be conducted in accordance with the following provisions:

1. The borrower shall not unilaterally terminate the project work for which a loan has been awarded. Where the borrower terminates the project, the loan shall be repaid in accordance with a schedule approved by the Department.

2. The borrower shall promptly give written notice to the Department of its intent to wholly or partially terminate the project work.

3. The Department, upon receipt of the borrower's written notice of intent to wholly or partially terminate the project, may enter into a repayment agreement with the borrower, which agreement shall establish the effective date of termination of the project work and the schedule for repayment of the entire loan. If the Department determines that a borrower has ceased to work on a project and has not complied with the notification and repayment provisions outlined in (b)1 and 2 above, or has failed to take all available steps to ensure project completion consistent with all agreements entered into, the Department may unilaterally terminate the loan pursuant to this section.

(c) The Department and borrower may enter into a mutual agreement to terminate the loan agreement at any time pursuant to terms which are consistent with this subchapter. The termination agreement shall establish the effective date of termination of the project and the schedule for the repayment of the entire loan.

(d) The effect of termination of the loan, in whole or in part, shall be as follows:

1. Upon termination, the borrower may be required to immediately refund or repay the entire amount of the loan to the Fund. If the loan is guaranteed by a security/deficiency agreement, the agreement shall be brought into effect to ensure the entire repayment of the loan. At the Department's discretion, it may authorize the immediate repayment of part of the loan and allow the remaining balance to be repaid in accordance with the loan agreement repayment schedule.

2. The borrower shall reduce the amount of outstanding commitments insofar as possible and report to the Department the uncommitted balance of funds awarded under the loan. The Department shall make the final determination of the allowability of termination costs.

(e) In addition to any termination action, the Department retains the right to pursue other legal remedies as may be available under Federal, State and local law as warranted.

7:26-14A.24 Certifications

Whenever in this subchapter a certification is required pursuant to this section, such certification shall include the following statement:

"I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment."

7:26-14A.25 Administrative hearings

(a) The Department shall decide in writing all disputes arising under a loan.

(b) A borrower may request an administrative hearing within 15 days of a written decision by the Department. The borrower shall be required to specify in writing and in detail the basis for its appeal.

(c) Following receipt of a complete request for a hearing pursuant to (b) above, the Department may attempt to informally settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

(d) If the Department determines the matter to be a contested case, the Department shall file the request for an administrative hearing with the Office of Administrative Law. Such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

7:26-14A.26 Severability

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

(a)**DIVISION OF ENVIRONMENTAL QUALITY
COMMISSION ON RADIATION PROTECTION****Registration of Ionizing Radiation-Producing
Machines and Radioactive Materials****Proposed Repeal and New Rules: N.J.A.C. 7:28-3**

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection, and the Commission on Radiation Protection, Max Weiss, Chairman.

Authority: N.J.S.A. 13:1D-1 et seq. and N.J.S.A. 26:2D-1 et seq., specifically N.J.S.A. 26:2D-7, 26:2D-9 and 26:2D-21.

DEP Docket No. 015-87-04.

Proposal Number: PRN 1987-177.

A public hearing concerning this proposal will be held on:

June 3, 1987 at 10:00 A.M.
Department of Environmental Protection
Bureau of Environmental Laboratories
Large Conference Room
380 Scotch Road (2nd Building)
Trenton, New Jersey

Submit comments by July 3, 1987 to:

Donald J. Stout
Office of Regulatory Services
Department of Environmental Protection
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In 1958, the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq. (hereinafter, the "Act") was enacted. This Act, as amended in 1971, 1977, and 1981, relates to the possession, handling, transportation and use of sources of radioactivity within the State of New Jersey. The Act established New Jersey's Radiological Health Program, which was transferred from the State Department of Health to the Bureau of Radiation Protection of the Department of Environmental Protection. The Act also created the New Jersey Commission on Radiation Protection (hereinafter, the "CORP") and vested in that body the authority to promulgate rules and regulations as may be necessary to prohibit and prevent unnecessary radiation. Pursuant to the Act, the Department of Environmental Protection (hereinafter, the "Department") administers the rules promulgated by the CORP and also has the authority to charge fees for the services it performs.

In 1972, the CORP and Department promulgated N.J.A.C. 7:28-3, "Registration: Radiation Protection Fee Schedule." This subchapter established the procedures and responsibility of registering radioactive materials, radiation producing machines and the registration fee schedule. Since the promulgation of these rules, there have been technological innovations and changes in the administration of the registration program which necessitate clarifying the registration requirements. Additionally, the cost per inspection of an ionizing radiation-producing machine has increased significantly, whereas the fees have remained the same. The CORP and Department are proposing to repeal N.J.A.C. 7:28-3 in its entirety and promulgate new registration and fee rules.

The proposed fee increase reflects the actual and projected expense incurred by the Department while performing the inspection and survey services mandated by the Radiation Protection Act. The fee proposal will provide necessary funds for the Department to conduct inspection of all ionizing radiation-producing equipment in accordance with the recommended inspection cycles for specific facility types (that is, hospitals, dental, podiatry, medical, radiology clinics, chiropractic, veterinary, industrial, etc.) set forth in the Criteria for Adequate Radiation Control Programs (x-ray); A Report of Task Force 2A, by Conference of Radiation Control Program Directors, April 1981.

N.J.A.C. 7:28-3.1 establishes the responsibility for registering ionizing radiation-producing machines, radioactive by-product material, source material, and special nuclear material possessed within the State of New Jersey within 30 days from the date of acquisition. This 30 day limit was increased from the 15 day requirement previously listed in N.J.A.C. 7:28-3.2. This section also requires that the facility retain a copy of the registration for review by the employees and the Department.

N.J.A.C. 7:28-3.2 identifies the ionizing radiation-producing machines and radioactive materials that are exempt from registration. It states in part that those ionizing radiation-producing machines possessed, stored

or used by agencies of the United States Government are exempt from registration. N.J.A.C. 7:28-3.3 revises the registration process for and identifies the specific machines components that must be registered as part of an ionizing radiation-producing machine. This section clarifies the registration year, expiration date, and renewal contingent upon payment of the annual fee.

N.J.A.C. 7:28-3.4 establishes the requirements for the temporary registration of ionizing radiation-producing machines. This section defines temporary possession as the use of an ionizing radiation-producing machine to replace a registered machine that is out of service for repair or is a machine used for evaluation prior to purchase. The requirements for the application for temporary registration are listed as well as conditions that would require assessment of the annual registration fee.

N.J.A.C. 7:28-3.5 provides that a person who possesses a license issued by the United States Nuclear Regulatory Commission for the possession of any radioactive by-product material, source material and special nuclear material must obtain a registration from the Department for possession of the specified types and amount(s) of such material as authorized by the Nuclear Regulatory Commission. This section defines the amendment and notification requirements and states that a registration fee will not be charged.

N.J.A.C. 7:28-3.6 provides that registrations issued by the Department are not transferable.

N.J.A.C. 7:28-3.7 provides for amendments to a registration issued for an ionizing radiation-producing machine and requires that the registrant give the Department written notification of any change in certain specified information on the registration within 30 days after the change.

N.J.A.C. 7:28-3.8 provides that the registrant must notify the Department in writing of changes to the Nuclear Regulatory Commission license. As with N.J.A.C. 7:28-3.7, the 15 day requirement was relaxed to a 30 day notification time limit.

N.J.A.C. 7:28-3.9 clarifies the notification requirements for the sale, installation, relocation, or disposal of ionizing radiation-producing machines. The requirements that pertain specifically to the manufacturer, his agent, or a dealer are listed as well as the requirements that pertain to the owner/registrant.

N.J.A.C. 7:28-3.10 establishes the specific criteria that would be cause for denial, suspension, or revocation of the registration of ionizing radiation-producing machines, radioactive by-product material, source material, or special nuclear material.

N.J.A.C. 7:28-3.11 lists the radioactive materials and quantities that are exempt from registration. Radium and daughters have been deleted because they are licensed pursuant to N.J.A.C. 7:28-4 et seq.

N.J.A.C. 7:28-3.12 provides the revised fee schedule for the registration of ionizing radiation-producing machines. Although the schedule now specifies certain machines by name (CAT Scanning Diagnostic X-ray Units, Mammography Units, Electron Beam Welding Unit, X-ray Fluorescence Spectroscopy Units, Electron Microscope Units, Cabinet X-ray Systems, and X-ray Baggage Inspection Systems), they are currently registered as part of other machine source categories. A separate category has been established for each machine to facilitate the administration of the registration program.

Social Impact

Since the use of radiation and radioactive material is an indispensable part of dialy living and the presence of radioactivity in the environment is, to an extent, unavoidable and, in some situations, desirable and necessary, the inherent goal of any radiological health program is the elimination of unnecessary radiation or the reduction of radiation dose levels and rates of exposure to a point that is as low as reasonably achievable. By proposing new rules to fully address changes in the administration of the registration program in response to technological changes in the development and use of ionizing radiation-producing machines, the Department has the necessary financial and information resources to conduct a more effective inspection program to ensure that patients, health workers and the general public are protected from unnecessary radiation.

Economic Impact

The proposed new rules will increase registration fees paid by the regulated community. The additional fees are necessary to increase the number of personnel to conduct inspections in order to ensure that the ionizing radiation-producing equipment is in compliance with N.J.S.A. 26:2D-1 et seq. and N.J.A.C. 7:28-1 et seq.

The current registration fees do not cover all of the expenses incurred by the Department in administering the registration program and providing the inspection services needed to protect the public from unnecessary radiation resulting from the use of ionizing radiation-producing machines. Under the existing registration fee schedule, the Department re-

ceives \$406,275 a year, while the annual cost of administering the registration program and providing inspection services totals \$684,132. It is projected that the annual revenue under the proposed fee schedule will be \$823,400. The additional revenue of \$139,268 over the current cost will be used to conduct studies, investigations, training, research and demonstrations pertaining to the control of radiation hazards, the measurement of radiation, and the effects on health of low-level radiation exposure in order to decrease unnecessary radiation.

Environmental Impact

The proposed new rules establish standards which will protect patients, health workers and the general public from unnecessary doses of radiation and increase the quality of radiographs. Medical and dental x-rays are the major source of radiation to the public, contributing as much as 99 percent of the normal exposure above the natural background level. By requiring the registration of ionizing radiation-producing machines, the Department can conduct an effective inspection program to ensure that the equipment meets established standards for exposure to low level radiation.

Regulatory Flexibility Statement

The proposed new rules apply to any manufacturer, dealer, State, county or local government, and any person, including, but not limited to, industry, hospitals, physicians, and dentists having possession, custody or control of any ionizing radiation-producing machine, radioactive by-product material, source material and special nuclear material except as specifically exempted by the regulation. It is estimated that of the total of 8,128 businesses impacted by this proposal, 7,473 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169) and will be impacted. In order to comply with this proposal, the small businesses will have to satisfy all the requirements set forth in N.J.A.C. 7:28-3. It is not anticipated that small businesses will need professional services or incur capital costs in order to comply with the proposal. The small businesses will incur minimal costs associated with processing the initial application and annual renewal of the registration plus an annual registration fee ranging from \$50.00 to \$300.00 depending upon the type of ionizing radiation-producing machine registered. In developing these rules, the Commission on Radiation Protection and the Department have balanced the need to protect patients, health workers and the general public from unnecessary radiation against the economic impact of the proposed rule and have determined that to minimize the impact of the rule on small business would endanger the environment, public health and safety and, therefore, no exemption from the proposed new rules is provided.

Full text of the proposed new rules follows:

SUBCHAPTER 3. REGISTRATION OF IONIZING RADIATION-PRODUCING MACHINES AND RADIOACTIVE MATERIALS

7:28-3.1 Registration for possession of ionizing radiation-producing machines and radioactive by-product material, source material, and special nuclear material

(a) Any person, manufacturer, dealer or State, county or local government shall register with the Department all radioactive by-product material, source material, special nuclear material and every ionizing radiation-producing machine possessed within the State of New Jersey except as exempted by N.J.A.C. 7:28-3.2.

(b) Any person, manufacturer, dealer or State, county or local government shall apply for such registration within 30 days after taking possession, custody or control of radioactive by-product material, source material, special nuclear material and ionizing radiation-producing machines on forms available from the Department.

(c) Any person, manufacturer, dealer or State, county or local government shall retain a copy of the registration at the facility for inspection by employees and the Department.

7:28-3.2 Exemptions from registration for possession of ionizing radiation-producing machines and radioactive by-product material, source material, and special nuclear material

(a) Except for machines which are not operated while on display, ionizing radiation-producing machines not being used in such a manner as to produce radiation, such as equipment in storage or on display, are exempt from registration.

(b) Electrical equipment that is not primarily intended to produce radiation and that does not produce radiation greater than 0.5 millirem per hour at any readily accessible point five centimeters from its surface is exempt from registration. Production-testing facilities for such equip-

ment shall not be exempt if any individual might receive a radiation dose exceeding the limits established in N.J.A.C. 7:28-6.2.

(c) Ionizing radiation-producing machines possessed, stored or used by agencies of the United States Government are exempt from registration.

(d) Those radioactive materials covered in specific and general state licenses issued by the Department in accordance with N.J.A.C. 7:28-4 are exempt from registration.

(e) Those radioactive materials contained in devices which are covered under general license issued by the United States Nuclear Regulatory Commission or have been granted an exemption from licensing requirements by the United States Nuclear Regulatory Commission are exempt from registration.

(f) Quantities of radioactive material equal to or less than those listed in N.J.A.C. 7:28-3.11 are exempt from registration requirements provided that no individual user of radioactive material shall have more than 10 such quantities of any material or materials at any one time.

7:28-3.3 Registration of ionizing radiation-producing machines

(a) Registration of ionizing radiation-producing machines shall pertain to each x-ray tube and its accompanying transformer, generator and control panel. If more than one x-ray tube operates off the same control panel, a separate registration is required for each tube.

(b) All registrations issued for ionizing radiation-producing machines shall expire on May 19 of each renewal year or shall expire one year from the date of initial application as determined by the Department. Registrations are renewable by the registrant for a period of one year upon payment of the fee provided in N.J.A.C. 7:28-3.12.

(c) Applications for new registrations for ionizing radiation producing machines will be accepted throughout the calendar year. The annual registration fee set forth in N.J.A.C. 7:28-3.12 shall be either prorated from the date the registration is issued until its expiration date on May 19 following the date of application, except that the Department may issue a registration for an additional year when an application is initially filed during the last three months of the registration year, or shall be assessed in full from the date of application until its expiration date one year later as determined by the Department.

7:28-3.4 Temporary registration of ionizing radiation-producing machines

(a) Any person, manufacturer, dealer or State, county or local government having temporary possession, custody or control of any ionizing radiation-producing machine for the purpose of replacing a registered machine that is out of service for a period longer than 60 days or for evaluation prior to purchase for a period longer than 60 days shall obtain a registration for temporary possession, custody or control of said machine.

(b) Application for temporary registration shall be submitted, on forms available from the Department, within 30 days after taking temporary possession, custody or control. No registration fee will be charged if the period of temporary possession, custody or control does not exceed 60 days. If the period exceeds 60 days, the annual registration fee for said machine set forth in N.J.A.C. 7:28-3.12 will be charged as of the date of application for the temporary registration.

(c) Within 30 days after relinquishment of temporary possession, custody or control of an ionizing radiation-producing machine, the registrant shall notify the Department in writing to terminate the temporary registration. The Department shall continue to charge a registration fee until a written notice of termination is received from the registrant.

7:28-3.5 Registration of radioactive by-product material, source material and special nuclear material

(a) Any person having within his possession, custody or control any radioactive by-product material, source material and special nuclear material pursuant to a license issued by the United States Nuclear Regulatory Commission shall apply for and obtain a registration for possession, custody or control of the specified type(s) and amount(s) of such material as authorized by the license issued by the Nuclear Regulatory Commission.

(b) A registrant does not have to apply for a new or amended registration for receipt of each shipment of a type of radioactive material for which it has a valid current registration provided that the total amount of such type of radioactive material in the registrant's possession, custody or control does not exceed the amount authorized in its registration for such type of material.

(c) Fees will not be charged for registration of radioactive by-product material, source material and special nuclear material.

(d) Any registration issued for radioactive materials pursuant to this subchapter shall be valid for so long as the license issued by the United States Nuclear Regulatory Commission is in full force and effect.

7:28-3.6 Transfer of registration for possession of radioactive by-product material, source material, special nuclear material and ionizing radiation-producing machines

Registrations for possession of radioactive by-product material, source material, special nuclear material and ionizing radiation-producing machines are not transferable.

7:28-3.7 Amendments to registration of ionizing radiation-producing machines

(a) A registrant must notify the Department in writing within 30 days after any change in the following information on the application for registration of an ionizing radiation-producing machine:

- 1. Trade name;
2. X-ray tube capacity;
3. Type of housing;
4. Generator power;
5. Owner;
6. Co-owner;
7. Location of machine including address (number, street, city, zip code, county) and room number;
8. Machine category;
9. Manufacturer;
10. Control panel model number; and
11. Control console serial number.

7:28-3.8 Amendments to registration of radioactive by-product material, source material or special nuclear material

A registrant shall notify the Department in writing within 30 days of any change in the license issued by the Nuclear Regulatory Commission for possession, custody or control of any type of radioactive by-product material, source material or special nuclear material. Said notification must specify the type and amount of such material.

7:28-3.9 Sale, installation, relocation or disposal of ionizing radiation-producing machines

(a) Whenever a manufacturer or dealer sells, installs, relocates or disposes of an ionizing radiation-producing machine, said manufacturer, agent or dealer shall give written notification thereof to the Department within 30 days of such sale, installation, relocation or disposal. Said notification shall include the manufacturer, model and serial number of each component, name and address of the new owner(s), address of the relocated machine or details of the final disposition of the machine. The Department may accept the current form used by the United States Food and Drug Administration for Report of Assembly of a Diagnostic X-ray System if the Department determines that the information is complete and accurate.

(b) Whenever an owner sells, relocates or disposes of an ionizing radiation-producing machine, said owner shall:

- 1. Give written notification to the Department on forms available from the Department within 30 days of such sale, relocation or disposal;
2. Include the New Jersey registration number, manufacturer, model and serial number of each component;
3. Include the name and address of the new owner(s), and
4. Include the address of the relocated machine, or details of the final disposition of the machine; and
5. Be responsible for all fees until the written notification is received by the Department.

7:28-3.10 Denial of an application for registration, and suspension, modification, or revocation of registration of ionizing radiation-producing machines, radioactive by-product material, source material or special nuclear material

(a) The Department, in addition to any penalties authorized by the Act, may deny an application for registration or suspend, modify or revoke a registration of ionizing radiation-producing machines, radioactive by-product material, source material or special nuclear material by reason of amendments to the Act, adoption of rules, orders issued by the Department pursuant to said Act or if the applicant or registrant:

- 1. Fails to comply with any provisions of the Act or any rules promulgated pursuant thereto including the timely payment of registration fees;
2. Falsifies or makes misleading statements in the application for registration;
3. Falsifies or makes misleading statements in any documents which were utilized to obtain a registration;
4. Alters registration documents;
5. Falsifies required records;

6. Aids, abets, combines with, or conspires with any person for any purpose which will evade or be in violation of the provisions of the Act or any rules promulgated pursuant thereto; or

7. Allows a registration to be used by any person for any purpose which will evade or be in violation of the provisions of the Act or any rules promulgated pursuant thereto.

(b) Except as provided in N.J.S.A. 26:2D-12 in cases of emergency, no registration shall be denied, modified, suspended or revoked prior to a hearing conducted by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-1 et seq., the Administrative Procedure Act, and N.J.A.C. 1:1-1 et seq., the Uniform Administrative Practice Rules, on the basis of a Notice of Intent filed by the Department stating the grounds for denial, suspension, modification or revocation of a registration.

(c) The Department may terminate a registration upon request submitted by the registration to the Department in writing.

7:28-3.11 Table of radioactive materials and quantities exempt from registration

(a) The following radioactive materials, in quantities less than or equal to those specified below, are exempt from registration:

Table with 3 columns: Radioactive Material, Column A (Not as a sealed source (microcuries)), and Column B (As a sealed source (microcuries)). Lists various isotopes like Antimony, Arsenic, Barium, Beryllium, Cadmium, Calcium, Carbon, Cerium, Cesium, Chlorine, Chromium, Cobalt, Copper, Europium, Fluorine, Gallium, Germanium, Gold, Hydrogen, Iodine, Iridium, Iron, Lanthanum, Manganese, Molybdenum, Nickel, Niobium, Palladium, Phosphorus, Polonium, Potassium, Praseodymium, Promethium, Rhenium, Rhodium, Rubidium, Ruthenium with their respective microcurie limits.

Samarium 153 (Sm 153)	10	10
Scandium 46 (Sc 46)	1	10
Silver 105 (Ag 105)	1	10
Silver 111 (Ag 111)	10	10
Sodium 22 (Na 22)	10	10
Sodium 24 (Na 24)	10	10
Strontium 89 (Sr 89)	1	10
Strontium 90+Yttrium 90 (Sr 90+Y 90)	0.1	1
Sulfur 35 (S 35)	50	50
Tantalum 182 (Ta 182)	10	10
Technetium 96 (Tc 96)	1	10
Technitium 99 (Tc 99)	1	10
Tellurium 127 (Te 127)	10	10
Tellurium 129 (Te 129)	1	10
Thallium 204 (Tl 204)	50	50
Tin 113 (Sn 113)	10	10
Tungsten 185 (W 185)	10	10
Vanadium 48 (V 48)	1	10
Yttrium 90 (Y 90)	1	10
Yttrium 91 (Y 91)	1	10
Zinc 65 (Zn 65)	10	10
Beta and/or Gamma emitting radioactive material not listed above	1	10

7:28-3.12 Fees for initial application for registration and annual registration of ionizing radiation-producing machines

(a) The fees for initial registration applications and for annual registration are as follows:

Machine Source Category	Initial Application Fee	Annual Registration Fee
1. Dental Units	\$ 75.00	\$ 75.00
2. Fixed Radiographic Diagnostic X-ray Units	75.00	75.00
3. Portable Radiographic Diagnostic X-ray Units	75.00	75.00
4. Medical Fluoroscopic Units (fixed)	75.00	75.00
5. Medical Fluoroscopic Units (portable)	75.00	75.00
6. Mobile Diagnostic Units (motor vehicle mounted)	75.00	75.00
7. Medical Radiographic Fluoroscopic Units (fixed)	75.00	75.00
8. Medical Radiographic Fluoroscopic Units (portable)	75.00	75.00
9. CAT Scanning Diagnostic X-ray Units	75.00	75.00
10. Mammography Unit	75.00	75.00
11. Therapeutic Units capable of operation at no more than 60 kVp	75.00	75.00
12. Therapeutic Units capable of operation at no more than 500 kVp	75.00	75.00
13. Therapeutic Units capable of operation at no more than 1 MeVp	75.00	75.00
14. Therapeutic Units including accelerators capable of operating at no more than 25 MeV	75.00	75.00
15. Therapeutic Units delivering a Neutron Beam to 14 MeV	300.00	50.00
16. Therapeutic Units including accelerators capable of operating at no more than 6 MeV	75.00	75.00
17. Industrial and Research Radiography	75.00	75.00
18. Electron Beam Welding Unit	75.00	75.00
19. X-ray Diffraction Units	75.00	75.00
20. X-ray Fluorescence Spectroscopy Units	75.00	75.00
21. Electron Microscope Units	75.00	75.00
22. Cabinet X-ray Systems	75.00	75.00
23. X-ray Baggage Inspection Systems or Mailroom	75.00	75.00
24. Industrial Accelerators	75.00	75.00

25. Research Accelerators to 1 MeV	100.00	100.00
26. Research Accelerators to 100 MeV	100.00	100.00
27. Research Accelerators above 100 MeV	100.00	100.00

(b) For each additional machine listed in (a)1 to (a)11 above, which is at the same address, the initial registration application fee is \$75.00 and the annual registration fee is \$75.00.

(c) An initial registration application fee or annual registration fee will be required for each unit. When two or more x-ray tubes are operated from the same generator, an application or registration fee will be required for each tube.

(d) Payment shall be made only by certified check or money order payable to "Treasurer, State of New Jersey."

(e) The initial registration application fee shall not be charged for units registered pursuant to the Radiation Protection Code prior to the effective date of this subchapter. However, the annual registration fee shall be applicable to all units.

(a)

**COMMISSION ON RADIATION PROTECTION
Controlled Areas**

Proposed Repeal and New Rules: N.J.A.C. 7:28-5

Authorized By: Commission on Radiation Protection,
Max Weiss, Chairman.

Authority: N.J.S.A. 26:2D-1 et seq., specifically N.J.S.A. 26:2D-7.

DEP Docket Number: 016-87-04.

Proposal Number: PRN 1987-176.

A public hearing concerning this proposal will be held on:

June 3, 1987 at 10:00 A.M.
Department of Environmental Protection
Bureau of Environmental Laboratories
Large Conference Room
380 Scotch Road (2nd Bldg.)
Trenton, NJ

Submit comments by July 3, 1987 to:

Donald J. Stout
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, NJ 08625

Summary

In 1958, the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq. (herein-after the "Act") was enacted. This Act, as amended in 1971, 1977 and 1981, relates to the possession, handling, transportation and use of sources of radioactivity within the State of New Jersey. The Act established New Jersey's Radiological Health Program, which was transferred from the State Department of Health to the Bureau of Radiation Protection of the Department of Environmental Protection. The Act also created the New Jersey Commission on Radiation Protection (CORP) and vested in that body the authority to promulgate rules as may be necessary to prohibit and prevent unnecessary radiation.

In 1972, the CORP promulgated N.J.A.C. 7:28-5 which provides that every area in which there is any reasonable possibility of an occupant receiving more than the radiation doses specified in N.J.A.C. 7:28-6 for radiation levels outside a controlled area shall be set aside as a controlled area. The rules also provide that no part of a controlled area can be used for residential purposes although part of a residential building can be designated as a controlled area.

The proposal includes new rules to replace those at N.J.A.C. 7:28-5.1 and 5.2 while adding N.J.A.C. 7:28-5.3 pertaining to precautionary procedures and N.J.A.C. 7:28-5.4 concerning termination of controlled areas. Many of the requirements in N.J.A.C. 7:28-5.3 and 5.4 come from current Federal regulations adopted by the U.S. Nuclear Regulatory Commission at 10 C.F.R. Part 20 which deals with the standards for protection against radiation.

N.J.A.C. 7:28-5.3 establishes that the precautionary measures (area surveys, wipe tests in areas where unsealed sources are routinely used, and personnel surveys) shall be performed and documented at sufficient intervals to insure that exposure levels are within acceptable standards,

that personnel monitoring equipment be worn by individuals within the controlled area, that personnel working in controlled areas be instructed in safeguards and procedures, and that the controlled area be posted.

N.J.A.C. 7:28-5.4 establishes requirements that tests be performed and documented of all controlled areas prior to their reclassification as uncontrolled areas. The proposed new rule will ensure that controlled areas are maintained in a safe manner, and that no controlled area will be allowed for unrestricted use by the public without documented proof that there is no reasonable possibility of an occupant receiving more than the radiation dose specified in N.J.A.C. 7:28-6 for outside controlled area.

Social Impact

Since the use of radiation and radioactive materials is an indispensable part of daily living and the presence of radioactivity in the environment is, to an extent, unavoidable and, in some situations, desirable and necessary, the inherent goal of any radiation protection program is the elimination of unnecessary radiation or the reduction of radiation dose levels and rates of exposure to a point that is as low as reasonably achievable. The use of naturally occurring and accelerator produced radioactive materials in research, industry and medicine has contributed to an improved quality of life. Such progress is not without cost or potential hazard. By requiring that every area in which there is any reasonable possibility of an occupant receiving an exposure dose from radiation and radioactive material more than the dose specified in N.J.A.C. 7:28-6 shall be designated as a controlled area and providing for precautionary procedures within the controlled area and upon termination of the use of controlled areas, the CORP has determined that the public will be protected from unnecessary radiation.

Economic Impact

The new rules will require minimal new expenditure on the part of the regulated community since most persons responsible for controlled areas are currently utilizing the precautionary measures and monitoring equipment required by the proposal. The cost of preparing and maintaining the records required by the proposal is minimal compared to the benefits of documenting the quality of the operation. It is concluded that significant economic impact will only be felt by persons whose equipment or standard of practice suffers serious deficiency. In such instances, the additional cost would be more than offset by the overriding concern for protecting the public from unnecessary radiation.

Environmental Impact

This proposal establishes precautionary measures and standards for making controlled areas available for unrestricted use which will protect the public from unnecessary radiation. The rules reduce unnecessary exposure to radiation and radioactivity in the controlled area and reduce the potential for releasing radioactivity to the environment. Pursuant to the proposal, controlled areas would not be released for unrestricted use until it has been documented through tests that controls are no longer necessary for the area.

Regulatory Flexibility

The proposed new rules would apply to any individual, corporation, partnership, firm, association, public or private institution and any State or local agency including but not limited to manufacturers, dealers, hospitals, physicians and dentists involved in the production, transfer, receipt, acquisition, ownership, possession and use of any ionizing radiation-producing machine and/or radioactive material. It is estimated that of the total of approximately 17,500 businesses impacted by this proposal, about 7,550 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169) and will be impacted. In order to comply with this proposal, the small businesses will have to satisfy the requirements set forth in the summary above. It is not anticipated that small businesses will need professional services or incur capital costs in order to comply with the proposal. The small businesses will incur minimal costs associated with the precautionary measures required pursuant to N.J.A.C. 7:28-5.3. In developing these rules, the Commission on Radiation Protection has balanced the need to protect the public from unnecessary radiation against the economic impact of the proposed rule and has determined that to minimize the impact of the rule on small businesses would endanger the environmental health and safety and therefore, no exemption from the rules is provided.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:28-5.

Full text of the proposed new rules follows:

SUBCHAPTER 5. CONTROLLED AREAS

7:28-5.1 Areas which must be controlled

(a) Except as provided in (b) below, every area in which there is any reasonable possibility of an occupant receiving an exposure dose from radiation and radioactive material more than the dose specified in N.J.A.C. 7:28-6 for radiation levels outside a controlled area shall be set apart as a controlled area by any person having possession, custody or control of any ionizing radiation-producing machine and/or radioactive material.

(b) All outgoing or incoming shipments of radioactive material shall be transported in conformance with N.J.A.C. 7:28-12 pertaining to transportation and all pertinent U.S. Department of Transportation regulations.

7:28-5.2 Limitations on controlled areas

No area within controlled areas shall be used for residential quarters although a room or rooms in residential buildings may be set apart as a controlled area.

7:28-5.3 Precautionary procedures

(a) Any person having possession, custody or control of any ionizing radiation-producing machine and/or radioactive material shall comply with the following precautionary procedures:

1. Area surveys shall be performed in controlled areas and in adjacent areas to insure that exposure levels to individuals conform to N.J.A.C. 7:28-6. The surveys shall be performed in accordance with N.J.A.C. 7:28-7 pertaining to Radiation survey and personnel monitoring.

2. Wipe tests shall be performed in areas where unsealed sources are routinely used to insure compliance with the requirements for radioactive contamination control in N.J.A.C. 7:28-9. The wipe tests shall be performed in accordance with N.J.A.C. 7:28-7.

3. Personnel surveys shall be performed and documented to insure compliance with N.J.A.C. 7:28-9.

4. All individuals entering a controlled area shall wear personnel monitoring equipment pursuant to the requirements for the use of personnel monitoring equipment in N.J.A.C. 7:28-7.

5. Proper and adequate instruction shall be given to all personnel working in controlled areas in the use of necessary safeguards and procedures, and they shall be supplied with such safety devices as may be required.

6. Adequate instructions or an escort shall be provided to all personnel frequenting or visiting controlled areas as shall be necessary to prevent unnecessary exposure.

7. The area shall be posted in accordance with N.J.A.C. 7:28-10.

7:28-5.4 Termination of controlled areas

Before a controlled area can be reclassified as an uncontrolled area, surveys shall be performed and documented to ensure compliance with N.J.A.C. 7:28-6 for radiation levels outside of controlled areas. Wipe tests shall be performed and documented in areas where unsealed sources had been used.

HEALTH

(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations Financial Elements and Reporting

Proposed Amendments: N.J.A.C. 8:31B-3.38 and 4.62

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,
Department of Health (with approval of the Health Care
Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and
26:2H-18d.

Proposal Number: PRN 1987-169.

Submit written comments by June 17, 1987 to:

Pamela S. Dickson, Director,
Hospital Reimbursement
New Jersey Department of Health, Room 601
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The proposed amendment to the Financial Elements and Reporting rules removes the Chapter 83 prospective reimbursement system restrictions on outpatient renal and home dialysis services. This change will facilitate a competition-based reimbursement structure for these services. These services will be treated as "excluded health care services", which are referred to as "Case C" items in the Financial Elements (at N.J.A.C. 8:31B-4.61). Thus, hospital based and free standing dialysis centers will be subject to more uniform regulation.

This amendment makes provision for the accounting (and allocation) of costs and revenues associated with outpatient dialysis services for the purpose of excluding them from the Chapter 83 Preliminary Cost Base. This exclusion is intended to insure that there are no duplicate payments for these services by eliminating the associated direct and indirect costs from the Preliminary Cost Base.

The proposed amendment to the Procedural and Methodological Regulations show the change to the Schedule of Rates which would be necessary upon final adoption of N.J.A.C. 8:31B-4.62(f). The reference to outpatient and home dialysis services was retained since the rates issued on January 1, 1987 will be effective until these amendments are adopted.

Social Impact

The proposed change in outpatient dialysis reimbursement is expected to promote more cost conscious provision of chronic outpatient dialysis through more equal competition among all providers of these services (free standing and hospital based). This increased competition is not expected to impact negatively on the quality of care because of retention of Department of Health and Health Care Financing Administration (HCFA) licensing criteria and quality standards currently in effect for dialysis centers. There are additional criteria which must be satisfied as a condition for Medicare participation in the End Stage Renal Disease Program (ESRD).

Economic Impact

The proposed change in outpatient dialysis reimbursement introduces a level playing field for providers of chronic non-inpatient dialysis. There is an element of risk to hospital providers which existed prior to 1980 and the implementation of the Chapter 83 reimbursement system. Previously, the hospitals would be assured a fixed price per procedure and the providers were required to keep expenditures within line. Under this proposal, while there is potential for a loss, the hospitals would be entitled to retain any surplus resulting from the efficient and effective provision of this service. It is expected that a more price competitive market will develop for this service. If this marketplace approach alters behavior through such means as increased efficiency or cost containment efforts, it would drive down the costs of the delivery of these services.

The largest single payer of these services is Medicare, which has sought to promote this type of market interaction between providers. The Medicare program's position is stated in the Federal Register (Volume 51, Number 91, May 13, 1986, on page 17548) as follows: "The continuing increase in facilities . . . since the final rates took effect on August 1, 1983, confirms our belief that facilities are able to operate under the composite rate system." The Department of Health estimates that Medicare represents approximately 90 percent of all outpatient dialysis care. Medicare coverage extends to any diagnosed ESRD patient after the first three months of chronic dialysis care.

Regulatory Flexibility Statement

The proposed amendments apply only to the 89 hospitals that have rates established by the Hospital Rate Setting Commission. With one exception, each of these hospitals employ more than 100 full-time employees and therefore, do not fall into the category of small business as defined in Section 2 of the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169). The one hospital which has less than 100 employees does not provide outpatient dialysis services and, therefore, is not affected by the proposed amendments.

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

8:31B-3.38 Derivation from Preliminary Cost Base

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

(c) Basic rate order:

1. Each hospital shall receive from the Commission a rate order detailing the Schedule of Rates as follows:

SCHEDULE OF RATES

ITEM	RATE PER CASE
DIRECT COSTS RELATED TO PATIENT CARE	
DRG 1	\$ _____
DRG 2	\$ _____
DRG 3	\$ _____
CLINIC PATIENTS	\$ _____ ***
HOME HEALTH PATIENTS	\$ _____ ***
EMERGENCY SERVICE OUTPATIENTS	\$ _____ ***
OUTPATIENT DIALYSIS TREATMENT	\$ _____ ****
AMBULATORY SURGERY	\$ _____ ***
SAME-DAY PSYCHIATRY	\$ _____ ***
HOME DIALYSIS	\$ _____ ****
OTHER AMBULATORY	\$ _____
INDIRECT FINANCIAL ELEMENTS	
INDIRECT COSTS RELATED TO PATIENT CARE	\$ _____
NET INCOME FROM OTHER SOURCES	\$ () _____
CAPITAL FACILITIES ALLOWANCE	\$ _____
COMMISSION APPROVED WORKING CASH INFUSION	\$ _____
GRANTS ON BEHALF OF THE MEDICALLY INDIGENT	\$ () _____
ESTIMATED UNCOMPENSATED CARE	[%] _____ %
ESTIMATED PERSONNEL HEALTH PROGRAM	[%] _____ %

NOTE: The Schedule of Rates shall be adjusted to reflect [5] five percent working capital increases and _____ percent for payor differentials as specified by the Commission. Payor Class A shall pay _____ percent of this Schedule of Rates. Payor Class B shall pay _____ percent of this Schedule of Rates and all other Payor Classes shall pay 100 percent of this Schedule of Rates.

*** Patients receiving these services will be billed at controlled charges; however, this rate per visit will be sued for purposes of reconciliation.

**** Effective (date of final adoption) outpatient and home dialysis services will not have rates set pursuant to N.J.A.C. 8:31B-4.62(f).

2.-3. (No change.)

(d) (No change.)

8:31B-4.62 Excluded Health Care Services

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

(f) **Excluded Ambulatory Services: Outpatient Renal and Home Dialysis.**

The cost and revenue related to these services are to be treated as Case C, revenues and expenses are netted, and neither gains nor losses are added to the Preliminary Cost Base. Sufficient accounting records should be maintained to account for the costs of such operations (that is, Medicare cost report HCFA-2552) and such direct and indirect cost shall be excluded from Costs Related to Patient Care.

(a)

NARCOTIC AND DRUG ABUSE CONTROL

Controlled Dangerous Substances

Rescheduling Alfentanil from Schedule I to II

Proposed Amendments: N.J.A.C. 8:65-10.1 and 10.2

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

Authority: N.J.S.A. 24:21-3.

Proposal Number: PRN 1987-170.

Submit comments by June 17, 1987 to:

Lucius A. Bowser, R.P., M.P.H.

Chief, Office of Drug Control

CN 362

Trenton, NJ 08625-0362

(609) 984-1308

Summary

The Department of Health proposes to reschedule Alfentanil from Schedule I to Schedule II of the controlled dangerous substances schedules to bring the State rules into conformity with the Federal controlled substances regulations. This substance, which has a high potential for abuse without having any medical use in Schedule I, has been approved for medical use by the U.S. Food and Drug Administration and has been placed into Schedule II of the Federal regulations as listed in the Federal Register, cited at 52 FR 2516, January 23, 1987, effective January 23, 1987.

Placement of this substance into Schedule II of the controlled dangerous substances schedules will allow production of this newly approved medicinal preparation and would allow for physician prescribing and dispensing the medication.

Social Impact

The proposal to reschedule Alfentanil into Schedule II will have a significant impact upon the public because it would allow for the manufacture and distribution of the newly approved drug product containing Alfentanil and would allow for physician dispensing or prescribing of this product for patients. There would be no additional requirements generated for record keeping connected with Schedule II drugs.

Economic Impact

The Department of Health's proposal to reschedule Alfentanil to Schedule II of the controlled dangerous substances schedules would have a beneficial economic impact on the manufacturer, physicians and pharmacists who would have a newly approved drug product available. It would have no economic impact upon physicians or pharmacists with regards to recordkeeping and security as recordkeeping and security is already established for Schedule II substances.

Regulatory Flexibility Statement

Although this amendment will have an impact upon thousands of registrants, who have been determined to be small business entities, there will be no added recordkeeping requirements that are not already required of substances in Schedule II. There are no new proposed requirements in this amendment which will impact upon these entities.

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

8:65-10.1 Controlled dangerous substances; Schedule I

(a) (No change.)

(b) The following is Schedule I listing of the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substance[s] code number.

1. Opiates: Unless specifically excepted or unless listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation (listed by generic/established or chemical name with CDS code):

Acetylmethadol	9601
[Alfentanil	9737]
Allylprodine	9602
.....

2.-7. (No change.)

8:65-10.2 Controlled dangerous substances, Schedule II

(a) (No change.)

(b) The following is Schedule II listing the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substance code number[s].

1. (No change.)

2. Opiates: Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within specific chemical designation, dextorphan and levopropoxyphene excepted, (listed by generic/established or chemical name with CDS code):

Alfentanil	9737
Alphaprodine	9010
Anileridine	9020
.....

3.-7. (No change.)

CORRECTIONS

THE COMMISSIONER

The following proposals are authorized by William H. Fauver, Commissioner, Department of Corrections.

Submit comments by June 17, 1987 to:

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

(a)

Close Custody Units Involuntary Placement into Protective Custody

Proposed Amendment: N.J.A.C. 10A:5-5.2

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

Proposal Number: PRN 1987-168.

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:5-2(f) relating to the hearing procedure for involuntary placement in Protective Custody. The proposed amendment provides the inmate with the opportunity to present a reason(s) for not being placed into Protective Custody at the time that he or she receives notice that he or she is under consideration for placement into involuntary Protective Custody.

Social Impact

The proposed amendment will have no new or additional social impact because the amended rule clarifies existing policy related to involuntary placement in Protective Custody.

Economic Impact

The proposed amendment will not have an economic impact because no additional costs are necessary to implement or maintain this rule.

Regulatory Flexibility Statement

The proposed amendment does not impose any reporting, recording or compliance requirements upon small businesses. A regulatory flexibility analysis of this proposed amendment is therefore not required.

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

10:A-5-5.2 Hearing procedure for involuntary placement to Protective Custody

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

(f) **At the time of receipt of the notice, the inmate shall be given the opportunity to present the basis for any opposition to involuntary placement in Protective Custody. The inmate shall not, however, be required to make any statement at this time. The information contained in the notice, together with any statement or evidence provided by the inmate at the time of receipt of the notice, shall be reviewed by the Superintendent or his or her designee immediately to determine whether, pending the completion of a thorough investigation, there is a reasonable basis to conclude that the inmate is in need of Protective Custody.**

[(f)](g) Illiterate inmates or inmates otherwise unable to marshal the facts shall [recieve] receive the assistance of a counsel substitute assigned by the Disciplinary Hearing Officer/Adjustment Committee or Superintendent. An interpreter shall be utilized, if needed, at the discretion of the Disciplinary Hearing Officer/Adjustment Committee.

[(g)](h) (No change in text)

[(h)](i) Inmates placed in emergent Protective Custody or under consideration for placement in Protective Custody shall receive a hearing within [10] 20 working days after receipt of the notice unless there are exceptional circumstances, unavoidable delays or reasonable postponements.

[(i)](j) At the hearing, the inmate shall be informed of all information bearing on his or her case, with the exception of information designated "confidential[.]"; or

Redesignate existing (j) through (l) as (k) through (m) (No change in text.)

NEW JERSEY REGISTER, MONDAY, MAY 18, 1987

(a)

**Classification Process
Work Credits****Proposed Amendment: N.J.A.C. 10A:9-5.6**

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

Proposal Number: PRN 1987-167.

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:9-5.6(b) and (d) relating to inmates earning work credits while housed in county facilities. The proposed amendment authorizes the earning of work credits, after 15 days in custody, by inmates housed in county facilities who are parole violators without additional charges and to inmates who are parolees serving county jail sentences who also have parole violations.

Social Impact

The proposed amendment will have no new or additional social impact because the amended rule clarifies existing policy related to the earning of work credits by inmates housed in county facilities.

Economic Impact

The proposed amendment will not have an economic impact because no additional costs are necessary to implement or maintain this rule.

Regulatory Flexibility Statement

The proposed amendment does not impose any reporting or compliance requirements upon small businesses. A regulatory flexibility analysis of this proposed amendment is therefore not required.

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

10A:9-5.6 Work credits for inmates housed in county facilities

(a) (No change.)

(b) [Parole violators being held in county facilities on parole warrants but no additional charges will not receive work credits until after revocation of parole. Credits may be given for work performed, beginning on the day the Parole Panel issues the decision of revocation.] **Inmates that are parole violators without additional charges who are held in a county facility on a parole warrant will receive work credits after they have been in custody for 15 days.**

(c) (No change.)

(d) Parolees serving county jail sentences in conjunction with parole violations may receive wages and work credits beginning [upon completion of the county jail sentence, providing that parole has been revoked] **on the date of parole revocation.**

(e) (No change.)

INSURANCE**DIVISION OF ACTUARIAL SERVICES**

(b)

Limited Death Benefit Forms**Proposed Amendments: N.J.A.C. 11:4-21**

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:44A-21, 17B:25-18, 17B:27-25, 17B:30-1 et seq., and 17B:30-15.

Proposal Number: PRN 1987-173.

Submit comments by June 17, 1987 to:

James D. Zarnowski, Director
Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Limited death benefit life insurance policies limit the proceeds which are payable to a beneficiary upon the death of the insured for a specified period of time following policy issuance, as an alternative to underwriting.

Prior to 1980, such policy forms generally were not approved for use in this State.

The Department, however, recognizes that this type of life insurance protection can be beneficial to individuals who are ineligible for full benefit, underwritten coverage, due to poor medical history or other adverse underwriting characteristics. As a result, in 1980 the Department promulgated N.J.A.C. 11:4-21 which authorized the sale of limited death benefit policies on a restricted basis and established guidelines for the advertising and issuance of such policies.

Pursuant to Executive Order 66(1978), this subchapter was readopted on June 3, 1985, with several substantive amendments which became operative on September 1, 1985. Generally, these amendments strengthened the disclosure requirements of the rule while at the same time expanded the potential market for such coverage. This proposal supersedes the proposed amendment to this subchapter published on May 19, 1986 at 18 N.J.R. 1085(a).

An amendment to N.J.A.C. 11:4-21.4(b), for example, required that all insurer advertising and sales presentations prominently advise the prospective insured of the nature of the policy's limited death benefits and that a similar, full coverage, underwritten policy might be available from that or some other insurer, possibly at lower rates. Amendments to N.J.A.C. 11:4-21.34(h) and (i), respectively, raised the maximum face amount of the limited death benefit policy from \$5,000 to \$15,000 and lowered the minimum age at which such a policy may be issued from 50 to 45.

Subsequent to the readoption of the subchapter, the Department received complaints from insurers concerning the amended language of N.J.A.C. 11:4-21.4(b). The insurers argued that the disclosure required by the provision was unduly burdensome and, in particular, had a deleterious impact on their multi-state radio and television broadcast advertising capability. The Department's proposed amendments to the subchapter address the concerns expressed by these insurers by deleting the aforementioned subsection (b).

However, the Department also has received information indicating that some insurers have issued limited death benefit policies to substantial numbers of standard or preferred risks. As previously indicated, it is the intent of N.J.A.C. 11:4-21 to ensure the availability of life insurance protection to those who may be otherwise ineligible and to avoid, through disclosure, the inappropriate purchase of the product by persons qualifying for full benefit, underwritten coverage.

In light of this information, the Department is proposing several amendments to the subchapter which are designed to further clarify its disclosure requirements. Full disclosure of the limitations of this policy form is particularly important considering both the broadened potential market and the increased maximum benefit levels that result from the Department's earlier amendments to the rule.

N.J.A.C. 11:4-21.1, the purpose and scope section of the subchapter, has been amended to explicitly state that the subchapter is intended to assure that limited death benefit policies are not sold to persons eligible for full death benefit policies.

The scope provision provides for the application of the subchapter to every limited death benefit policy issued or delivered after the operative date of the amended subchapter, to provide for the rule's applicability to currently filed forms as well as those filed in the future, and to deem noncomplying filed forms as withdrawn as of the operative date of the amended subchapter. What formerly constituted N.J.A.C. 11:4-21.2 has been recodified as subsection (b) of N.J.A.C. 11:4-21.1 in this proposal.

An agency note included in this proposal indicates that the Department intends to make the amendments to this subchapter operative 60 days after publication of a notice of adoption in the New Jersey Register. This delayed operative date has been incorporated to permit insurers adequate lead time to effect compliance with the revised requirements of the subchapter. The existing text of N.J.A.C. 11:4-21 will remain in effect until the operative date of the revised subchapter.

The definitions section of the subchapter (N.J.A.C. 11:4-21.2) has been modified to clarify the term "limited death benefit policy" and to add definitions of "department" and "full death benefit policy."

N.J.A.C. 11:4-21.3, general requirements, has been substantively revised. N.J.A.C. 11:4-21.4(a) through (e) have been replaced by new proposed subsections (a) through (e).

Proposed N.J.A.C. 11:4-21.3(a) requires that the insurer obtain, at the time of application, a signed and dated statement from the prospective applicant that he or she understands that eligibility for a full death benefit policy may be possible. This statement must be received prior to issuance of a limited death benefit policy. A copy of the statement must be submitted to the Department for review.

N.J.A.C. 11:4-21.3(b) provides that all advertising and/or revisions to a limited death benefit policy must contain a narrative statement addressing the method by which the policies will be sold, and must be submitted to the Department prior to use.

N.J.A.C. 11:4-21.3(c) states that all advertising must prominently explain the nature of the limited death benefit policy and the duration of the limited death benefit period.

N.J.A.C. 11:4-21.3(d) lists requirements necessary for advertising which makes reference to a specific premium rate. N.J.A.C. 11:4-21.3(e) states that agents shall not receive greater commissions for the sale of limited death benefit policies than for the sale of full death benefit policies.

N.J.A.C. 11:4-21.3(f) through (j) provide, respectively, that the limited death benefit shall not be less than the amount of premiums paid with interest at the rate used to determine nonforfeiture values under the policy; the period during which a limited death benefit is applied shall not exceed 25 percent of life expectancy at the issue age; the face value or ultimate amount of insurance shall not exceed \$15,000; the issue age shall not be less than 45; and a provision that allows for the return of the policy for a full return of premiums within 30 days after delivery.

N.J.A.C. 11:4-21.4 is a severability clause.

Social Impact

Limited death benefit policies are designed for individuals who, because of certain underwriting characteristics, may be ineligible for full coverage, underwritten policies. Although such coverage is expensive, the Department believes that this type of coverage is necessary for certain individuals.

The proposed amendments to this rule protect the public by providing stricter advertising and disclosure requirements. For example, the proposal includes provisions for statements explaining the nature of the limited death benefit policy. The full disclosure required by the amendments should serve to avoid the inappropriate purchase of limited death benefit coverage by persons eligible for full benefit, underwritten policies.

The proposed amendments also provide relief to insurers utilizing multi-state radio and television broadcast advertising.

Economic Impact

The stricter disclosure and advertising requirements may result in eligible individuals purchasing full death benefit policies rather than limited death benefit policies. Such individuals will benefit since full death benefit coverage is often less costly than comparable limited death benefit coverage.

Insurers will incur some additional costs in revising their advertising materials, applications and policy forms and in printing other documents required by the rule. The relaxation of disclosure requirements with respect to radio and television broadcast advertising may result in reduced costs to insurers utilizing these forms of advertising.

The Department expects to incur certain administrative costs in reviewing revised forms and advertising material. It is anticipated that the costs will be absorbed within the existing budget.

Regulatory Flexibility Statement

Some insurers affected by these proposed amendments are small businesses as that term is defined in the Regulatory Flexibility Act, P.L. 1986, c.169. To provide for uniform and consistent applicability of these rules, and to avoid the granting of a prescribed business advantage to insurers who are small businesses by reducing or eliminating the advertising and policy requirements, no differential treatment is accorded small businesses by these proposed amendments.

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

AGENCY NOTE: The amendments to this subchapter shall become operative 60 days after publication in the New Jersey Register of the notice of adoption.

SUBCHAPTER 21. LIMITED DEATH BENEFIT FORMS

11:4-21.1 Purpose; scope

(a) The purpose of this subchapter is to establish guidelines for the filing and review of [L]limited [D]death [B]benefit policy forms which will:

1. Make life insurance available to people who [would not] are otherwise [be eligible] **uninsurable**;

2. [Reduce through disclosure the likelihood of misunderstanding arising where the sales presentation emphasizes the non-underwriting feature while minimizing or ignoring the limitation on death benefits at early

durations] **Assure that limited death policies are not sold by agents in preference to full death benefit policies and that the applicant understands that he or she may qualify for a full death benefit policy**;

3. [Insure that the applicant is aware that he or she may qualify for an underwritten policy, which may provide greater benefits at lower premiums] **Reduce through disclosure the likelihood of misunderstanding arising where the sales presentation emphasizes the underwriting feature while minimizing or ignoring the limitation on death benefits at early durations**; and

4. Set standards for the advertising of [L]limited [D]death [B]benefit policy forms so as to eliminate unfair, misleading or deceptive advertising practices.

[11:4-21.2 Applicability and scope]

(b) This subchapter shall apply to all [individual] life insurance policy forms delivered or issued for delivery after the [effective] operative date hereof that limit death benefits [at early durations] **during a period following the inception of the policy as an alternative to underwriting**. [For previously filed limited death benefit forms, revised advertising materials and sales presentations must be submitted to the Department prior to the issuance of any limited death benefit policy forms after the operative date of this subchapter.] **The requirements in this subchapter apply to all previously filed forms as well as any forms submitted in the future. Previously filed forms which do not comply with these requirements are considered withdrawn as of the operative date of this subchapter.**

[11:4-21.3]11:4-21.2 Definitions

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

"Advertising" [materials and sales presentations] means **any advertising materials and sales presentations in the following categories**:

1. Printed and published material, audiovisual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio and television scripts, billboards and similar displays;

2. Descriptive literature and sales aids of all kinds issued by an insurer or agent, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters;

3. Material used for the recruitment, training and education of an insurer's sales personnel, agents, solicitors, and brokers which is designed to be used or used to induce the public to purchase, increase, modify, reinstate, or retain a policy; and

4. Prepared sales talks, presentations and material for use by sales personnel, agents, solicitors and brokers.

["Limited Death Benefit Policy" means a policy which limits death benefits at early duration as an alternative to underwriting.

"Prominently" means in such a manner as to make wording conspicuous, obvious and immediately noticeable. For written publications, this would mean type larger and bolder than that of the remainder of the publication appearing at the top or beginning of the publication. For radio or television, this means verbal statements made at the outset of the presentation.]

"Department" means the New Jersey Department of Insurance.

"Full death benefit policy" means **any individual life insurance policy, group life insurance policy, group life insurance certificate, or fraternal benefit society certificate delivered or issued for delivery in this State which provides the full face amount as the death benefit at all times following the inception date of the policy.**

"Limited death benefit policy" means **any individual life insurance policy, group life insurance policy, group life insurance certificate, or fraternal benefit society certificate delivered or issued for delivery in this State which limits death benefits during a period following the inception date of the policy as an alternative to underwriting.**

[11:4-21.4 Requirements] 11:4-21.3 General requirements

(a) [The policy must prominently display on its face page, the amount of any death benefit smaller than the face amount on the policy together with the years during which each of the reduced amounts apply. The brief description on the face page shall refer to the limited benefit and specify the period of limitation.] **No limited death benefit policy shall be issued in this State unless the insurer has, at the time of application, obtained from the applicant a signed and dated statement attesting that the applicant understands that he or she may qualify for a full death benefit policy which provides full benefits from inception. A copy of this statement must be submitted to the Department for review prior to its use.**

(b) [All advertising materials and sales presentations shall prominently advise the prospect of the limited nature of the early death benefits, and that similar, full coverage, underwritten policies at possibly lower premium rates, may be available from that or some other company.] **All**

advertising of a limited death benefit policy and any revisions to the advertising must be submitted to the Department prior to use. The material submitted must include a narrative statement of the method by which the policy will be sold.

(c) [For companies that offer similar, full coverage, underwritten policies to some or all of those eligible for limited death benefit policies, any difference in the premium rates between the limited benefit policy and the underwritten policy must be prominently shown in advertising and sales presentations. Instructions in the procedure to be followed if the prospect is interested in applying for the underwritten policy must also be included.] All advertising for a limited death benefit policy shall prominently explain the nature of the limited death benefit policy and state the duration of the limited death benefit period.

(d) [A narrative statement of the method by which the policy will be sold, including any instructions to agents, standardized presentation, and any advertising or direct mail material shall be submitted to the Department.] Any advertising of a limited death benefit policy which makes reference to a specific premium rate must provide:

1. For other than radio and television, a listing of the rates and benefits for all available ages (male and female); and

2. For radio and television, instructions in the procedure to be followed by the applicant to learn what benefits and rates are available.

(e) [When sold by agents, the commission must be significantly lower on the limited benefit policies to insure that full coverage, equivalent, underwritten policies will be sold in preference to the limited benefit forms. A statement to this effect must be submitted to the Department.] When sold by agents, the commission may not be greater on the sale of limited death benefit policies than on the sale of full death benefit policies.

(f) The limited death benefit shall not be less than the amount of premiums paid with interest at the rate used to determine nonforfeiture values under the policy.

(g) The period during which a limited death benefit applies shall not exceed 25 percent of [expectation of] life expectancy at the issue age, as determined by the mortality table used for nonforfeiture values under the policy[.], or two years, whichever is shorter.

(h) The face[,] or ultimate[,] amount of insurance shall not exceed \$15,000.

(i) The issue age shall not be less than 45.

(j) The policy shall include a provision allowing for the return of the policy for a full refund of premiums within [at least] 30 days after delivery.

11:4-21.4 Severability

[If any section or portion of a section of this subchapter, or the applicability thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the remainder of this subchapter, or the applicability to other persons, shall not be affected thereby.] If any provision of this subchapter, or its application to any person or circumstances, is held invalid, the remainder of this subchapter and its application to other persons or circumstances shall not be affected.

(a)

Group Coordination of Benefits

Proposed New Rules: 11:4-28

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e).

Proposal Number: PRN 1987-174.

Submit comments by June 17, 1987 to:

James D. Zarnowski, Director
Regulatory Affairs
Department of Insurance
201 East State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follow:

Summary

Proposed new subchapter N.J.A.C. 11:4-28, concerning group coordination of benefits (COB), is designed to establish uniform procedures for claim benefit payment in cases where an insured is covered under more than one group health insurance contract.

Prior to the promulgation of this subchapter, the Department required contracts to include COB provisions. These provisions were to follow the guidelines established by the National Association of Insurance Com-

missioners (NAIC). If the contract provisions did not conform to the NAIC COB guidelines, the contract was disapproved as contrary to the public interest. Over the years, multiple revisions were made in the NAIC guidelines, and the most recent guidelines contain certain provisions which the Department is reluctant to accept. This subchapter is designed to incorporate the acceptable NAIC guidelines into rules.

Specifically, the subchapter establishes an order in which insurers pay their claims, and provides the authority for the orderly transfer of information needed to pay claims promptly. By establishing these guidelines for payment, it is anticipated that the rules will reduce claim payment delays and duplication of benefits.

The rules are based on the NAIC model regulation concerning coordination of benefits. The language in the proposed subchapter is virtually identical to that found in the NAIC model. However, upon a careful review of the structural organization of the NAIC model, it was determined that the regulation was difficult to understand. Therefore, the Department chose to reorganize the NAIC model regulation to make it more coherent.

N.J.A.C. 11:4-28.1 states the purposes underlying the proposal of the subchapter and lists some of the benefits which are anticipated from its enactment. The section also gives the effective date of the subchapter and outlines its applicability to existing contracts.

N.J.A.C. 11:4-28.2 is a definitions section, which includes definitions of key phrases such as "allowable expense" and "plan." Within the definition of "plan" are examples of what constitutes a plan for purposes of the subchapter, and also what types of coverage do not fall within the definition of plan and are therefore exempt from the subchapter.

N.J.A.C. 11:4-28.3 addresses a model COB contract provision. N.J.A.C. 11:4-28.3(a) states that Appendix A contains a model COB provision for use in group contracts. N.J.A.C. 11:4-28.3(b) allows group contracts to change the language in the model to conform to the style of the group contract or to reflect differences among plans, but prohibits any other substantive changes.

N.J.A.C. 11:4-28.3(c) provides the circumstances in which a group contract may reduce benefits on the basis that another plan exists, and N.J.A.C. 11:4-28.3(d) states that no contract may contain a provision that its benefits are "excess" or "always secondary" to any plan except as provided in the subchapter.

N.J.A.C. 11:4-28.4(a) outlines the general order for coordinating the payment of benefits. N.J.A.C. 11:4-28.4(b) provides the rules for the order of benefits for a dependent child when the parents are married, and N.J.A.C. 11:4-28.4(c) provides the rules for a dependent child when the parents are divorced or separated.

N.J.A.C. 11:4-28.4(d) discusses the order of payment of benefits of plans for persons who are laid off or retired. N.J.A.C. 11:4-28.4(e) provides the order of payment for plans which do not fall into any of the other categories.

The alternative outlined in N.J.A.C. 11:4-28.5 permits a secondary plan to reduce its benefits to the extent that the sum of the benefits paid by it and other plans does not exceed the allowable expenses. Such reduction by the secondary plan is what is currently found in group health insurance contracts issued by insurers in New Jersey.

The 1985 NAIC model regulation also contained two other alternatives to determine to what extent a secondary plan will be liable for expenses not paid by the primary plan. One alternative permits a secondary plan to reduce its benefits to the extent that the sum of the other plans does not exceed 80 percent of the allowable expenses. The second alternative allows a secondary plan to reduce its benefits by any benefits paid by other plans.

These two alternatives have not been incorporated into this subchapter. The Department believes that these alternatives represent too great a reduction of benefits to insureds, and although they are designed to effect cost-containment, the Department does not feel that there is enough evidence to justify such a reduction in benefit. The Department intends to monitor the cost-containment efforts of other states to determine whether these options should be included in the COB subchapter.

N.J.A.C. 11:4-28.6 lists several miscellaneous provisions. N.J.A.C. 11:7-28.6(a) permits secondary plans which provide benefits in the form of services to recover the cash values of the services from the primary plan, to the extent that benefits would be covered by the primary plan.

N.J.A.C. 11:4-28.6(b) describes the method by which a plan that follows the COB benefit determination rules can coordinate its benefits with a plan which labels itself "excess" or "always secondary" or which is inconsistent with the rules provided in the subchapter.

N.J.A.C. 11:4-28.6(c) permits insurers to substitute certain technical phrases for others.

N.J.A.C. 11:4-28.6(d) instructs that COB and subrogation are completely different concepts, and the inclusion of one in a contract does not affect the inclusion or exclusion of the other.

Appendix A provides model COB provisions which must be incorporated by insurers in their contracts, subject to the provisions in N.J.A.C. 11:4-28.3(b) and (c). Insurers may change the language and style of the model, but no substantive changes may be made.

Social Impact

The proposed new subchapter provides a procedure to establish the order in which claims are paid when more than one insurance plan is involved. The subchapter permits plans to include a COB provision, which determines whether the plan is primary or secondary.

By establishing a predictable order of payment, claim payment delays should be reduced since there will be no confusion as to which insurer is responsible for paying first.

The prior guidelines for coordination of benefits, which were based on the gender of the individuals, gave the appearance of sex discrimination and precipitated many complaints. In response to this situation, the NAIC developed the birthday rule, which uses the birthdate of the individuals involved to determine the primary plan.

Since the purpose of the COB rules is to establish a uniform method for determining the order of payment, the Department believes that the birthday rule will accomplish this goal and, at the same time, eliminate the appearance of sex discrimination.

Economic Impact

As a result of establishing an order of payment, duplicate benefit payments will be eliminated. Thus, insureds will receive only the amount to which they are entitled, and insurers will not have to pay benefits in excess of their responsibility.

The Department will experience a decrease in workload since the incorporation of COB provisions in a rule should reduce the number of inquiries and complaints with regard to claim payment delays.

Regulatory Flexibility Statement

Some insurers affected by these proposed new rules are small businesses as that term is defined in the Regulatory Flexibility Act, P.L. 1986, c.169. As these rules are designed to provide uniform procedures for claim benefit payment where an insured is covered under more than one group health insurance contract, a different procedure for insurers who are small businesses would negate the procedural consistency sought to be established, and would further obscure what is, at present, an area of confusion in the insurance industry. Beyond the mandated coverage provisions, there are no other compliance requirements for insurers who are small businesses.

Full text of the proposed new rules follows:

SUBCHAPTER 28. GROUP COORDINATION OF BENEFITS

11:4-28.1 Purpose; applicability

(a) The purpose of this subchapter is to:

1. Permit, but not require, plans to include a coordination of benefits (COB) provision;
2. Establish an order in which plans pay their claims;
3. Provide the authority for the orderly transfer of information needed to pay claims promptly;
4. Reduce duplication of benefits by permitting a reduction of the benefits paid by a plan when the plan, pursuant to rules established by this subchapter, does not have to pay its benefits first;
5. Reduce claims payment delays; and
6. Make all contracts that contain a COB provision consistent with this subchapter.

(b) This subchapter is applicable to every group contract which provides health care benefits and which is issued on or after the effective date of this subchapter.

(c) A group contract which provides health care benefits and was issued before the effective date of this subchapter shall be brought into compliance with this subchapter by the latter of:

1. The next anniversary date or renewal date of the group contract; or
2. The expiration of any applicable collectively bargained contract pursuant to which it was written.

11:4-28.2 Definitions

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

"Allowable Expense" means the necessary, reasonable, and customary item of expense for health care when the item of expense is covered at least in part under any of the plans involved, except where a statute requires a different definition.

1. Notwithstanding the above definition, items of expense under coverages such as dental care, vision care, prescription drug or hearing aid programs may be excluded from the definition of Allowable Expense. A plan which provides benefits only for any such items of expense may limit its definition of Allowable Expenses to like items of expense.

2. When a plan provides benefits in the form of services, the reasonable cash value of each service will be considered as both an Allowable Expense and a benefit paid.

3. The difference between the cost of a private hospital room and the cost of a semi-private hospital room is not considered an Allowable Expense under the above definition unless the patient's stay in a private hospital room is medically necessary in terms of generally accepted medical practice.

4. When COB is restricted in its use to specific coverage in a contract (for example, major medical or dental), the definition of "Allowable Expense" must include the corresponding expenses or services to which COB applies.

"Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:

1. Services (including supplies);
2. Payment for all or a portion of the expenses incurred;
3. A combination of 1 and 2 above; or
4. An indemnification.

"Claim Determination Period" means the period of time, which must not be less than 12 consecutive months, over which Allowable Expenses are compared with total benefits payable in the absence of COB, to determine whether overinsurance exists and how much each plan will pay or provide.

1. The Claim Determination Period is usually a calendar year, but a plan may use some other period of time that fits the coverage of the group contract. A person may be covered by a plan during a portion of a Claim Determination Period if that person's coverage starts or ends during the Claim Determination Period.

2. As each claim is submitted, each plan is to determine its liability and pay or provide benefits based upon Allowable Expenses incurred to that point in the Claim Determination Period. But that determination is subject to adjustment as later Allowable Expenses are incurred in the same Claim Determination Period.

"Coordination of Benefits" means a provision establishing an order in which plans pay their claims.

"Plan" means a form of coverage with which coordination is allowed. The definition of plan in the group contract must state the types of coverage which will be considered in applying the COB provision of that contract. The right to include a type of coverage is limited by the rest of this definition.

1. The definition shown in the Model COB Provision, attached to this rule as Appendix A, is an example of what may be used. Any definition that satisfies this definition may be used.

2. This subchapter uses the term "plan." However, a group contract may, instead, use "program" or some other term.

3. Plan may include:
 - i. Group insurance and group subscriber contracts;
 - ii. Uninsured arrangements of group or group-type coverage;
 - iii. Group or group-type coverage through HMOs and other prepayment, group practice and individual practice plans;
 - iv. Group-type contracts. Group-type contracts are contracts which are not available to the general public and can be obtained and maintained only because of membership in or connection with a particular organization or group. Group-type contracts answering this description may be included in the definition of plan, at the option of the insurer or the service provider and its contract-client, whether or not uninsured arrangements or individual contract forms are used and regardless of how the group-type coverage is designated (for example, "franchise" or "blanket"). The use of payroll deductions by the employee, subscriber or member to pay for the coverage is not sufficient, of itself, to make an individual contract part of a group-type plan. This description of group-type contracts is not intended to include individually underwritten and issued, guaranteed renewable policies that may be purchased through payroll deduction at a premium savings to the insured;
 - v. Policies where the amount by which group or group-type hospital indemnity benefits exceed \$100.00 per day;

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vi. The medical benefits coverage in group, group-type and individual automobile "no-fault" and traditional automobile "fault" type contracts; and

vii. Medicare or other governmental benefits, except as provided in 4vii below. That part of the definition of plan may be limited to the hospital, medical and surgical benefits of the governmental program.

4. Plan shall not include:

i. Individual or family insurance contracts;

ii. Individual or family subscriber contracts;

iii. Individual or family coverage through Health Maintenance Organizations (HMOs);

iv. Individual or family coverage under other prepayment, group practice and individual practice plans;

v. Group or group-type hospital indemnity benefits of \$100.00 per day or less;

vi. School accident-type coverages. These contracts cover grammar, high school and college students for accidents only, including athletic injuries, either on a 24-hour basis or on a "to and from school" basis; and

vii. A State plan under Medicaid, and shall not include a law or plan when, by law, its benefits are in excess of those of any private insurance plan or other non-governmental plan.

"Hospital Indemnity Benefits" means those benefits not related to expenses incurred. The term does not include reimbursement-type benefits even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

"Primary Plan" means a plan whose benefits for a person's health care coverage must be determined without taking the existence of any other plan into consideration. A plan is a Primary Plan if either of the following conditions is true:

1. The plan either has no order of benefit determination rules, or its has rules which differ from those permitted by this subchapter. There may be more than one Primary Plan; or

2. All plans which cover the person use the order of benefit determination rules required by this subchapter, and under those rules the plan determines its benefits first.

"Secondary Plan" means a plan which is not a Primary Plan. If a person is covered by more than one Secondary Plan, the order of benefit determination rules of this subchapter decides the order in which their benefits are determined in relation to each other. The benefits of each Secondary Plan may take into consideration the benefits of the Primary Plan or plans and the benefits of any other plan which, under the rules of this subchapter, has its benefits determined before those of that Secondary Plan.

"This Plan" means, in a COB provision, the part of the group contract providing the health care benefits to which the COB provision applies and which may be reduced because of the benefits of other plans. Any other part of the group contract providing health care benefits is separate from This Plan. A group contract may apply one COB provision to certain of its benefits (such as dental benefits), coordinating only with like benefits, and may apply other separate COB provisions to coordinate other benefits.

11:4-28.3 Model COB contract provision

(a) Appendix A contains a model COB provision for use in group contracts. That use is subject to the provisions of (b) and (c) below and to the provisions of N.J.A.C. 11:4-28.4.

(b) A group contract's COB provision does not have to use the words and format shown at Appendix A. Changes may be made to fit the language and style of the rest of the group contract or to reflect the difference among plans which provide services which pay benefits for expenses incurred; and which indemnify. No other substantive changes are allowed.

(c) A group contract may not reduce benefits on the basis that:

1. Another plan exists;

2. A person is or could have been covered under another plan, except with respect to Part B of Medicare; or

3. A person has elected an option under another plan providing a lower level of benefits than another option which could have been elected.

(d) No contract may contain a provision that its benefits are "excess" or "always secondary" to any plan as defined in this subchapter, except in accord with the rules permitted by this subchapter.

11:4-28.4 Rules for coordination of benefits

(a) The general order of benefits is as follows:

1. The Primary Plan must pay or provide its benefits as if the Secondary Plan or Plans did not exist.

2. A Secondary Plan may take the benefits of another plan into account only when, under these rules, it is Secondary to that other plan.

3. The benefits of the plan which covers the person as an employee, member or subscriber (that is, other than as a dependent) are determined before those of the plan which covers the person as a dependent.

(b) The rules for the order of benefits for a dependent child when the parents are not separated or divorced are as follows:

1. The benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year;

2. If both parents have the same birthday, the benefits of the plan which covered the parent longer are determined before those of the plan which covered the other parent for a shorter period of time;

3. The word "birthday" refers only to month and day in a calendar year, not the year in which the person was born;

4. A group contract which includes COB and which is issued or renewed, or which has an anniversary date on or after 60 days after the effective date of this subchapter, shall include the substance of the provision in (b)1, 2 and 3 above. That provision shall become effective one year and 60 days after the effective date of this subchapter. Until that provision becomes effective, the group contract may instead contain wording such as:

"Except as stated in (c) below, the benefits of a plan which covers a person as a dependent of a male are determined before those of a plan which covers the person as a dependent of a female."

5. If the other plan does not have the rule described in (b)1, 2 and 3 above, but instead has a rule based upon the gender of the parent, and if, as a result, the plans do not agree on the order of benefits, the rule based upon the gender of the parent will determine the order of benefits.

(c) If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

1. First, the plan of the parent with custody of the child;

2. Then, the plan of the spouse of the parent with the custody of the child; and

3. Finally, the plan of the parent not having custody of the child.

4. If the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first. The plan of the other parent shall be the Secondary Plan. This paragraph does not apply with respect to any Claim Determination Period or plan year during which any benefits are actually paid or provided before the entity has that actual knowledge.

(d) The benefits of a plan which covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a plan which covers that person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule is ignored.

(e) If none of the above rules determines the order of benefits, the benefits of the plan which covered an employee, member or subscriber longer are determined before those of the plan which covered that person for the shorter term.

1. To determine the length of time a person has been covered under a plan, two plans shall be treated as one if the claimant was eligible under the second within 24 hours after the first ended.

2. The start of a new plan does not include:

i. A change in the amount or scope of a plan's benefits;

ii. A change from one type of plan to another (such as, from a single employer plan to that of a multiple employer plan).

3. The claimant's length of time covered under a plan is measured from the claimant's first date of coverage under that plan. If that date is not readily available, the date of the claimant first became a member of the group shall be used as the date from which to determine the length of time the claimant's coverage under the present plan has been in force.

11:4-28.5 Procedure to be followed by Secondary Plan

(a) When it is determined, pursuant to N.J.A.C. 11:4-28.4, that this Plan is a Secondary Plan, it may reduce its benefits so that the total benefits paid or provided by all plans during a Claim Determination Period are not more than total Allowable Expenses. The amount by which the Secondary Plan's benefits have been reduced shall be used by the Secondary Plan to pay Allowable Expenses, not otherwise paid, which were incurred during the Claim Determination Period by the person for

whom the claim is made. As each claim is submitted, the Secondary Plan determines its obligation to pay for Allowable Expenses based on all claims which were submitted up to that point in time during the Claim Determination Period.

(b) The benefits of the Secondary Plan will be reduced when the sum of the benefits that would be payable for the Allowable Expenses under the Secondary Plan in the absence of this COB provision, and the benefits that would be payable for the Allowable Expenses under the other Plans, in the absence of provisions with a purpose like that of this COB provision, whether or not claim is made, exceeds those Allowable Expenses in a Claim Determination Period. In that case, the benefits of the Secondary Plan will be reduced so that they and the benefits payable under the other plans do not total more than those Allowable Expenses.

1. When the benefits of this Plan are reduced as described above, each benefit is reduced in proportion. It is then charged against any applicable benefit limit of this Plan.

2. Paragraph (b)1 above may be omitted if the plan provides only one benefit, or may be altered to suit the coverage provided.

11:4-28.6 Miscellaneous provisions

(a) A Secondary Plan which provides benefits in the form of services may recover the reasonable cash value of providing the services from the Primary Plan, to the extent that benefits for the services are covered by the Primary Plan and have not already been paid or provided by the Primary Plan. Nothing in this provision shall be interpreted to require a plan to reimburse a covered person in cash for the value of services provided by a plan which provides benefits in the form of services.

(b) Some plans have order of benefit determination rules not consistent with this subchapter which declare that the plan's coverage is "excess" to all others, or "always secondary." This occurs because certain plans may not be subject to insurance regulation, or because some group contracts have not yet been conformed with this subchapter pursuant to N.J.A.C. 11:4-28.1.

1. A plan with order of benefit determination rules which comply with this subchapter (Complying Plan) may coordinate its benefits with a plan which is "excess" or "always secondary" or which uses order of benefit determination rules which are inconsistent with those contained in this subchapter (Noncomplying Plan) on the following basis:

i. If the Complying Plan is the Primary Plan, it shall pay or provide its benefits on a primary basis;

ii. If the Complying Plan is the Secondary Plan, it shall, nevertheless, pay or provide its benefits first, but the amount of the benefits payable shall be determined as if the Complying Plan were the Secondary Plan. In such a situation, such payment shall be the limit of the Complying Plan's liability; and

iii. If the Noncomplying Plan does not provide the information needed by the Complying Plan to determine its benefits within a reasonable time after it is requested to do so, the Complying Plan shall assume that the benefits of the Noncomplying Plan are identical to its own, and shall pay its benefits accordingly. However, the Complying Plan must adjust any payments it makes based on such assumption whenever information becomes available as to the actual benefits of the Noncomplying Plan.

2. If the Noncomplying Plan reduces its benefits so that the employee, subscriber, or member receives less in benefits than he or she would have received had the Complying Plan paid or provided its benefits as the Secondary Plan and the Noncomplying Plan paid or provided its benefits as the Primary Plan, and governing State law allows the right of subrogation set forth below, then the Complying Plan shall advance to or on behalf of the employee, subscriber, or member an amount equal to such difference.

i. However, in no event shall the Complying Plan advance more than the Complying Plan would have paid had it been the Primary Plan less any amount it previously paid. In consideration of such advance, the Complying Plan shall be subrogated to all rights of the employee, subscriber, or member against the Noncomplying Plan. Such advance by the Complying Plan shall also be without prejudice to any claim it may have against the Noncomplying Plan. Such advance by the Complying Plan shall also be without prejudice to any claim it may have against the Noncomplying Plan in the absence of such subrogation.

(c) A term such as "usual and customary," "usual and prevailing," or "reasonable and customary," may be substituted for the term "necessary, reasonable and customary." Terms such as "medical care" or "dental care" may be substituted for "health care" to describe the coverages to which the COB provisions apply.

(d) The COB concept clearly differs from that of subrogation. Provisions for one may be included in health care benefits contracts without compelling the inclusion or exclusion of the other.

APPENDIX A MODEL COB PROVISIONS

COORDINATION OF THE GROUP CONTRACT'S BENEFITS WITH OTHER BENEFITS

(I) APPLICABILITY

(A) This Coordination of Benefits ("COB") provision applies to This Plan when an employee or the employee's covered dependent has health care coverage under more than one Plan. "Plan" and "This Plan" are defined below.

(B) If this COB provision applies, the order of benefit determination rules should be looked at first. Those rules determine whether the benefits of This Plan are determined before or after those of another plan. The benefits of This Plan:

i. Shall not be reduced when, under the order of benefit determination rules, This Plan determines its benefits before another plan; but

ii. May be reduced when, under the order of benefits determination rules, another plan determines its benefits first. The above reduction is described in Section (IV) Effect on the Benefits of This Plan.

(II) DEFINITIONS

(A) "Plan" is any of these which provides benefits or services for, or because of, medical or dental care or treatment:

i. Group insurance or group-type coverage, whether insured or uninsured. This includes prepayment, group practice or individual practice coverage. It also includes coverage other than school accident-type coverage.

ii. Coverage under a governmental plan, or coverage required or provided by law. This does not include a State plan under Medicaid (Title XIX, Grants to States for Medical Assistance Programs, of the United States Social Security Act as amended from time to time). It also does not include any plan when, by law, its benefits are excess to those of any private insurance program or other non-governmental program.

Each contract or other arrangement for coverage under (i) or (ii) is a separate plan. Also, if an arrangement has two parts and COB rules apply only to one of the two, each of the parts is a separate plan.

(B) "This Plan" is the part of the group contract that provides benefits for health care expenses.

(C) "Primary Plan/Secondary Plan." The order of benefit determination rules state whether This Plan is a Primary Plan or Secondary Plan as to another plan covering the person.

When This Plan is a Primary Plan, its benefits are determined before those of the other plan and without considering the other person's benefits.

When This Plan is a Secondary Plan, its benefits are determined after those of the other plan and may be reduced because of the other plan's benefits.

When there are more than two plans covering the person, This Plan may be a Primary Plan as to one or more other plans, and may be a Secondary Plan as to a different plan or plans.

(D) "Allowable Expense" means a necessary, reasonable, and customary item of expense for health care, when the item of expense is covered at least in part by one or more plans covering the person for whom the claim is made.

The difference between the cost of a private hospital room and the cost of a semi-private hospital room is not considered an Allowable Expense under the above definition unless the patient's stay in a private hospital room is medically necessary either in terms of generally accepted medical practice, or as specifically defined in the plan.

When a plan provides benefits in the form of services, the reasonable cash value of each service rendered will be considered both an Allowable Expense and a benefit paid.

(E) "Claim Determination Period" means a calendar year. However, it does not include any part of a year during which a person has no coverage under This Plan, or any part of a year before the date this COB provision or a similar provision takes effect.

(III) ORDER OF BENEFIT DETERMINATION RULES.

(A) General. When there is a basis for a claim under This Plan and another plan, This Plan is a Secondary Plan which has its benefits determined after those of the other plan, unless:

i. The other plan has rules coordinating its benefits with those of This Plan; and

ii. Both those rules and This Plan's rules, in subparagraph (B) below, require that This Plan's benefits be determined before those of the other plan.

(B) Rules. This Plan determines its order of benefits using the first of the following rules which applies:

i. **Non-Dependent/Dependent.** The benefits of the plan which covers the person as an employee, member or subscriber (that is, other than as a dependent) are determined before those of the plan which covers the person as a dependent.

ii. **Dependent Child/Parents not Separated or Divorced.** Except as stated in subparagraph (B)(iii) below, when This Plan and another plan cover the same child as a dependent of different person, called "parents":

a. The benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year; but

b. If both parents have the same birthday, the benefits of the plan which covered the parents longer are determined before those of the plan which covered the other parent for a shorter period of time.

However, if the other plan does not have the rule described in (a) immediately above, but instead has a rule based upon the gender of the parent, and if, as a result, the plans do not agree on the order of benefits, the rule in the other plan will determine the order of benefits.

iii. **Dependent Child/Separated or Divorced Parents.** If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

a. First, the plan of the parent with custody of the child;

b. Then, the plan of the spouse of the parent with the custody of the child; and

c. Finally, the plan of the parent not having custody of the child.

However, if the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first. The plan of the other parent shall be the Secondary Plan. This paragraph does not apply with respect to any Claim Determination Period or Plan year during which any benefits are actually paid or provided before the entity has that actual knowledge.

iv. **Active/Inactive Employee.** The benefits of a plan which covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a plan which covers that person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule (iv) is ignored.

v. **Longer/Shorter Length of Coverage.** If none of the above rules determines the order of benefits, the benefits of the plan which covered an employee, member or subscriber longer are determined before those of the Plan which covered that person for the shorter term.

(IV) EFFECT ON THE BENEFITS OF THIS PLAN.

(A) **When This Section Applies.** This Section (IV) applies when, in accordance with Section (III) Order of Benefit Determination Rules, This Plan is a Secondary Plan as to one or more other plans. In that event the benefits of This Plan may be reduced under this section. Such other plan or plans are referred to as "the other plans" in (B) immediately below.

(B) **Reduction in this Plan's Benefits.** The benefits of This Plan will be reduced when the sum of:

i. The benefits that would be payable for the Allowable Expenses under This Plan in the absence of this COB provision; and

ii. The benefits that would be payable for the Allowable Expenses under the other plans, in the absence of provisions with a purpose like that of this COB provision, whether or not claim is made; exceeds those Allowable Expenses in a Claim Determination Period. In that case, the benefits of This Plan will be reduced so that they and the benefits payable under the other plans do not total more than those Allowable Expenses.

When the benefits of This Plan are reduced as described above, each benefit is reduced in proportion. It is then charged against any applicable benefit limit of This Plan.

(V) RIGHT TO RECEIVE AND RELEASE NEEDED INFORMATION.

Certain facts are needed to apply these COB rules. (Insurer) has the right to decide which facts it needs. It may get needed facts from or give them to any other organization or person. (Insurer) need not tell, or get the consent of, any person to do this. Each person claiming benefits under This Plan must give (Insurer) any facts it needs to pay the claim.

(VI) FACILITY OF PAYMENT.

A payment made under another plan may include an amount which should have been paid under This Plan. If it does, (Insurer) may pay that amount to the organization which made that payment. That amount will then be treated as though it were a benefit paid under This Plan. (Insurer) will not have to pay that amount again. The term "payment made"

includes providing benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services.

(VII) RIGHT OF RECOVERY

If the amount of the payments made by (Insurer) is more than it should have paid under this COB provision, it may recover the excess from one or more of:

(A) The persons it has paid or for whom it has paid;

(B) Insurance companies; or

(C) Other organizations.

The "amount of the payments made" includes the reasonable cash value of any benefits provided in the form of services.

LAW AND PUBLIC SAFETY

(a)

STATE BOARD OF DENTISTRY

Applicants for License to Practice Dental Hygiene; Standards for Approval of Schools of Oral Hygiene

Proposed Amendments: N.J.A.C. 13:30-2.1, 2.2, 2.7, 2.8, 2.9, 2.13, 2.14, 6.2, 6.5, 6.9

Proposed Repeal: N.J.A.C. 13:30-6.6, 8.2

Authorized By: Richard Van Sciver, D.D.S., President, State Board of Dentistry.

Authority: N.J.S.A. 45:6-52.

Proposal Number: PRN 1987-164.

Submit comments by June 17, 1987, to:

William Gutman, Executive Secretary

State Board of Dentistry

1100 Raymond Boulevard

Room 321

Newark, New Jersey 07102

The agency proposal follows:

Summary

Subchapter 2 (Applicants for License to Practice Dental Hygiene) and Subchapter 6 (Standards for Approval of Schools of Oral Hygiene) of Chapter 30 were promulgated by the State Board of Dentistry prior to 1970. In view of the fact that many procedures and standards have been developed and revised since that time, the Board is proposing to amend sections of these subchapters and to repeal two rules in order to reflect existing practices.

Many of the amendments and deletions result from the fact that the Board no longer administers its own examination to candidates for dental hygiene licensure. Rather, the Board relies on the Northeast Regional Board examination. Therefore, changes were required to indicate that almost all terms and conditions concerning examination of candidates are those set forth by the Northeast Regional Board.

The Board also proposes to amend the rules to provide specifically for its statutory authority to waive examination of a candidate in appropriate cases. However, the candidate must be a graduate of an approved school.

The proposal sets forth amendments to the duties of a registered dental assistant. The rule will permit the fabricating as well as cementing of temporary crowns and bridges after preparation of the tooth by the dentist with the exception of intra-oral occlusal adjustments. In addition, the rule will permit taking impressions for models to be used as counters for fixed or reusable prosthesis. A third amendment will permit the placement and removal of medicated pellets.

Several of the amendments in this proposal were suggested by the Petition for Rulemaking submitted by the New Jersey Dental Hygienists Association (Notice of Petition at 18 N.J.R. 1715). This included a recommendation that a dental hygienist who has graduated from an approved dental hygiene program in New Jersey in 1984 or thereafter shall be permitted to perform expanded functions without furnishing further proof of qualifications. These functions include: (1) apply pit and fissure sealants; (2) polish amalgam restorations; (3) remove excess cement from crown and orthodontic bands (by hand or mechanical instrument); (4) fabricate athletic mouth guard appliances. All graduates of New Jersey programs have had a course in expanded functions in their curriculum since 1983 which is taught to clinical competence. Therefore, it is not necessary to maintain the distinction between traditional and expanded functions for these graduates.

The Petition also recommended that the rules be amended to permit a licensed dental hygienist to be the administrator of a dental hygiene school. The current rule only permits a dentist to direct such programs. The proposal includes this change so long as the administrator is chosen in accordance with the ADA Standards for Accreditation of Dental Hygiene Programs.

The current rule which limits dental hygiene programs to women will be amended to delete any reference to sex as recommended by the Petition. There is no basis for limiting applicants to dental hygiene schools.

The proposal includes the repeal of two rules. The first is the rule concerning dormitories which is outdated and no longer applicable to current practices. The second is a rule which lists dental hygiene functions. The rule predates the Dental Auxiliaries Act, and the listed functions are included in N.J.A.C. 13:30-2.10, 2.13.

Social Impact

The proposed amendments are not expected to have a great social impact since they reflect current practices and replace outdated procedures. The Board of Dentistry no longer administers its own examination to applicants and, therefore, defers to the Northeast Regional Board for all terms and conditions of the examination process.

The elimination of qualifications for expanded functions for hygienists who graduated from New Jersey programs in 1984 or thereafter will remove a barrier from the performance of those functions by qualified individuals. The proposal also will permit qualified dental hygienists to become the administrators of New Jersey dental hygiene programs.

The amendments eliminating the limitation of dental hygiene programs to women and dormitory requirements are not expected to have social impact since they reflect existing practices.

Economic Impact

The proposed amendments are not expected to have any economic impact since they simply effect current procedures and practices in dental hygiene.

Regulatory Flexibility Statement

That part of the proposal which amends N.J.A.C. 13:30-2.1, 2.2, 2.7, 2.8, and 2.9 applies to all applicants to the Board of Dentistry for a license to practice dental hygiene. There are approximately 400 such applicants per year. Those applicants are not small businesses and are specifically prohibited from establishing independent offices for the purpose of performing hygienist services whether or not there is supervision or direct supervision of a licensed dentist pursuant to N.J.S.A. 45:6-64. The amendments to N.J.A.C. 13:30-2.13 and 2.14 expand the scope of permissible duties of registered dental assistants of which there are approximately 920 and licensed dental hygienists of which there are approximately 4,000 in the State of New Jersey. The remainder of the proposal, N.J.A.C. 13:30-6.2, 6.5, 6.6, applies to schools of dental hygiene. There are approximately six such schools in the State. The proposal may indirectly impact the approximate 9,000 licensed dentists in the State as the primary employers of dental auxiliaries.

The reporting, recordkeeping and compliance requirements of the proposal include the prescribed form and manner by which a dental hygienist can attain licensure, the permissible duties of a registered dental assistant and licensed dental hygienist, and the permissible administrator of a school of dental hygiene.

There are no costs involved in compliance with this proposal other than the cost which always has been borne by applicants for licensure as part of the application procedure. There will not be any need for professional services to fulfill the requirements of the rules. Likewise, these rules cannot be designed to minimize any adverse economic impact on small businesses since to a large extent they do not apply to small businesses, and to the extent that they do, there is minimal economic impact which would be the same regardless of the size of the business.

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

13:30-2.1 Qualifications of applicants

(a) (No change.)

(b) To obtain a license to practice dental hygiene, the candidate must pass the Northeast Regional Board examination in dental hygiene [or a simultaneous examination (same in content as the former) of the New Jersey State Board of Dentistry].

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

13:30-2.2 Application procedure

(a) An applicant shall obtain an application from [the Secretary of the Board of Dentistry or] the Secretary of the Northeast Regional Board [or from the Director of the respective dental hygiene school].

(b) The application shall be completed in detail, properly executed, and returned with the required fee to the Secretary of the Northeast Regional Board by the required date.

(c) The examination fee shall be that which is established by and payable to the Northeast Regional Board. [Candidate has the option of taking the Northeast Regional Board examination in which case the assigned examiners are from the region, and in accord with rules will permit licensure in any or all participating states; or a simultaneous examination in which case examiners are members of the New Jersey State Board of Dentistry and in accord with rules will permit licensure in New Jersey only.]

[(d) The completed and properly executed application with the required fee must be returned to the Secretary of the Northeast Regional Board by the required date. In the case of the simultaneous examination, the properly executed application and the required fee must be returned to the Secretary of the New Jersey State Board of Dentistry no later than 45 days preceding the examination.]

[(e) The examination fee for the Northeast Regional Board examination is established by and payable to the N.E.R.B. The fee for the simultaneous examination and licensure in New Jersey is \$25.00. The fee for simultaneous reexamination is \$10.00. The simultaneous examination, reexamination and licensure fee is payable to the State of New Jersey, in care of the New Jersey State Board of Dentistry.]

13:30-2.7 Reexaminations

(a) [Candidates will be permitted to take one examination and upon failure to pass, may appear for two reexaminations in conditional subjects over a period of three years.] **Reexamination will be permitted upon application to and approval by the Northeast Regional Board under terms and conditions set forth by the Northeast Regional Board.**

[(b) Candidates for simultaneous reexamination may be reexamined upon payment to the Secretary of the New Jersey Board of Dentistry, of a fee of \$10.00. The fee and completed reexamination application must be submitted and approved not less than 15 days prior to the reexamination date. Such date is available on request to the Secretary of the Board.]

[(c) N.E.R.B. reexamination will be permitted upon application to and approval by the Northeast Regional Board under terms and conditions as set forth in this Section.]

[(d) Upon failure to pass, the candidate may make application as a new candidate under the same conditions governing the original application.]

13:30-2.8 Schedule of examinations

(a) A schedule giving the date, place and hour of each examination and instructions will be sent by the Northeast Regional Board prior to the examination or reexamination.

(b)-(e) (No change.)

[(f) The format of the New Jersey State simultaneous examination in dental hygiene is the identical examination as the Northeast Regional Board and the same rules shall prevail.]

13:30-2.9 Licensure of candidates in dental hygiene

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

(c) [One may file an application for a license in any of the participating states. Each state will probably require:

1. National Board scores;
2. Northeast Regional Board scores;
3. The State's license fee; and
4. Any specific State's requirements (some states may require citizenship or other affidavits).]

A candidate for licensure as a dental hygienist in the State of New Jersey shall present proof of the following:

1. National Dental Hygiene Board certification.
2. Northeast Regional Board certification.
3. Successful completion of the New Jersey jurisprudence examination.

(d) [The New Jersey State Board of Dentistry requires:

1. National Dental Hygiene Board certification. Candidates that have graduated on or after January 1, 1973, must possess National Dental Hygiene Board certification. Candidates that have graduated prior to January 1, 1973, need not possess National Dental Hygiene Board certification but must successfully complete the written comprehensive examination of the New Jersey State Board of Dentistry in addition to the Northeast Regional Board or simultaneous examination;

2. Northeast Regional Board scores or successful completion of simultaneous examination;

3. State licensing fee and examination fee (the latter pertains only to those electing to take the simultaneous examination). Those electing to take the Northeast Regional Board examination pay the examination fee directly to N.E.R.B.;

4. Qualifying certificate from Commissioner of Education;

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5. Citizenship or declaration of intention.]

The New Jersey State Board of Dentistry may, in its discretion, grant a waiver of Northeast Regional Board performance testing, depending upon the record of the candidate. However, the candidate must be a graduate of a hygiene school approved by the Joint Commission on Dental Accreditation.

(e) The participating states of the Northeast Regional Board will give a waiver of performance testing to all successful candidates for a period of five years. After five years, acceptance of the N.E.R.B. certificate is optional with the state, depending upon the record of the candidate in continuing education and ethical practice. It shall be the decision of the individual board, then as to whether the candidate shall retake the examination test or have it waived based on this evidence.]

(f) Failing candidates are required to stand reexamination only in those sections of the examination in which they sustained failure.]

(g) Candidates will receive a fingerprint card with their application from the Board. The completed fingerprint card is required by all candidates for licensure. Candidates may have their fingerprints taken at local or State Police stations. The completed fingerprint card must accompany the completed application for licensure.]

(h)(e) (No change in text.)

13:30-2.13 Duties of a registered dental assistant

(a) A registered dental assistant may perform the following duties under the direct supervision of a licensed dentist:

1.-5. (No change.)

6. **Fabricate and [C]eement temporary crowns and bridges after preparation of tooth (teeth) [and crowns] by a dentist. This does not include intra-oral occlusal adjustments;**

7. **Take impressions for diagnostic models and models to be used as counters for fixed or removable prosthesis;**

8. (No change.)

9. **Place and remove retraction cords and medicated pellets;**

10.-15. (No change.)

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

13:30-2.14 Qualifications for performance of expanded functions

(a) (No change.)

(b) **A dental hygienist who has graduated from an approved dental hygiene program in the State of New Jersey in 1984 or thereafter shall be qualified to perform expanded functions as defined in N.J.A.C. 13:30-2.10(c), and shall be exempt from the provisions of (a) above.**

13:30-6.2 Administration

(a) The school shall have an administrator [a director or dean] who is a licensed dentist or a licensed dental hygienist in the State of New Jersey, in accordance with the ADA Standards for Accreditation of Dental Hygiene Programs.

(b) The administrator [director or dean] shall be responsible for carrying out the policies of the school and shall have direct supervision of the school.

(c) The administrator [He] shall be a recognized member of the Faculty Council (or similar body).

13:30-6.5 Faculty

(a) The faculty of the school shall consist of the administrator [dean or director]; one full-time teacher the first year and after the first year, when need is manifest, two full-time teachers, capable of directing and teaching the dental phases of dental [oral] hygiene; and sufficient other capable, qualified teachers to teach adequately the courses outlined in these standards.

(b) The teaching of the dental clinical subjects may be appropriately divided between qualified New Jersey licensed dentists and qualified New Jersey licensed dental [oral] hygienists.

(c) (No change.)

(d) The private practice of dentistry and/or dental hygiene shall not be permitted at the school of [oral] dental hygiene.

13:30-6.6 [Dormitories] (Reserved)

(a) The school shall make available ample dormitories or housing facilities for all out of town noncommuting students.

(b) Dormitory life of all students up to 25 years of age must be supervised.]

13:30-6.9 Entrance requirements

(a) The school of oral hygiene shall be open to women only.]

(b)(a) (No change in text.)

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

13:30-8.2 [Additional dental hygiene functions] (Reserved)

(a) The following duties are considered as within the normal legal duties which may be assigned to a dental hygienist under the direction or control of a licensed dentist:

1. The application of topical fluorides to the teeth;
2. The application of topical anesthetic agents to the oral mucosa;
3. The removal of subgingival deposits from the gingival crevice;
4. The placement and removal of rubber dam.]

(a)

BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Application Requirements; Misconduct; Fees

Proposed New Rules: N.J.A.C. 13:40-2.1 through 2.10

Proposed Amendments: N.J.A.C. 13:40-3.1 and 6.1

Authorized By: John V. DeGrace, P.E., L.S., President, Board of Professional Engineers and Land Surveyors.

Authority: N.J.S.A. 45:8-27 et seq.

Proposal Number: PRN 1987-172.

Submit comments by June 17, 1987 to:

Cathleen A. McCoy, B.S., M.A., Secretary-Director
Board of Professional Engineers and Land Surveyors
1100 Raymond Boulevard, Room 317
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Professional Engineers and Land Surveyors is proposing new rules, N.J.A.C. 13:40-2.1 et seq., which articulate the procedures for applicants seeking to take the examination to become an engineer-in-training, professional engineer or land surveyor.

The ability to speak and write the English language is among the requirements for licensure, pursuant to N.J.S.A. 45:8-35. Many of the proposed rules reflect the procedures used by the Board to effectively and fairly implement this requirement.

In addition, proposed N.J.A.C. 13:40-2.9 provides for the cancellation of an applicant's file whenever any applicant fails any eight hour section of the examination on three consecutive occasions or when a qualified applicant fails to sit for two consecutive examinations.

The proposed amendments to N.J.A.C. 13:40-3.1(a) require licensees to maintain an enhanced professional relationship with the client. Many letters from consumers over the years have indicated that licensees do not always effectively and consistently communicate with their clients. The Board anticipates that enforcement of these amendments will alleviate these problems.

The Board of Professional Engineers and Land Surveyors is proposing to amend N.J.A.C. 13:40-6.1 to require applicants who have degrees from non-United States institutions to pay for degree evaluation. This proposed amendment also requires that applicants pay for the actual cost of any review or regrading of a failed examination.

Social Impact

Proposed rule N.J.A.C. 13:40-2.1 et seq. will benefit the applicant by requiring said individual to follow current administrative procedures. All applicants will follow uniform procedures allowing the Board to review applications in a more efficient and timely manner. The proposal also places on record the requirements of the Board, thus giving applicants advance notice of these requirements.

The proposal will also benefit the State Board of Professional Engineers and Land Surveyors by eliminating unnecessary tasks and procedures in the Board office. In particular, the excess devotion of time by the office staff and needless use of file space for people who do not currently plan to take an examination for which they are scheduled, adversely affects the quality of service and ultimately, increases the cost for those applicants who do take the examination.

The proposed amendment to N.J.A.C. 13:40-3.1 will expand the scope of those acts considered to be professional misconduct by licensees. It will benefit the consumer by improving and outlining how a professional and client relationship should be conducted.

The proposed amendments to N.J.A.C. 13:40-6.1 should have a positive social impact. Provision is made for a uniform review, by experts in the field, of educational institutions located outside of the United States.

Furthermore, the review by a professional service should lessen the time required by the Board to review all application files, thus allowing for more efficient responses by the Board to applicants.

Likewise, the proposed rule should have a positive social impact by allowing candidates to verify their exam score or to review, if appropriate, their exam.

Economic Impact

The proposed new rules, N.J.A.C. 13:40-2.1 et seq., should have a positive economic impact. Applicants will be alerted to all procedures required for timely application consideration. The proposed rules will benefit applicants by requiring said individuals to take the time to better prepare for the examination and to upgrade the quality of experience gained in the work place. Furthermore, the proposal requires a professional Board-approved service to review non-United States educated candidates' degree. This will ensure that all foreign applicants have the equivalent of a four-year degree as required by N.J.S.A. 45:8-35.

The proposed rules will also save unqualified candidates the expense of continuous payment towards an examination for which they are currently unprepared. Additionally, the proposal is likely to result in savings to the Board of Professional Engineers and Land Surveyors by eliminating the economic burden of storing and processing the application files of individuals who fail to request to take, or to show up for, regularly scheduled examinations.

The proposed amendment to N.J.A.C. 13:40-3.1 should have no adverse economic impact on the public. To the extent that professional services to the public may be improved through appropriate disciplinary action against known rule violators, the public may benefit economically.

As a result of proposed amendment to N.J.A.C. 13:40-6.1, the applicant may bear some degree of economic hardship. However, the proposed amendment only contemplates the actual cost of a review and will not generate any revenue for the Board.

Regulatory Flexibility Statement

The proposed rules apply to virtually all licensees of and/or applicants to the State Board of Professional Engineers and Land Surveyors and thus, indirectly, will apply to all businesses, both large and small. There are approximately 22,224 licensees of this Board. There are approximately 1,100 applicants per exam period. The exam is given twice yearly.

The reporting, recordkeeping and compliance requirements described in proposed N.J.A.C. 13:40-2.1 et seq. include prescribed deadlines, educational requirements, language comprehension requirements, experience and reference requirements, as well as the prescribed form of applications and methods by which an applicant can obtain licensure. N.J.A.C. 13:40-3.1 sets out the proper methods by which a licensee shall maintain a relationship with his or her client. N.J.A.C. 13:40-6.1 requires that an applicant pay the costs of any outside evaluations, reviews or tabulations which may be required by subchapter 2.

The costs involved in complying with the provisions of N.J.A.C. 13:40-2 and 6.1 will be borne uniformly by all applicants. There will not be any variation in the costs for small businesses of different types and of different sizes, inasmuch as these rules do not affect "businesses," but rather individuals applying for licensure. Likewise, there is no need for these rules to be designed to minimize any adverse economic impact on small businesses. It is also clear that there will not be any need for professional services to fulfill the requirements of the proposed rules.

The proposed amendments to N.J.A.C. 13:40-3.1 may impose certain annual costs insofar as improved recordkeeping and communication with one's clients will require additional paperwork. It is unlikely however, that any professional services will be required to comply with this rule. The Board does not find that there will be any adverse economic impact of the proposed rules on small businesses, inasmuch as the rule applies to all licensees, and uniform application of this rule is necessary in order to benefit the numbers of the public.

In view of the fact that the rules operate evenly on all members of the class affected by their application and since that class is composed largely, if not entirely, of small businesses whose interests have been considered in the formulation of the rules, the intent of the Regulatory Flexibility Act vis a vis minimizing adverse economic impact has been satisfied.

Full text of the proposed new rules follows:

SUBCHAPTER 2. APPLICATION REQUIREMENTS

13:40-2.1 Form

All applications must be typewritten and notarized.

13:40-2.2 Deadlines

(a) All applications and supplemental documents must be submitted to the Board office within the prescribed deadlines to be considered for admission to the next regularly scheduled examination. It is the applicant's responsibility to verify the receipt of all documents by the Board office.

(b) Failure to meet prescribed deadlines shall result in the denial of the application and rescheduling for a following examination.

13:40-2.3 Education

(a) Each applicant shall provide the Board with an official transcript reflecting the degree(s) earned by the applicant. Said transcript must be sent directly from the institution to the Board and must include the Board assigned application number of the applicant.

(b) An applicant with a non-United States degree who has documented that due to political or economic sanctions he is unable to have the transcript sent directly to the Board must submit his original transcript to the Board office. The applicant must also provide a literal, verbatim English translation, certified to be accurate by a competent authority. In addition, the applicant must list all courses and their description on the Reconstruction Form which is provided by the Board.

(c) Any applicant who has attended an institution not located in the United States shall have his or her degree evaluated by a review service selected and approved by the Board. Reviews by other services will not be accepted.

13:40-2.4 Language comprehension requirement

An applicant for licensure as a professional engineer or land surveyor who is from a non-English speaking country or a country wherein the primary language is other than English, prior to taking the examination shall submit to the Board a TOEFL (Test of English) certificate with a minimum score of 575 and a TSE (Test of Spoken English) with a minimum score of 200. This test shall have been taken within two years of application.

13:40-2.5 Experience

(a) An applicant who has received an engineering degree from a college or university not located in the United States must have gained two years of professional engineering experience acceptable to the Board which has been gained in the United States to be eligible to sit for the fundamentals of engineering exam.

(b) Pursuant to N.J.S.A. 45:8-35, an applicant who is applying to sit for the principles and practices exam must have four years of professional engineering experience acceptable to the Board, two years of which must have been gained in the United States.

13:40-2.6 References

(a) The following rules shall apply to all applicants:

1. Reference will not be accepted from relatives of the applicant.
2. No current Board member shall be used as a reference.
3. All reference forms must contain the applicant's Board assigned number.
4. No references over one year old will be accepted.

(b) References shall be provided as follows:

1. Engineer-in-training applicants: Of the three references required, one shall be a licensed professional engineer in the United States and have personal knowledge of the applicant's experience or training.
2. Professional engineer applicants: Of the five references required, three must be licensed professional engineers in the United States and have personal knowledge of the applicant's experience or training.
3. Professional land surveyor applicants: Of the five references required, three must be licensed land surveyors in the United States and have personal knowledge of the applicant's experience or training.

(c) The Board shall accept a National Council of Engineering Examiners record book for transcript and reference documents only.

1. This booklet must be labeled with the application number.
2. References over six months old will not be accepted.
3. Transcripts that are illegible or do not contain a visible official registrar's seal will not be accepted.
4. All professional experience, listing of documents and education received must be typed according to the format provided in the application.

13:40-2.7 Comity

(a) Comity licensure pursuant to N.J.S.A. 8-35(1)(d) or (e) shall be granted provided that education, experience, and examination requirements for licensure by the issuing agency are comparable to current requirements of the State of New Jersey.

(b) All prior State licenses must be current, active and in good standing in order for licensure pursuant to N.J.S.A. 45:8-35(1)(d) or (e) to be granted. The Board's enabling legislation does not contain an eminence or grandfather clause, nor reciprocity with any state, territory or country.

13:40-2.8 Waiver

(a) The Board may waive the fundamentals of engineering portion of the exam provided that, in addition to the education requirements at N.J.A.C. 13:40-2.3, the applicant has a specific record of an additional 15 years or more of experience at the time of application in engineering work of a character satisfactory to the Board. Eight of the 15 years of experience must have been gained in the United States or must have been acquired while working for a United States based firm.

(b) The specialized training section of the exam shall not be waived.

13:40-2.9 Cancellation of applications

(a) Any applicant for any eight hour section of the examinations given for professional engineering or land surveying who fails any part, with a score of 65 percent or below on three consecutive occasions, shall have said application cancelled.

(b) Any applicant who has had an application cancelled as in (a) above, may only reapply for examination after a two year period and must reapply under the same application number originally assigned.

(c) Any applicant who fails to sit for two consecutive exams for which said individual was eligible or scheduled to take, shall have said application cancelled.

(d) Any applicant who has had an application cancelled for failure to sit as in (c) above may only reapply after a six month period and must reapply under the same application number originally assigned.

(e) Applications will be cancelled at a public meeting after notice to the applicant.

(f) An applicant who has had an application cancelled will be required to submit a new application, pay appropriate fees, meet Board deadlines, and again submit all required documents, including references.

13:40-2.10 Review of examination

(a) An applicant who has taken the fundamentals of engineering exam, fundamentals of land surveying exam, or principles and practices of land surveying and the New Jersey L.S. exam, may request a hand score and score tabulations of each exam taken. The applicant may not personally review the exams.

(b) An applicant who has taken the principles and practices exam may request to review his or her solution pamphlet and the correct solution answers.

(c) All requests for scoring or review must be made in writing within 30 days of the mailing of score to the applicant.

(d) An applicant may not appeal, or request re-evaluation of the exam.

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

SUBCHAPTER 3. MISCONDUCT

13:40-3.1 Enumeration of prohibited acts

(a) Misconduct in the practice of professional engineering and land surveying shall include without limitation:

1.-7. (No change.)

8. Failure to determine the true and actual identity of the real client in interest prior to commencing any work. All correspondence, contracts, bills shall be addressed to that client, unless expressly directed otherwise, in writing, by the client.

9. Failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

10. Failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions.

SUBCHAPTER 6. FEES

13:40-6.1 Fee schedule

(a) The following fees shall be charged by the Board:

1.-8. (No change.)

9. Any applicant who is required under N.J.A.C. 13:40-2 to have his or her degree evaluated must pay via certified check or money order the actual cost of the evaluation.

10. Any applicant who requests an exam review or score tabulation must pay via certified check or money order the actual cost of the review or tabulation.

(a)

DIVISION OF CONSUMER AFFAIRS

Sale of Animals

Proposed Repeal: N.J.A.C. 13:45A-12.1, 12.2

Proposed New Rules: N.J.A.C. 13:45A-12.1, 12.2, 12.3

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

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

Proposal Number: PRN 1987-184.

Public hearings concerning this proposal will be held on the following dates: Wednesday, June 3, 1987 from 10:00 A.M. to 3:00 P.M.

New Jersey State Library
185 West State Street
First Floor Meeting Room
Trenton, NJ 08625

Wednesday, June 17, 1987 from 10:00 A.M. to 2:00 P.M.

Essex County College
303 University Avenue
Auditorium
Newark, NJ 07102

Submit comments by June 17, 1987 to:

James J. Barry, Jr., Director
Division of Consumer Affairs
1100 Raymond Boulevard, Rm. 504
Newark, NJ 07102

The agency proposal follows:

Summary

The Division of Consumer Affairs originally adopted N.J.A.C. 13:45A-12 in November 1975. The Division now proposes to repeal the existing rules and to propose new rules. The new rules correct practical defects in the existing rules and address certain business realities relating to the pet sale industry.

The major change effected by the proposed new rules is that a pet dealer will be required to have each dog or cat examined by a licensed veterinarian within three days of receipt of the animal and, under certain conditions, reexamined within 72 hours of the delivery of a dog or cat to a purchaser.

The length of time in which a consumer must obtain a certification from a veterinarian declaring a dog or cat to be "unfit for purchase" remains at the present 14 day requirement. A new provision is included which protects a consumer whose dog or cat has been declared "unfit for purchase" within one year due to a congenital cause or condition. The definition of "unfit for purchase" is broadened and now specifically includes the death of the dog or cat within the 14 day period. The length of time a consumer has to deliver the veterinarian certification of "unfit for purchase" is increased from the present three days to 10 days and the pet dealer must confirm the consumer's election in writing.

A pet dealer or his employee may inoculate and vaccinate animals but is prohibited from any activity which may imply that he or she is qualified in any degree to practice veterinary medicine.

A pet dealer is required to quarantine all dogs and cats diagnosed as suffering from a contagious or infectious disease until a veterinarian determines that such animal is free from contagion or infection.

The terms "pet shop" and "kennel" are defined and their use by pet dealers is strictly limited in order to void confusion to consumers.

Social Impact

The existing N.J.A.C. 13:45A-12 is concerned primarily with protecting the consumer who has purchased a sick dog or cat. The proposed new rules additionally seek to insure that the dog or cat has not been seriously ill or impaired before the consumer makes the purchase.

The proposed new rules will help prevent the delivery of sick animals to New Jersey consumers. The rules require pet dealers to have a dog or cat examined within these days of receipt of the animal and require examination within 72 hours of delivery to a consumer if the previous exam took place more than 14 days prior to purchase. The sale of sick animals should also be largely prevented by a new requirement that dogs and cats with contagious diseases will have to be quarantined until cured.

The use of the term "kennel" by pet shop owners has the capacity to cause confusion among New Jersey consumers who are likely to be misled into believing that they are dealing with something other than a retail "pet shop." The proposed new rules which define the word "kennel" and limit its use should largely remove this confusion.

The proposed new rules should benefit the consumer since they provide the consumer with a written record of the animal's health and should provide the pet dealer a greater incentive to sell healthy animals. The rules also grant relief to a consumer whose animal is declared unfit for purchase within one year of purchase due to a congenital cause or condition.

Economic Impact

The rules require that timely veterinary examination(s) be conducted by arrangement of the pet dealer. The expense to the pet dealer should be offset by the assurance that the animal in question is reasonably healthy prior to sale. In the long term, pet dealers should benefit economically by presumably less frequent instances of post-sale veterinary treatments for which the dealer is financially liable.

The proposed rules require that the pet dealer prepare and present to the consumer a proposed statement of rights, permissible waiver and options available in the event of "unfitness" of the animal. The consumer and the pet dealer both will benefit from the removal of potential ambiguities in the sales transaction. Fuller disclosure of the economic rights and responsibilities of both parties will benefit dealers as well as consumers.

Regulatory Flexibility Statement

The pet dealer industry in New Jersey is comprised entirely of small businesses, although several dealers have more than one business location and several have operations which engage in the breeding of animals for sale rather than exclusively engaging in the sale of animals. Thus, the proposed new rules do not impose additional burdens upon small businesses since all pet dealers are affected equally.

Moreover, certain aspects of the proposed new rules do not impact upon the pet dealer industry in any new or additional manner since certain existing compliance and record keeping requirements have been retained: N.J.A.C. 13:45A-12.2(a)1 (Animal History and Health Certificate); N.J.A.C. 13:45A-12.2(a)2 (Maintenance of the Certificate for a one year period); N.J.A.C. 13:45A-12.2(a)8 (Posting of sign relating to New Jersey law governing the sale of animals); and N.J.A.C. 13:45A-12.3(a)9 (written notice relating to New Jersey law governing the sale of animals).

Only two new compliance and recordkeeping requirements are found in the proposed new rules: N.J.A.C. 13:45A-12.3(a)4 (Veterinary Examination Waiver Form) and N.J.A.C. 13:45A-12.3(a)7 (Unfit for Purchase Election Form). The Waiver Form is not required for all sales but is only required where the animal's last veterinary examination occurred more than 14 days prior to purchase. The Election Form is similarly not required for all sales, but is only required where the consumer elects to exercise options based upon the animal's unfitness. In both instances, no professional services are required for the pet dealer to comply with the proposed new rules and in both instances, the cost of compliance is outweighed by the economic benefit to all pet dealers in eliminating any ambiguities in pre- and post-sale consumer transactions. Thus, by utilizing both forms, pet dealers will be able to eliminate the costs of post-sale disputes regarding an animal's health at the time of sale and the election and relief sought by consumers whose animals are certified to be unfit for purchase.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:45A-12.

Full text of the proposed new rules follows:

SUBCHAPTER 12. SALE OF ANIMALS

13:45A-12.1 Definitions

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

"Animal" means a dog or cat.

"Consumer" means any natural person purchasing a dog or cat from a pet dealer.

"Division" means the Division of Consumer Affairs, Department of Law and Public Safety.

"Kennel" means the business of boarding dogs or cats or breeding dogs or cats for sale.

"Person" means any person as defined by N.J.S.A. 56:8-1(d).

"Pet dealers" means any person engaged in the ordinary course of business in the sale of animals for profit to the public.

"Pet shop" means the business of selling, offering for sale or exposing for sale dogs or cats.

"Unfit for purchase" means any disease, deformity, injury, physical condition, illness or defect which is congenital, or which was manifest, capable of diagnosis or likely to have been contracted on or before the sale and delivery of the animal to the consumer. The death of an animal within 14 days of its delivery to the consumer, except death by accident occurring or injury sustained subsequent thereto, shall deem such animal as unfit for purchase.

13:45A-12.2 General provisions

(a) Without limiting the prosecution of any other practices which may be unlawful under N.J.S.A. 56:8-1 et seq., the following acts, practices or omissions shall be deceptive practices in the conduct of the business of a pet dealer:

1. To sell, offer for sale or expose for sale an animal within the State of New Jersey without an animal history and health certificate and without providing the consumer with a completed animal history and health certificate. The animal history and health certificate shall be signed by the pet dealer, his agent or employee, and shall contain the following information:

- i. The animal's breed, sex, age, color and birth date;
- ii. The name and address of the person from whom the pet dealer purchased the animal;
- iii. The breeder's name and address, and the litter number of the animal;
- iv. The name and registration number of the animal's sire and dam;
- v. The date the pet dealer took possession of the animal;
- vi. The date the animal was shipped to the pet dealer, where such date is known by the dealer;
- vii. The date or dates on which the animal was examined by a veterinarian licensed to practice in the State of New Jersey, the name and address of such veterinarian, the findings made and the treatment, if any, taken or given to the animal;
- viii. A statement of all vaccinations and inoculations administered to the animal, including the identity and quantity, the name and address of the person or licensed veterinarian administering the same, and the date of administering the vaccinations and inoculations;
- ix. A 10-point boldface type warning in the following form:

WARNING

The animal which you have purchased has has not (check as applicable) been previously vaccinated or inoculated. Vaccination or inoculation neither guarantees good health nor assures absolute immunity against disease. Examination by a veterinarian is essential at the earliest possible date to enable your veterinarian to insure the good health of your pet.

2. To fail to maintain a copy of the animal history and health certificate signed by the consumer for a period of one year following the date of sale and/or to fail to permit inspection thereof by authorized representatives of the Division upon two days' notice (exclusive of Saturday and Sunday).

3. To include in the animal history and health certificate any false or misleading statement regarding the information to be contained therein.

4. To directly or indirectly refer, promote, suggest, recommend or advise that a consumer consult with, use, seek or obtain the services of any particular licensed veterinarian.

5. To describe or promote the operation of the business as a "kennel" unless the business operation falls within the definition contained in N.J.A.C. 13:45A-12.1 or the operation of the business as a "kennel" has been authorized by the issuance of a license pursuant to N.J.S.A. 4:19-15.8. In the absence of meeting such criteria, a pet dealer shall be considered to be engaged in the operation of a "pet shop" and shall, where the name for the business operation includes the word "kennel," indicate the following disclaimer in proximate location to the name for the business operation in all promotional or advertising activities:

"This business only engages in the operation of a pet shop."

6. To use or employ a name for the business operation which suggests or implies that such business operation is engaged in or is associated with any organization which registers or certifies the pedigree or lineage of animals and/or to represent, expressly or by implication, approval by or

affiliation with such organization, unless the following disclaimer, as appropriate, appears in proximate location to the name for the business operation:

"This business only engages in the operation of a pet shop."

"This business only engages in the operation of a kennel."

7. To state, promise or represent, directly or indirectly, that an animal is registered or capable of being registered with an animal pedigree registry organization, followed by a failure either to effect such registration or provide the consumer with the documents necessary therefor within 90 days following the date of sale of such animal. In the event that a pet dealer fails to effect registration or to provide the necessary documents within 90 days following the date of sale, the consumer shall, upon written notice to the pet dealer, be entitled to choose one of the following options:

- i. To return the animal and to receive a refund of the purchase price plus sales tax; or
- ii. To retain the animal and to receive a partial refund of 75 percent of the purchase price plus sales tax.

8. A pet dealer's failure to comply with the consumer's election pursuant to 7 above within 10 days of written notice thereof shall be deemed a separate deceptive practice for purposes of this rule.

9. To fail to display conspicuously on the business premises a sign not smaller than 22 inches by 18 inches which clearly states to the public in letters no less than one inch high the following:

KNOW YOUR RIGHTS

The sale of dogs and cats is subject to a regulation of the New Jersey Division of Consumer Affairs. Read your animal history and health certificate, the Statement of New Jersey Law Governing the Sale of Dogs and Cats and your Contract. In the event of a complaint you may contact: Division of Consumer Affairs, 1100 Raymond Boulevard, Newark, New Jersey 07102 (201) 648-3537.

(b) It shall be a deceptive practice within the meaning of this section for a pet dealer to secure or attempt to secure a waiver of any of these provisions.

13:45A-12.3 Required practices related to the health of animals and fitness for sale and purchase

(a) Without limiting the prosecution of any other practices which may be unlawful under N.J.S.A. 56:8-1 et seq., it shall be a deceptive practice for a pet dealer to sell, offer for sale or expose for sale animals within the State of New Jersey without complying with the following minimum standards relating to the health of animals and fitness for sale and purchase:

1. A pet dealer shall have each animal examined by a veterinarian licensed to practice in the State of New Jersey within three days of receipt of the animal. The name and address of the examining veterinarian, together with the findings made and treatment (if any) ordered as a result of the examination, shall be noted on each animal's history and health certificate as required by N.J.A.C. 13:45A-12.2(a)lvii.

2. A pet dealer shall keep caged in a quarantined area of the premises any animal diagnosed as suffering from a contagious or infectious disease, illness or condition until such time as a licensed New Jersey veterinarian determines that such animal is free from contagion or infection.

3. A pet dealer and/or his agents shall be permitted to inoculate and vaccinate animals prior to purchase but such person shall be prohibited from representing, directly or indirectly, that he is qualified to engage in or is engaging in, directly or indirectly, the following activities: diagnosing, prognosing, treating, administering, prescribing, operating on, manipulating or applying any apparatus or appliance for disease, pain, deformity, defect, injury, wound or physical condition of animals after purchase for the prevention of, or to test for, the presence of any disease in such animals. These prohibitions include but are not limited to the giving of inoculations or vaccinations after purchase, the diagnosing, prescribing and dispensing of medication to animals and the prescribing of any diet or dietary supplement as treatment for any disease, pain, deformity, defect, injury, wound or physical condition.

4. A pet dealer shall have any animal which has been examined more than 14 days prior to purchase reexamined by a licensed New Jersey veterinarian for the purpose of disclosing its condition at the time of purchase. Such examination shall take place within 72 hours of delivery of the animal to the consumer unless the consumer waives this right to reexamination in writing. The written waiver shall be in the following form and a copy shall be given to the consumer prior to the signing of any contract or agreement to purchase the animal:

KNOW YOUR RIGHTS

To ensure that healthy animals were sold in this State, New Jersey law requires that a dog or cat be examined by a licensed New Jersey veterinarian within three days of the time it is received by a pet dealer and within 72 hours of the delivery of the dog or cat to a consumer who has purchased the animal. A pet dealer need not have the animal reexamined if you, the consumer, decide that you do not want such a reexamination performed.

If you do not want a reexamination performed, please indicate your decision below.

WAIVER OF REEXAMINATION RIGHT

I understand that I have the right to have my animal reexamined within 72 hours of its delivery to me. I do not want to have such a reexamination performed.

Consumer's Name (Print)	Consumer's Signature
	Date
Pet Dealer's or Agent's Name (Indicate Title or Position) (Print)	Pet Dealer's or Agent's Signature
	Date

5. If at any time within 14 days following the sale and delivery of an animal to a consumer, a licensed veterinarian certifies such animal to be unfit for purchase due to a non-congenital cause or condition or within one year certifies an animal to be unfit for purchase due to a congenital cause or condition, a consumer shall have the right to elect one of the following options:

i. The right to return the animal and receive a refund of the purchase price, including sales tax, plus reimbursement of the veterinary fees incurred prior to the consumer's receipt of the veterinary certification;

ii. The right to retain the animal and to receive reimbursement for veterinary fees incurred prior to the consumer's receipt of the veterinary certification, plus the future cost of veterinary fees to be incurred in curing or attempting to cure the animal. The pet dealer's liability under this option shall not exceed a dollar amount equal to the purchase price including sales tax of the animal;

iii. The right to return the animal and to receive in exchange an animal of the consumer's choice, of equivalent value, plus reimbursement of veterinary fees incurred prior to the consumer's receipt of the veterinary certification;

iv. In the event of the animal's death within 14 days of its delivery to the consumer, except where death occurs by accident or injury sustained subsequent thereto, the right to receive a refund of 75 percent of the purchase price plus sales tax for the animal or in exchange an animal of the consumer's choice of equivalent value, plus reimbursement of veterinary fees incurred prior to the death of the animal.

6. The pet dealer shall accept receipt of a veterinary certification of unfitness which has been delivered by the consumer within 10 days following the consumer's receipt thereof, such certification to contain the following information:

- i. The name of the owner;
- ii. The date or dates of examination;
- iii. The breed, color, sex and age of the animal;
- iv. A statement of the veterinarian's findings;
- v. A statement that the veterinarian certifies the animal to be "unfit for purchase";
- vi. An itemized statement of veterinary fees incurred as of the date of the certification;
- vii. Where the animal is curable, the estimated fee to cure the animal;
- viii. Where the animal has died, a statement setting forth the probable cause of death;
- ix. The name and address of the certifying veterinarian and the date of the certification.

7. When a consumer presents a veterinary certification of unfitness to the pet dealer, the pet dealer shall confirm the consumer's election in writing. The election shall be in the following form and a copy shall be given to the consumer upon signing:

UNFITNESS OF ANIMAL—ELECTION OF OPTION

I understand that, upon delivery of my veterinarian's certification of unfitness, I have the right to elect one of the following options. I am aware of those options and I understand each of them. I have chosen the following option:

1. Return of my animal and receipt of a refund of the purchase price, including sales tax for the animal, plus reimbursement of the veterinary fees incurred prior to the date I received my veterinarian's certification of unfitness.

2. Retention of my animal and reimbursement for the veterinary fees incurred prior to the date I received my veterinarian's certification of unfitness, plus the future cost to be incurred in curing or attempting to cure my animal, the total reimbursement not to exceed a dollar amount equal to the purchase price including sales tax for my animal.

3. Return of my animal and receipt of an animal of my choice of equivalent value in exchange plus reimbursement of veterinary fees incurred prior to the date I received my veterinarian's certification of unfitness.

4. **DEATH OF ANIMAL ONLY.** Receipt of a refund of 75 percent of the purchase price, including sales tax for the animal, or in exchange an animal of my choice of equivalent value (check as applicable) plus reimbursement of the veterinary fees incurred prior to the death of the animal.

Consumer's Name (Print)	Consumer's Signature
	Date
Pet Dealer's or Agent's Name (Indicate Title or Position) (Print)	Pet Dealer's or Agent's Signature
	Date

8. A pet dealer shall comply with the consumer's election as required by 5i through 5iv above not later than 10 days following receipt of a veterinary certification. In the event that a pet dealer wishes to contest a consumer's election, he shall notify the consumer and the Director of the Division of Consumer Affairs in writing within five days following the receipt of the veterinarian's certification, and he may require the consumer to produce the animal for examination by a veterinarian of the dealer's choice at a mutually convenient time and place. The Director shall, upon receipt of such notice, provide a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. to determine why the option elected by the consumer should not be allowed.

9. A pet dealer shall give the following written notice to a consumer prior to the delivery of the animal. Such notice, signed by both the pet dealer and the consumer, shall be embodied in a separate document and shall state the following in 10 point boldface type:

**KNOW YOUR RIGHTS—A STATEMENT
OF NEW JERSEY LAW GOVERNING THE
SALE OF DOGS AND CATS**

The sale of dogs and cats is subject to a regulation of the New Jersey Division of Consumer Affairs. In the event that a licensed veterinarian certifies your animal to be unfit for purchase within 14 days following receipt of your animal or within one year in the case of a congenital cause or condition, you may choose to return your animal and receive a refund of the purchase price, keep the animal and attempt to cure it or return the animal and receive in exchange an animal of your choice of equivalent value. In the event of your animal's death within this 14-day period, except where death occurs by accident or injury is sustained subsequent to purchase, the refund is limited to 75 percent of the purchase price plus sales tax or receipt of an animal of your choice of equivalent value in exchange. In addition, veterinary fees must be paid by the pet dealer.

In order to exercise these rights, you must present a written veterinary certification that the animal is unfit and an itemized bill to the pet dealer within ten days after you receive them. In the event that the pet dealer wishes to contest the certifica-

tion or the bill, he may request a hearing at the Division of Consumer Affairs. If the pet dealer does not contest the matter, he must make the refund or reimbursement not later than ten days after receiving the veterinary certification.

Although your dog or cat was examined by a licensed veterinarian prior to sale, symptoms of certain conditions may not appear until after sale. If your dog or cat appears ill, you should have it examined by a licensed veterinarian of your choice at the earliest possible time.

If the pet dealer has promised to register your animal or to provide the necessary papers and fails to do so within 90 days following the date of sale, you are entitled to return the animal and receive a full refund of the purchase price plus sales tax or to keep the animal and receive a refund of 75 percent of the purchase price plus sales tax.

10. It shall be a deceptive practice within the meaning of this section for a pet dealer to secure or attempt to secure a waiver of any of the provisions of this rule.

(a)

NEW JERSEY RACING COMMISSION

**Harness Rules
Horsemen Associations**

Proposed New Rule: N.J.A.C. 13:71-1.25

Authorized By: Charles K. Bradley, Deputy Director, New Jersey Racing Commission.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1987-163.

Submit comments by June 17, 1987 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
CN 088
Justice Complex
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule establishes guidelines for the horsemen's associations which represent the individual horsemen racing in the State of New Jersey and the funds allocated to these associations by N.J.S.A. 5:5-66.

Social Impact

The social impact of the proposed new rule is a positive one, as it will insure that statutorily allocated money administered by the horsemen's organizations are used to finance benevolent programs, such as pension plans and health and life insurance plans, to benefit all New Jersey horsemen regardless of whether individual horsemen are members of that association or not.

Economic Impact

The economic impact of the proposed new rule is positive. The new rule mandates that administrative and overhead costs relevant to the benevolent programs be reasonably related to such programs. The majority of the funds provided by the statutory allocations must be used for providing benevolent programs to the horsemen.

Regulatory Flexibility Statement

The proposed rule adds no compliance requirements for small businesses since it concerns horsemen organizations which are not independently owned or operated, and are dominated in their respective fields.

OFFICE OF ADMINISTRATIVE LAW NOTE: N.J.A.C. 13:71-1.23, modification of penalties, was inadvertently omitted from the New Jersey Administrative Code (see proposal notice at 13 N.J.R. 820(a) and adoption notice at 14 N.J.R. 347(a)). The rule currently appearing at N.J.A.C. 13:71-1.23, smoking prohibited, should be codified as N.J.A.C. 13:71-1.24. Both rules should appear as follows.

13:71-1.23 Modification of penalties

The Commission may modify on its own motion any penalty or decision imposed by a racing official pursuant to the rules and regulations as herein contained.

NEW JERSEY REGISTER, MONDAY, MAY 18, 1987

13:71-1.24 Smoking prohibited

Smoking is prohibited under the shed row of any barn. Persons found violating this rule will be reported to the judges and shall be subject to a fine of \$25.00 for the first offense, \$50.00 for the second offense and to suspension for the third or subsequent violation.

Full text of the proposed new rule follows:

13:71-1.25 Horsemen associations

(a) It shall be the intent of this section to establish guidelines that ensure that funds allocated to the Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association by statute (N.J.S.A. 5:5-66) are used to finance programs to benefit all New Jersey horsemen and that administrative and overhead costs are reasonably related to such programs.

(b) Funds allocated to the Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association by statute must be used to benefit all New Jersey horsemen. Membership in the Horsemen's Benevolent and Protective Association or the Standardbred Breeders' and Owners' Association shall not be a condition for receiving benefits.

(c) Amounts collected as voluntary dues from members of the Horsemen's Benevolent and Protective Association or the Standardbred Breeders' and Owners' Association are excluded from this rule. However, funds acquired from sources other than statutory allocation to these associations must be kept separate and apart from funds obtained from the statutory allocation.

(d) The Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association shall maintain adequate records concerning receipt of and distribution of funds allocated to them by statute. The New Jersey Racing Commission shall have access to all records maintained by the Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association which relate directly or indirectly to funds allocated by statute.

(e) The Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association shall submit detailed budgets to the Racing Commission by December 15 of each year for the following calendar year, identifying the source and use of funds and any surplus or deficit that may result. The budget must include the actual expenses to date for the current calendar year in each category for comparison purposes. In addition, the Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association shall file quarterly budget reports with the Commission 45 days after the close of each quarter. These reports must reflect actual income and expenses to date, and projected income and expenses for the remainder of that year.

(f) The Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association shall file audited financial statements, including balance sheet, income statement and source and use of funds, prepared by a certified public accountant of New Jersey, with the Commission by February 28 of each year for the preceding calendar year.

(g) Funding for benevolent programs, including but not limited to pension plans and health and life insurance plans, is considered reasonable if the funding is at least 65 percent of the total statutory allocation. Whether or not a program will be considered a benevolent program will be decided upon application to the Racing Commission. Funding below 65 percent of the total statutory allocation requires justification satisfactory to the Commission. The administrative costs and overhead of administering these specific benevolent programs must not exceed 15 percent of the total dedicated to such programs.

(h) General administration and overhead expenses are considered reasonable if the expenses are less than 15 percent of the statutory allocation. Funding above 15 percent of the total statutory allocation requires justification satisfactory to the Commission. Within this category, expenses for travel, entertainment, meals and lodging are considered reasonable if they conform to the New Jersey State Travel Regulations. For expenses in excess in amounts allowed under New Jersey State Travel Regulations, the Racing Commission may require special justification and/or prior approval.

(i) Payments to national programs are allowed only to the extent that the New Jersey Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association can clearly show that the payments benefit all New Jersey horsemen, not just members of these organizations.

(j) If a surplus results at the end of a calendar year, the entire surplus must be applied to funds dedicated to benevolent programs in following years, as may be approved by the Commission.

(k) Violation of this section may subject the organization to a fine not to exceed \$1,000.00 per violation.

TRANSPORTATION**TRANSPORTATION OPERATIONS****(a)****Miscellaneous Traffic Rules
Mid-Block Crosswalk
Route 33 in Monmouth County****Proposed New Rule: N.J.A.C. 16:30-10.4**

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-34.

Proposal Number: PRN 1987-181.

Submit comments by June 17, 1987 to:

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

The agency proposal follows:

Summary

The proposed new rule will establish a "mid-block" crosswalk along Route 33 in the Borough of Freehold, Monmouth County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. This rule establishes a designated area for pedestrians to safely cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device.

Based upon a request from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a "mid-block" crosswalk was warranted. The Department therefore proposes new rule N.J.A.C. 16:30-10.4 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed new rule will establish a "mid-block" crosswalk along Route 33 in the Borough of Freehold, Monmouth County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Additionally, this rule establishes a designated area for pedestrians to safely cross a roadway at other than an area which is controlled and directed by a police officer or a traffic control device. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for its work force for mileage, personnel and equipment requirements. The Department will bear the costs for the appropriate striping along the roadway.

Regulatory Flexibility Statement

Since the proposed new rule does not place any bookkeeping, record-keeping or compliance requirements on small businesses as that term is defined by the Regulatory Flexibility Act, P.L. 1986, c.169, a regulatory flexibility analysis is not required.

Full text of the proposed new rule follows.

16:30-10.4 Route 33

(a) Under the provisions of N.J.S.A. 39:4-34, the certain parts of State highway Route 33 described in this section shall be designated as a mid-block crosswalk.

1. Along Route 33 in the Borough of Freehold, Monmouth County from a point 390 feet east of the easterly curb line of Phyllis Road to a point 10 feet easterly therefrom.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Sales and Use Tax Definitions

Proposed New Rules: N.J.A.C. 18:24-1.2 and 1.3

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:32B-24.

Proposal Number: PRN 1987-162.

Submit comments by June 17, 1987:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street, CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The New Jersey Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq., contains a number of exemptions assigned to sale transactions involving newspapers, magazines and other periodicals. These include N.J.S.A. 54:32-3(b)(5) by which advertising services for use directly and primarily for publication in newspapers and magazines are exempt; N.J.S.A. 54:32B-8.5 by which sales of newspapers, magazines and periodicals are exempt; N.J.S.A. 54:32B-8.30 by which sales of advertising to be published in a newspaper are exempt; and N.J.S.A. 54:32B-11(5) by which the use of paper in the publication of newspapers is exempt from use tax. The purpose of the proposed new rules is to enable taxpayers and Division personnel to determine through the use of specified criteria which publications are newspapers, magazines or periodical publications under the Sales and Use Tax Act. The proposed new rules utilize several definitional criteria, the most important of which are the standards that each issue of a newspaper or other periodical carry not less than 10 percent news or information content (other than advertising) and that it be available for distribution among the general public, whether or not through a paid subscription. The rules also refer to the criteria of the Domestic Mail Manual as used by the Postal Service for determining second class mail privileges. This proposal supersedes the proposed definition of periodical published in the New Jersey Register on September 22, 1986 at 18 N.J.R. 1928(a).

Social Impact

The proposed new rules will aid vendors who must determine whether receipts from the sale of a publication is subject to sales tax in New Jersey. The rules will also help to clarify the taxable status of certain transactions involving free circulation publications, particularly as that status is in doubt by reason of *Fairlawn Shopper v. Director, Division of Taxation*, 98 N.J. 64 (1984). Both vendors and consumers in New Jersey should benefit from the criteria provided by the new rules after their adoption.

Economic Impact

The economic impact of the proposed new rules is insignificant. State sales and use tax revenue should not be substantially affected, nor is the cost of tax administration and compliance expected to increase for either the Division or taxpayers.

Regulatory Flexibility Statement

The proposed rules will affect small businesses, as that term is defined under the Regulatory Flexibility Act, P.L. 1986, c.169, as those affected by the rules are required to collect Sales and Use Tax. However, as the purpose of the proposed rules is to clarify exemptions under the Sales and Use Tax Act, no recordkeeping, bookkeeping or compliance requirements are imposed upon small businesses by these rules.

Full text of the proposed new rules follows.

SUBCHAPTER 1. FORMS AND DEFINITIONS

18:24-1.1 (No change.)

18:24-1.2 Newspaper defined

(a) A "newspaper" means a publication which generally conforms to all the following indicia:

1. A newspaper is published in printed or written form at stated short intervals at least 50 times a year;

2. A newspaper is available for circulation among the public, whether or not through paid subscriptions;

3. A newspaper contains information of general interest or reports of current events and contains original or reprinted articles on a variety of topics, photographs, illustrations, advertising matter, legal notices, comic strips, cartoons, editorial comment or other such subject matter;

4. A newspaper does not contain as advertising matter more than 90 percent of its printed area;

5. A newspaper has continuity as to title and the general nature of its content from issue to issue; and

6. A newspaper does not constitute a book, either singly or when successive issues are put together.

(b) Except as inconsistent with (a) above, whether a publication has been or would be classified as one which is entitled to second class mailing privileges by the United States Postal Service will be taken into consideration in the determination of whether or not the publication is a newspaper.

18:24-1.3 Magazine and periodical defined

(a) A "magazine" means a periodical publication which generally conforms to all the following indicia:

1. A periodical is published in printed or written form at stated intervals, at least as frequently as four times a year;

2. A periodical is available for circulation among the public, whether or not through paid subscriptions;

3. A periodical contains a variety of articles by different authors devoted to literature, the sciences or the arts, news, some special industry, profession, sport or other field of endeavor;

4. A periodical does not contain as advertising matter more than 90 percent of its printed area;

5. A periodical has continuity as to title and the general nature of content from issue to issue; and

6. A periodical does not constitute a book, either singly or when successive issues are put together.

(b) Except as inconsistent with (a) above, whether a publication has been or would be classified as one which is entitled to second class mailing privileges by the United States Postal Service will be taken into consideration in the determination of whether or not the publication is a magazine.

OTHER AGENCIES

CASINO CONTROL COMMISSION

(b)

Rules of the Games

Minimum and Maximum Wagers

Proposed Amendment:

Alternative I N.J.A.C. 19:47-8.2

Alternative II N.J.A.C. 19:47-8.2

Alternative III N.J.A.C. 19:47-8.2

Alternative IV N.J.A.C. 19:47-8.2

Alternative V N.J.A.C. 19:47-8.2

Authorized By: Casino Control Commission,

Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c).

Proposal Number: PRN 1987-165.

Submit comments by June 17, 1987 to:

Deno R. Marino, Deputy Director-Operations
Casino Control Commission
Division of Financial Evaluation & Control
Princeton Pike Office Park
Building No. 5, CN 208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:47-8.2 provides for the repeal of the \$1.00 minimum wager on Big Six tables. The proposal includes five alternatives, only one of which will be adopted by the Casino Control Commission.

NEW JERSEY REGISTER, MONDAY, MAY 18, 1987

The first four alternatives would allow the relaxation of the minimum wager on all Big Six tables from \$1.00 to a higher denomination; they differ in the dollar limit and the frequency in which the relaxations will be allowed to occur. More specifically, Alternative I would eliminate the Big Six minimum wager and permit the casino licensee to establish the minimum wager consistent with the regulations addressing Blackjack, Roulette, Craps and Baccarat. Alternative II would permit each casino licensee to set the minimum wager for each Big Six game, not to exceed a \$5.00 minimum. Alternative III would allow the Big Six minimum to be set at any amount only during peak periods, as defined in the proposed amendment. Alternative IV would allow the minimum wager to be set at any amount, but not to exceed \$5.00, only during peak periods.

Alternative V differs from Alternative I through IV in that it would require the casino licensee to maintain at least one table with a minimum wager of \$1.00, while allowing the casino licensee the discretion to choose minimums on all other Big Six tables.

Social Impact

The social impact of the alternatives are difficult to project since several are possible. The social impact of Alternatives I and II may result in the lockout of the lower denomination player. Another potential effect would be for the more affluent patron to be attracted to play Big Six by virtue of the higher denomination.

The impact of Alternative III and IV may to a lesser degree reflect the same social impact as Alternative I and II but are more reflective of the current theme of raising the minimums on specific holiday weekends during the year.

Alternative V would have a minimal impact since at least one table will have a \$1.00 minimum.

Granted that different alternatives may provide varying degrees of social impact, since casinos will set minimums based upon market demands, the impact will be most strongly determined by public acceptance or rejection of different minimums.

Economic Impact

It is difficult to assess the economic impact of these proposals. Since casinos entertain marketing strategies geared to specific social economic strata, this may provide individual managements with more flexibility in seeking out segments they wish to develop. Further, depending on the minimums selected by each casino licensee, the casino revenues may be affected, as well as the win or loss to players who seek to patronize tables with higher minimum wagers.

The potential of increasing Big Six revenue is dependent upon the popularity of various minimums with the gaming patron. The popularity will depend on what the gaming patron perceives as a comfortable minimum wager amount, based on his or her bankroll. Since the tax revenue from Big Six is expressed as a percentage of gross revenue, any effect on Big Six revenue resulting from the increase in the minimum wagers will have a proportional effect on tax revenue. Although the total dollar amount of revenue may be affected, the varying minimums will not affect the win percentage (win divided by drop) since both amounts will be affected simultaneously. In addition, there will be no perceivable cost associated with any changes to the minimum wager regulation.

Regulatory Flexibility Statement

This proposal will only affect the operations of casino licensees and therefore will not impact upon any small business protected under the Regulatory Flexibility Act.

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

Alternative I

19:47-8.2 Minimum and maximum wagers

[FOREWORD]

[The Casino Control Act requires the Casino Control Commission to promulgate rules establishing such minimum wagers and other limitations as the Commission determines are necessary to assure the vitality of casino operations and to assure fair odds to and maximum participation by casino patrons. Based upon the evidence presented to the Commission at public hearings, upon studies conducted by Commission staff and upon public comment to its proposed rules on this subject, the Commission finds that, at present, the patron demand for low minimum wager table games exceeds the supply of such table games. The Commission further finds that, at least until such time as the supply of low minimum wager table games meets or exceeds this patron demand a regulation concerning low minimum wager table games is necessary to assure maximum participation by casino patrons.

In enacting the Casino Control Act, the Legislature intended to revitalize the hospitality and convention industries by utilizing casino gaming as a unique tool of urban redevelopment. The Legislature recognized that to achieve this goal new investment capital would have to be attracted to the area. In light of these legislative policies, in light of the mandate of the Casino Control Act to promulgate rules establishing such minimum wagers and other limitations as are necessary to insure the vitality of casino operations, and in light of the evidence presented before it, the Commission finds that such rules must allow licensed casinos to be favorably competitive with casinos in other jurisdictions and must allow licensed casinos sufficient flexibility to react to market conditions and other variables of the industry. The Commission further finds that, under prevailing conditions, the best way to assure the vitality of casino operations while providing for maximum participation by casino patrons is by adopting a regulation which establishes guidelines, standards and factors to be applied by the Commission to each licensed casino on a case-by-case basis.

The Commission deems it advisable in light of the above considerations that this regulation shall be reexamined no later than one year from the date of its formal adoption.]

(a) (No change.)

(b) The spread between the minimum wager and the maximum wager at table games shall be as follows:

1.-3. (No change.)

4. Big Six Wheel: The minimum wager shall be [**\$1.00**] **established by the casino licensee** and the maximum wagers shall be at least:

i.-vi. (No change.)

5.-6. (No change.)

(c) (No change.)

Alternative II

19:47-8.2 Minimum and maximum wagers

(a) (No change.)

(b) The spread between the minimum wager and the maximum wager at table games shall be as follows:

1.-3. (No change.)

4. Big Six Wheel: The minimum wager shall be [**\$1.00**] **\$5.00 or less** and the maximum wagers shall be at least:

i.-vi. (No change.)

5.-6. (No change.)

(c) (No change.)

Alternative III

19:47-8.2 Minimum and maximum wagers

(a) (No change.)

(b) The spread between the minimum wager and the maximum wager at table games shall be as follows:

1.-3. (No change.)

4. Big Six Wheel: The minimum wager shall be \$1.00 [and the maximum wager shall be at least:] **during non-peak periods which is defined as the hours during which a licensed casino is permitted to operate, commencing on Monday at 10:00 A.M. and ending on Friday at 6:00 P.M. and shall be established by the casino licensee during peak periods which is defined as the hours during which a licensed casino is permitted to operate, commencing on Friday at 6:00 P.M. and ending on Monday at 4:00 A.M., and commencing at 6:00 P.M. on the day before State and Federal holidays and ending at 4:00 A.M. on the day after State and Federal holidays. The maximum wagers shall be at least:**

i.-vi. (No change.)

5.-6. (No change.)

(c) (No change.)

Alternative IV

19:47-8.2 Minimum and maximum wagers

(a) (No change.)

(b) The spread between the minimum wager and the maximum wager at table games shall be as follows:

1.-3. (No change.)

4. Big Six Wheel: The minimum wager shall be \$1.00 [and the maximum wagers shall be at least:] **during non-peak periods which is defined as the hours during which a licensed casino is permitted to operate, commencing on Monday at 10:00 A.M. and ending on Friday at 6:00 P.M., and shall be \$5.00 or less for peak periods which is defined as the hours during which a licensed casino is permitted to operate, commencing on Friday at 6:00 P.M. and ending on Monday at 4:00 A.M. and commencing at 6:00 P.M. on the day before State and Federal holidays and ending at 4:00 A.M. on the day after State and Federal holidays. The maximum wagers shall be at least:**

- i.-vi. (No change.)
- 5.-6. (No change.)
- (c) (No change.)

Alternative V

19:47-8.2 Minimum and maximum wagers

- (a) (No change.)
- (b) The spread between the minimum wager and the maximum wager at table games shall be as follows:
 - 1.-3. (No change.)
 - 4. Big Six Wheel: There shall be at least one Big Six table where [T] the minimum wager shall be \$1.00 and the minimum wager at any other Big Six table available for gaming shall be established by the casino licensee. [t]The maximum wagers shall be at least:
 - i.-vi. (No change.)
 - 5.-6. (No change.)
 - (c) (No change.)

(a)

Junkets

Junket Prearrival Reports

Proposed Amendment: N.J.A.C. 19:49-3.1

Authorized By: Casino Control Commission,

Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-69 and 5:12-102.

Proposal Number: PRN 1987-166.

Submit comments by June 17, 1987 to:

David C. Missimer
 Senior Assistant Counsel
 Casino Control Commission
 3131 Princeton Pike Office Park
 Building No. 5, CN 208
 Trenton, N.J. 08625

The agency proposal follows:

Summary

A casino licensee is currently required by N.J.A.C. 19:49-3.1(a)3 to file a junket prearrival report for each junket to its casino hotel which involves "[a]n offer of complimentary services or items which have a value in excess of \$500.00 per participant calculated in accordance with the provisions of N.J.A.C. 19:45-1.9." On February 5, 1987, Resorts International Hotel, Inc. (Resorts) petitioned the Casino Control Commission requesting that this requirement be eliminated (see 19 N.J.R. 467). Re-

sorts contended that this requirement applies primarily to patron initiated junkets which do not involve junket enterprises. Since the majority of the information contained in a prearrival report relates to the identity and terms of compensation of any junket enterprise involved, it has been suggested that prearrival reports for patron initiated junkets serve no useful regulatory purpose. The proposed amendment would delete N.J.A.C. 19:49-3.1(a)3. It should be noted, however, that a junket arrival report would still have to be prepared and filed pursuant to N.J.A.C. 19:49-3.2(a)3 for any junket previously governed by N.J.A.C. 19:49-3.1(a)3.

Social Impact

The proposed amendment will not affect the conduct of junket activities presently authorized in New Jersey. The amendment will merely alter the manner in which casino licensees are required to report such activities to the Division of Gaming Enforcement. Moreover, the amendment will not significantly diminish the amount of information concerning junkets currently available to the Division. Therefore, it is not anticipated that the proposed amendment will have any significant social impact.

Economic Impact

The proposed amendment should decrease the number of junket reports required to be prepared and filed by casino licensees. The number of junket reports processed and reviewed by the Division of Gaming Enforcement should also be reduced. Therefore, the proposed amendment should have a beneficial economic impact on the casino industry and the Division. It is not anticipated that the proposal will have any economic impact on the Commission or the general public.

Regulatory Flexibility Analysis

Since the junket reporting requirements addressed by this proposal only affect casino licensees, the Commission finds that the proposal will not affect small businesses as defined by the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169).

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

19:49-3.1 Junket prearrival reports

(a) A prearrival report shall be prepared by a casino licensee for each junket which involves either:

- 1. A junket enterprise; or
- 2. A sole owner/operator junket enterprise [;or].

[3. An offer of complimentary services or items which have a value in excess of \$500.00 per participant calculated in accordance with the provisions of N.J.A.C. 19:45-1.9.]

(b)-(e) (No change.)

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF RURAL RESOURCES

State Soil Conservation Committee

Procedure; Mining and Quarrying Activities; Minor Subdivision

Adopted Amendment: N.J.A.C. 2:90-1.5

Adopted New Rules: N.J.A.C. 2:90-1.13 and 1.14

Proposed: March 2, 1987 at 19 N.J.R. 395(a).

Adopted: April 23, 1987 by the State Soil Conservation Committee, Arthur R. Brown, Jr., Chairman.

Filed: April 24, 1987 as R.1987 d.222, **without change**.

Authority: N.J.S.A. 4:24-3 and 4:24-42.

Effective Date: May 18, 1987.

Expiration Date: June 24, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

2:90-1.5 Procedure

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

(e) The district shall include in the notice of certification or on the certified plan the following clause: "This certification is limited to the controls specified in this plan. It is not authorization to engage in the proposed land use unless such use has been previously approved by the municipality or other controlling agency."

Redesignate existing (e)-(g) as (f)-(h) (No change in text.)

2:90-1.13 Mining and quarrying activities

Certification of a soil erosion and sediment control plan shall be required for the operation of all mining or quarrying activities regardless of proposed or actual related agricultural or horticultural use. Mining or quarrying activities shall include the extraction and removal of soils and/or sediment, as defined in N.J.S.A. 4:24-41, from the proposed site.

2:90-1.14 Minor subdivision

An application for minor subdivision, where the subdivider certifies in writing that no land disturbance is proposed, shall not be deemed a project for the purposes of the Soil Erosion and Sediment Control Act of 1975, as amended, N.J.S.A. 4:24-39 et seq. Municipal approval of subsequent applications for construction permits on lots derived from such subdivisions shall be conditioned upon district certification of a plan for soil erosion and sediment control where more than 5,000 square feet of the surface area of land will be disturbed by the applicant for the concurrent construction of two or more single family dwelling units or other structures. Concurrent construction, with respect to this policy, means any activity where land is disturbed in two or more lots at the same time by the same applicant in the same subdivision.

ENVIRONMENTAL PROTECTION

DIVISION OF COASTAL RESOURCES

(b)

Coastal Permit Program Rules

Adopted Amendments: N.J.A.C. 7:7-1, 2, 3, 4 and 6

Proposed: November 3, 1986 at 18 N.J.R. 2156(a).

Adopted: April 16, 1987 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: April 20, 1987 as R.1987 d.217, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **except** that the proposed amendments to N.J.A.C. 7:7-2.1(b)6 and 7:7-2.3(a)2 have not been adopted.

Authority: N.J.S.A. 13:1D-9, 13:19-17, 13:9A-3 and 12:5-3.

DEP Docket No. 048-86-10.

Effective Date: May 18, 1987.

Expiration Date: May 7, 1989.

Summary of Public Comments and Agency Responses:

The Department held a public hearing concerning the proposed amendments on November 20, 1986 at the offices of the Division of Coastal Resources, Labor and Industry Building, Trenton, New Jersey. Three people attended the hearing. During the comment period for this proposal which ended on December 3, 1986, comments were received from public interest groups, trade groups and individuals. Six people submitted comments.

COMMENT: One witness testified in favor of the proposed use of the term "high tide line" in place of "mean high water line" at N.J.A.C. 7:7-1.3. Another witness objected to the use of the term, "high tide line," indicating that the existing term is based upon case law regarding riparian boundaries. It was also argued that the proposed language would cause difficulty because it does not rely upon a formal reference point established by tidal data.

RESPONSE: The Department has reviewed this issue and agrees that the mean high water mark is quantifiable and can be mathematically calculated using methods established by the National Ocean Survey (NOS). Mean high water datum which varies from area to area can be determined based on a technique that is uniformly accepted. A high tide mark is not quantifiable. A spring high tide, as defined by the proposed language, would vary from day to day and from place to place. Because of the variation, it is more accurate and verifiable to use an average or means such as the mean high water line.

Accordingly, even though the proposed language would provide protection to a small environmentally sensitive strip of land between the mean high water line and the high tide line, it would also create ambiguity and administrative difficulties which would outweigh any environmental advantage the increased protection might afford. Therefore, the existing term, "mean high water line" has been retained and the proposed term, "high tide line" has not been adopted.

COMMENT: At N.J.A.C. 7:7-1.3, the definition of "permit" should be modified so that developers are given notice, at the beginning, that they may be responsible for both pre-construction requirements as well as long-term monitoring and maintenance requirements.

RESPONSE: The Department concurs and has modified the definition accordingly.

COMMENT: The requirement, at N.J.A.C. 7:7-1.5(b)2, that the permittee notify the Department within five working days of beginning construction is ambiguous. It is unclear whether the permittee should notify the Department before or after beginning work.

RESPONSE: The Department agrees that this language may be ambiguous. It has been modified to reflect the intent that a permittee must notify the Department no later than five days prior to beginning construction.

COMMENT: It should be made clear at N.J.A.C. 7:7-1.5(b)13 that when a new tenant, lessee or owner intends to implement a change, a permit modification, and not a new permit, is required.

RESPONSE: The Department concurs that this is the intent of the provision and has been made the appropriate editorial modification for clarification.

COMMENT: N.J.A.C. 7:7-1.5(b)14 should provide that the permittee must satisfy all conditions required prior to commencement of construction unless there is clear and compelling evidence presented to the Division that the condition cannot be met.

RESPONSE: It is, or should be, understood by all that the explanation submitted to the Department pursuant to this provision must be in the form of clear and compelling evidence that the condition cannot be met and that, absent evidence, the applicant will be responsible for satisfying the condition as provided. The Department has made the appropriate editorial changes to clarify existing policy.

COMMENT: The proposed change to N.J.A.C. 7:7-1.5(d) regarding the length of time for which a permit shall be valid appears to be a significant shift from present policy. Over the course of time, many factors relevant to the permit may change. To allow a permit to be valid for as long as the proposal allows would prevent the Department from taking advantage of any new knowledge or technology.

RESPONSE: The provision, as it was proposed, takes into account the fact that large scale or complex development may not be completed within a five year period. It would not be reasonable to require an on-going project to re-apply for a CAFRA permit if construction goes beyond five years and to impose additional conditions which were not contemplated by either the Division or the applicant at the time of the original permit review. The relevant language has been modified, however, so that an applicant must contact the Department and give notice that construction will extend beyond the five year period. This change will enable the Department to make the determination that construction beyond the five year period is permissible and that the project complies with the conditions for extension of the permit. The project developer will know when the five year period is exceeded and whether continuation of construction under the permit is proper.

COMMENT: The threshold requirement, at N.J.A.C. 7:7-2.1(b)1ii and (b)3i, for submission of a CAFRA permit should apply to the construction of more than 1,200 feet of new roadway or sewer lines provided that such roads or sewers are located outside a project or facility that is regulated by CAFRA.

Another witness testified that CAFRA should apply to road and sewer extensions if the extension is 1,200 feet or greater, regardless of the size of the development or if the new development to be serviced by an extension has 25 units or more regardless of the length of the road.

Another witness questioned the reference, at N.J.A.C. 7:7-2.1(b)1ii, to 1,000 feet of new road construction.

RESPONSE: It is the intent of the Department that road and sewer construction that is ancillary to a non-CAFRA regulated project would be outside the purview of CAFRA notwithstanding the fact that it may be greater than 1,200 feet. CAFRA provides, at N.J.S.A. 13:19-3, that new housing developments of 25 or more dwelling units or equivalent require a permit. To assert CAFRA jurisdiction over a road or sewer that is totally within a non-CAFRA regulated facility and, by so doing, assert jurisdiction over the facility itself would be contrary to the intent of the statute.

The reference to 1,000 feet of roadway is a printer's error. The Department does not intend to change the existing reference to 1,200 feet of road. The two provisions have been adopted essentially as proposed, except for certain editorial changes and the deletion of the phrase, "and expanded" from both provisions so as to make them consistent with N.J.A.C. 7:7-2.1(b)4vii.

COMMENT: At N.J.A.C. 7:7-2.1(b)1iii, expansion of the threshold for the regulation of parking areas from two or more acres to three or more acres or 300 or more parking spaces is a substantial weakening of the rule, especially when the threshold determination excludes access drives.

RESPONSE: The Department does not agree that the proposed amendment will result in a weakening of this provision. It was found that a single standard based upon either size or number of spaces was not adequate. A structure capable of accommodating more than 300 passenger vehicles could be constructed on a lot that is smaller than three or even two acres. Additionally, a parking facility designed for slightly fewer than 300 bus spaces could occupy an area considerably greater than two acres.

Accordingly, the Department has proposed the imposition of both standards—size and number of spaces—which will result in a broader application of the regulation. It should be noted that the 300 parking space standard had been the threshold prior to the adoption of the present

regulations on June 1, 1984 (see 15 N.J.R. 2090(a) and 16 N.J.R. 1073(a)) and has been determined to be roughly equivalent to the two acre standard as to passenger vehicles.

Access drives will not be considered as part of the area of the lot; only parking spaces and associated drive aisles will be considered. The access roads will be reviewed pursuant to those provisions of the regulations pertaining to roadways.

COMMENT: Language at N.J.A.C. 7:7-2.1(b)4i should be modified to make it clear that the Department is not regulating subdivisions but rather the actual construction of 25 or more units.

Another witness indicated support of the Department's proposal.

RESPONSE: It is the Department's intent to continue to require a permit for a subdivision which results in the creation of 25 or more building lots regardless of actual construction. No change has been made.

COMMENT: One witness indicated support of the proposed definition of new or expanded housing developments (at N.J.A.C. 7:7-2.1(b)4vii) to include the addition of one or more units to existing dwelling units where the result is a total of 25 or more units.

RESPONSE: The proposed modifications to this provision were adopted.

COMMENT: At N.J.A.C. 7:7-2.1(b)5, the term "contiguous" should be defined further so that the intent can be clearly interpreted.

RESPONSE: The term "contiguous parcels" has been clarified to reflect the Department's intent that it refer to parcels that are part of the same subdivision or directly abut or are separated by a roadway or other public right of way. Properties separated by a limited access road such as the Garden State Parkway will not be considered to be contiguous.

AGENCY NOTE: The proposed amendments to N.J.A.C. 7:7-2.1(b)6 will not be adopted at this time. The Department has proposed an amendment to this paragraph elsewhere in this issue of the New Jersey Register.

COMMENT: The proposed modification to N.J.A.C. 7:7-2.3(a)2 which would extend the regulated waterfront area beyond the existing boundary for large contiguous waterfront properties which have been combined to create a single development is unfair and inconsistent with Attorney General Formal Opinion (F.O.) No. 6 dated February 29, 1980. That opinion states that the Department may regulate the portion of uplands adjacent to the State's navigable waterways that constitutes the waterfront, but the waterfront is a relatively narrow strip of land whose precise geographical limit should be defined by a rule using the criteria set forth in the opinion.

Another witness indicated support for this proposed amendment.

RESPONSE: The proposed modification to N.J.A.C. 7:7-2.3(a)2 is not being adopted at this time. It is being repropounded in this issue of the New Jersey Register to provide an additional opportunity for public comment.

COMMENT: At N.J.A.C. 7:7-2.3(d)1 and 2 the existing language should be modified so that the exceptions embodied in these two provisions be permitted only if the structure is more than 500 feet, rather than 100 feet from the high tide line. This would provide greater Departmental control over development in sensitive waterfront areas.

RESPONSE: The language to which this witness refers has been in place for several years. The Department has determined during its implementation that the structures referred to in these two provisions are, by definition, minor in nature and, as such, do not have a significant impact upon those areas greater than 100 feet from the mean high water line.

COMMENT: One witness stated that it had expected the Department to insert, at N.J.A.C. 7:7-2.3(d), a provision requiring that a waterfront development permit application be submitted for a "change in use" of a structure. Inasmuch as this language does not appear, and only the words, "reconstruction" and "alteration" have been added to the subsection, a "change in use" should not be addressed by the regulation.

This witness also objected to the proposed inclusion of the terms "reconstruction" and "alteration" because they will expand the Waterfront Development program and create an additional burden upon the Department. There has been no assessment as to the ability of the Department to handle this added administrative burden, including additional resources, etc. Finally, by adding the proposed language, the Department would be "regulating beyond the construction or development of projects," which, it is felt, "goes beyond the intent of the Department's ability to regulate under their (sic.) statutory powers."

Another witness indicated that it strongly supports the modifications to this subsection, but recommends that the exceptions at N.J.A.C. 7:7-2.3(c)1 and 2 be permitted only if the structure is more than 500 rather than 100 feet from the high tide line. This would provide greater control over development in sensitive waterfront areas.

RESPONSE: The Department did not specifically address a change in use because virtually every significant change in use will necessarily involve the reconstruction, alteration, expansion or enlargement of a structure and will be covered under this subsection.

The Department has assessed the possibility of this modification's resulting in an increased burden upon its resources and has determined that it will be manageable.

As to the issue of the Department's extending beyond its statutory authority pursuant to N.J.S.A. 12:5-1 et seq., it is the Department's opinion that the modification is reasonably intended to effectuate the statutory purpose (see preceding comment and response).

COMMENT: N.J.A.C. 7:7-2.3(d)4 should be deleted on the grounds that repairs, replacement and renovation of structures in the waterfront area can have substantial impacts that may require mitigation. To exclude these activities from a permit requirement will prevent the Department from being able to control the manner in which they are performed.

RESPONSE: N.J.A.C. 7:7-2.3(d)4 and 5 were inserted in the rules in compliance with State law, P.L. 1981, c.315 (N.J.S.A. 12:5-3b). The provisions of these two paragraphs are identical to the statutory provisions.

COMMENT: It is not clear why the Department is, at N.J.A.C. 7:7-2.3(c)3, proposing to exempt floating homes that were in use prior to June 1, 1984 from the requirement to obtain a permit. The effect of the proposed change would be to exempt existing houseboats that are moved to a new location. It is recommended that all new, reconstructed, altered, expanded or relocated floating homes moored for longer than 30 consecutive days be required to obtain a permit.

RESPONSE: In 1984, the Department promulgated rules requiring that individual floating homes require a permit if moored at a location for longer than 30 days (see 15 N.J.R. 2090(a) and 16 N.J.R. 1073(a)). As is the case with more traditional structures, the rules were made applicable to new facilities only; that is, those which were registered in New Jersey as of the effective date of the rule. The modification to this provision is intended to provide a more accurate standard by which to identify such pre-existing structures. The standard will not be whether the floating home had been registered in New Jersey, but rather, whether it was in use prior to the date.

COMMENT: It is not clear why the Department is removing the requirement (N.J.A.C. 7:7-2.3(f)2) for a permit for any developer on lands formally flowed by the tide where such a permit is required as a condition of the tidelands grant or license applicable to such lands.

RESPONSE: The Department is not removing the requirement for a permit for any development on such lands. N.J.A.C. 7:7-2.3(f) imposes such a requirement. The deleted provision was found to be redundant and therefore unnecessary.

COMMENT: The Department should, at the end of the first sentence at N.J.A.C. 7:7-2.3(g)2i, insert the phrase, "unless the developer could show good cause." This would provide the developer an opportunity to demonstrate that the delay has been due to circumstances beyond its control.

RESPONSE: The proposed provision provides that an interruption "may be cause for revocation" of an exemption. The language is sufficiently broad so that the Department may, at its discretion, accommodate a situation of the type described in this comment. No change from the proposal is necessary.

COMMENT: At N.J.A.C. 7:7-4.2(b), it is felt that a full 20 copies of the CAFRA Environmental Impact Statement (EIS) is not necessary. It is suggested that the applicant be given the option of submitting 20 complete copies or one complete original along with 19 copies each containing an attachment with the specific information for review by the applicable agency.

Another witness stated that the EIS requirement should be limited to 15 copies with additional copies as may be specifically required by the Department.

RESPONSE: The Department has re-assessed its needs with regard to an EIS and has determined that a total of five complete copies of the EIS with all attachments would, in most cases, be sufficient. An additional 10 copies will be required and each will contain a specific appendix as may be appropriate. The language has been modified to reflect these changes.

COMMENT: According to the proposed language at N.J.A.C. 7:7-4.2(g), even permit applications for small recreational docks, piers and catwalks constructed across wetlands to gain access to a waterway would require a mitigation plan. The proposed rule should not require a formal mitigation plan for these small projects in all cases, but only as may be needed.

RESPONSE: It is not the intent of the Department to require a formal mitigation plan for relatively small projects provided that vehicles and equipment will not be placed on the wetlands in order to build the structure. The provision has been modified to reflect this intent.

COMMENT: The proposed language at N.J.A.C. 7:7-4.5(a)2 should not be adopted. Public hearings provide an opportunity for the public not only to provide information to the Division but also to provide opinions on how the Division should handle particular circumstances. If public hearings are restricted to those occasions when additional information is needed, the Department may deprive the public of the opportunity to participate in the permit process.

RESPONSE: The proposed modifications to this provision are not anticipated to result in a substantive change in the criteria used by the Department to determine the need for a non-CAFRA public hearing. These changes have been proposed to make the non-CAFRA hearing procedure comply with the terms and provisions of the Ninety Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.). That law provides that the Department must review all permit applications and render a decision within 90 days of the date upon which it was declared complete for review. Pursuant to the existing rules, if public input is found to be necessary, the application is declared complete for review and a hearing is scheduled during the 90 day review period. The result is that sometimes the Department has insufficient time to fully review and evaluate the information it has received at the hearing. The amended language codifies the fact that a non-CAFRA hearing is being conducted because additional information is needed in the form of public input and the application should not be declared complete for review until the information is received.

COMMENT: At N.J.A.C. 7:7-4.5(d)2, an applicant should be required to notify all property owners immediately adjacent to the site where a pipeline is to be installed because a project of this type can have a significant effect upon the character of an area.

RESPONSE: It is not practical to notify all adjacent property owners along what could possibly be several miles of pipeline. The rule does provide that, in the case of a pipeline or road, the applicant must give public notice by publication in a newspaper of general circulation in the municipality in which the facility is located.

COMMENT: At N.J.A.C. 7:7-6.3, the Department should combine certain items listed under "existing site conditions" with requirements under "location and resource policies" so that the inventory assessment and compliance requirements for the CAFRA EIS are addressed in one section. In addition, certain information required by the project description in the "utilities plan" such as an explanation of electrical service, street lighting, etc. are unnecessary and should be removed. The Department should also delete the content and format subsection (N.J.A.C. 7:7-6.3(c)) in its entirety.

Another witness indicated its support of the proposed requirements for EIS information stating that the information would be useful for both the Department and the public.

RESPONSE: The Department has reviewed the EIS requirements and has determined that the information requested is necessary so that the Department may adequately assess the impact of the project.

COMMENT: The requirements for Type B Wetlands environmental impact statements should be included under N.J.A.C. 7:7-4.2, where the requirement for the EIS is first stated, instead of at N.J.A.C. 7:7-6.3.

RESPONSE: The rules were reorganized at proposal so that all requirements relating to the format and content of environmental impact statements generally are located in one subchapter.

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

7:7-1.2 (Reserved)

7:7-1.3 Definitions

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

...
 *["High tide line" means a line or mark left upon tide flats, beaches, or along shore objects that indicates the intersection of the land with the water's surface at the maximum height reached by a rising tide. The mark may be determined by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The term includes spring high tides and other high tides that

occur with periodic frequency, but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.]*

...
"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). Permits may be issued with conditions, including requirements that shall, at the discretion of the Division, be satisfied prior to commencement of construction ***and long term post construction requirements such as monitoring and maintenance***.

...
"Pesticide" means any substance defined as a pesticide pursuant to the provisions of N.J.A.C. 7:30.

7:7-1.4 Standards for evaluating permit applications

All applications for coastal permits shall be approved, conditionally approved or denied pursuant to the Department's Rules on Coastal Resources and Development, N.J.A.C. 7:7E.

7:7-1.5 Permits and permit conditions

(a) No person shall undertake or cause, suffer, allow or permit any regulated activity without a permit issued by the Division in accordance with this chapter.

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

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

2. A permittee shall notify the Division in writing within five working days ***[of]* *prior to*** 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.-8. (No change.)

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

10. (No change.)

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

12. (No change.)

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. No such change shall be implemented unless an application ***for a permit modification*** is filed pursuant to this chapter.

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 the time required by the permit or, if no time specific requirement is imposed, then within six months of the effective date of the permit, or provide ***[an explanation of why]* *evidence satisfactory to the Division that*** such condition(s) cannot be satisfied.

15. If required by the Department as a permit condition, the permit shall filed with the clerk of the county in which the project site is located as notice to prospective purchasers.

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

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

2. (No change.)

(d) A permit shall be valid authority to commence construction of a facility for a period of five years from its date of issuance. Where construction has commenced within this five year period, the permit shall *** , upon written authorization of the Department,*** be valid, as long as construction continues, until the project is completed ***[except as provided by paragraph 1]* *subject to the provisions of 1 and 2*** below.

1. If construction continues beyond the five year period, and then, prior to the completion of the project, stops for a period of one year or longer, then the permit shall expire.

2. All requests for authorization to continue construction beyond the expiration of a permit shall be submitted to the Department no later than five business days prior to the expiration date of the permit.

(e) (No change.)

7:7-1.8 Permit fees

Permit fees are established by the Department pursuant to the 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) and are published at N.J.A.C. 7:1C-1.5. The Division will maintain a printed fee schedule for public use.

7:7-2.1 CAFRA

(a) (No change.)

(b) The Department interprets the statutory term "facility" as defined by CAFRA 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. To that end, the following terms are interpreted, for the purposes of this section, as follows.

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

i. (No change.)

ii. New road construction of more than 1,200 feet in length or the extension of an existing road by more than ***[1,000]* *1,200*** feet, including a cumulative total of 1,200 feet of road extension or construction in any one municipality at ***[the new]* *any*** one site except such road is totally within a new ***[and expanded]*** housing development consisting of 24 units or less.

iii. The impervious or pervious paving of an area for 300 or more parking spaces for motor vehicles and related access, or paving of an area equal to or greater than three acres excluding access drives.

2. (No change.)

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 except where such sewer line is totally within a new ***[or expanded]*** housing development consisting of 24 units or less;

ii.-iv. (No change.)

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, whether or not the owner of such parcel will conduct actual construction. Any building lots which have been determined by the Department 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 building lots need not be restricted to any single municipal tax block nor to any one period of time in order to require a permit;

ii.-iv. (No change.)

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

vi. (No change.)

vii. The addition of one or more dwelling units, or equivalent, to any existing dwelling units for which construction had commenced subsequent to September 19, 1973 where such addition, when combined with the existing dwelling units, results in a total of 25 or more units. Any dwelling units in existence on or before September 19, 1973 which have been determined by the Department 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;

viii. (No change.)

NOTE: On September 8, 1986 the Department proposed amendments to N.J.A.C. 7:7-2.1(b)4.viii. See 18 N.J.R. 1772(a) for more information.

ix. The construction of 24 or fewer dwelling units or equivalent as defined in this section, where such construction is part of a larger planned facility in which the total number of dwelling units or equivalent will exceed 24 units.

5. Contiguous parcels shall include, but not be limited to, those land areas which directly abut ***or are separated by a general access roadway or other right of way, including waterways,*** or ***those land areas which*** are part of a subdivision existing and under common ownership on or after September 19, 1973.

6. 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 [provided that it can be shown to the satisfaction of the Division that:

- i. On-site construction has not been interrupted for a period exceeding one year during the period subsequent to the exemption determination; and
- ii. The facility is being constructed in accordance with the plans which were submitted to the Division at the time that the exemption determination was made]*.

7:7-2.2 Wetlands

(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. (No change.)
- 2. Type "B" Wetland permits are required for:
 - i.-vii. (No change.)
 - viii. Filling, excavation or the construction of any structure.
- (b) (No change.)
- (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 wetlands boundary on the following wetlands maps:

1. Middlesex County:

602-2070

2.-4. (No change.)

5. Atlantic County

161-1998

273-2016

6. (No change.)

7. Cumberland County

140-1872

140-1902 161-1902

140-1908 161-1908

140-1902 196-1800

140-1926 196-1806

147-1848 196-1812

147-1854 196-1818

147-1896 196-1824

147-1896 196-1830

8.-11. (No change.)

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:

- 1. (No change.)
- 2. In ***all other areas of the State (that is 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*, ***[or]* 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* *[tide]* line***, except for large contiguous waterfront properties which have been combined to create a single development. In such cases, even if the development is to be designed and built in phases, the regulated waterfront area shall include the entire contiguous development proposal]*.

(b) (No change.)

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

- 1.-2. (No change.)

3. The mooring of a floating home for more than 30 consecutive days. Floating homes in use within the waters of this State prior to June 1, 1984 shall not require a permit. (See N.J.A.C. 7:7-2.1(b) for a definition of floating home.)

4.-5. (No change.)

(d) A permit will be required in the waterfront area for the construction, reconstruction, alteration, expansion or enlargement of any structure, or for the excavation or filling of any area with the exceptions listed below:

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

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

3. (No change.)

4. The repair, replacement or renovation of a permanent dock, wharf, pier, bulkhead or building existing prior to January 1, 1981, provided the repair, replacement or renovation does not increase the size of the structure and the structure is used solely for residential purposes or the docking or servicing of pleasure vessels;

5. The repair, replacement or renovation of a floating dock, mooring raft or similar temporary or seasonal improvement or structure, provided the improvement or structure does not exceed in length the waterfront frontage of the parcel or real property to which it is attached and is used solely for the docking or servicing of pleasure vessels.

(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 in accordance with paragraph (a)2 above, 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* *[tide]* line**, and shall graphically depict the proposed project.

2. (No change.)

(f) A permit is required for the additional filling of any lands formerly flowed by the tide, if any filling 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 paragraph (a)2 above.

1. (No change.)

(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. (No change.)

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, or where previously exempted, it may be cause for revocation of such exemption, by the Division.

ii. (No change.)

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

(a) Potential applicants are encouraged to request a pre-application conference with the Division at the earliest opportunity. A request for a pre-application conference shall be made in writing and shall include a project description, a tax lot and block designation of the site and a United States Geological Survey quadrangle map showing the site.

(b) (No change.)

7:7-4.2 Application contents

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

(b) CAFRA permit applications shall also include *20* *15* copies of an Environmental Impact Statement (EIS), prepared in accordance with N.J.A.C. 7:7-6.

*1. At the option of the applicant either 15 complete copies with all attachments and appendices shall be submitted or five complete copies of the EIS shall be submitted along with 10 additional copies, one of which shall have appended thereto only an archeological survey, if appropriate; one of which shall have appended thereto only the recycling plan; one of which shall have appended thereto only a traffic analysis if appropriate; and one of which shall have appended thereto only an energy conservation plan. The remaining copies may be submitted without appendices and attachments.

2. All EIS submittals with appendices shall be labeled on the cover page so that the appendices can be identified.

3. The applicant shall, upon notification by the Division during the initial 20 working day review, submit additional copies along with appendices.*

(c) Wetlands Type B applications shall also include five copies of an Environmental Impact Statement (EIS), prepared in accordance with N.J.A.C. 7:7-6.

(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). The additional requirements shall include but not necessarily be limited to the following:

1. Copy of any Tidelands Grant, Lease or License previously approved for the property in question.

2. Evidence that copies of the CP-1 have been forwarded to the County and Municipal Planning Boards and Environmental Commissions, County and Municipal Clerks, and U.S. Army Corps of Engineers.

3. Fifteen copies and one reproducible transparent copy of a development plan on 8-1/2" x 11" paper, showing, at a minimum the following:

- i. The lot;
- ii. All existing waterfront structures on the lot and immediately adjacent lots;
- iii. Distances and dimension of areas, structures and lots, including wetlands and high tide line, upland property, roads and utility lines;
- iv. The proposed work area;
- v. The general site location of the development depicting the Region;
- vi. The scale of the plan and a north arrow;
- vii. The name of the person who prepared the plan; and
- viii. The name of the applicant and municipal lot and block number.

4. Photographs showing the project site.

(e) Development plans for activities in an area which will require a Tidelands (Riparian) Grant, Lease or License, shall be prepared by a professional surveyor licensed by the State of New Jersey and shall depict the limits of the area for which the Tidelands instrument will be sought.

(f) (No change in text.)

(g) If the regulated activity for which a permit is requested will occur on wetlands as defined by N.J.A.C. 7:7E-3.25(a), then the applicant shall, subject to the exception set forth in paragraph*s* 1 *and 2* below, submit a mitigation plan as part of the application.

1. Upon adequate showing by the applicant that financing for the project is contingent upon the issuance of a permit, the Division may issue the permit and allow the submission of a mitigation plan as a pre-construction permit condition, provided, however, that no permit will be issued until the Department has reviewed and approved a conceptual outline of a mitigation plan which applicant intends to implement.

2. The Division may, upon the request of the applicant, determine that a mitigation plan will not be required to be a part of a permit application for the construction of catwalks, piers, docks, landings, footbridges and observation decks provided that the applicant shows, to the satisfaction of the Division, that vehicles and equipment will not be placed on the wetlands in order to construct the structure and that the structure will comply with the acceptability conditions provided by N.J.A.C. 7:7E-4.11(d). The Division may, however, require mitigation notwithstanding the applicant's compliance with the terms of this paragraph, if it has determined, on an individual case basis, that mitigation is necessary. The Division will notify the applicant that a mitigation plan is required within the initial 20 working day review period.

*2.]**3.* Any mitigation plan submitted pursuant to this section shall include, but not necessarily be limited to, the following:

- i. A site plan showing wetlands which will be destroyed and showing the wetlands area which will be mitigated.
- ii. A metes and bounds description of the proposed mitigation site.

iii. NJ Wetlands Map/Tidelands Map number(s) for the development site (and mitigation site if at a different location) as well as block and lot numbers and ownership of the mitigation site.

iv. Size of wetlands disturbance (surface area in sq. ft. or acres).

v. Size of wetlands mitigation (surface area sq. ft. or acres). The acreage of wetlands habitat, tidal water and any uplands habitats created or preserved as part of the mitigation project shall be specified. Only the wetlands portion of the acreage will apply to wetlands mitigation ratio of 2:1.

vi. Elevation of final grade of mitigation site in relation to mean sea level (MSL), along with slope percentage.

vii. Tidal range of mitigation site and salinity range of adjacent inundating waters.

viii. Wetlands community type and flora species disturbed (scientific name, not common names as these vary) and a real coverage of each prior to disturbance. These items shall be shown on the site plan.

ix. Soil and vegetation type of mitigation site prior to disturbance. This information shall be shown on the site plan.

x. Type of soil if placed as substrate.

xi. Scientific names of species to be planted (or seeded), stock type (example: bare root sprigs, peat potted, etc.), and source of material (example: Maryland).

xii. Spacing of plantings or density of seeding and a schedule showing the dates excavated, planted/seeded, fertilized, monitored, etc. These items shall be shown on the site plan.

xiii. Type of fertilizer used, nutrient concentrations and dates applied.

iv. Schedule of implementation.

iv. Monitoring program (if required).

(h) All application sets including charts, plans and other large documents submitted to the Department pursuant to this chapter shall be collated and folded flat to a size that is suitable for interoffice distribution.

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 (see N.J.A.C. 7:7-6.1) may also make a copy of the application available for public scrutiny by interest 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 except as provided in N.J.A.C. 7:7-4.8.

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 final review, 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 final review or public hearing until all the additional information has been received and deemed acceptable for review.

i. In the case of all CAFRA permit applications and those other coastal permit applications or CAFRA permit modification applications for which the Division has determined that additional information is necessary to assist it in its review and that this information can only be obtained by public hearing, the application shall be declared complete for public hearing.

3. (No change.)

(b) Within 15 days of the receipt of any additional information submitted pursuant to paragraph (a)2 above and where a public hearing will not be held, the Division shall notify the applicant of the completeness for final review 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 final review by the Division.

1. (No change.)

(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 final review shall begin the 90 day review period established pursuant to the 90 Day Construction Permit Law.

(d) If an application is not complete for final review 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.-2. (No change.)

(e) Once an application for which a public hearing is required has been declared complete for public hearing, 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 public hearing.

2. (No change.)

7:7-4.5 Public hearings

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

1. (No change.)

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 it determines that additional information is necessary to assist it in its review and that this information can be obtained only by providing an opportunity for a public hearing. Such a determination will be made within 20 working days of the filing of the application.

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

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

2. (No change.)

(c) (No change.)

(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. (No change.)

2. If the facility is a linear facility 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, 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. (No change.)

(e)-(g) (No change.)

(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 final 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) In the case of CAFRA applications, the Division shall, within 15 days after the public hearing, either declare the application complete for final review or notify the applicant that additional information is required.

1. In the case of CAFRA applications, 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 final review.

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

(c) In the case of a non-CAFRA application for which a public hearing was held, the application shall be declared complete for final review on the date of the public hearing.

(d) If an application for which a public hearing has been held is not complete for review 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, further extensions 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.

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 final review.

(b) The Division shall act on all Wetland and Waterfront Development applications within 90 days after the application was declared complete for final review.

(c) (No change.)

7:7-4.9 Withdrawal, resubmission and amendment of applications

(a) A applicant may withdraw an application at any time in the application review process. All fees submitted with such applications are non-returnable subsequent to the application being declared complete for public hearing or final review, 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. An applicant who wishes to appeal the denial, and at the same time revise the application may do so in accordance with the procedures in N.J.A.C. 7:7-5.4.

7:7-4.10 Requests for modifications

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

(c) Requests for minor modifications shall be acted upon 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. (No change.)

2. A fee shall be required for any modification which is not minor in nature, and shall be in accordance with the provisions of N.J.A.C. 7:1C (Ninety Day Construction Permits).

3. (No change.)

7:7-4.12 Expedited application process

(a) (No change.)

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

1.-3. (No change.)

4. The application must be complete for final review or public hearing 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 final review or public hearing on the day it is submitted.

2.-4. (No change.)

7:7-6.2 Distribution of EIS to other agencies

(a) (No change.)

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

(c) An affidavit shall be sent by the applicant or the applicant's agent to the Division stating that the applicant has distributed copies of the EIS pursuant to paragraph (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 Formats and contents

(a) The applicant shall prepare and submit the EIS in the form and manner as set forth in this subchapter. Failure to comply with these requirements may result in a determination that an application is not complete for public hearing or final review, depending on its status (see N.J.A.C. 7:7-4.1 and 4.4).

(b) The applicant shall include in the EIS the following:

1.-3. (No change.)

4. An EIS for a Type B Wetlands Permit shall, in addition to the general requirements set forth in paragraphs 1 to 3 above, include a description and analysis of all possible direct and indirect effects of the proposed activity on the site itself as well as on adjacent and noncontiguous areas. The EIS shall refer particularly to the effect of the project on the public trust in submerged lands, 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, soils, and land use; in addition, it shall describe and analyze:

- i. The reason that structures cannot be located on lands other than wetlands;
- ii. 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;
- iii. Alternatives to the proposed action which would reduce or avoid environmental damage;
- iv. All measures to be taken during and after the completion of the proposed activity to reduce detrimental on-site and off-site effects; and
- v. Adverse environmental impacts which cannot be avoided.

(c) Every EIS submitted to the Division, other than those submitted for a Type B Wetlands Permit shall, to the maximum extent practicable, be prepared in accordance with the following format:

1. Table of contents;
2. List of figures;
3. Introduction;
4. Inventory:
 - i. Location;
 - ii. Ownership of site and adjacent properties; and
 - iii. Existing site conditions:
 - (1) Topography;
 - (2) Existing development;
 - (3) Existing zoning;
 - (4) Master plan;
 - (5) Tidelands interest;
 - (6) Regulated wetlands;
 - (7) Delineated flood hazard areas; and
 - (8) Publicly owned lands.
5. Project description:
 - i. General;
 - ii. Building type;
 - iii. Transportation plan;
 - iv. Utilities plan:
 - (1) Water supply;
 - (2) Wastewater service;
 - (3) Storm drainage facilities;
 - (4) Electrical service;
 - (5) Solid waste collection, recycling, disposal; and
 - (6) Street lighting.
 - v. Energy plan;
 - vi. Landscaping plan;
 - vii. Soil erosion and sediment control plan;
 - viii. Open space and recreation plan;
 - ix. Aesthetics plan;
 - x. Construction plan;
 - xi. Operation plan; and
 - xii. Future plan.
6. Environmental assessment and compliance with Coastal Resource and Development Policies. This section of the EIS shall include an environmental inventory assessment, a detailed statement of compliance with the Coastal Resource and Development Policies (N.J.A.C. 7:7E), and a listing of adverse impacts, mitigation and alternatives.

i. Location policies:

- (1) Special areas;
- (2) General water areas;
- (3) General land areas; and
- (4) General Location Policies with reference to Secondary impacts.

ii. Use Policies; and

iii. Resource Policies.

7. Appendices as needed.

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Use of Water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System

Adopted Amendments: N.J.A.C. 7:11-3.1, 3.2, 3.3 and 3.4

Adopted New Rules: N.J.A.C. 7:11-3.6 through 3.28

Adopted Repeal: N.J.A.C. 7:1-3.5 through 3.22

Proposed: July 7, 1986 at 18 N.J.R. 1330(a).

Adopted: April 24, 1987 by Richard T. Dewling, Chairman, N.J. Water Supply Authority and Commissioner, Department of Environmental Protection.

Filed: April 27, 1987, as R.1987 d.228 with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

DEP Docket No. 029-86-06.

Effective Date: May 18, 1987.

Expiration Date: June 6, 1988.

Summary of Public Comments and Agency Responses:

N.J.A.C. 7:11-3.7

COMMENT: The proposed regulations should permit temporary peaking of water withdrawals.

RESPONSE: There are two aspects of the peaking issue. The first is the hydraulic delivery capacity of the Delaware and Raritan Canal and the second in the impact of peaking on the system yield.

Recognizing these concerns when East Brunswick submitted an application for water supply from the Canal with a request for peaking, the Authority proposed to undertake a separate study carried out by the New Jersey Institute of Technology (NJIT) to evaluate the impact of peaking on the Authority's systems. That proposal has now been combined in an overall larger feasibility study that is to be performed by the Department of Environmental Protection (the "Department") utilizing the New Jersey Institute of Technology. The study will include a yield analysis of the Raritan Basin including other possible future proposed reservoirs.

In addition, the study will include an investigation of the hydraulic delivery capability of the Canal. Certain field experiments will be conducted as part of that investigation. The Water Supply Authority (the "Authority") believes that it would be prudent to reconsider the peaking issue after the results of the NJIT study are received.

N.J.A.C. 7:11-3.10

COMMENT: Subsection (b) of this section is not equitable since it gives to the Authority the unilateral right to reject any water user's request for renewal of a water supply agreement without cause.

RESPONSE: The Authority agrees that subsection (b) is inequitable to the water users and therefore has deleted subsection (b) in its entirety. In addition, the Authority has modified the remaining language so that subsection (c), which becomes (b), will provide a more equitable procedure for renewal and assessment of double charges while a new subsection (c) clarifies the procedural requirements for renewal by referencing N.J.A.C. 7:11-3.2.

N.J.A.C. 7:11-3.11

COMMENT: The six month period of daily below average withdrawal which will cause the Authority to revoke the water user's agreement should be extended to a 12 month period in order to provide a more accurate measure of the user's daily withdrawals for the year.

RESPONSE: The Authority agrees that the period of six consecutive months should be increased to 12 consecutive months.

N.J.A.C. 7:11-3.12

COMMENT: The right of the Authority to terminate a water use agreement as presently outlined in the proposal is unfair to the water users and could cause serious financing problems for many of the users.

RESPONSE: The Authority agrees that the termination provisions of this section are unfair to water users. The Authority, therefore, has decided to delete subsections (a), (b), and (c) in their entirety and substitute language which provides for temporary curtailment or suspension of a user's withdrawal of water from the system based only upon emergency circumstances.

N.J.A.C. 7:11-3.15

COMMENT: Water users do not have sufficient operational flexibility to meet the actual daily requirements of this section. Further, the words "physically or financially stressed" in subsection (f) should be changed to "physically damaged or financially stressed."

RESPONSE: The Authority agrees that the language in subsection (f) should be changed from "physically or financially stressed" to "physically damaged or financially stressed."

The Authority maintains, however, that the remaining provisions of this section are not unreasonable. The principal intent of this section is to provide the mechanism necessary for the efficient operation of Authority facilities for everyone's benefit and not to unduly limit the operational flexibility of the water users. Subsection (d) provides the means for the users to fine-tune their requests. The Authority fully appreciates that the water users' circumstances may change on relatively short notice and that every circumstance cannot be anticipated in regulations such as these. Nonetheless, it is important to Authority operations that weekly schedules and 48 hour notification of departures from schedules be provided to the Authority. The Authority believes that the modifications in N.J.A.C. 7:11-3.17 will also help to ease some of the concerns voiced by water users.

The Authority has inserted an additional note in subsection (d) which states that the need for the 48 hour notification in the Raritan Basin (Spruce Run/Round Valley) be evaluated in the event that the Confluence Reservoir is constructed and becomes operational.

N.J.A.C. 7:11-3.16

COMMENT: The water users do not have sufficient operational flexibility to comply with this section.

RESPONSE: The Authority maintains that the provisions of this section are not unreasonable. Releases from the reservoirs are carefully controlled in order to meet demands of water users as well as to satisfy the minimum streamflow requirements set by the State. Excess river withdrawals cannot be compensated for on short notice. It is for this reason that this provision was inserted in the rules.

N.J.A.C. 7:11-3.17

COMMENT: Either the five percent water withdrawal limit must be increased to 25 percent or the wording of the section must be revised to allow for greater water withdrawal on limited occasions as long as there would be no negative effects on the Authority's operational costs or the division rights of other water users.

RESPONSE: The Authority points out that the penalty provisions in subsection (a) have been temporarily waived by the Authority until such time and in the event that the future Confluence Force Main and Confluence Reservoir are constructed and are operational. This waiver has been noted in subsection (a).

As to subsection (b), the Authority has modified the language of this subsection so that \$1,000.00 must be paid for each million gallons of water withdrawn from the Delaware and Raritan Canal over five percent in excess of advance notice of daily demand only where the Authority incurs additional expenses for pumping or otherwise in order to satisfy contractual and/or legislative requirements.

N.J.A.C. 7:11-3.18

COMMENT: Subsections (c) and (d) are too general since they give the right of review and approval of the water user's facilities to the Department and to the Delaware and Raritan Canal Commission in areas that are beyond their legitimate scope of responsibility.

RESPONSE: The Authority has modified the language in subsections (c) and (d) by inserting "and if applicable" prior to "the Department and the Delaware and Raritan Canal Commission" in subsection (c) and adding "if applicable" prior to "of the Department and the Delaware and Raritan Canal Commission" in subsection (d).

N.J.A.C. 7:11-3.19

COMMENT: The words "laboratory approved by the New Jersey Water Supply Authority" should be deleted from subsection (b), first

sentence. Likewise, the word "laboratory" should be removed from paragraph (b), second sentence.

RESPONSE: The Authority has modified the language of subsection (b) by removing the words "laboratory approved by the New Jersey Water Supply Authority" and inserting the words "meter testing firm" in their place. Further, the word "laboratory" in the second sentence of subsection (b) is deleted.

N.J.A.C. 7:11-3.21

COMMENT: Water users should be allowed to submit their monthly reports by the tenth day of each month rather than by the third day of each month which is too restrictive.

RESPONSE: The Authority recognizes the merit of this request and therefore has amended the language of subsection (a) by changing the words "not later than the third day" to read "not later than the tenth day."

COMMENT: The Authority should consider a reserve charge for those customers who might wish to reserve capacity as such capacity begins to be allocated from available surplus capacity.

RESPONSE: The Authority maintains that any provision regarding a reserve charge would be more appropriately be addressed in the Rate Schedule rather than in these rules concerning use of water. The Authority, therefore, recommends that the reserve charge issue be discussed with the water users prior to the next proposed Rate Schedule revision.

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

SUBCHAPTER 3. RULES FOR THE USE OF WATER FROM THE DELAWARE AND RARITAN CANAL AND SPRUCE RUN/ROUND VALLEY RESERVOIR SYSTEM

7:11-3.1 Application for water supply

Application for withdrawal of water from the Delaware and Raritan Canal, or from the flow of the Raritan River or its tributaries as maintained or replaced by releases from the Spruce Run Reservoir or the Round Valley Reservoir, or application for withdrawal of water directly from either or both reservoirs shall be submitted to the New Jersey Water Supply Authority on an "Application for Water Supply" form, copies of which will be furnished by the New Jersey Water Supply Authority upon request.

7:11-3.2 Public hearing

(a) In accordance with N.J.S.A. 58:1B-5, 58:22-9 and 13:13-12.9, a public hearing shall be held on each application before the New Jersey Water Supply Authority, except that the New Jersey Water Supply Authority may waive this requirement in the case of an application for a quantity less than 500,000 gallons per day.

(b) The applicant shall present testimony and respond to objectors and other interested parties at the public hearing required by (a) above relevant to the application for water supply including, but not limited to:

1. Justification by the applicant of the public interest and necessity involved in the proposed diversion;

2. Identification of the applicant's water supply facilities which are planned to use the surface water diverted from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System;

3. Certification of the proper and safe construction of all of applicant's water supply facilities and equipment; and

4. Description of the applicant's ability to maintain the sanitary conditions of the source of water diverted from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System.

(c) All costs and expense in connection with public hearing, including the cost of legal advertising and stenographic transcripts, shall be paid by the applicant.

7:11-3.3 Water use agreement

(a) Water shall be withdrawn from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System only in accordance with the terms of a formal agreement, to which *[these rules and regulations]* ***this subchapter*** shall be attached and made a part thereof, between the New Jersey Water Supply Authority and the user.

(b) The agreement shall be executed by the user within 60 days after transmittal by the New Jersey Water Supply Authority, otherwise the application and approval shall be null and void.

7:11-3.4 Rates, charges and debt service assessments

The rates, charges and debt service assessments to be applied to water supplied from the Delaware and Raritan Canal or to water sustained or replaced by releases from the Spruce Run/Round Valley Reservoir, or to withdraw directly from either or both of the reservoirs, shall be the most current rates, charges and debt service assessments established in the "Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir System", N.J.A.C. 7:11-2.

7:11-3.5 Payments

(a) The user shall pay the New Jersey Water Supply Authority for all raw water withdrawn from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System in accordance with the rates and provisions set forth in the Rate Schedule in effect on date of execution of the water use agreement and as modified from time to time in accordance with the provisions of N.J.A.C. 7:11-2.10.

(b) The user shall pay to the New Jersey Water Supply Authority a total annual demand charge computed by multiplying the quantity specified in the water use agreement for 24-hour withdrawal, known as the daily allotment*,* by 365.

(c) A user shall pay the New Jersey Water Supply Authority only for the cost of operation and maintenance on an annual demand charge basis provided that the water withdrawn downstream of the Spruce Run/Round Valley Reservoir System is returned to the stream channel substantially undiminished in quantity and quality at a point considered by the New Jersey Water Supply Authority to be in the near vicinity of the point of withdraw.

(d) Until the total water supply capacity of the Spruce Run/Round Valley Reservoir System is allocated by contract, the New Jersey Water Supply Authority may allow interim, short-term use of the uncommitted capacity of the Raritan River and its tributaries downstream of the Spruce Run/Round Valley Reservoir System on a nonguaranteed, annual interruptible basis to support the growing of agricultural and horticultural products provided that short-term users shall pay the cost of operations and maintenance for the actual amount of water diverted by the short-term user during any month.

(e) Payments shall be made monthly as billed, at such place as the New Jersey Water Supply Authority may designate.

AGENCY NOTE: The current text of N.J.A.C. 7:11-3.5 through 7:11-3.22, as found in the New Jersey Administrative Code, is proposed for repeal.

7:11-3.6 Equivalent sustained supply for Spruce Run/Round Valley Reservoir System (Raritan Basin)

(a) In operating the Spruce Run/Round Valley Reservoir System to augment the Raritan Basin natural stream flow during periods of low runoff, optimum dependable supply is attained at the confluence of the Millstone and Raritan Rivers where the combined flow from the tributaries of the Raritan River above that point becomes effective. Therefore, each application for the diversion, withdrawal or allocation of water from the Raritan River downstream of the Spruce Run/Round Valley Reservoir System is to be evaluated, and differentiation in rates and charges may be made, on the following basis:

1. Quantities of water to be supplied;
2. Distance between the water supply facility and the point of diversion;
3. Cost to the New Jersey Water Supply Authority of making the water available;
4. Actual location where the water will be used;
5. Character of the use of the water; and
6. Other factors related to the optimum dependable water supply from the Spruce Run/Round Valley Reservoir System as deemed appropriate by the New Jersey Water Supply Authority.

7:11-3.7 Peak demand

(a) Contract allocation will be made in terms of million gallons per day.

(b) The maximum permitted withdrawal rate, shall be specified by the New Jersey Water Supply Authority in the water use agreement.

7:11-3.8 Production factor: Spruce Run/Round Valley Reservoir System (Raritan Basin)

(a) The inverse ratio between each daily allocation and its equivalent in sustained supply at the confluence of the Millstone and Raritan Rivers is expressed as the Production Factor for such allocation. The annual Demand Charge for water to be withdrawn at or below the confluence

of the Raritan and Millstone Rivers (Basic Confluence Charge), multiplied by the Production Factor for such given allocation, will determine the prevailing charge for such allocation.

(b) Where the water withdrawn within the Raritan River Basin, as supported by releases from Spruce Run/Round Valley Reservoir System, is returned by the user to the stream channel substantially undiminished in quantity and quality at a point considered to be in the near vicinity of the point of withdrawal, all as determined by the New Jersey Water Supply Authority, the Production Factor shall be considered to be unity (1.0).

7:11-3.9 Period of agreement

(a) The effective date, period of agreement, and date of commencement of charges shall be set forth in the water use agreement to be executed in accordance with N.J.A.C. 7:11-3.3 and be consistent with terms and conditions for diversion set forth by the New Jersey Water Supply Authority.

(b) Unless otherwise specified in the water use agreement, the date of commencement of charges shall be the first day following completion of construction of the withdrawal system, but in no case later than nine months after the date of approval of the water agreement by the New Jersey Water Supply Authority.

(c) At the end of the agreed upon period*,* the agreement shall expire, except as to those matters set forth at N.J.A.C. 7:11-3.10, 3.12 and 3.23.

7:11-3.10 Renewal

(a) If the user desires to continue withdrawal of water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System beyond the expiration date specified in the current water use agreement, the user shall submit to the New Jersey Water Supply Authority notification of intent to renew not less than 90 days in advance of the expiration date of the agreement then in force.

(b) The New Jersey Water Supply Authority has the right to reject any users request to continue withdrawal of water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System beyond the termination date specified in the current water use agreements.]

*((c)**(b)* If the user *[continues said withdrawal after the expiration date of the contract without submitting an application for renewal pursuant to this section]* ***has not submitted a notification of intent to renew as provided in (a) above, the Authority shall notify the user of the expiration date of the contract. If, after such notification by the Authority, the user continues withdrawal***, the charge for such withdrawal will be twice the rate per million gallons as specified in the New Jersey Water Supply Authority's Rate Schedule in effect at that time.

(c) All applications for renewal of contracts shall be decided upon by the Authority based upon the record of the public hearing held as part of the application process required pursuant to N.J.A.C. 7:11-3.2. Water users may make reference in an application for renewal to information submitted in support of a previous water use contract and shall not be required to resubmit such information.

7:11-3.11 Revocation by authority

In event that for a period of *[six]* ***12*** consecutive months the daily average withdrawal shall not equal at least* 50 percent of the quantity specified in the agreement for 24 hour withdrawal, the New Jersey Water Supply Authority *[reserves the right to]* ***may unilaterally, with five days written notice,*** revoke the water use agreement and require that the user submit a new application for revised lower quantity of water withdrawn from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System. ***The new application will be processed in accordance with N.J.A.C. 7:11-3.1 and 3.2.***

7:11-3.12 *[Termination]* ***Temporary curtailment or suspension***

*(a) In case of an emergency, natural or otherwise, or where after public hearing and for good cause shown the New Jersey Water Supply Authority determines that such circumstances exist that the State's best interests are served, the New Jersey Water Supply Authority reserves the right to curtail, suspend or terminate the user's withdrawal of water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System.

(b) Violation of the rules and regulations as set forth in this Subchapter shall be just cause to terminate the user's right to withdraw water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System as determined by the New Jersey Water Supply Authority.

(c) Upon termination of the water use agreement for any reason, the privileges granted to the user shall terminate absolutely and be extinguished.]*

In the event of an emergency, natural or otherwise, after notice and hearing, where practicable, in accordance with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1, the Authority reserves the right to temporarily curtail or suspend the user's withdrawal of water from the system.

7:11-3.13 Strikes, natural disasters, acts of God

The New Jersey Water Supply Authority shall not be considered in default in the performance of any of its obligations to the extent the performance of any such obligations is prevented or delayed because or by reason of war, hostilities, revolution, civil commotion, strike, epidemic, accident, fire, wind, flood, explosion or embargo; or because or by reason of any law, order, proclamation, or regulation of the Government of the United States of America, or of any state of the United States of America, including the State of New Jersey, or of any authority or representative of any such Governments; or because or by reason of any act of God, whether of the same or a different nature.

7:11-3.14 Assignment

Agreement to withdraw water from the Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir System as set forth in this subchapter shall not be assigned ***[nor set over]* *or otherwise transferred*** to any other corporation, firm or person without the prior written approval of the New Jersey Water Supply Authority.

7:11-3.15 Diversion scheduling

(a) The time required for transmission of waters into the Raritan Basin and/or from the Delaware Basin to reach the user will depend on location of the purchaser's point of diversion or use, antecedent hydraulic/hydrologic conditions and magnitude of composite scheduled diversions.

(b) For the purpose of estimating such travel time the user shall by telephone, notify the New Jersey Water Supply Authority on every Monday at a time mutually agreed upon of the user's preliminary estimated daily demands for the week starting on the following Monday.

(c) When required by the New Jersey Water Supply Authority, the user shall submit in writing to the New Jersey Water Supply Authority a schedule of normal withdrawals for its point(s) of diversion.

(d) The user shall notify the New Jersey Water Supply Authority by telephone at a time mutually agreed upon and a minimum of 48 hours in advance of pending departures from a set schedule as set forth in (b) and (c) above due to plant shutdown or other causes, and in the event of emergency departure from said schedule the user shall immediately notify the New Jersey Water Supply Authority or its designated representative at such place and in such manner as the New Jersey Water Supply Authority or its designated representative may from time to time designate with confirming notices of any departures in writing.

1. The 48 hour notification requirement as it applies to the Raritan Basin (Spruce Run/Round Valley) will be evaluated in the event that the Confluence Reservoir is constructed and becomes operational.

(e) The user shall similarly notify the New Jersey Water Supply Authority or its representative indicating resumption of a normal schedule with confirming notices in writing.

(f) In the event the user fails to notify the New Jersey Water Supply Authority or its designated representative of the departure from or a return to normal schedule, and the facilities and appurtenances of the New Jersey Water Supply Authority's systems are physically or financially stressed, (for example, an embankment damaged or an unnecessary pumping demand incurred), the costs of such ***damage or* stress**, in whole or in part, shall be ***[borne]* *paid*** by the user as determined and billed by the New Jersey Water Supply Authority.

7:11-3.16 Withdrawal limitation: Raritan Basin

During any period when water is being released from the New Jersey Water Supply Authority owned reservoir facilities for any Raritan Basin stream flow augmentation, the user shall not on any day during that period withdraw any quantity of water in excess of his advance notice of daily demand given under the procedure set forth in N.J.A.C. 7:11-3.15 (Diversion scheduling).

7:11-3.17 Excess withdrawal

(a) During the period of reservoir releases, any water withdrawn from the Raritan Basin Streams over five percent in excess of the advance notice of daily demand given by the user as required at N.J.A.C. 7:11-3.15 (Diversion scheduling) shall be paid for ***by the user*** at the rate of \$1,000.00 for each million gallons of such excess, provided however that prevailing rates shall apply in the case of overdraft for fire suppression or other catastrophe.

[Note:]* *1. This provision has been temporarily waived by the Authority until such time as ***and in the event that,*** the future Confluence Force Main and Confluence Reservoir are constructed and are operational.

(b) ***[Any water withdrawn]* *Should the withdrawal of any water*** from the Delaware and Raritan Canal over five percent in excess of the advance notice of daily demand given by the user as required at N.J.A.C. 7:11-3.15 (Diversion scheduling), ***cause the Authority to incur additional expenses for pumping or otherwise in order to satisfy contractual and/or legislative requirements, such water*** shall be paid for ***by the user*** at the rate of \$1,000.00 for each million gallons of such excess, provided however that prevailing rates shall apply in the case of overdraft for fire suppression or other catastrophe.

7:11-3.18 Withdrawal systems

(a) Withdrawal of raw water from any Raritan Basin streams or directly from the Spruce Run/Round Valley Reservoir System or the Delaware and Raritan Canal by the user shall be at his own cost and expense.

(b) The New Jersey Water Supply Authority grants to the user of water from the Delaware and Raritan Canal the right to install and construct in the Canal and on adjoining Canal property at or near the point of withdrawal, and to replace, repair, operate and maintain, such apparatus, equipment, structures and facilities, all at the user's sole cost and expense, as may be necessary for withdrawal from the Canal of the raw water sold by the New Jersey Water Supply Authority, for the measurement thereof, and for the transportation thereof to the plant or plants of the user, provided that plans for the construction of such facilities have received the prior written approval of the ***[Division of Parks and Forestry]* *Department*** and the Delaware and Raritan Canal Commission.

(c) Prior to the installation or construction of any apparatus, equipment, structures or facilities therefor, the user shall furnish to the New Jersey Water Supply Authority for its prior written approval, a plan showing in such detail as may be required by the New Jersey Water Supply Authority the proposed system for withdrawal, measurement, transportation and ultimate disposition of the water, and shall not install or construct the same until said system shall have been approved in writing by the New Jersey Water Supply Authority, ***and if applicable*** the ***[Division of Parks and Forestry]* *Department*** and the Delaware and Raritan Canal Commission.

(d) The New Jersey Water Supply Authority also grants to the user of water from the Delaware and Raritan Canal the right of ingress over, upon and under any and all other Canal lands as may be necessary for the construction, operation, repair and maintenance of such system, after the user has received the written approval ***if applicable*** of the ***[Division of Parks and Forestry]* *Department*** and the Delaware and Raritan Canal Commission.

(e) The New Jersey Water Supply Authority or its designated representative shall have the right at any time to examine ***and inspect*** all facilities constituting the withdrawal system.

(f) The user of water from the Delaware and Raritan Canal shall, within ten days after receipt of written demand from the New Jersey Water Supply Authority, make such repairs to its structures and facilities as, in the opinion of the New Jersey Water Supply Authority, may be required to eliminate leakage of water from, or potential damage to the Delaware and Raritan Canal.

(g) Failure of any user of water from the Delaware and Raritan Canal to make any repairs required by the New Jersey Water Supply Authority pursuant to (f) above shall allow the New Jersey Water Supply Authority to make any necessary repairs at the cost and expense of the user and the user shall pay any such repair costs to the New Jersey Water Supply Authority upon demand.

(h) The user shall make such changes in its withdrawal system as may from time to time be ordered in writing by the New Jersey Water Supply Authority.

(i) The user shall make no alterations in the approved withdrawal system without securing the prior written approval of the New Jersey Water Supply Authority.

7:11-3.19 Meter

(a) The user shall purchase or construct, install, maintain and operate, at his own sole cost and expense, in a manner satisfactory to the New Jersey Water Supply Authority, a flow meter or measuring device of a type and in a location approved by the New Jersey Water Supply Authority.

(b) The user shall have the flow meter tested for accuracy at his own sole cost and expense before installation, by a ***[laboratory approved by the New Jersey Water Supply Authority]* *meter testing firm***, and shall

furnish a report of such test to the New Jersey Water Supply Authority. The user further shall have such laboratory test repeated and furnish a report of said test to the New Jersey Water Supply Authority at intervals of not less than one year ***[or]* *and*** following meter repairs.

(c) Meter tests other than those set forth in (b) above may be required by the New Jersey Water Supply Authority, and payment therefor shall be at the cost and expense of the user except when report of such tests shall disclose the meter to be register~~ed~~***ing*** within five percent of true accuracy, in which case the cost of such test shall be paid by the New Jersey Water Supply Authority.

(d) In the case of a joint allocation to be operated through a single agent designated as the user, there shall be provided by the user, in addition to the meter at the point of withdrawal, meters to measure the distribution to each of the several parties to the allocation.

7:11-3.20 Meter failure

(a) The user shall use reasonable care that the installed flow meter or measuring device required at N.J.A.C. 7:11-3.19 is properly operating at all times.

(b) If the installed flow meter or measuring device is broken or improperly operating during any period of time, the New Jersey Water Supply Authority shall make necessary ***[adjustments or]* estimates *or adjustments*** to determine the amounts of water withdrawn and to be charged for during any period of meter or measuring device failure, provided that said ***[adjustments or]* estimates *or adjustments*** shall be based on the daily quantity contracted for by the user, with due consideration of the scale of plant operation before and during the breakdown period, or on such other method as the New Jersey Water Supply Authority shall determine in its discretion.

(c) In the event of repeated or prolonged failure of any meter or measuring device to operate properly, ***[the Authority may]* *the user shall, upon Authority order,*** repair or replace of the meter or other measuring device at the ***user's*** cost and expense ***[of the user]***.

(d) In the event of failure of the user to comply with the order set forth in (c) above within a reasonable period, the New Jersey Water Supply Authority may order suspension of withdrawal until the faulty meter or other measuring device has been repaired or replaced provided that such suspension shall not excuse the purchaser from payment of charges set forth in the New Jersey Water Supply Authority's most current Rate Schedule.

7:11-3.21 Meter readings

(a) The user shall keep a daily record of flow rates and cumulative daily water withdrawal totals and shall submit to the New Jersey Water Supply Authority each month, not later than the ***[third]* *tenth*** day of the month unless otherwise approved by the New Jersey Water Supply Authority, copies of such records for the preceding month.

(b) The monthly meter readings to determine total withdrawal shall be taken by the user on the last day of each month, unless otherwise approved by the New Jersey Water Supply Authority, or if that day falls on ***Saturday,*** Sunday or ***a*** legal holiday, on the first working day thereafter.

(c) The ***user shall allow the*** New Jersey Water Supply Authority or its designated representative ***[shall have the right]*** at any time to examine any flow meter or other measuring device and the daily records maintained pursuant to (a) above, as well as to order meter tests, repair or replacement.

7:11-3.22 Assistance to be furnished by user

The user, at his own expense, shall furnish the designated representative of the New Jersey Water Supply Authority such assistance as it may require for the purpose of examining the user's withdrawal system, making meter tests, taking samples, or performing other duties in connection with the agreement.

7:11-3.23 Indemnity

The user shall at all times ***defend,*** save~~*~~ ***[and]*** hold harmless ***[or]* *and*** indemnify the New Jersey Water Supply Authority and any of its officers, agents and employees against claims for damages of whatsoever kind or nature arising in any manner or under any circumstances by reason of the action or inaction of the user, his officers, agents, representatives or employees in installing, constructing, replacing, repairing, maintaining or operating the withdrawal system, and the furnishing of water to others, whether such damage be sustained by the purchaser or by other persons or corporations which seek to hold the Authority liable.

7:11-3.24 Insurance: Use of Delaware and Raritan Canal supply

(a) All users of the Delaware and Raritan Canal water shall maintain public liability and property damage insurance on the property and facilities which constitute the user's withdrawal system operated and maintained on canal property, with an insurance company authorized to do business in the State of New Jersey, in the following minimum amounts or as otherwise required:

1. \$100,000/\$300,000 bodily injury; and
2. \$50,000 property damage, and naming the New Jersey Water Supply Authority as an "Additional insured".

(b) Certificates of such coverage shall be delivered to the New Jersey Water Supply Authority with evidence of payment of premiums thereof upon delivery to the New Jersey Water Supply Authority of the water use agreement executed by the user pursuant to this subchapter.

7:11-3.25 Water quality

(a) The water supplied from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir System is raw water subject to all quality variations and hazard inherent in natural streams and that the New Jersey Water Supply Authority does not guarantee the quality of the water supplied under this subchapter and no claims regarding quality variations shall be made against the New Jersey Water Supply Authority and, therefore, no claims regarding quality variations will be recognized by the New Jersey Water Supply Authority.

(b) Water withdrawn for potable use shall be treated by the purchaser, in accordance with the provisions of N.J.S.A. 58:22-9 and N.J.S.A. 13:13-12.9, in a manner satisfactory to the New Jersey Department of Environmental Protection.

7:11-3.26 Discharge into Delaware and Raritan Canal

(a) The return of water to the Delaware and Raritan Canal may be allowed only if the quality of the Delaware and Raritan Canal waters is not impaired as determined by the New Jersey Water Supply Authority.

(b) Water shall not be discharged into the Delaware and Raritan Canal except upon prior application and only in accordance with the terms and conditions of a formal written approval granted by the New Jersey Water Supply Authority.

(c) The application for discharge into the Delaware and Raritan Canal shall include all information required by the New Jersey Water Supply Authority for determination of conditions governing discharge.

7:11-3.27 Discharge structures

(a) Structures for the discharge of water into the Delaware and Raritan Canal shall be installed and maintained by the user thereof at its own sole cost and expense.

(b) Prior to the installation of discharge structures or facilities, the user shall furnish to the New Jersey Water Supply Authority a plan showing in such detail as may be required by the New Jersey Water Supply Authority the proposed discharge system, and shall not install or construct the same until said system shall have been approved in writing by the New Jersey Water Supply Authority.

(c) The user shall, within ten days after receipt of written demand from the New Jersey Water Supply Authority, make such repair to the user's discharge system as may be required to eliminate leakage of water from, or potential damage to the Delaware and Raritan Canal, or on his failure to do so, the New Jersey Water Supply Authority may make such repairs at the cost and expense of the user, which cost and expense the user shall pay on demand.

(d) The user shall make such changes in the user's discharge system as may from time to time be required by the New Jersey Water Supply Authority but shall not alter the approved installation of the system without the prior written approval of the New Jersey Water Supply Authority.

7:11-3.28 Disposition of facilities: Delaware and Raritan Canal

(a) Within 90 days after an agreement expires, any user of Delaware and Raritan Canal water shall remove from the property under the jurisdiction of the New Jersey Water Supply Authority all facilities installed by the user, and restore the property to its former condition in a manner satisfactory to the New Jersey Water Supply Authority, ***[Division of Parks and Forestry]* *the Department*** and the Delaware and Raritan Canal Commission. On the user's failure to remove the facilities, the New Jersey Water Supply Authority may make such removal and restoration at the cost and expense of the user, which cost and expense the user shall pay on demand ***[and/or the]* ***. **The* New Jersey Water Supply Authority *reserves the option to]* *may in its discretion,*** sell any facilities to help defray the cost of removal and restoration.

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(b) Within 30 days after an agreement expires, the user may formally ***[tender]* *offer*** any or all withdrawal and related water supply facilities on the Delaware and Raritan Canal property to the New Jersey Water Supply Authority and the New Jersey Water Supply Authority may, at the Authority's discretion, accept the ***[tendered]* *offered*** facilities in writing within 60 days. ***[Tender]* *An offer*** of the facilities shall stay the 90 day period for removal of the facilities pending the New Jersey Water Supply Authority's acceptance or rejection of the ***[tender]* *offer***.

HEALTH

(a)

NARCOTICS AND DRUG ABUSE CONTROL

Drugs and Devices

New Drugs and Laetrile

Adopted New Rule: N.J.A.C. 8:21-4

Adopted Amendments: N.J.A.C. 8:21-4.5, 4.26, 4.31, 4.32

Proposed: December 1, 1986 at 18 N.J.R. 2363(a).

Adopted: April 24, 1987 by Molly Joel Coye, M.D., M.P.H.,
Commissioner, Department of Health.

Filed: April 27, 1987 as R.1987 d.227, **without change.**

Authority: N.J.S.A. 24:22-1 and 24:6F-5.

Effective Date: May 18, 1987.

Expiration Date: November 18, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the expired rules adopted as new can be found at N.J.A.C. 8:21-4.

Full text of the adoption follows.

8:21-4.3 Subpart A, General provisions; definitions

(a) (No change.)

(b) The definitions set forth in Subpart A (General provisions), section 21 C.F.R. 310.3 pursuant to the intent and policy of the Department of Health set forth in a preamble to new drug regulations, mean the following.

1.-4. (No change.)

8:21-4.5 Subpart A, General provisions; new drug applications

(a) 21 C.F.R. 314.1 (Applications), 21 C.F.R. 314.60 (Amended applications), 21 C.F.R. 314.65 (Withdrawal of applications without prejudice), 21 C.F.R. 314.70 (Supplemental applications), 21 C.F.R. 314.90 (Insufficient information in application), 21 C.F.R. 314.105 (New drug application approvals; availability of information), 21 C.F.R. 314.420 (Master files), 21 C.F.R. 314.12 (Untrue statements in application), 21 C.F.R. 314.104 (New drugs with potential for abuse) and 21 C.F.R. 314.140 (Confidentiality of data and information in a new drug application, NDA, file) are hereby adopted by reference.

(b) Regarding subpart B (Administrative actions on application), 21 C.F.R. 314.102 (Comment on application), 21 C.F.R. (Notification to applicant of approval of application), 21 C.F.R. 314.125 (Reasons for refusing to file applications), 21 C.F.R. 314.120 (Refusal to approve the application), 21 C.F.R. 314.150 (Withdrawal of approval of an application), 21 C.F.R. 314.152 (Notice of withdrawal of approval of application), 21 C.F.R. 314.160 (Revocation of order refusing to approve application, or suspending or withdrawing approval of an application), and 21 C.F.R. 314.162 (Notices and orders) are hereby adopted by reference.

(c) Full text of Federal regulations pertaining to new drugs may be found in sections 310, 312, and 314 of 21 C.F.R., parts 300 through 499, revised as of April 1, 1986, and may be purchased from:

Superintendent of Documents
United States Printing Office
Washington, D.C. 20404
Price \$25.00 per copy

(d) The complete text of those sections adopted by the Department may be reviewed in the office of:

Drug Control
Narcotic and Drug Abuse Control
CN 362 (129 E. Hanover Street)
Trenton, NJ 08625-0362
(609) 984-1308

8:21-4.26 Amygdalin; testing

(a) As a substance subject to a new drug application (FD form 356H), amygdalin, also known as Laetrile or vitamin B-17, shall not be available for testing on humans until such time as the sponsor identified in FD form 356H provides to the Department the information specified in a "Notice of Claimed Investigational Exemption for a New Drug" (form FD1571, 1572 and 1573), known as an IND. Copies of those IND. forms may be obtained from:

Office of Drug Control
Narcotic and Drug Abuse Control
New Jersey Department of Health
CN 362 (129 E. Hanover Street)
Trenton, NJ 08625-0362

8:21-4.31 Filing of affidavit

Any physician who makes or witnesses an affidavit which authorizes the importation of Amygdaline, Laetrile or Vitamin B-17 (hereafter Laetrile) for any person or who prescribes Laetrile for any person shall immediately file with the Office of Drug Control in the Department of Health at CN 362, Trenton, New Jersey 08625-0362, a copy of the "Written Informed Request for Prescription of Amygdalin (Laetrile) for Medical Treatment" established by N.J.S.A. 24:6F-1. Forms may be obtained at no cost from the Department of Health.

8:21-4.32 Written orders; prescriptions; dispensing

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

(c) Any physician who prescribes or orders the administration or dispensing of Laetrile shall file with the Office of Drug Control in the Department of Health at CN 362, Trenton, NJ 08625-0362, a clear copy of the order as described above.

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need

Intermediate Adult and Special Psychiatric Bed Standards

Adopted New Rules: N.J.A.C. 8:43E-5

Proposed: January 20, 1987 at 19 N.J.R. 171(b).

Adopted: April 22, 1987 by Molly Joel Coye, M.D.,

Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: April 27, 1987 as R.1987 d.226, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: May 18, 1987.

Expiration Date: January 17, 1988.

Summary of Public Comments and Agency Responses:

Written comments were received from 18 organizations. Of these comments, 12 dealt exclusively with the issue of the proposed batching schedule for Certificate of Need applications, with two additional organizations including this among several other comments.

The full list of organizations that formally responded during the public comment period includes the following:

Atlantic City Medical Center
Bridgeton Hospital
Carrier Foundation
Chilton Memorial Hospital
Christ Hospital
Clara Maass Medical Center
Cooper Hospital/University Medical Center
Community Memorial Hospital
Dover General Hospital

Fair Oaks Hospital
Hospital Group of America
Muhlenberg Hospital
New Jersey Division of Mental Health and Hospitals
New Jersey Psychiatric Association
Nexus Health Care Corporation
Northern Ocean Hospital System
Underwood Memorial Hospital System
Voluntary Hospital Association of N.J.

COMMENT: N.J.A.C. 8:43E-5.2—As noted above, there were fourteen commentors on the proposed batching schedule contained in the proposal. Eleven organizations (Atlantic City M.C.; Bridgeton; Chilton; Christ; Clara Maass; Community Memorial; Dover; Muhlenberg; Nexus; Underwood Memorial; and Voluntary Hospital Association of N.J.) urged a delay in the batching schedule of 90 to 120 days beyond the proposed May 1 schedule. It was noted by some commentors that there would be insufficient time to prepare applications as the submission date would be only two weeks beyond the anticipated effective date of these rules.

Cooper Medical Center "encouraged the compliance with the timeliness for Certificate of Need submission."

Northern Ocean Hospital System supported the proposed May 1 date "since the moratorium was developed in the summer of 1985" and because "any other date would unnecessarily delay the development of adult intermediate and special beds."

The New Jersey Psychiatric Association urged the adoption of the rules (with their suggested changes) with the proposed batching schedule in order not to delay development of needed services.

RESPONSE: The Department concurs with the views expressed by the majority of commentors that insufficient time exists between the anticipated effective date and the start of the batching cycle. Therefore, N.J.A.C. 8:43E-5.2 has been changed to a July 1 and January 1 annual batching cycle schedule.

COMMENT: N.J.A.C. 8:43E-5.3 Definitions—The New Jersey Division of Mental Health and Hospitals forwarded written comments made at an earlier date which it felt had not been adequately addressed during the planning process by the Statewide Health Coordinating Council (SHCC). A comment related to definitions of Intermediate Psychiatric Beds urged a change to require the completion of short term treatment in an acute psychiatric unit and to modify the length of stay cap of 45 days.

RESPONSE: The Department believes the issue related to the definition of Intermediate Adult Psychiatric beds was fully addressed by the proceedings of SHCC's Psychiatric Bed Task Force and that the proposed language represents formal consensus among the many diverse groups and organizations represented on this advisory body. The Department believes the proposed 45 day limit on the average length of stay of all patients admitted to an intermediate unit is appropriate (from a review of both New Jersey and national data) and will serve to distinguish between units providing active medical treatment and sub-acute care. No change has been made in proposed N.J.A.C. 8:43E-5.3.

COMMENT: N.J.A.C. 8:43E-5.4 Minimum Size—Fair Oaks Hospital and the Hospital Group of America commented that the proposed 32 bed minimum number of psychiatric beds as a requirement for new units within general hospitals was too low and would lead to a large number of units, thus fragmenting the system.

RESPONSE: The Department believes that this minimum would promote the development of new units only in facilities with pre-existing psychiatric inpatient capacity, thus improving continuity of care. The approval of new programs will be made only where applicants meet both need and quality of care requirements and, in addition, priority is offered in Section 5.20 to the most cost-effective proposals, thus giving incentive to development of units or larger licensed bed capacity than set by these minimums.

COMMENT: N.J.A.C. 8:43E-5.5 Bed Need—Several commentors addressed specific parts of this section.

Voluntary Hospitals of America (VNA) urged that bed need calculations allow diversion of out-of-state admissions of New Jersey residents to be considered in bed need, which is addressed in 5.5(d). They further requested a reformulation of the calculation found in Appendix A for Special Psychiatric Bed Need.

The New Jersey Psychiatric Association stated it felt use of national estimates of Intermediate Adult length of stay in calculation of bed need were inappropriate. They also urged a recalculation of the methodology in Appendix A.

The Carrier Foundation questioned the need for any additional Intermediate Adult and Special psychiatric beds. Data was presented showing the decline in occupancy at Carrier from 94 percent in 1980 to 79.4 percent in 1986.

Fair Oaks and Hospital Group of America questioned the rationale for averaging the estimated national admission rates and average length of stay with the New Jersey rates. A number of additional specific questions were raised by Fair Oaks which will be addressed separately below.

RESPONSE: In regard to use of out-of-state psychiatric facilities by New Jersey residents, the Department concurs that it is possible that additional New Jersey facilities may lead to some diversion of patients and re-capture of market share. However, it is also possible that no significant diversion of patients will be realized. There is no rational method of assessing either the number of patients going out-of-state (in that there is no official data that can be accessed by the Department) nor is there a means of projecting a market share diversion rate. The use of national admission rates in the methodology will partially address the issue of whether New Jersey's admission rates are lowered by lack of in-state facilities.

The use of national estimates of admission rates and average length of stay are important to accurately measure whether the experience of New Jersey's current system for intermediate adult psychiatric services, as represented in our data by only two existing psychiatric hospitals, parallels that of the rest of the country. As there is no data set that specifically defines intermediate psychiatric admissions on a national level, the number of private psychiatric hospital system admissions, adjusted for Child and Adolescent and Specialized unit utilization, has been chosen as the most appropriate proxy for this data. The two sets of data have been found to be in relatively close conformance.

The Special Psychiatric Bed Target found in Appendix A is viewed as a guideline against which overall requests for special psychiatric beds through Certificate of Need will be measured. Each individual application will be reviewed by the criteria for need established in N.J.A.C. 8:43E-5.5(f). It is felt that the approach utilized in Appendix A measures the total need for beds in the inpatient psychiatric system and assigns the relevant proportion of that need to the special psychiatric sector. The results of the methodology reflect the Department's assessment that a projected 25 percent growth in special psychiatric beds would promote the orderly development of this segment of the health care system. Furthermore, exceptions are permitted to the target methodology where utilization of any single component of this system, such as eating disorder or geriatric psychiatry beds, exceed 90 percent annual occupancy, thus evidencing additional need.

The Department concurs that the relative need for psychiatric beds may change over time. Appendix A has been changed upon adoption to provide that the methodology's target of 28 beds per 100,000 may be updated periodically to reflect potential increases in the need for psychiatric beds.

The existence of underutilized intermediate Adult or Special Psychiatric Beds in an area proposed to be served by a new provider is addressed in section 5.11. Thus, approval of new bed capacity will be considered in the context of its impact on existing providers within New Jersey.

COMMENT: Fair Oaks Hospital raised questions about the current inventory of beds; the use of county based need estimates; the fact that the formula does not address short-term adult, child/adolescent, or substance abuse bed need or the need for adolescent substance abuse beds.

RESPONSE: The Department cannot publish an inventory of licensed beds, which is subject to change, in a regulatory format. These are available from the Department upon request and will be distributed to all interested parties prior to submission of applications. County based need estimates are prepared for the purpose of measuring need within the regional service areas that may be proposed by applicants. Need for child/adolescent, adult open acute, and all substance abuse beds is addressed in separate Department regulations or planning documents, and is not appropriate to this rule.

COMMENT: Fair Oaks and Hospital Group of America commented on section 5.5(e), stating that the availability of an exception to bed need estimates for purpose of serving patients traditionally admitted to state or county hospitals allowed need to be defined by applicants and therefore was discriminatory to other applicants.

RESPONSE: The Department has specifically identified in N.J.A.C. 8:43E-5.5(e) that bed need will be measured by use of a formula whose components are based on written documentation that must be submitted by each applicant. This procedure is not viewed as discriminatory as all applicants may choose to apply for this exception.

COMMENT: Fair Oaks and Hospital Group of America commented that N.J.A.C. 8:43E-5.5(h) is unreasonable in requiring all existing providers to have an average length of stay within 110 percent of the statewide average prior to expanding bed capacity.

RESPONSE: The Department concurs that strict application of this standard due to statistical aberrations and/or unique program designs may be unreasonable. Language permitting an exception to be granted has been added at N.J.A.C. 8:43E-5.5(h)2.

COMMENT: Fair Oaks and Hospital Group of America commented that N.J.A.C. 8:43E-5.5(j), which pertains to the designation of existing county psychiatric hospital licensed beds within the inventory of Intermediate Adult or Special Psychiatric bed was unfair. It was recommended that "all institutions wishing to create new beds, whether or not the total of beds within the institution are increased or decreased, should continue to be subject to the Certificate of Need process."

RESPONSE: The Department concurs with this comment and the potential exception for public hospitals has been eliminated from these rules. As these rules govern all facilities, regardless of license, that have Intermediate Adult and Special Psychiatric beds, new language has been added to N.J.A.C. 8:43-5.5(j) to provide for the publication by the Department of an official inventory of these types of beds. Any facility seeking to permanently change its inventoried number of beds in these categories must obtain Certificate of Need approval.

COMMENT: Fair Oaks Hospital and Hospital Group of America commented that the clinical criteria for Mentally Ill Substance Abusers contained in N.J.A.C. 8:43-5.5(m) through (o) are extraordinarily rigorous, inappropriately require a previous psychiatric hospitalization, and "dictates" when a physician should establish a diagnosis for a substance abuser.

RESPONSE: These criteria are being adopted solely for the purpose of identifying how need for Special Substance Abuse/Psychiatric beds will be documented by applicants, and do not govern the actual provision of care. The Department concurs, however, with the potential problem in defining when a physician's diagnosis should be made and has deleted this reference in N.J.A.C. 8:43E-5.5(o). As these criteria have been developed by a special clinical advisory committee to the Departments of Health and Human Services, no changes have been made to section (m).

COMMENT: N.J.A.C. 8:43E-5.7 Accessibility—Fair Oaks and Hospital Group of America commented that the accessibility requirement in N.J.A.C. 8:43E-5.7(b) related to case mix appears discriminatory and places the Department in the business of financial planning for institutions. Fair Oaks questioned the authority of the Department in this area.

RESPONSE: The Department is mandated by the New Jersey Health Care Facilities Act to promote the accessibility and availability of services to low income persons. In the planning process leading to proposal of these rules, the level of accessibility to current facilities offering these services in New Jersey to persons of low income was examined. Based on this analysis, it was determined that a need existed to promote greater access to these services not only for the medically indigent residents of the state, but also for all persons having readily-available health insurance coverage, such as Medicare, Medicaid, and Blue Cross/Blue Shield. While the proportion of the population having these coverages far exceeds 50 percent, it was agreed during the planning process to set this level as a minimum expectation for purposes of Certificate of Need approval. Should reimbursement systems change significantly at some point in the near future, modification can be proposed to reflect these new conditions.

COMMENT: The N.J. Division of Mental Health commented that there may be discrimination against hospitals with high volumes of uncompensated care patients due to the lack of an appropriate reimbursement mechanism to cover uncompensated care costs, as the Department of Health intends to utilize the SHARE reimbursement system for all units, regardless of licensure.

RESPONSE: The Department of Health has examined all reimbursement options for this service and believes SHARE offers the most appropriate means of determining rates. As DRG trims do not extend to 45 days, Chapter 83 mechanisms cannot be employed. Costs of indigent care can be met through revenues from non-SHARE payors, profits, or grants from other public or non-profit sources.

The issue of reimbursement cannot be addressed within the scope of this planning and the Department cannot offer any changes to the proposed rule to further address this concern.

COMMENT: N.J.A.C. 8:43E-5.13—Fair Oaks and Hospital Group of America commented that criteria on costs contained in N.J.A.C. 8:43E-5.13(c) infringes on the private billing practices of physicians.

RESPONSE: The proposed language requires a detailing of the method of physician billing to be employed by the applicant facility and the identification of any costs for physician services that are included in projected facility SHARE rates or charges. This section is included in the rules for the purpose of allowing the Department to make reasonable comparisons of the projected charges per day contained in each Certificate of Need application.

COMMENT: N.J.A.C. 8:43E-5.15—Fair Oaks and Hospital Group of America commented that the required submission of line drawings or floor plans in N.J.A.C. 8:43E-5.15 is unnecessary and will unduly increase costs to applicants. The Department's Construction and Monitoring unit has requested that the appropriate federal codes be cited within these rules.

RESPONSE: Certificate of Need applications require detailed construction cost estimates and square footage data. The development of a preliminary design for the unit, which is subject to change during the plans review process, is necessary to enhance the ability of the Certificate of Need Review Process to determine compliance with these requirements. The relevant federal codes have been incorporated into this section.

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

SUBCHAPTER 5. INTERMEDIATE ADULT AND SPECIAL PSYCHIATRIC BEDS

8:43E-5.1 Scope

The New Jersey Department of Health currently licenses and regulates inpatient psychiatric beds as provided in licensed general and special hospitals throughout the State. These rules address the addition or establishment of licensed psychiatric beds which will be classified as Intermediate Adult Psychiatric Beds or Special Psychiatric Beds in any existing or proposed licensed hospital in New Jersey. The rules do not apply to facilities proposing to establish Adult Closed Acute Psychiatric Beds or other psychiatric services for which existing planning regulations are in effect.

8:43E-5.2 Submission of certificate of need applications

Applications for establishment of new Intermediate Adult or Special Psychiatric Beds will be under batching procedures as determined by the Department and under policies and procedures set forth in N.J.A.C. 8:33. The schedule shall be as follows:

Deadline for Actual Submission	Cycle Begins
[May 1] *July 1*	*[June 15]* *August 15*
[November 1] *January 1*	*[December 15]* *February 15*

8:43E-5.3 Definitions

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

"Adult closed acute psychiatric unit" means a separate and locked unit of inpatient beds in a New Jersey hospital specifically designated for the provision of intensive treatment services for persons experiencing an acute episode of a primary or secondary psychiatric disorder which accepts and treats individuals under an involuntary commitment order and may also admit patients to the unit under voluntary commitment status. Admissions to the unit have an average length of stay of thirty (30) days or less.

"Adult open acute psychiatric beds" means licensed psychiatric beds in a designated and separate unit of a New Jersey hospital, for the provision of intensive evaluation, stabilization, and treatment of persons who are experiencing an acute episode of a psychiatric disorder. Admissions to the unit have a length of stay which is generally 30 days or less. (See N.J.A.C. 8:43E-2.1 et seq.)

"Average length of stay (ALOS)" means total patient days on a service or unit divided by total admissions, exclusive of in-hospital transfers.

"Children's acute psychiatric beds" means any separate unit or facility, or sub-unit of an existing licensed psychiatric unit or facility, established for the provision of intensive treatment and rehabilitation of individuals under the age of 18, who are experiencing an acute episode of a psychiatric disorder. (See N.J.A.C. 8:43E-4.1 et seq.)

"Department" means the New Jersey Department of Health.

"Emergency/Screening mental health services" means a designated or discrete program of psychiatric crisis intervention, evaluation, treatment and referral services available on a 7-day, 24-hour basis to individuals experiencing an acute psychiatric crisis within a defined service area.

"Guidelines" means those general factors to be considered in applying a given standard, or to guide decision-making in areas for which specific standards are not available or would not be appropriate.

"Intermediate adult psychiatric beds" means licensed psychiatric beds in a separate and designated area in a New Jersey Hospital which provides intensive psychiatric evaluation and treatment services as part of a comprehensive psychiatric and psychosocial rehabilitation program, and which are appropriate for individuals aged 18 and above who are experiencing an acute episode of a psychiatric disorder and who require a comprehensive and specialized treatment program that cannot be fully provided within a short-term acute psychiatric setting. Admissions to the Intermediate Psychiatric unit or facility have an average length of stay which is generally greater than the average length of stay for Adult Open Acute Psychiatric Units in New Jersey and less than 45 days.

"Mental health service area" means a designated area of the state approved by the New Jersey Department of Human Services as a primary catchment area for community mental health service delivery.

"Special Psychiatric Beds" means licensed psychiatric beds within any separate unit or section of a licensed New Jersey Hospital which are utilized for the treatment of an identified target population of any age demonstrated to require a specialized program of treatment for acute psychiatric disorders. Examples include units designated to provide services to persons with eating disorders, geriatric services and with dual psychiatric/substance abuse diagnoses. Admissions to the Intermediate Psychiatric unit or facility will have an average length of stay which reflects the level of active medical care for each category of Special Psychiatric Bed but should, as a guideline, be less than 60 days.

"Standards" means the specific requirements that applicants must satisfy in developing applications for certificate of need approval. Standards address measurable characteristics that such applications must meet.

8:43E-5.4 Minimum size of facilities and nursing units

(a) The minimum number of beds that may be established in a single free-standing facility is 60. These may include any inpatient psychiatric service as well as residential alcohol beds, where at least 50 percent of licensed beds are psychiatric. Approval of residential alcoholism services beds shall be governed by N.J.A.C. 8:33K1.1 et seq. and such beds shall be licensed as residential alcoholism services beds by the Department.

(b) The Department may consider exceptions to (a) above when the applicant demonstrates that at a lower capacity, reimbursement rates will be within 110 percent of the average SHARE rates for existing New Jersey intermediate psychiatric beds as determined by the Department;

(c) Minimum size of Intermediate Adult nursing units shall be 20 beds.

(d) Minimum size of Special Psychiatric nursing units shall be 12 beds.

(e) The minimum number of total inpatient psychiatric beds in any general hospital proposing to establish Intermediate Adult or Special Psychiatric beds shall be 32 at the conclusion of the project. An exception may be considered by the Department for those applicants who demonstrate that the applicant has provided a written affiliation agreement with an existing provider of adult open acute psychiatric services in its primary service area which in combined total (proposed and existing) meets the minimum 32 bed requirement. It shall be demonstrated that the current provider of adult open acute psychiatric services does not have the available licensed bed capacity to convert existing underutilized acute care beds (e.g., pediatrics, obstetrics, medical-surgical, etc.) as evidenced by occupancy levels in services below the minimum standards set within the Hospital Policy Manual (N.J.A.C. 8:43-3.1), or that the affiliate hospital does not have an appropriate physical plant necessary for Intermediate Adult or Special Psychiatric Services.

(f) The Affiliation Agreement as required in (e) above shall contain the following elements:

1. Agreement for joint medical staff arrangements for all psychiatric services provided within the two hospitals;

2. Procedures for transfer of patients, including eligibility criteria, transportation arrangements, and financial liabilities;

3. Arrangements for sharing of professional subspecialties, training activities, purchasing, and/or other related resources necessary to provision of psychiatric services in order to maximize economies in the delivery of care between the two institutions.

8:43E-5.5 Bed need

(a) Each applicant for Intermediate Adult Psychiatric Beds shall demonstrate the need for additional bed capacity in its area through application of the Intermediate Adult and Special Psychiatric bed need methodology in (b) below.

(b) Intermediate Adult Psychiatric Bed Need by County shall equal:

Step	Calculation
1.	Projected Admissions per 100,000 population x Projected Population, Target Year x Average Length of Stay = Projected Intermediate Adult Patient Days = (1)
2.	[Total, step (1) ÷ 365] = Average Daily Census ÷ .80 = Bed Need at 80 percent Occupancy = (2)
3.	(2)-(Existing Intermediate Adult Bed Capacity) = New Bed Need

(c) For purposes of this section, the following shall apply:

1. Projected admissions shall be derived by averaging the total New Jersey Intermediate Adult Psychiatric Admissions per 100,000 adult population and estimated U.S. Intermediate Adult Psychiatric Admissions per 100,000 adult population based on the latest official data available to the Department.

2. Population Age 18 and above by County shall be defined by New Jersey Department of Labor projections, Economic/Demographic method.

3. Target Year shall be the year five years beyond the date of need calculation, utilizing N.J. Department of Labor projections, Economic/Demographic model.

4. Average Length of Stay shall be defined as mean length of stay, New Jersey Intermediate Adult Psychiatric units, averaged with mean length of stay, U.S. Intermediate Adult Psychiatric units based on the latest data available to the Department.

5. Existing capacity shall equal [Effective Intermediate Adult Psychiatric bed use by county (based on patient origin data)] + [Projected beds by county of origin (C/N approved Intermediate Adult Psychiatric Beds—year two)].

(d) No additional beds may be justified in an application through the projection of admissions of New Jersey residents diverted from out-of-state psychiatric facilities providing Intermediate Adult or Special Psychiatric services.

(e) An exception to the bed need requirement may be considered by the Department when the applicant has demonstrated that when the establishment of beds is for the purpose of serving patients who traditionally have been admitted to a State or County Psychiatric Hospital, where need has been demonstrated for Intermediate Psychiatric Unit Services. This shall be documented by an affiliation agreement with the State or County Psychiatric Hospital, which shall be attached to the application. Need for the proposed number of beds shall be documented through application of the methodology which follows:

1. Formula

$$\begin{aligned} & \text{(Total State and/or County Psychiatric Hospital Admissions)} \times \text{(Expected Percent of Admissions)} = \text{(1) Projected Admissions} \\ & \text{(1)} \times \text{(Statewide ALOS, Intermed. Adult Psychiatric Beds)} = \text{(2) Projected Patient Days} \\ & \text{(2)} \div 365 = \text{(3) Average Daily Census} \\ & \text{(3)} \times \text{(2 - .80)} = \text{Bed Need, 80 percent Occupancy} \end{aligned}$$

2. For purposes of this subsection, the derivation of formula components shall be as follows:

i. Total State or County Psychiatric Hospital Admissions shall be the total of first and readmissions to the State Psychiatric Hospital and/or County Psychiatric Hospital from the proposed service area of the applicant facility. The most recent 12 month period of which data has been published by the N.J. Department of Human Services shall be utilized in application of this methodology.

ii. Expected Percent of Admissions shall be that proportion of total State or County Psychiatric Hospital Admissions which, based upon written admissions criteria and projected referral agreements contained within the Certificate of Need application, may be demonstrated to be potential patients of the proposed new Intermediate Adult Psychiatric beds. This shall be further verified by a written agreement with the State and/or County Psychiatric Hospital, and with the designated Inpatient Screening Program(s) in the proposed service area, each containing an estimate of diverted admissions.

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iii. Statewide Average Length of Stay (ALOS), Intermediate Adult Psychiatric Beds, shall be the mean length of stay of all licensed Intermediate Adult psychiatric units, for the last full calendar year available to and published by the Department.

(f) Each applicant proposing the establishment of Special Psychiatric beds shall be an existing provider of, or propose to provide within the Certificate of Need application, Adult Open Acute, Intermediate Adult, or Children's Psychiatric beds. Each applicant shall justify the need for Special Psychiatric beds through applicable methodologies as contained in this section and through provision of the following documentation:

1. An analysis of the availability and utilization of existing resources in New Jersey and in proposed service area presently serving these populations, and a demonstration that the proposed special psychiatric unit will not unnecessarily duplicate these resources. All such existing inpatient units in the proposed service area serving the identified target population must have an occupancy rate exceeding 85 percent during the last 12 month period for which data has been reported to the Department. An exception may be considered where the proposed unit, in comparison to existing resources, will provide services in a manner achieving both significant cost savings to consumers and/or significant accessibility improvements to the medically indigent population.

2. A description of alternative settings and treatment models that are currently utilized for the provision of psychiatric services to the identified target population in New Jersey and nationally, and a justification of the need to utilize an inpatient setting to accomplish treatment goals. No special psychiatric program will be approved where the use of alternative, less costly settings or models of care is determined to be available for the appropriate and effective treatment of the identified target population.

3. Projected average length of stay must be demonstrated to be clinically appropriate through analysis of current length of stay data in facilities treating similar populations in New Jersey, if any, or nationally.

4. Projected numbers of admissions to the proposed special psychiatric beds must be justified through:

i. An analysis of current rates of admission to facilities treating similar populations in New Jersey, if any, or nationally.

ii. Identification of major referral sources and documentation through letters of support of the numbers of patients who would be likely to be referred on an annual basis if the proposed service was established.

(g) In evaluating the applications for Special Psychiatric beds, the Department shall take into consideration the statewide need for such services as delineated in Appendix A.

(h) When the application is for the purpose of increasing existing Intermediate Adult or Special Psychiatric Bed capacity, the applicant must additionally demonstrate the following:

1. Occupancy rates for the previous 24 months shall have exceeded 90 percent. At the proposed new capacity, it must be demonstrated that occupancy will exceed 85 percent within two years of operation.

2. Average length of stay shall not exceed 110 percent of ALOS in existing Intermediate Adult or Special psychiatric beds, based on data reported to the Department for the previous calendar year. ***An exception may be considered by the Department where the applicant can justify, based on either the existence of a statistical anomaly or the clearly-documented clinical uniqueness of the existing program, that the ALOS is appropriate.***

[iii.]**3. A discharge planning system which has effectively reduced length of stay to the most efficient, clinically appropriate level shall be demonstrated to be in operation. Referral agreements for follow-up care shall be attached to the Certificate of Need application.

(i) Existing psychiatric facilities seeking to expand through establishing special psychiatric services shall meet criteria identified in (f), (g) and (h) above; and additionally shall demonstrate need through the following documentation:

1. Numbers of target population patients admitted during the previous two calendar years, their average length of stay, and patient days.

2. Numbers of target population patients referred but not accepted during the last two calendar years, and an explanation of their disposition; and

3. Justification of the need to utilize a separate unit and program for the treatment of the target population.

***[(j) County Psychiatric Hospitals with existing licensed Psychiatric beds seeking to designate all or a portion of beds as Intermediate Adult or Special Psychiatric without a change in licensed bed capacity shall contact the Department for a determination of Certificate of Need requirements. Without prior notification of and approval by the Department, no such beds shall be considered for planning purposes as Inter-**

mediate Adult or Special Psychiatric beds. Where a Certificate of Need is determined necessary, all criteria in these regulations shall be satisfied.]*

***[(j) Forty-five days prior to the initial schedule for batching of Intermediate Adult and Special Psychiatric Beds, the Department shall publish the official inventory of Intermediate Adult and Special Psychiatric Beds, which shall be based on analysis of hospital licensure surveys, utilization data, and/or prior Certificate of Need actions.**

1. Any subsequent permanent change in Intermediate Adult or Special Psychiatric bed capacity by an existing facility, including a transfer between these two categories, shall require Certificate of Need approval.*

(k) General Hospitals seeking to establish Intermediate Adult or Special Psychiatric Beds through conversion of existing acute care bed capacity shall meet the following criteria:

1. The hospital shall, directly or indirectly through Affiliation Agreement as required in N.J.A.C. 8:43E-5.4(e) and (f), provide the following services:

- i. Adult Open Acute Psychiatric inpatient services,
- ii. An Emergency/Screening mental health program.
- iii. Community mental health services, including outpatient and partial care services, as defined in the rules and regulations governing community mental health services (N.J.A.C. 10:37) under the Community Mental Health Services Act (N.J.S.A. 30:9A). An exception will be permitted to hospitals not providing these services, where written affiliation agreements exist and the CMHC(s) within the proposed service area provides evidence of support for the project.

2. The proposed facility shall demonstrate availability of appropriate and sufficient floor space necessary to meet Physical Plant Standards for free-standing psychiatric hospitals as defined by the Joint Commission on Accreditation of Hospitals (JCAH). Access to outdoor or indoor facilities for physical exercise shall be available.

(l) No application requesting establishment of a separate designated number of beds for the provision of psychiatric inpatient services to adolescents or children shall be approved under provisions of these rules. All such requests shall be subject to the standards and criteria contained in N.J.A.C. 8:43E-4.1 et seq.

(m) Facilities requesting approval of Special Psychiatric Beds to serve patients with dual Substance Abuse/Psychiatric diagnoses shall demonstrate need based on treatment solely of individuals meeting the Mentally Ill Chemical Abuser (MICA) clinical criteria which follow:

1. MICA client must have a major psychiatric diagnosis as defined in DSMIII (Revised); Diagnosis must be made free of chemical abuse and abstinence syndrome; and,

2. MICA client must have a chemical dependence diagnosis as defined in DSMIII (Revised); and,

3. MICA client must have a chronic or relapsing history of both a major psychiatric disorder and chemical dependency, and have:

- i. Experienced one or more psychiatric inpatient care episodes;
- ii. Experienced regular problems of chemical abuse of at least one month's duration such that it brings client into treatment; and,

4. MICA client must show significant functional impairment in the areas of self-care, socialization, and employment. For example, a Global Level of Functioning equal to or less than five; and unable to function without assistance in community.)

(n) For purposes of this Section, the term Mentally Ill Chemical Abuser (MICA) means individuals who have had or are presently demonstrating significant symptoms of severe psychopathology of a chronic or relapsing course. Specifically, this would include psychotic disorders such as schizophrenic disorders, paranoia and some with atypical paranoid disorder, schizoaffective disorders and some with recurrent major affective disorder. Also included would be the more severe personality disorders such as those within the borderline spectrum of borderline narcissistic and histrionic personality disorders plus those within schizophrenic spectrum of schizotypal and schizoid personality disorders. Also included would be certain organic mental disorders with psychotic symptoms such as those related to seizure disorders and chronic residual of drug toxicity. In general, individuals so designated have been severely psychiatrically disabled for at least six months. This disability is to the extent that they have not been able to sustain gainful employment, adequately care for themselves, or maintain meaningful relationships due to symptoms of their psychiatric disorder without assistance.

(o) The MICA term is being used to designate those mentally ill patients as described in (n) above who meet the criteria for chemical dependence (significantly increased tolerance or withdrawal symptoms).

There must be documented evidence of repetitive interference with a person's functioning as a result of chemical abuse for at least one month's duration for dependency to be diagnosed.

[Unless there is a previous psychiatric history with objective symptoms at a time when there was no significant chemical abuse, there should be a minimum of two weeks of complete abstinence before other psychiatric diagnoses are made in a chemical abuser. Various studies, including neuroendocrine, have shown to take at least two weeks of abstinence for homeostasis to be reestablished.]

(p) The MICA definition excludes the mentally ill person who drinks moderately in a non-pathological manner and might rarely become intoxicated. It also excludes chemical abusers who are depressed or anxious as a result of their abstinence or who experience chaotic lives and adjustment disorders related to their chemical abuse.

8:43E-5.6 Admissions criteria

(a) Admissions criteria and/or policies must be developed by the facility and included as part of the Certificate of Need application.

(b) Written admissions criteria should, at a minimum, address the following:

1. Diagnostic and other patient characteristics or factors both acceptable and not acceptable for admission.
2. For those individuals deemed ineligible for admission to the facility, a description of referral procedures to a more appropriate facility.
3. Policy on acceptance of individuals without or with limited ability to pay for treatment.
4. Policy on acceptance of individuals with Medicaid and Medicare insurance coverage.

(c) The applicant shall provide assurance that the facility or parts thereof, will request designation as a "Mental Hospital" under N.J.S.A. 30:9, and will accept involuntarily committed patients.

(d) The admissions policy must assure that priority will be given to:

1. Individuals who have previously received psychiatric inpatient treatment and/or who have severe, incapacitating psychiatric disorders.
2. Individuals whose treatment needs cannot appropriately be satisfied in Adult Open Acute Psychiatric Beds or other alternative treatment settings of a less intensive nature.
3. Individuals who meet the clinical criteria for civil commitment.
4. Individuals with special treatment needs unavailable in community-based inpatient or ambulatory care settings.

8:43E-5.7 Accessibility of care

(a) A minimum of 10 percent of occupied beds shall be utilized for medically indigent patients within all Intermediate and Special Psychiatric units. Within the 10 percent, a minimum of 5 percent must be available for free care to individuals under the criteria contained in categories A and B of the Hill-Burton Act regulations (42 CFR 124.501 et seq.), with the balance available to individuals under partial pay or free care arrangements. For existing facilities seeking to add beds, this requirement must be met on a hospital-wide basis at the completion of the project and prior to licensure of the new beds. The Department may consider exceptions to this requirement for facilities who demonstrate a significant financial hardship based on the case mix of patients by payer source, where such exception is requested within the Certificate of Need application.

(b) Access to services by patients with insurance coverage from all primary payer sources shall be demonstrated in the proposed or existing case-mix of the facility. This shall be documented by data or admissions policies providing that a minimum of 50 percent of the patient case-mix shall be medically indigent or covered by non-investor owned insurance carriers, including Medicaid, Medicare, and Blue Cross/Blue Shield. For existing facilities, this requirement must be met on a hospital-wide basis at the completion of the project and prior to licensure of the new beds.

(c) The applicant shall assure that it has a treatment policy whereby no patient will be discharged prior to the completion of treatment as a result of the inability to pay, except based on choice by the patient or the patient's family. Existing facilities shall document implementation of this through providing average length of stay by payer source.

(d) The applicant shall assure that individuals previously hospitalized in either a State or County psychiatric facility will not be denied admission to the unit solely because of such previous hospitalization.

(e) The applicant shall assure that individuals with a single diagnosis of alcoholism or drug abuse shall not be accepted for treatment in the psychiatric unit. Referral agreements with appropriate facilities designated for substance abuse treatment must be in evidence. Admission of patients with dual diagnoses of substance abuse and psychiatric disorders are acceptable for admission where an applicant demonstrates availability of appropriate clinical services for this population.

(f) The applicant shall assure compliance with all applicable Civil Rights and non-discrimination requirements of federal and New Jersey law.

(g) All applicants approved for Intermediate and Special Psychiatric beds shall submit an annual report documenting compliance with these accessibility requirements. The Department may assess licensure penalties for non-compliance with Certificate of Need conditions, in accordance with N.J.A.C. 8:43B-1.7(f).

8:43E-5.8 Continuity of care

The applicant shall demonstrate evidence that written referral agreements will be established with general hospitals providing psychiatric inpatient units, community mental health agencies, and State or county hospitals in the proposed service area.

8:43E-5.9 Average length of stay—Intermediate Adult Services

Projected average length of stay (ALOS) in facilities proposing new Intermediate Adult Psychiatric Beds shall not exceed 110 percent of ALOS of all existing comparable units in either the state, as reported in the full last calendar year of data available to the Department, or in appropriate national data, whichever is lower.

8:43E-5.10 Clinic services

The applicant shall demonstrate that all patients, regardless of the ability to pay, shall have arrangements provided for follow-up care on an outpatient basis. The applicant shall assure availability of outpatient clinic services necessary to meet the needs of patients who are unable to utilize community mental health centers or private practitioners, except where the hospital is geographically inaccessible for outpatient care to such patients.

8:43E-5.11 Impact on area psychiatric units

(a) Occupancy rates in all existing Intermediate Adult Psychiatric Units impacted by the proposed new units or facility shall exceed 85 percent prior to the approval of additional Intermediate Adult psychiatric beds. In determining "impact", the review process may consider such issues as geographic accessibility, economic and/or financial efficiencies, referral patterns, commitment to serve the indigent, and quality of services offered.

(b) Occupancy rates of all comparable Special Psychiatric Units impacted by the proposed new facility or unit shall exceed 80 percent prior to the approval of additional Special Psychiatric Beds.

(c) The applicant shall demonstrate through its Admissions Policy that the proposed bed addition will not negatively impact utilization of existing Adult Open Acute Psychiatric Units in the proposed service area by inappropriately admitting patients whose condition requires a less intensive level of care. Submission of statements from affected hospitals indicating support or no projected impact shall be considered evidence in demonstrating compliance with this rule.

8:43E-5.12 Treatment programs and staffing patterns

(a) The proposed treatment program and staffing pattern by service must be identified within the Certificate of Need application. All applicants for Intermediate Adult and Special Psychiatric Beds shall demonstrate the ability to comply with state psychiatric licensure standards as well as the current JCAH Standards as applicable to psychiatric facilities and units. Applicants shall demonstrate the availability of a full range of treatment modalities and staffing disciplines with the capacity to offer a multi-disciplinary treatment planning approach.

(b) Treatment programs and staffing patterns for special purpose psychiatric units shall be fully described and clinical appropriateness justified within the Certificate of Need application.

(c) Treatment programs, staffing patterns, and services planned for involuntarily committed patients shall be described.

(d) Applicants proposing Special Psychiatric beds to serve patients with dual psychiatric/substance abuse diagnoses shall have policies and procedures related to detoxification.

8:43E-5.13 Costs

(a) The projected SHARE reimbursement rate and projected per diem charged to private pay patients and commercial insurers shall be provided. Sufficient detail to determine the basis for these projections shall be made available to the Department.

(b) The projected rates must be determined reasonable by the Department in comparison to average per diem rates of existing New Jersey facilities providing Intermediate Adult Psychiatric Services within two years of operation.

(c) The method of physician billing to patients shall be detailed within the Certificate of Need application. Any physician costs included in the per diem rates shall be itemized and the projected charges identified.

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(d) All ancillary and clinical support services which may be routinely provided to and charged to patients shall be detailed within the Certificate of Need application. A list of laboratory test required upon admission shall be provided. No project shall be approved unless all mandatory laboratory and diagnostic tests as required by the facility are justified as medically necessary by the applicant.

(e) The policies and procedures for informing patients of the charges for care prior to or upon admission must be detailed within the Certificate of Need application.

(f) The number of single-bedded rooms must be itemized and justified.

8:43E-5.14 Capital financing

Financing of hospital construction, modernization/renovation, or major moveable equipment projects requires a minimum equity contribution from the hospital of at least 15 percent of total project costs, including all financing and carrying charges.

8:43E-5.15 Physical environment

The design of the facility shall within reasonable construction cost guidelines and *[consistent with applicable life-safety and BOCA codes]* ***in compliance with the Guidelines for Construction and Equipment for Hospital and Medical Facilities, DHHS Publication (HRS-M-HF) 84-1***, provide the most appropriate and least restrictive clinical environment to meet treatment goals. A floorplan or line drawings of the proposed new facility or unit(s) shall be attached to demonstrate compliance with these rules and consistency with the proposed treatment program.

8:43E-5.16 Local endorsement guidelines

The applicant shall document evidence of local support for the project in the proposed service area by submitting letters of endorsement from recognized mental health service delivery agencies, including State and/or County funded community mental health agencies, and general hospitals providing psychiatric inpatient services.

8:43E-5.17 Standards regarding County Mental Health Board review

The County Mental Health Board(s) of the service area proposed to be served by the applicant shall be provided with a copy of the Certificate of Need application for their formal action at the time of submission to the Department. A letter of endorsement from the Board(s) or its Administrator reflecting Board action shall be considered a significant factor in assessing local need for the project. County Mental Health Board comments shall be forwarded to the Department of Health, Health Systems Agencies, and to the Division of Mental Health and Hospitals in a timely manner consistent with Certificate of Need procedures identified at N.J.A.C. 8:33.

8:43E-5.18 New Jersey Department of Human Services endorsement

The Department of Human Services shall review every application for Intermediate and Special Psychiatric Beds. This review will be based upon the criteria contained within these regulations. A statement of non-endorsement by the Department of Human Services may constitute a reason for denial by the Department of Health.

8:43E-5.19 Data

Each applicant shall assure that such utilization data as required by the Department in order to implement the planning assessments necessary under these regulations will be provided.

8:43E-5.20 Competitive Review

(a) Where the need in a service area for additional Intermediate Adult and/or Special Psychiatric Beds has been demonstrated, and more than one applicant has filed a Certificate of Need to establish such services, the Department may approve only the number of applications necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicant or applicants who, relative to all other projects, most clearly demonstrate the fullest level of compliance with the following criteria:

1. Full compliance with all standards and guidelines in these rules.
2. The highest level of access to services by the medically indigent and by persons under cost-based insurances.
3. Implementation in the most cost effective and efficient manner, measured by capital costs, projected per diem charges, and reduction of excess acute care bed capacity in the area.
4. Closest conformity to the need for Intermediate Adult and Special Psychiatric Beds in the area.
5. Provision of the highest level of quality in the proposed clinical programs.
6. The endorsement of the Health Systems agencies, County Mental Health Board(s), and mental health providers in the proposed service area.

APPENDIX A

Guidelines for Special Psychiatric Bed Need

Need for Special Psychiatric Beds must be demonstrated under the criteria identified at N.J.A.C. 8:43E-5.5(f), within an overall statewide cap based on the following methodology:

The total number of Special Psychiatric Beds that may be approved statewide shall not exceed the statewide cap except where all existing beds within a sub-category of special beds have been operating in excess of 90 percent occupancy for at least 12 months. The statewide cap shall be calculated as follows:

1. Total psychiatric target beds is calculated as 28 beds per 100,000 population, projection year¹

2. Total psychiatric target beds less total supply² x [.38]³ x [.45]⁴ = Estimated bed need target, Special Psychiatric beds

Notes:

¹Projection year shall be five years forward from the year of calculation. Population shall be official NJ Department of Labor estimates, Economic-Demographic Model. ***The total psychiatric targeted beds of 28 may be updated periodically based on new data.***

²Total supply, N.J. shall equal the current number of existing and C/N approved Adult Open Acute, Intermediate Adult and Special Inpatient Screening, and Adult Closed Psychiatric Beds as defined under Department regulation in licensed New Jersey hospitals.

³Estimated proportion of Intermediate/Special Psychiatric beds in total psychiatric inpatient bed supply, U.S. Based on most recent National Institute of Mental Health data, utilizing total private psychiatric hospital bed supply as source of indicator. May be updated periodically.

⁴Estimated proportion of Special Psychiatric Beds in total Intermediate/Special Psychiatric bed supply. Based on National Association of Private Psychiatric Hospitals surveys. May be updated periodically based upon availability of more current or other applicable data sources.

PUBLIC HEALTH COUNCIL

(a)

Local Health Development Services Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey

Adopted Amendment: N.J.A.C. 8:52-1.8

Proposed: March 2, 1987 at 19 N.J.R. 398(b).

Adopted: April 13, 1987, by Evelyn Geddes, Chairperson, Public Health Council.

Filed: April 20, 1987 as R.1987 d.216, **without change.**

Authority: N.J.S.A. 26:1A-15.

Effective Date: May 18, 1987.

Expiration Date: December 15, 1991.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

8:52-1.8 Personnel

(a) A Health Educator shall have completed the following:

1. (No change.)
2. A Master's degree in a related field from an accredited college or university which includes or is supplemented by the successful completion of coursework in each of the following areas: health education theory, education program planning and evaluation, educational processes, social and behavioral sciences, research methodology, and public health administration; or
3. A Bachelor's degree which includes or is supplemented by the successful completion of coursework in each of the following areas: health education theory, education program planning and evaluation, educational processes, social and behavioral sciences, research methodology, and public health administration and has three years of experience in assessing health education needs, planning, implementation, and evaluation of health education programs, and community organization in either a local health department or State or local health agency.

(b)-(d) (No change.)

DRUG UTILIZATION REVIEW COUNCIL

(a)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: January 5, 1987 at 19 N.J.R. 13(a).

Adopted: April 16, 1987 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: April 22, 1987 as R.1987 d.219, with portions of the proposal **not adopted** and portions **not adopted but still pending**.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: May 18, 1987.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

1. Regarding Haloperidol Tablets, 20 mg, by Searle

Searle stated that this 20 mg strength is proportional to their previously submitted 10 mg haloperidol.

McNeil submitted objections to the proposed 20 mg Searle haloperidol (as well as continuing to object to the 10 mg Searle haloperidols, not subject to this public hearing). In brief, McNeil alleges that the Searle study did not have sufficient statistical power to detect a difference between the Searle 10 mg haloperidol and and McNeil's 10 mg Haldol. (The Searle 20 mg product apparently was approved based on the 10 mg study.)

McNeil also states that the AUCs of 38% of the Searle subjects were more than 125% of those for Haldol, which McNeil translates into an unintended 25% increase in dose in at least 30% of patients who would receive the Searle generic.

McNeil asks that the Searle 20 mg (and 10 mg) haloperidols not be added to the Formulary, and suggests that a multiple-dose, steady state study is needed to properly evaluate haloperidol substitutes.

The Council deferred final action at its March 10, 1987 meeting pending additional statistical analysis. At its April 14, 1987 meeting, the Council reviewed additional data from Searle and found the Searle haloperidol 20 mg to be interchangeable with Haldol 20 mg.

2. Regarding Cefadroxil Products

Bristol-Myers objected to the proposed Biocraft products, stating that no such products have been approved by the FDA. They ask that such products be rejected.

The Council agreed and again deferred action.

The following products and their manufacturers were **ADOPTED**:

Allopurinol tabs 100, 300 mg
Amanatadine HCl caps 100 mg
Cephadrine caps 250 mg
Haloperidol tabs 20 mg
Indomethacin caps 25, 50 mg
Lorazepam tabs 0.5, 1, 2 mg
Meclofenamate caps 50, 100 mg
Metoclopramide tabs 10 mg
SMZ/TMP tabs 400/80, 800/160
Sulfanilamide 15% vag crm (Vagitrol for)
Trazodone tabs 50, 100 mg
Verapamil tablets 80, 120 mg

Mylan
Chase
Biocraft
Searle
Barr
Danbury
Mylan
Interpharm
Mutual
Lemmon
Barr
P-D

The following product and its manufacturer was **not adopted**:

Tolazamide tabs 250, 500 mg Interpharm

The following products were **not adopted but are still pending**:

Allopurinol tabs 100, 300 mg
Amiloride/HCTZ tabs 5/50
Cefradroxil for susp 125, 250, 500/5 ml
Cefadroxil caps 500 mg
Cephadrine caps 250, 500 mg
Chlorthalidone tabs 25, 50 mg
Clonidine HCl tabs 0.1, 0.2, 0.3 mg
Clonidine tabs 0.1, 0.2, 0.3 mg
Clonidine tabs 0.3 mg
Codeine/phenyleph/chlorphen/KI ("Pediocof")
Decongestant caps (Entex cap. formula)
Doxepin caps 10, 25, 50, 75, 100 mg
Ergoloid mesylates SL tabs 0.5, 1 mg
Flurazepam caps 15, 30 mg

Superpharm
Barr
Biocraft
Biocraft
Mutual
Interpharm
Mylan
Cord
Life
Amide
Quantum
Superpharm
Barr

Haloperidol tabs 0.5, 1, 2, 5 mg
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg
Methyldopa tabs 125, 250, 500 mg
Metoclopramide tabs 10 mg
Promethazine/cod, VC PL, VC/cod syrups
Propranolol tabs 10, 20, 40, 60, 80 mg
Propranolol tabs 90 mg
Propranolol/HCTZ tabs 40/25 mg
Quinidine gluconate E.R. tabs 234 mg
Quinidine sulfate tabs 200 mg
Spironolactone/HCTZ tabs 25/25
Temazepam caps 15, 30 mg
Temazepam caps 15, 30 mg
Tetracycline HCl caps 250, 500 mg
Thioridazine tabs 10, 25, 50 mg
Tolazamide tabs 250, 500 mg
Trazodone tabs 50, 100 mg

Quantum
Par
Roxane
Barr
Cenci
Par
Par
Mylan
Superpharm
Cord
Superpharm
Sandoz
Par
Superpharm
Mutual
Superpharm
Quantum

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notice of Adoption may be found at 19 N.J.R. 641(a).

(b)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: June 2, 1986 at 18 N.J.R. 1167(a).

Adopted: April 16, 1987 by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: April 22, 1987 as R.1987 d.220, with portions of the proposal **not adopted** and portions **not adopted but still pending**.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: May 18, 1987.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

The following products and their respective manufacturers were **ADOPTED**:

Potassium Cl powder 20 mEq/packet
Potassium bicarb efferves tab 25 mEq
Tolazamide tabs, 250, 500 mg

Alra
Alra
Cord

The following products were **not adopted but are still pending**:

Cholestyramine for susp 4 g/packet
Clonidine tablets 0.1, 0.2, 0.3 mg
Dexchlorpheniramine maleate tabs 2 mg
Estropipate tabs 1.5, 3.0 mg
Furosemide tabs 80 mg
Haloperidol tabs 0.5, 1, 2, 5, 10 mg
Hydromorphone tabs 2 mg, 4 mg
Indomethacin caps 25, 50 mg
Lactulose syrup 10 g/15 ml
Lithium carbonate caps 300 mg
Lorazepam tabs 0.5, 1.0, 2.0 mg
Lorazepam tabs 1 mg, 2 mg
Lorazepam tabs 2 mg
Lorazepam tabs 2 mg
Methyldopa tabs 125, 250, 500 mg
Metoclopramide tabs 10 mg
Metronidazole tabs 250, 500 mg
Nitrofurantoin macrocrs. caps 50, 100 mg
Potassium Cl extend. rel. tabs 8, 10 mEq
Potassium Cl extended rel tabs 8 mEq
Potassium bicarb. effervescent tab 25 mEq
Propranolol tabs 10, 20, 40, 60, 80 mg
Sucralfate tabs 1.0 g
Temazepam caps 15, 30 mg
Trifluoperazine tabs 5 mg
Valproic acid syrup 250 mg/5 ml
Verapamil tabs 80, 120 mg

Pharm. Basics
Bolar
Sidmak
Pharm. Basics
Roxane
Purepac
Roxane
Purepac
Alra
Bolar
Duramed
Pharm. Basics
Bolar
Purepac
Bolar
Watson
Watson
Bolar
Alra
Copley
Alergon
Bolar
Pharm. Basics
Bolar
Bolar
Alra
Bolar

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notices of Adoption may be found at 18 N.J.R. 1955(a), 2208(b), 19 N.J.R. 116(b), 216(c) and 640(a).

NEW JERSEY REGISTER, MONDAY, MAY 18, 1987

(a)

Interchangeable Drug Products

Adopted Amendment: N.J.A.C. 8:71

Proposed: September 8, 1986 at 18 N.J.R. 1775(a).

Adopted: April 16, 1987, by the Drug Utilization Review Council, Sanford Luger, Chairman.

Filed: April 22, 1987 as R.1987 d.221, with portions of the proposal not adopted but still pending.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: May 18, 1987.

Expiration Date: April 2, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

The following products and their respective manufacturers were ADOPTED:

Amitriptyline/perphenazine 50/4 tabs	Chelsea
Haloperidol tabs 10 mg	Searle
Procainamide caps 250, 375, 500 mg	Cord
Propranolol/HCTZ tabs 40/25, 80/25	Duramed

The following products were not adopted but are still pending:

Acetaminophen/codeine elix 120/12	Naska
Allopurinol tabs 100, 300 mg	Cord
Amiloride/HCTZ 5 mg/50 mg tabs	Chelsea
Aminophylline tabs 100, 200 mg	West-Ward
Amitriptyline tabs 10, 25, 50, 75, 100 mg	Zenith
Carbamazepine tabs 200 mg	Teva
Cephadroxil caps 500 mg	Zenith
Cephadroxil tabs 1 g	Zenith
Cephalexin caps 250, 500 mg	Zenith
Cephadrine caps 250, 500 mg	Zenith
Chlorpheniramine 12/PPA 75 mg ER caps	Chelsea
Clofibrate caps 0.5 g	Chelsea
Clonidine HCl tabs 0.1, 0.2, 0.3 mg	Watson
Clonidine HCl tabs 0.1, 0.2 mg	Cord
Clonidine tabs 0.1, 0.2, 0.3 mg	Chelsea
Clonidine tabs 0.1, 0.2, 0.3 mg	Zenith
Cyproheptadine syrup 2 mg/5 ml	Naska
Disopyramide phosphate caps 100, 150 mg	Chelsea
Ergoloid mesylates oral tabs 1 mg	Sandoz
Erythromycin ethylsuccinate susp 400/5 ml	Naska
Erythromycin ethylsuccinate 200 mg/5 ml	Naska
Flurazepam caps 15, 30 mg	Zenith
Furosemide tabs 80 mg	Zenith
Haloperidol tabs 0.5, 1, 2, 5, 10 mg	Zenith
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Duramed
Hydrocodone/homatropine 5/1.5 mg/5 ml	Naska
Hydroxyzine HCl syrup 10 mg/5 ml	Naska
Ibuprofen tabs 200, 300, 400, 600 mg	Zenith
Indomethacin caps 25, 50 mg	Cord
Indomethacin sustained rel caps 75 mg	Zenith
Isosorbide dinitrate tabs 20, 30 mg	Chelsea
Lidocaine viscous liquid 2%	Naska
Lithium carbonate caps 300 mg	Reid-Rowell
Lorazepam tabs 0.5, 1.0, 2.0 mg	Watson
Lorazepam tabs 0.5, 1.0, 2.0 mg	Zenith
Meclofenamate caps 50, 100 mg	Chelsea
Methyldopa/HCTZ 250/15, 250/25	Zenith
Methyldopa/HCTZ 500/30, 500/50 tabs	Zenith
Metoclopramide tabs 10 mg	Chelsea
Oxazepam caps 10, 15, 30 mg	Zenith
Perphenazine tabs 2, 4, 8, 16 mg	Zenith
Potassium Cl mod rel 8 mEq and 10 mEq	Upsher-Smith
Prednisolone tabs 5 mg	PFI
Prednisone tabs 5, 10, 20, 50 mg	Chelsea
Procainamide HCl ER tabs 250, 500, 750 mg	Cord
Prochlorperazine maleate tabs 5, 10, 25 mg	Duramed
Promethazine VC syrup 6.25/5 per 5 ml	Naska
Promethazine VC/cod syrup 6.25/5/10/5 ml	Naska
Promethazine syrups 6.25mg/25mg/5ml	Naska
Promethazine/DM syrup 6.25/15 per 5 ml	Naska

Promethazine/codeine syrup 6.25/10/5 ml	Naska
Propranolol HCl tabs 20, 40 mg	Lemmon
Propranolol tabs 10, 20, 40, 80 mg	Zenith
Propranolol/HCTZ tabs 40/25	Zenith
Theophylline elixir 80 mg/15 ml	Naska
Thioridazine 10, 15, 25, 50, 100, 150, 200 mg	Sandoz
Thioridazine conc. 30 mg/ml, 100 mg/ml	Sandoz
Thiothixene caps 2, 5, 10 mg	Chelsea
Tolbutamide tabs 500 mg	Danbury
Triamterene/HCTZ caps 50/25	Zenith
Triamterene/HCTZ tabs 75/50	Zenith
Valproic acid caps 250 mg	Chelsea
Verapamil tabs 80, 120 mg	BASF
Verapamil tabs 80, 120 mg	Zenith

OFFICE OF ADMINISTRATIVE LAW NOTE: Related Notices of Adoption may be found at 19 N.J.R. 116(c), 217(a) and 640(b).

LAW AND PUBLIC SAFETY

(b)

**DIVISION OF CONSUMER AFFAIRS
Board of Professional Engineers and Land Surveyors**

**Land Surveyors
Preparation of Land Surveys**

Adopted Amendment: N.J.A.C. 13:40-5.1

Proposed: December 1, 1986 at 18 N.J.R. 2367(b).

Adopted: February 9, 1987 by New Jersey State Board of Professional Engineers and Land Surveyors, John DeGrace, P.E., L.S., President.

Filed: April 16, 1987 as R.1987 d.215, without change.

Authority: N.J.S.A. 45:8-27 et seq.

Effective Date: May 18, 1987.

Expiration Date: September 30, 1990.

Summary of Public Comments and Agency Responses:

The New Jersey State Board of Professional Engineers and Land Surveyors afforded all interested persons the opportunity to comment on the proposed amendment to N.J.A.C. 13:40-5.1(i) by December 31, 1986. Announcement of this opportunity to respond to the Board was given in the New Jersey Register on December 1, 1986. An announcement was also forwarded to the New Jersey Society of Professional Engineers and Land Surveyors and the New Jersey Society of Professional Engineers.

A full record of this opportunity to be heard can be inspected by contacting the Board office at 1100 Raymond Boulevard, Room 317, Newark, New Jersey 07102.

On January 8, 1987, pursuant to the authority of N.J.S.A. 45:8-27 et seq. in accordance with the applicable provisions of the Administrative Procedure Act, the Board voted to adopt N.J.A.C. 13:40-5.1(i). This rule clarifies when and how deed descriptions must be provided when preparing a survey. The Board adopted this rule without change.

Two comments were received. One supported the amendment and the other disagreed with the amendment as well as the entire concept of providing a deed description with surveys. Specifically, this second comment stated that there is no need to redraft a deed description every time a current property owner decides to refinance his property; that because the standard charge for a metes and bounds description ranges between \$65.00 and \$75.00, there would be a significant economic impact; and that once a surveyor prepares a deed description for a surveyed parcel, that same description should be adequate for use for any further updates to the original survey if no changes are noted in the interim and assuming that the same client (owner) retains title.

Upon review of this comment, the Board noted that it had received comments of a similar nature when N.J.A.C. 13:40-5.1(i) was originally drafted. The Board's response at that time still reflects the opinion of the Board regarding the preparation of surveys. Initially, the Board concluded that despite the fact that certain surveyors may currently be charging their clients up to \$75.00 for a description, it does not necessarily follow that this is the actual cost involved in its preparation. In fact, the rule requires that a description of the property being surveyed be provided to the surveyor prior to undertaking the assignment. The only time that

the description would materially change if the original description had been in error and facts disclosed during the survey would necessitate a change in that description. Such an occasion is more often the exception than the rule. In the usual course, the original description would still be in effect and would be modified by the surveyor by simply stating that the description is based on a survey prepared by the surveyor. The benefit to such a procedure is that the individuals researching deeds are able to determine which surveyors have done work in the area of the property in question thus improving the availability of surveying information. Many comments on the proposal of the original N.J.A.C. 13:40-5.1(i) assumed, incorrectly, that a new, original, and completely changed description was required. This was not the intention of the rule as proposed. Subsection (i) was modified at that time as a result of the comment, taking into account the fact that surveys are sometimes made for purposes other than for the conveyance of title. Therefore, the rule was modified to require that the surveyor provide a description of the property being surveyed when the survey is being used for conveyancing.

It is this final sentence that has led to much confusion among licensees. For that reason, the adopted amendment to N.J.A.C. 13:40-5.1(i) provide a more detailed explanation as to when the description must be provided and what form that description must take.

Full text of the adoption follows.

13:40-5.1 Land surveyors; preparation of land surveys

(a)-(h) (No change.)

(i) Upon completing the plat or plan of survey, the licensed land surveyor shall provide the client an agreed upon number of prints of the survey drawing. Such print copies of the plat or plan of survey shall bear the signature and impression seal of the licensed land surveyor. Certification by the licensed land surveyor may be given when requested by the client.

1. The licensed land surveyor shall also supply a description of the property surveyed when the survey is to be used for conveyancing (title transfer or mortgage). This description must be suitable for use in a deed. The description may be by metes and bounds or by reference to a filed plan, block and lot. If a filed plan, block and lot is utilized, the entire title of the filed plan shall be set forth along with, the filed plan number and the date on which the plan was recorded in the office of the County Recording Officer. If there is any deviation from the filed plan to the completed survey, a description by filed plan, block and lot, shall not be utilized. The deed description shall be consistent with both the survey provided and the documentation upon which the survey was based and shall be written in such a manner as to define the boundary lines of real property unambiguous and sufficient for a surveyor to lay it out on the ground. This description may be reproduced on the survey plat itself or may be by separate document. If the deed description is provided on the survey plat, it must be titled "Deed Description." If a separate document is provided, the description shall be signed and sealed by the licensed land surveyor responsible for its preparation.

2. The term "referenced" shall not be utilized when referring to a filed plat when it is intended to meet the requirements of supplying the deed description listed in 1 above. It shall also be improper to use or reference a municipal tax map to comply with the requirements for deed description by reference to a filed plat. A tax map shall not be deemed a filed plan for the purpose of title transfer.

(a)

STATE ATHLETIC CONTROL BOARD Time Between Bouts

Adopted Repeal and New Rule: N.J.A.C. 13:46-5.23

Proposed: December 15, 1986 at 18 N.J.R. 2423(a).

Adopted: January 20, 1987 by State Athletic Control Board,
Larry Hazzard, Commissioner.

Filed: April 16, 1987 as R.1987 d.214, **without change.**

Authority: N.J.S.A. 5:2A-7(c) and 5:2A-4.

Effective Date: May 18, 1987.

Expiration Date: June 3, 1990.

Summary of Public Comments and Agency Responses:

One comment was received which asked for clarification of when a boxer, for example, competing in a four-round bout to a decision on January 5, 1987, would be able to box again. N.J.A.C. 13:46-5.23(c)

clearly provides that, if a boxer has competed in a bout of four to six rounds, he shall not be permitted to box again in New Jersey until 14 days have elapsed since his last bout. Therefore, in the above example, a boxer competing in a four-round bout on January 5, 1987, would next be able to compete in New Jersey on January 20, 1987, which is the first day after the expiration of the mandatory 14-day waiting period.

Full text of the adoption follows.

13:46-5.23 Time between bouts

(a) If a boxer has competed anywhere in a bout of nine rounds or more, he shall not be permitted to box in this State until 30 days have elapsed since his last bout.

(b) If a boxer has competed anywhere in a bout of seven to eight rounds inclusive, he shall not be permitted to box in this State until 20 days have elapsed since his last bout.

(c) If a boxer has competed anywhere in a bout of four to six rounds inclusive, he shall not be permitted to box in this State until 14 days have elapsed since his last bout.

(d) If a boxer has competed anywhere in a bout of one to three rounds inclusive, he shall not be permitted to box in this State until 10 days have elapsed since his last bout.

(e) At the Commissioner's discretion, the time periods outlined above may be extended where indicated by the circumstances of the boxer's last bout. In making this determination, the Commissioner shall consider:

1. The number, nature and effect of the blows exchanged by the boxers during the bout;
2. The physical condition of the boxer as demonstrated by the post-fight physical examination; and
3. The recommendations of the ringside physician.

(b)

ATTORNEY GENERAL

Chemical Breath Testing

Readoption with Amendments: N.J.A.C. 13:51

Proposed: March 16, 1987 at 19 N.J.R. 444(b).

Adopted: April 24, 1987 by W. Cary Edwards, Attorney General.

Filed: April 27, 1987 as R.1987 d.229, **with technical changes**
consistent with N.J.A.C. 1:30-4.3(c).

Authority: N.J.S.A. 39:4-50.3 and 12:7-56.

Effective Date: April 27, 1987 for Readoption; May 18, 1987 for
Amendments.

Expiration Date: April 27, 1992.

Summary of Public Comments and Agency Responses:

Four law enforcement entities commented on the proposed readoption with amendments by indicating unqualified endorsement. The Attorney General has responded to each entity and thanked them for their comments. No change in the proposed rule was necessitated by these supportive comments.

Changes were made at N.J.A.C. 13:51-1.3(a) to clarify the language of that subsection and to correct an erroneous statutory citation.

Full text of the readoption with amendments appears in the New Jersey Administrative Code at N.J.A.C. 13:51.

Full text of the amended readopted rules follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

13:51-1.1 Purpose of subchapter

This subchapter prescribes the requirements for certification of a person to conduct chemical analysis of the breath of a person arrested pursuant to N.J.S.A. 39:4-50, et seq., N.J.S.A. 12:7-34.19, N.J.S.A. 12:7-46, N.J.S.A. 2A:4A-23, or N.J.S.A. 12:7-54, et seq., the conditions under which certification can occur and the general rules for holders of certificates, pursuant to the statutory requirements of L.1966, c.142, Sec. 3, as amended by L.1971, c.273, Sec. 1 (C. 39:4-50.3); hereinafter denoted as N.J.S.A. 39:4-50.3 or L.1986, c.39, Sec. 8, (C.12:7-56); hereinafter denoted as N.J.S.A. 12:7-56.

13:51-1.2 Definitions

For the purpose of this chapter, and subchapters 1, 2, and 3 thereof, the terms set forth herein are defined as follows:

"Approved instrument" shall mean a device or instrument approved by the Attorney General at N.J.A.C. 13:51-3.5 for use in the chemical analysis of the breath of a person arrested pursuant to the provisions of N.J.S.A. 39:4-50, et seq., N.J.S.A. 12:7-34.19, N.J.S.A. 12:7-46 or N.J.S.A. 2A:4A-23.

"Approved methods" shall mean those steps or operations approved by the Attorney General at N.J.A.C. 13:51-3.6 for use in the chemical analysis of the breath of a person arrested pursuant to the provisions of N.J.S.A. 39:4-50, et seq., N.J.S.A. 12:7-34.19, N.J.S.A. 12:7-46 or N.J.S.A. 2A:4A-23 on an approved instrument.

"Calendar year" shall mean all days of a year commencing with and including January 1 of a specific year and continuing through to and including December 31 of the same year.

"Certification" shall mean the approval by the Attorney General of a person as an operator, as herein defined, and shall mean said person is qualified and competent to perform chemical breath test analysis utilizing an approved method and an approved instrument as defined in this subchapter and as set forth at N.J.A.C. 13:51-3 as authorized by N.J.S.A. 39:4-50.3 or N.J.S.A. 12:7-56.

"Operator" shall mean a person who is certified as a Chemical Breath Test Operator to perform analysis of an arrested person's breath utilizing an approved method and an approved instrument, as defined in this subchapter and as set forth at N.J.A.C. 13:51-3 and pursuant to the provisions of N.J.S.A. 39:4-50.3 or N.J.S.A. 12:7-56.

"Replica" shall mean a document which is an operator's certificate as defined in this section and which shall bear the signatures or facsimile signatures of the Attorney General and the Superintendent of State Police and which is of a size that permits it to be carried in the pocket, purse, wallet, etc., and includes replacements thereof as set forth at N.J.A.C. 13:51-1.12(c).

13:51-1.3 Certification

(a) ***For the purpose of prosecution,*** *[N]**n*o operator may conduct a valid analysis *[for the purpose of prosecution]* of an arrested person's breath under the provisions of N.J.S.A. 39:4-50.3 or *[N.J.S.A. 7:12-56]* ***N.J.S.A. 12:7-56***, unless such operator has been issued a valid operator's certificate which is current at the time of the analysis of an arrested person's breath and which attests that such operator is then qualified and competent to conduct such analysis utilizing an approved method and an approved instrument as set forth at N.J.A.C. 13:51-3.

(b) (No change.)

13:51-3.1 Purpose of subchapter

Pursuant to the provisions of L.1966, c.142, Sec. 3, as amended by L.1971, c.273, Sec. 1, (C. 39:4-50.3) and L.1986, c.39, Sec. 8, (C. 12:7-56): hereinafter denoted N.J.S.A. 39:4-50.3 or N.J.S.A. 12:7-56, respectively, the provisions of this subchapter set forth the instruments and methods approved by the Attorney General for the chemical analysis of the breath of a person arrested pursuant to the provisions of N.J.S.A. 39:4-50, et seq., N.J.S.A. 12:7-34.19, N.J.S.A. 12:7-46 or N.J.S.A. 2A:4A-23.

13:51-3.2 Application for approval

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

(d) Upon completion of evaluation of an instrument, method and/or operational function, the Superintendent shall recommend approval or rejection of the same to the Attorney General. The Attorney General, upon review of the recommendations, shall approve or reject the instrument, method and/or operational function pursuant to law (N.J.S.A. 39:4-50.3 or N.J.S.A. 12:7-56).

13:51-3.4 Periodic inspection of approved instruments

Periodic inspection of all approved instruments used in this State in connection with the prosecution of a person pursuant to the provisions of N.J.S.A. 39:4-50, et seq., N.J.S.A. 12:7-34.19, N.J.S.A. 12:7-46 or N.J.S.A. 2A:4A-23 shall be made by a Breath Test Coordinator/Instructor. The results of such periodic inspections shall be recorded on forms provided by the Superintendent of State Police and the originals thereof shall be maintained by the Division of State Police.

13:51-3.5 Approved instruments for performing chemical analysis of a person's breath

(a) The Breathalyzer, Model 900, is an instrument approved by the Attorney General pursuant to L.1966, c.142, Sec. 3, as amended by L.1971, c.273, Sec. 1 (C. 39:4-50.3) and L.1986, c.39, Sec. 8 (C. 12:7-56) and this subchapter, for the testing of a person's breath by chemical analysis.

(b) The Breathalyzer, Model 900A, is an instrument approved by the Attorney General pursuant to L.1966, c.142, Sec. 3, as amended by L.1971, c.273, Sec. 1 (C. 39:4-50.3) and L.1986, c.39, Sec. 8 (C.12:7-56) and this subchapter, for the testing of a person's breath by chemical analysis.

(c) The Dominator Albreath is an instrument approved by the Attorney General pursuant to L.1966, c.142, Sec. 3, as amended by L.1971, c.273, Sec. 1 (C. 39:4-50.3) and L.1986, c.39, Sec. 8 (C. 12:7-56) and this subchapter, for the testing of a person's breath by chemical analysis.

(d) The Alco-Tector is an instrument approved by the Attorney General pursuant to L.1966, c.142, Sec. 3, as amended by L.1971, c.273, Sec. 1 (C. 39:4-50.3) and L.1986, c.39, Sec. 8 (C. 12:7-56) and this subchapter, for the testing of a person's breath by chemical analysis.

TRANSPORTATION

(a)

CONTRACT ADMINISTRATION

Distribution and Sale of Construction Plans and Supplementary Specifications, Deferred Payments to Contractors for Materials Supplied and Work Performed in the Construction of State Highways and Related Projects

Adopted Amendments: N.J.A.C. 16:44-3.2, 3.4, 7.5, 7.6, 7.7, 7.8, 7.9

Proposed: January 20, 1987 at 19 N.J.R. 181(b).

Adopted: February 23, 1987 by Jack Friedrich, Assistant Commissioner for Engineering and Operations (State Highway Engineer).

Filed: April 20, 1987 as R.1987 d.218, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, 14A:1-1 et seq., and 14:15-2.

Effective Date: May 18, 1987.

Expiration Date: October 3, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:44-3.2 Requirements

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

(d) A charge shall be made for each set of black line plans and supplemental specifications pursuant to requests from outside the NJDOT in accordance with the following, except as otherwise authorized herein:

1. Plans and supplemental specifications will be furnished upon request at a charge in accordance with reasonable copying expenses.

2.-5. (No change.)

(e) (No change.)

16:44-3.4 Nondepartmental distribution and sale

(a) The Bureau of Contract Administration shall issue plans and supplementary specifications in the quantities indicated without cost to the following:

1. The successful low bidder will receive copies of plans specified below and five additional free copies of supplementary specifications, without charge, upon award of the contract, if requested.

TABLE OF PLANS FURNISHED WITHOUT CHARGE

From More Than	To And Including	Sets Of Plans Furnished
0	500,000	1
500,000	1,000,000	2
1,000,000	5,000,000	3
5,000,000	10,000,000	4
10,000,000	-	5

Additional copies of plans and supplementary specifications will be furnished upon request at a charge in accordance with reasonable copying expenses.

2.-5. (No change.)

6. The Bureau, Division, or Unit in which the plans originate shall make distribution to those who are to receive complimentary plans and supplementary specifications as indicated in paragraphs 2, 3, 4 and 5 above.

16:44-7.5 Pledge of approved bonds by contractor in lieu of retained percentages

(a) (No change.)

(b) The bonds deposited by the contractor must be issued by the State of New Jersey or any of its political subdivisions, having a rating of at least "B a a" by Moody's Investor Service and/or "B B B" by Standard and Poors Corporation, and must have a value at least equal to the amount of money to be released to the contractor. As used in this subsection and hereafter, the value of a bond is the lesser of current market value or par value of such bonds.

16:44-7.6 Responsibilities of bank designated and appointed as escrow agent

(a) Upon delivery of said negotiable bonds, the bank shall determine and certify to the Department of Transportation that the bonds meet the terms of acceptability defined herein and furnish a receipt to the contractor and send a copy to the Department of Transportation. The receipt shall contain:

1. Description of negotiable bonds on deposit by official name;
2. The rating of each issue of bonds;
3. Maturity date;
4. Coupon rate;
5. Par value and current market value of each issue.

(b) (No change.)

(c) The bank shall provide a monthly report to the Department of Transportation and a copy to the contractor which shall contain:

1. Description of negotiable bonds on deposit by official name;
2. (No change.)
3. Maturity date;
4. Coupon rate;
5. Par value and current market value of each issue;
6. Total market value of all bonds deposited by the contractor.

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

16:44-7.7 Deposit of additional bonds

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

(c) The contractor shall be required to replace any of the bonds held in the escrow account whose value was used in the computation of the amount of retainage released to the contractor at any time those bonds decline in rating below the rating required for bonds to be acceptable. The contractor is required to replace the unacceptable bonds with acceptable bonds. The Department of Transportation shall withhold from future payments cash equal to the amount of retainage previously released to the contractor which was based upon the value of the now unacceptable bonds should the contractor fail to replace the unacceptable bonds with acceptable bonds.

16:44-7.8 Called or matured bonds

(a) (No change.)

(b) Proceeds of called or matured bonds whose value was used in the computation of the amount of retainage released to the contractor may be released by the bank upon delivery by the contractor of acceptable bonds with current value equal to or greater than the amount of the proceeds of the called or matured bonds.

(c) The contractor may elect, at his discretion, to substitute acceptable new bonds for those bonds in the escrow account that were called or matured.

16:44-7.9 Default

In the event a default shall occur under the contract between the Department and the contractor, the Commissioner of Transportation shall promptly notify the bank in writing of such default. Following written notification of default the bank shall not dispose of, release or compromise any bond or the proceeds of called or matured bonds, without written instructions from the Commissioner. If directed by the Commissioner, the bank shall sell any bonds in the escrow account and pay proceeds of such sale and/or the proceeds held in the account from called or matured bonds to the Department or to any payee designated by the Commissioner. A copy of the instructions to sell shall be sent to the contractor by certified mail.

TREASURY-TAXATION

DIVISION OF TAXATION

(a)

Homestead Rebate Act

Extension of Time to File Homestead Rebate Claim

Adopted Amendment: N.J.A.C. 18:12-7.12

Proposed: December 15, 1986 at 18 N.J.R. 2460(a).

Adopted: April 24, 1987 by John R. Baldwin, Director, Division of Taxation.

Filed: April 27, 1987 as R.1987 d.223, **without change.**

Authority: N.J.S.A. 54:4-3.80 and 54:50-1.

Effective Date: May 18, 1987.

Expiration Date: August 12, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

18:12-7.12 Extension of filing date

(a)-(j) (No change.)

(k) The time for property owners to file their applications for a homestead rebate payable in 1987 pursuant to P.L. 1976, c.72, including applications by shareholders in cooperative associations and those residing in properties of certain mutual housing corporations, has been extended to March 2, 1987.

(b)

Local Property Tax

Both Senior Citizen's and Veteran's Deductions

Adopted Repeal and New Rule: N.J.A.C. 18:14-2.11

Proposed: January 20, 1987 at 19 N.J.R. 195(b).

Adopted: April 24, 1987 by John R. Baldwin, Director, Division of Taxation.

Filed: April 27, 1987 as R.1987 d.224, **without change.**

Authority: N.J.S.A. 54:4-8.47.

Effective Date: May 18, 1987.

Expiration Date: August 12, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

18:14-2.11 Deduction in addition to veteran's deduction

(a) A claimant receiving a veteran's deduction provided under P.L. 1963, c.171, as amended, (N.J.S.A. 54:4-8.10 et seq.) may also be entitled to the deduction provided herein and, in addition, may receive any homestead rebate or credit provided by law.

1. Example: Mary Roe, who is a veteran and the surviving spouse of a veteran, upon reaching the age of 65 years, may be entitled to a deduction in the amount of \$350.00 (\$50.00 as a veteran's surviving spouse; \$50.00 as a veteran; and \$250.00 as a qualified senior citizen).

(a)

**Transfer Inheritance Tax
Administration of Transfer Inheritance Tax and New
Jersey Estate Tax: Who May Represent the Estate
Before the Transfer Inheritance Tax Bureau**

Adopted Amendment: N.J.A.C. 18:26-12.2

Proposed: November 17, 1986 at 18 N.J.R. 2321(b).

Adopted: April 24, 1987 by John R. Baldwin, Director, Division
of Taxation.

Filed: April 27, 1987 as R.1987 d.225, **without change.**

Authority: N.J.S.A. 54:50-1.

Effective Date: May 18, 1987.

Expiration Date: August 12, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

18.26-12.2 Administration of Transfer Inheritance Tax and New Jersey
Estate Tax

(a) (No change).

1. No Inheritance Tax report on the estate of a resident decedent will
be accepted nor negotiation entered into with regard to the estate matters
of a resident decedent unless such estate is represented by:

i. An attorney-at-law of the State of New Jersey;
ii. The personal representative of an estate;
iii. An heir-at-law, next of kin, grantee, transferee, legatee, or devisee
of the decedent; or

iv. A certified public accountant of the State of New Jersey, provided
such accountant is designated for such purpose, in writing, by any of the
persons enumerated in ii or iii above.

2. (No change in text.)

EMERGENCY ADOPTION

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Exemption From Solid Waste Registration

Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 7:26-1.7

Emergency Amendment Adopted: April 29, 1987 by
Richard T. Dewling, Commissioner, Department of
Environmental Protection.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): April 29,
1987.

Emergency Amendment Filed: April 30, 1987 as R.1987, d.231.

Authority: N.J.S.A. 13:1E-4, 13:1E-5, 13:1E-6 and 13:1E-11.

Emergency Amendment Effective Date: April 30, 1987.

Emergency Amendment Expiration Date: June 29, 1987.

Concurrent Proposal Number: PRN 1987-192.

DEP Docket Number: 019-87-04.

A **public hearing** concerning this concurrent proposal will be held on:
June 4, 1987 at 10:00 A.M.

Room 202 East
Brower Student Center
Trenton State College
Pennington Road
Trenton, New Jersey

Submit written comments by June 17, 1987 to:

Michael S. Caro, Regulatory Officer
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

This rule 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. 54:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of the emergency rule amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance of the notice of adoption for filing by the office of Administrative Law (see N.J.A.C. 1:30-4.5(d)).

The agency emergency adoption and concurrent proposal follows.

Summary

N.J.A.C. 7:26-1.7 provides for circumstances under which the Department may exempt certain classes of solid waste facilities from registration. This amendment to N.J.A.C. 7:26-1.7 expands the types of facilities such exemption is available to by broadening the specific criteria for sanitary landfills at N.J.A.C. 7:26-1.7(d) and providing specific criteria for exempting solid waste transfer stations. The specific criteria for transfer stations provide for a period of public comment prior to the operation of any facility exempted by the issuance of a temporary certificate of authority to operate (TCAO) where the Department determines that time permits. No change is proposed to the Department's requirement to register a facility at the earliest practicable date. The TCAO must therefore contain a schedule for the registration of the facility or a replacement facility within the life of the TCAO. This amendment also specifies the requisites for emergency environmental impact statement approval as well as the specific application requirements pursuant to N.J.S.A. 13:1E-26.

Social Impact

The overall impact of this amendment will be positive. In allowing for the issuance of TCAO's to transfer stations, the public will benefit from the immediate availability of transfer stations where the closure of local disposal facilities require that waste be hauled long distances for disposal. This provision will allow the Department to respond to disposal shortfalls within a solid waste management district by quickly authorizing the short-term construction and operation of transfer stations. This amendment

will therefore provide the Department with a mechanism to insure that major solid waste disposal disruptions will be resolved quickly subject to short-term, environmentally sound solutions.

Economic Impact

The economic impacts of this amendment will be positive. Transfer stations are commonly used to consolidate solid waste prior to hauling it long distance to available disposal facilities. Where these facilities are located out of state, they tend to have higher tipping fees than do most New Jersey facilities. This expense, coupled with increased transportation costs, will likely result in increased waste disposal costs for the public. However, by extending the temporary certification exemption to solid waste transfer stations which meet the specific criteria provided, the Department seeks to avoid major disruptions in disposal facility access and the far higher costs associated with such disruptions. It is not expected that compliance with the public notice and comment requirements will impose significant economic burdens on applicants or the Department.

Environmental Impact

The environmental impact of this amendment will be positive. The portions of the existing rule which require the Department to find that an exemption will not violate the intent of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and will not pose a threat to the public health or the environment, are not being amended. Therefore, the extension of TCAO exemptions to transfer station facilities will not pose an adverse environmental impact. The use of this exemption to allow the expedited construction and operation of transfer stations will have a positive environmental impact by quickly allowing the cessation of reliance on over-used or over-capacity landfills in favor of more distant alternatives where necessary to provide short-term disposal services pending the construction of in-county facilities. This exemption will also help expedite the construction of transfer stations where the unanticipated closure of a disposal facility relied upon by the district leaves it with no other alternatives.

Regulatory Flexibility Statement

This regulation would apply to proposed transfer station facility applicants for TCAOs. It is estimated that of the total number of applicants for transfer station TCAOs impacted by this proposal, 75 percent would be small businesses as defined in the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169) and will be impacted. In order to comply with this proposal, the small businesses will have to meet the specific criteria for exemption as well as submit an application containing an emergency environmental impact statement, engineering designs and a disclosure statement required pursuant to N.J.S.A. 13:1E-126 et seq. to the Department. The applicant must also file its application (except for the disclosure statement) in the municipality and county where the proposed facility is to be located. In preparing the application, it is likely that small businesses will need the services of a professional engineer.

It is expected that initial capital costs for each small business could range from \$1,000.00 to \$20,000.00 depending upon the size and location of the proposed facility. These costs are only necessary initially with no further annual costs associated with compliance. The TCAO application filing requirements are somewhat less than the ordinary registration requirements pursuant to N.J.A.C. 7:26-2. The Department has therefore simplified TCAO application requirements to the minimum level necessary to insure that the environmental impacts associated with a new transfer station facility will be sufficiently mitigated. Accordingly, in developing this rule, the Department has balanced the need to protect the environment against the economic impact on small businesses and has determined that to exempt small businesses from the application requirements of this rule would unnecessarily endanger the public health, safety and the environment and, therefore, no exemption from coverage is provided.

Full text of the emergency amendment with concurrent proposal follows (additional indicated in boldface thus; deletions indicated in brackets [thus]).

7:26-1.7 Exemption from registration

(a) Pursuant to N.J.S.A. 13:1E-4a, the Commissioner [shall] **may** exempt from the requirement of registration as set forth in N.J.A.C. 7:26-2, and [shall] **may** grant a permanent or temporary certificate of authority

to operate, with or without conditions, to the class of solid waste collection or disposal facilities or operations which in the [c]Commissioner's opinion meets the general and application specific criteria set forth in this section.

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

(d) This subsection sets forth the [S]specific criteria for exempting sanitary landfills.[:]

1. A temporary certificate of authority to operate which shall be for a fixed period of time, not to exceed one year, [shall] may be granted to a sanitary landfill facility which, in the opinion of the [c]Commissioner, meets the following criteria for exemption:

i.-iii. (No change.)

iv. Use of the facility prior to the time that a registration can be issued pursuant to N.J.A.C. 7:26-2 is essential in order to avoid a major disruption in the operation of one or more solid waste management plans [and] or in order to comply with a judicial decree or statutory requirement to provide disposal services in a particular district; and

v. (No change.)

(e) (No change.)

(f) This subsection sets forth the specific criteria for exempting transfer stations.

1. A temporary certificate of authority to operate (TCAO) which shall be for a fixed period of time, not to exceed one year, may be granted to a transfer station facility which, in the opinion of the Commissioner, meets the following criteria for exemption:

i. The proposed owner or operator of the facility is determined by the Commissioner, after a preliminary review of such information as the Commissioner may require, to demonstrate sufficient integrity, expertise and competence to operate a transfer station facility in compliance with the Solid Waste Management Act and the TCAO operation conditions. Where this determination is made pursuant to N.J.S.A. 13:1E-135 and N.J.A.C. 7:26-16.5(c), the TCAO shall not be issued for a period exceeding six months and may, in the Department's discretion, be renewed for one additional consecutive six month period;

ii. Use of the facility prior to the time that a registration can be issued pursuant to N.J.A.C. 7:26-2 is essential in order to avoid a major disruption in the provision of solid waste disposal services, which disruption would be inconsistent with the purpose and intent of the Solid Waste Management Act;

iii. The facility will be designed, constructed, and operated in a manner consistent with the public health, safety and the environment under the circumstances. Notwithstanding any other requirement specified in Title 7 of the New Jersey Administrative Code, the facility requirements for design, construction and operation shall be those specified as conditions in the TCAO; and

iv. A schedule has been established and incorporated into the TCAO for compliance with all the requirements of N.J.A.C. 7:26-2 for registration of this facility or of an alternative facility (where the subject facility is designed for temporary operation only). The schedule may call for accomplishing one or more registration requirements after commencement of facility operation.

2. Notwithstanding any other provision of N.J.A.C. 7:26, the following shall constitute the application requirements for a TCAO for transfer stations:

i. Where applicable, a disclosure statement pursuant to N.J.S.A. 13:1E-126 et seq. and N.J.A.C. 7:26-16 on such forms as the Department requires. The disclosure statement, where appropriate, should be accompanied by a written request for a temporary license pursuant to N.J.S.A. 13:1E-135 and N.J.A.C. 7:26-16.5(c).

ii. An emergency environmental impact statement pursuant to N.J.A.C. 7:26-1.7(f)3; and

iii. An engineering design which specifies the following:

(1) Site plan map including layout of the facility buildings or structures, profile and elevation views and interior floor plan;

(2) Access roads;

(3) Fencing;

(4) Scales, if required pursuant to N.J.S.A. 13:1E-117;

(5) On site queuing;

(6) Facility and equipment design sufficient to handle specified capacity;

(7) Facility construction plans;

(8) Washdown and control of wastewater;

(9) On-site drainage controls;

(10) Design and surfacing of on-site roadways;

(11) Operational safety and environmental monitoring procedures; and

(12) Housekeeping procedures such as litter, odor, dust and vector control.

3. Notwithstanding any other provision of N.J.A.C. 7:26, the following shall constitute the requirements for an emergency environmental impact statement for a transfer station meeting the exemption criteria in N.J.A.C. 7:26-1.7(f)1. An emergency environmental impact statement shall be in narrative form and must be approved prior to or concurrent with issuance of a transfer station TCAO. An emergency environmental impact statement shall contain, at a minimum, the following:

i. A brief description of the land use of the area immediately surrounding the proposed facility;

ii. A description of possible environmental impacts on the immediately surrounding area and the facility design elements or other measures that will address them. This description shall address, at a minimum, the following environmental concerns:

(1) Noise;

(2) Air quality;

(3) Traffic;

(4) Stormwater and washdown drainage; and

(5) Any other concerns described in the solid waste disposal regulations proposed May 5, 1986 at 18 N.J.R. 883(a) which the Department determines should be discussed based upon the circumstances of the particular case, including time constraints.

4. All TCAO applicants shall file copies of their applications, except for the disclosure statement, in the offices of the municipality and county in which the facility is proposed to be located on the same day such application is filed with the Department. The applicant shall also publish notice of the application, within five calendar days of filing the application, in a newspaper of general circulation in the municipality and county. After evaluating the emergent time constraints, the Department may require that the notice identify a public comment period and specify the address at which the Department will receive public comments.

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Bureau of Shellfish Control

Closure of Seasonally Approved and Approved Areas for Shellfish Harvesting, N.J.A.C. 7:12-1.7

Take notice that the rule N.J.A.C. 7:12-1.7, closure of approved areas and seasonally approved areas for shellfish harvesting, currently found in the New Jersey Administrative Code has expired. The emergency new rule, adopted by the Commissioner of the Department of Environmental Protection, with Gubernatorial approval, was filed with the Office of Administrative Law on March 30, 1984. The emergency new rule was effective for 60 days and was not concurrently proposed at the time of filing with OAL. The rule expired on May 29, 1984 and will be removed from the New Jersey Administrative Code.

DIVISION OF WATER RESOURCES

(b)

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on January 14, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq, and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management (WQM) Plan was adopted by the Department. This amendment will incorporate West Milford's Wastewater Management Plan (1986) into the Northeast WQM Plan. It will also specify new wastewater treatment facilities and sewer service areas for West Milford Township. West Milford will be designated as the Wastewater Management Agency for all new wastewater treatment facilities.

(c)

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow for the expansion of the Delran Sewerage Authority's sewer service area to include the proposed Cobblestone Court development which is located in Moorestown Township, Burlington County.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(d)

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on February 19, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process Regulations (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment will allow for the expansion of a sewer service area in Burlington Township to include the proposed Neck Road development, Block 142, Lot 3.06. The project site will be served by an existing sewer main.

(e)

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that on March 19, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment will permit the construction of a detention basin outlet structure in wetlands for the Washington Valley Golf Course development known as Fairway Estates-Fairway Mews in Washington Township, Warren County.

(f)

Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan

Public Notice

Take notice that on March 4, 1987 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Lower Raritan/Middlesex County Water Quality Management Plan was adopted by the Department. This amendment will revise the sewer service area delineation to include Monroe Life Care Center ("The Meadows") in the sewer service area of the Forsgate Sewage Treatment Plant.

(g)

DIVISION OF ENVIRONMENTAL QUALITY

Filing Requirement for Facilities with Extremely Hazardous Substances

Public Notice

Take notice that, pursuant to Section 302 of the Federal Superfund Amendments and Reauthorization Act of 1986 (SARA), signed into law by President Reagan on October 17, 1986, a facility is subject to emergency planning requirements if it handles any of 402 extremely hazardous substances at the facility in a quantity greater than the threshold planning quantity established for those substances. The emergency planning requirements of this Act recognize the need to establish and maintain contingency plans for responding to chemical accidents which can inflict health and environmental damage as well as cause significant disruption within a community.

On or before May 17, 1987, the owner/operator of each facility subject to the requirements of Section 302 must notify the State Emergency Response Commission of the state in which it is located that it is subject to that section.

NEW JERSEY REGISTER, MONDAY, MAY 18, 1987

On or before September 17, 1987, any facility which is subject to the emergency planning requirements of Section 302 is required, pursuant to Section 303, to inform the State Emergency Response Commission of its designated Emergency Response Coordinator for that facility. Failure to comply with these reporting provisions may subject a facility to an enforcement action under Section 325 of SARA. Facilities which have not already complied with the Federal May 17, 1987 deadline are out-of-compliance as of that date.

Executive Order No. 161, signed by Governor Thomas H. Kean, on February 13, 1987, establishes the New Jersey State Emergency Response Commission. Furthermore, it designates the New Jersey State Police and the New Jersey Department of Environmental Protection to be the lead agencies for enactment and enforcement of Subtitle A and Subtitle B of Title III, SARA.

Facilities subject to the provisions of Section 302 and 303 shall notify the following office of both facility registration and identification of the designated Emergency Response Coordinator:

New Jersey State Department of Environmental Protection
Division of Environmental Quality
SARA Title III Project
CN 402
Trenton, New Jersey 08625
Tel: (609) 633-7289

HEALTH

(a)

Petition for Rulemaking Smoking In Acute Care Hospitals

N.J.A.C. 8:43B-1 et seq.

Petitioners: Medical Society of New Jersey and New Jersey Group against Smoking Pollution.

Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Take notice that on April 8, 1987, the Medical Society of New Jersey and the New Jersey Group against Smoking Pollution petitioned the State Department of Health to adopt a rule prohibiting smoking in acute care hospitals entirely, pursuant to N.J.S.A. 26:2H-1 et seq. (Health Care Facilities Act) and N.J.S.A. 26:30-7 et seq. (Smoking in Health Care Facilities).

Petitioners state that they have long been concerned about the effects of indoor ambient tobacco smoke on the health of exposed individuals, in light of evidence indicating that tobacco smoke presents a substantial health hazard to individuals, particularly those with cardiovascular and lung disease. Acute care hospitals service large numbers of such individuals, and it is thus suggested that a rule be adopted protecting hospital patients from the ill effects of tobacco smoke.

Petitioners also recognize that a smoking habit is difficult to break; however, experience in smoke free atmospheres (i.e., where a "clean air" policy has been adopted) indicates that such policies not only protect the health of the non-smoker, but aid the smoker in his resolve to quit smoking.

It is also pointed out that ventilation requirements hospitals must meet are not sufficient to adequately protect the health of the patients therein.

On the basis of the above, petitioners conclude that a ban on smoking in acute care hospitals is necessary to guarantee hospital patients protection from the effects of tobacco smoke.

Finally, petitioners request that a public hearing be held, to permit other interested organizations and individuals to express their opinions. It is suggested that this Department's Commission on Smoking or Health conduct such a hearing.

Take further notice that, pursuant to N.J.A.C. 1:30-3.6(c)(3), this petition has been referred to both the Division of Health Facilities Evaluation and the Smoking Control Program, for review and a determination as to how the Department should respond.

Technical staff with those two programs are currently reviewing the petition and supporting documentation attached thereto, in an effort to evaluate the validity of the arguments raised therein. Once the review is completed, the Department will be able to respond, in a rational manner, to the petition.

The Department will also consider the request for a public hearing made by petitioners. Once a decision is made regarding that request, as well as the petition, a Notice of Proposed Action will be submitted to the Office of Administration Law, for publication in the New Jersey Register.

INSURANCE

(b)

NEW JERSEY REAL ESTATE COMMISSION

June 16, 1987 Special Meeting of the New Jersey Real Estate Commission

Consideration of Petition for Declaratory Ruling on, or Amendments to, N.J.A.C. 11:5-1.15(a), (b), (c), (j), (k) and (m) concerning Non-Specific Advertising.

Notice of Public Hearing

Take notice that, due to the large number of individuals who it is anticipated will wish to attend the public hearing of the New Jersey Real Estate Commission at which the above-referenced matter will be considered, the Commission has determined to place this matter upon the agenda for its June 16, 1987 public meeting. Be further advised that this meeting will be held at the:

Rider College Student Center
Route 206
Lawrenceville, New Jersey

The Commission meeting at which this matter will be considered will be held on June 16, 1987, commencing at 9:30 A.M. The Commission will open the floor to discussion and to receive public comments on this petition at approximately 1:00 P.M.

A copy of the notice of the Commission's action upon this petition, which was published in the April 20, 1987 issue of the New Jersey Register, at 19 N.J.R. 664(a) has previously been supplied to all real estate offices in New Jersey and to other interested parties.

LAW AND PUBLIC SAFETY

(c)

NEW JERSEY RACING COMMISSION

Racing Harness Rules

Notice of Correction: N.J.A.C. 13:71-1.23 and 1.24

Take notice that errors appear in the New Jersey Administrative Code at 13:71 concerning harness racing. N.J.A.C. 13:71-1.23, Modification of penalties, was inadvertently omitted from the Code (see proposal notice at 13 N.J.R. 820(a) and adoption notice at 14 N.J.R. 347(a)). The rule currently appearing at N.J.A.C. 13:71-1.23, Smoking prohibited, should be codified as N.J.A.C. 13:71-1.24. Both rules should appear in the Code as follows:

13:71-1.23 Modification of penalties

The Commission may modify on its own motion any penalty or decision imposed by a racing official pursuant to the rules and regulations as herein contained.

13:71-1.24 Smoking prohibited

Smoking is prohibited under the shed row of any barn. Persons found violating this rule will be reported to the judges and shall be subject to a fine of \$25.00 for the first offense, \$50.00 for the second offense and to suspension for the third or subsequent violation.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES Amendment to Certain Rules Necessitated by Board's Change of Address

Public Notice

Take notice that effective on Monday, June 1, 1987, the Board of Public Utilities' offices will be located at Two Gateway Center, Newark, New Jersey 07102. Accordingly, several Board rules will be amended to reflect this change of address.

Full text of the rules affected by this change of address follow (citations to Chapter 17 pertain to rules of the Office of Cable Television):

14:1-1.4 Offices

The statutory office of the Board and the office of the Secretary of the Board are located at [1100 Raymond Boulevard] Two Gateway Center, Newark, New Jersey 07102.

14:1-1.7 Communications

(a) All pleadings, correspondence and other papers [w] should be addressed to the Secretary, Board of Public Utility Commissioners, [1100 Raymond Boulevard, Room 208] Two Gateway Center, Newark, New Jersey 07102. Copies of such correspondence should be directed to the hearing examiner and parties of record in formal matters.

(b) (No change.)

14:1-2.2 Payment of fees and charges

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

(c) All checks for payment of such fees and charges shall be made payable to the order of "Treasurer, State of New Jersey" and delivered or mailed to the Secretary of the Board, [28 West State Street, Trenton] Two Gateway Center, Newark, New Jersey [08625] 07102.

14:5-5.2 Adoption by reference of rules concerning preservation of records; electric utilities

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

(c) Copies of the full text of these rules are available for examination in the Board's offices [in Room 208, 101 Commerce Street] at Two Gateway Center, Newark, New Jersey, 07102 and are included in the case files in these dockets. Additional copies may be purchased from the National Association of Regulatory Utility Commissioners, P.O. Box 684, Washington, DC 20044.

14:6-4.2 Adoption by reference of rules concerning preservation of records; gas utilities

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

(c) Copies of full text of these rules are available for examination in the Board's offices [in Room 208, 101 Commerce Street] at Two Gateway Center, Newark, New Jersey 07102, and are included in the case files in these dockets. Additional copies may be purchased from the National Association of Regulatory Utility Commissioners, P.O. Box 684, Washington, DC 20044.

14:17-1.4 Offices

The Office of Cable Television is located at [101 Commerce Street in] Two Gateway Center, Newark, New Jersey 07102.

14:17-1.7 Communications

(a) All formal papers and correspondence should be addressed to the Office of Cable Television, Board of Public Utility Commissioners, [101 Commerce Street] Two Gateway Center, Newark, New Jersey 07102, and not to individual members of the Office's staff unless otherwise specifically authorized or directed by the Board or the Office.

(b) All such papers and correspondence shall be deemed to be officially received when delivered at the Office at [101 Commerce Street] Two Gateway Center, Newark, New Jersey 07102, but the Director, a Commissioner, the Secretary or an Assistant Secretary of the Board may in his discretion receive papers and correspondence for filing.

14:17-2.2 Payment of fees and charges

(a) (No change.)

(b) All checks for payment of such fees and charges shall be made payable to the order of "Treasurer, State of New Jersey" and delivered or mailed to the Director of the Office, [101 Commerce Street] Two Gateway Center, Newark, New Jersey 07102.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Gross Income Tax Act Extension of Time to File Residential Property Tax Credit Application, N.J.A.C. 18:35-1.19

Public Notice

Take notice that N.J.A.C. 18:35-1.19, Extension of time to file a residential property tax credit, currently found in the New Jersey Administrative Code has expired. The emergency new rule, adopted by the Director of the Division of Taxation, with Gubernatorial approval, was filed with the Office of Administrative Law on April 15, 1986. The emergency new rule was effective for 60 days and was not concurrently proposed at the time of filing with OAL. The rule expired on May 15, 1986 and will be removed from the New Jersey Administrative Code.

OTHER AGENCIES

(c)

CASINO CONTROL COMMISSION

Petition for Rulemaking Craps: Continuation or Selection as Shooter N.J.A.C. 19:47-1.11

Petitioner: Trump Plaza.

Authority: N.J.S.A. 5:12-69(c) and N.J.S.A. 52:14B-4(f);
N.J.A.C. 1:30-3.6.

Take notice that on April 7, 1987, Trump Plaza filed a rulemaking petition with the Casino Control Commission requesting an amendment to N.J.A.C. 19:47-1.11.

The petitioner contends that under N.J.A.C. 19:47-1.8, if a sole player at a craps game makes the Pass Line point and elects not to place a new Pass Bet or Don't Pass Bet, a precondition for retention of the dice, there is in effect no shooter and the game must stop. Nevertheless, should that same sole player have a Don't Come wager on the layout at that time, N.J.A.C. 19:47-1.3(d) would permit moving this bet to the Don't Pass Line thus satisfying the requirements of N.J.A.C. 19:47-1.8 and the game would be allowed to continue. Should this same player have a Come Bet on the line, however, N.J.A.C. 19:47-1.3(c) would prohibit moving this bet to the Pass Line and the game would have to be stopped.

To remedy this situation, the petitioner proposes to amend N.J.A.C. 19:47-1.11 whereby if there are no other players at the table or if neither the shooter nor any other players elect to make a Pass Bet or Don't Pass Bet, the game may continue if there are Come Bets or Don't Come Bets remaining on the table. In such circumstances, the boxperson would withdraw a number of chips equal to the table minimum from the bankroll and place these chips on the Pass Line together with an Off button. The shooter would then roll the dice for the purpose of effecting a decision on the Come or Don't Come wagers.

After due notice, this petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 5:12-69(c).

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the April 6, 1987 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(d).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1987 d.1 means the first rule adopted in 1987.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A number and date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: MARCH 16, 1987.

NEXT UPDATE WILL BE DATED APRIL 20, 1987.

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
18 N.J.R. 1019 and 1122	May 19, 1986	18 N.J.R. 2345 and 2408	December 1, 1986
18 N.J.R. 1123 and 1222	June 2, 1986	18 N.J.R. 2409 and 2472	December 15, 1986
18 N.J.R. 1223 and 1326	June 16, 1986	19 N.J.R. 1 and 164	January 5, 1987
18 N.J.R. 1327 and 1432	July 7, 1986	19 N.J.R. 165 and 260	January 20, 1987
18 N.J.R. 1433 and 1504	July 21, 1986	19 N.J.R. 261 and 324	February 2, 1987
18 N.J.R. 1505 and 1640	August 4, 1986	19 N.J.R. 325 and 392	February 17, 1987
18 N.J.R. 1641 and 1726	August 18, 1986	19 N.J.R. 393 and 430	March 2, 1987
18 N.J.R. 1727 and 1862	September 8, 1986	19 N.J.R. 431 and 476	March 16, 1987
18 N.J.R. 1863 and 1978	September 22, 1986	19 N.J.R. 477 and 586	April 6, 1987
18 N.J.R. 1979 and 2078	October 6, 1986	19 N.J.R. 587 and 672	April 20, 1987
18 N.J.R. 2069 and 2148	October 20, 1986	19 N.J.R. 673 and 794	May 4, 1987
18 N.J.R. 2149 and 2234	November 3, 1986	19 N.J.R. 795 and 898	May 18, 1987
18 N.J.R. 2235 and 2344	November 17, 1986		

**N.J.A.C.
CITATION**

ADMINISTRATIVE LAW—TITLE 1

1:1, 1:2—1:21	Administrative hearings			
1:30-1.2, 2.8	Use of appendices	18 N.J.R. 1728(a)	R.1987 d.200	19 N.J.R. 715(a)
1:30-1.12, 3.6, 4.1	Agency rulemaking; correction to Administrative Code	19 N.J.R. 675(a)		19 N.J.R. 777(a)
1:30-3.1	Additional notice of proposed rulemaking	19 N.J.R. 675(b)		
1:30-4.1, 4.5	Filing of adopted rules; emergency rule adoptions	19 N.J.R. 676(a)		
1:31-1.2—2.1	Petition for a rule	19 N.J.R. 677(a)		

(TRANSMITTAL 25, dated December 15, 1986)

AGRICULTURE—TITLE 2

2:22	Control of dangerously injurious insects	19 N.J.R. 479(a)		
2:32	Sire Stakes Program	19 N.J.R. 480(a)		
2:50	Milk production and supply	19 N.J.R. 433(a)		
2:69-1.11	Commercial values of fertilizers	19 N.J.R. 484(a)		
2:90-1.3	Soil erosion and sedimentation control	18 N.J.R. 2081(a)	R.1987 d.171	19 N.J.R. 513(a)
2:90-1.5, 1.13, 1.14	Soil erosion and sediment control	19 N.J.R. 395(a)	R.1987 d.222	19 N.J.R. 861(a)

(TRANSMITTAL 1987-1, dated February 17, 1987)

BANKING—TITLE 3

3:6-16	Qualified bank acquisitions of underwritten securities	19 N.J.R. 677(b)		
3:7-5.1	Statement of interest and bank holding companies	19 N.J.R. 327(a)	R.1987 d.192	19 N.J.R. 632(a)
3:11-11.13	Leeway investments: confidentiality of approval process	18 N.J.R. 1224(a)		
3:23	License fees	19 N.J.R. 485(a)		
3:41	Cemeteries: disinterment and reinterment of human remains	18 N.J.R. 1642(a)		

(TRANSMITTAL 1987-1, dated February 17, 1987)

PERSONNEL (CIVIL SERVICE)—TITLE 4

4:1-27.1	Overtime rules	19 N.J.R. 327(b)		
4:2-27	Overtime rules	19 N.J.R. 327(b)		
4:6	Overtime Committee Rules	19 N.J.R. 327(b)		

(TRANSMITTAL 1987-1, dated January 20, 1987)

COMMUNITY AFFAIRS—TITLE 5

5:14-1.1—1.4, 2.1—2.3, 3.1—3.23, 4.1—4.6	Neighborhood Preservation Balanced Housing Programs	19 N.J.R. 589(a)		
5:18-2.5, 2.7, 2.11, 2.14, 3.2, 4.1, 4.7, 4.9-4.13, 4.17, 4.18	Uniform Fire Code: Fire Safety Code	18 N.J.R. 1225(a)		
5:18A-2.3, 4.3, 4.4	Fire Code Enforcement	18 N.J.R. 1225(a)		

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(CITE 19 N.J.R. 893)

I.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:19	Continuing care retirement communities: disclosure requirements	19 N.J.R. 597(a)		
5:23-3.18, 6.1-6.3	Energy subcode; solar energy property tax exemptions	19 N.J.R. 433(b)		
5:23-4.5	Uniform Construction Code enforcement: conflict of interest	19 N.J.R. 332(a)		
5:70	Congregate Housing Services Program	19 N.J.R. 678(a)		
5:80-21	Housing and Mortgage Finance: single family loans	18 N.J.R. 2238(a)		

(TRANSMITTAL 1987-3, dated March 16, 1987)

DEFENSE—TITLE 5A

(TRANSMITTAL 1, dated May 20, 1985)

EDUCATION—TITLE 6

6:3-2	Pupil records	19 N.J.R. 333(a)	R.1987 d.209	19 N.J.R. 749(a)
6:8-7.1	High school graduation requirements	19 N.J.R. 4(a)	R.1987 d.185	19 N.J.R. 632(b)
6:8-7.1	High school graduation requirements	19 N.J.R. 4(b)	R.1987 d.186	19 N.J.R. 633(a)
6:20-2.14	Appropriation of free balance by local district	19 N.J.R. 437(a)		
6:20-4	Tuition for private schools for the handicapped	19 N.J.R. 336(a)	R.1987 d.210	19 N.J.R. 751(a)
6:21-18	Inspection of vehicles used for pupil transportation	19 N.J.R. 5(a)	R.1987 d.184	19 N.J.R. 633(b)
6:46	Area Vocational Technical and Private Schools: waiver of Executive Order No. 66 (1978) sunset provision	18 N.J.R. 1996(b)		
6:46-1	Area vocational technical schools	18 N.J.R. 1511(a)		
6:53	Vocational education safety standards	19 N.J.R. 485(b)		
6:68-7	Municipal branch library services	19 N.J.R. 6(a)	R.1987 d.183	19 N.J.R. 634(a)
6:68-8	Evaluation and development of library collections	19 N.J.R. 7(a)	R.1987 d.182	19 N.J.R. 635(a)
6:68-9	Maintenance of library collections	19 N.J.R. 8(a)	R.1987 d.181	19 N.J.R. 635(b)

(TRANSMITTAL 1987-3, dated March 16, 1987)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-3	Interim Environmental Cleanup Responsibility Act rules	19 N.J.R. 10(a)	R.1987 d.147	19 N.J.R. 514(a)
7:1-3, 4	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)		
7:1-6	Disposal of solid waste	18 N.J.R. 883(a)		
7:1A	Water Supply Bond Loan Program	19 N.J.R. 437(b)		
7:1F-1, 2	Industrial Survey Project rules	19 N.J.R. 11(a)	R.1987 d.193	19 N.J.R. 637(a)
7:1G-2.1, 2.2, 4.1, 4.2, 5.4	Worker and Community Right to Know: hazardous substances and materials	19 N.J.R. 438(a)		
7:1G-3.2, 5.2, 7	Worker and Community Right to Know: assessment of civil administrative penalties for nondisclosure of information	19 N.J.R. 703(a)		
7:2-11	Natural Areas System	18 N.J.R. 2349(b)		
7:6-1.26, 1.37, 3.2, 3.5, 3.10, 3.11, 3.12, 4.5, 4.7	Boating and water-skiing	19 N.J.R. 396(a)	R.1987 d.194	19 N.J.R. 637(b)
7:7-1, 2, 3, 4, 6	Coastal Permit Program	18 N.J.R. 2156(a)	R.1987 d.217	19 N.J.R. 861(b)
7:7-2.2	Monmouth County wetlands maps	18 N.J.R. 2162(a)		
7:8-1.3, 1.7, 2.1, 2.2, 2.6, 3.4, 3.6	Stormwater management	19 N.J.R. 488(a)		
7:9-4.14	Water quality criteria for Mainstem Delaware River Zones	18 N.J.R. 1435(a)		
7:9-13	Sewer connection bans	18 N.J.R. 2163(a)		
7:9-13	Sewer connection ban: extension of comment period	19 N.J.R. 263(b)		
7:11-3	Use of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoir Complex	18 N.J.R. 1330(a)	R.1987 d.228	19 N.J.R. 868(a)
7:12-1.7	Closure of shellfish harvesting areas: expired rule			19 N.J.R. 888(a)
7:13-7.1(d)	Redelineation of Raritan River and Peters Brook: re-proposed	19 N.J.R. 167(b)		
7:13-7.1(d)	Redelineation of Wolf Creek in Hackensack Basin	18 N.J.R. 2355(a)		
7:13-7.1(d)	Redelineation of Holland Brook in Somerset County	18 N.J.R. 1866(a)	R.1987 d.197	19 N.J.R. 639(a)
7:13-7.1(d)	Redelineation of North Branch Raritan River in Somerset County	18 N.J.R. 1866(b)	R.1987 d.196	19 N.J.R. 639(c)
7:13-7.1(d)	Flood plain delineations in Passaic-Hackensack and Raritan basins	19 N.J.R. 489(a)		
7:13-7.1(e)	Redelineation of Henderson Brook in Fair Lawn	18 N.J.R. 2169(a)	R.1987 d.195	19 N.J.R. 639(b)
7:13-7.1(g)	Flood hazard areas along the Saddle, Ramapo and Mahwah rivers, and Masonicus Brook	19 N.J.R. 169(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System	18 N.J.R. 2085(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System: comment period extended	18 N.J.R. 2411(a)		
7:14A-1.8	NJPDES fee schedule	19 N.J.R. 706(a)		
7:14A-1.9, 12	Sewer connection bans	18 N.J.R. 2163(a)		
7:14A-1.9, 12	Sewer connection bans: extension of comment period	19 N.J.R. 263(b)		

(CITE 19 N.J.R. 894)

NEW JERSEY REGISTER, MONDAY, MAY 18, 1987

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:14A-6.16	Disposal of solid waste	18 N.J.R. 883(a)		
7:22-6	Pinelands Infrastructure Trust Fund procedures	18 N.J.R. 1896(a)	R.1987 d.207	19 N.J.R. 755(a)
7:22-7	Determination of allowable costs: Pinelands	18 N.J.R. 1904(a)	R.1987 d.208	19 N.J.R. 766(a)
7:25-2.18, 2.22	Use of land and water areas	19 N.J.R. 398(a)		
7:25-4.13, 4.17	Endangered and nongame species lists	19 N.J.R. 491(a)		
7:26-1.4, 2, 2A, 2B, 5, 12.11, 12.12	Disposal of solid waste	18 N.J.R. 883(a)		
7:26-1.4, 7.5, 7.7, 8.13	Waste oil	18 N.J.R. 878(a)		
7:26-1.7	Temporary certification of solid waste transfer stations	Emergency (expires 6-29-87)	R.1987 d.231	19 N.J.R. 886(a)
7:26-2.13	Solid waste facilities: recordkeeping	19 N.J.R. 171(a)		
7:26-7.2, 9.1, 9.3, 10.8, 11.4	Hazardous waste management: containers, landfills, existing facilities	19 N.J.R. 441(a)		
7:26-8.14	Hazardous waste listing: ethylene dibromide wastes	19 N.J.R. 443(a)		
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management	18 N.J.R. 2356(a)		
7:26-9.1, 9.3, 10.4, 10.8, 11.4, 12.1, 12.2	Hazardous waste management: extension of comment period	19 N.J.R. 263(c)		
7:26-12.2	Hazardous waste facilities: application signatories	19 N.J.R. 11(b)		
7:26-15	Recycling Grants and Loans Program	18 N.J.R. 2358(a)		
7:26-17	Scales at solid waste facilities	18 N.J.R. 1154(a)		
7:26B	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)		
7:27-16.1, 16.3	Air pollution control: Stage II vapor recovery	18 N.J.R. 1867(a)		
7:28-14	Therapeutic radiation installations	18 N.J.R. 1157(a)		
7:28-42.1	Workplace exposure to radio frequency radiation	18 N.J.R. 1166(a)	R.1987 d.206	19 N.J.R. 770(a)
7:30-2.3	Restricted-use pesticides	19 N.J.R. 492(a)		
7:50	Pinelands Comprehensive Management Plan	18 N.J.R. 2239(a)		
7:50	Pinelands Comprehensive Management Plan: public hearings	18 N.J.R. 2411(b)		

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8:2-1	Birth certificates	18 N.J.R. 2278(a)		
8:2-1	Birth certificates: extension of comment period	19 N.J.R. 264(a)		
8:21-4	Control of new drugs and Laetrile use	18 N.J.R. 2363(a)	R.1987 d.227	19 N.J.R. 873(a)
8:21-5	Foods, drugs, cosmetics, devices: order to remove from sale and recall	18 N.J.R. 1361(b)		
8:21-5	Order to remove from sale and recall of foods, drugs, cosmetics, and devices: extension of proposal comment period	18 N.J.R. 1715(b)		
8:26-5.7	Lifeguard training at ocean and tidal bathing beaches	19 N.J.R. 494(a)		
8:31-26	Standards for All Health Care Facilities: administrative recodification	_____	_____	19 N.J.R. 662(c)
8:31-26.3, 26.4	Home health agencies: employee physicals; child abuse and neglect	18 N.J.R. 2283(a)		
8:31B-2.2, 3.51, 3.57, 3.73, 4.40	Hospital reimbursement: Same Day Surgery services	18 N.J.R. 1908(a)		
8:31B-3.22, 3.31, 3.51	Hospital reimbursement: graduate medical education	19 N.J.R. 605(a)		
8:31B-3.27, 4.42	Hospital reimbursement: capital facilities allowance	18 N.J.R. 1912(a)		
8:31B-3.41, 4.15, 4.38, 4.39	Hospital reimbursement: uncompensated care	18 N.J.R. 2283(b)		
8:31B-3.72	Hospital reimbursement: periodic adjustments	18 N.J.R. 1917(a)		
8:31B-3.73, App. IX	Hospital reimbursement: cost/volume methodology	18 N.J.R. 2284(a)		
8:31B-3.73, App. IX	Hospital reimbursement: correction to cost/volume methodology	19 N.J.R. 264(b)		
8:31B-7	Uncompensated Care Trust Fund	19 N.J.R. 495(a)		
8:31B-7.4, 7.5	Uncompensated Care Trust Fund	Emergency (expires 5-11-87)	R.1987 d.164	19 N.J.R. 568(a)
8:33E-1	Cardiac diagnostic facilities and services	19 N.J.R. 606(a)		
8:33E-2	Cardiac surgical centers	19 N.J.R. 610(a)		
8:33G-3.11	Long-term care beds for former psychiatric hospital patients	19 N.J.R. 614(a)		
8:42	Licensure of home health agencies	18 N.J.R. 2287(a)		
8:43E-5	Intermediate Adult and Special Psychiatric Beds: certification of need	19 N.J.R. 171(b)	R.1987 d.226	19 N.J.R. 873(b)
8:52-1.8	Local health educators	19 N.J.R. 398(b)	R.1987 d.216	19 N.J.R. 879(a)
8:65-10.3	Controlled substances: Tiletamine-Zolazepam preparations	19 N.J.R. 497(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:71	Generic drug list additions: public hearing (see 18 N.J.R. 1381(a), 1463(b), 1957(a), 2015(a), 19 N.J.R. 118(a), 216(b))	18 N.J.R. 537(a)	R.1987 d.133	19 N.J.R. 450(a)
8:71	Generic drug list additions (see 18 N.J.R. 1955(b), 2208(b), 19 N.J.R. 116(b), 216(c), 640(a))	18 N.J.R. 1167(a)	R.1987 d.220	19 N.J.R. 880(b)
8:71	Generic drug additions (see 19 N.J.R. 116(c), 217(a), 640(b))	18 N.J.R. 1775(a)	R.1987 d.221	19 N.J.R. 881(a)
8:71	Interchangeable drug products (see 19 N.J.R. 215(a))	18 N.J.R. 2100(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 216(a))	18 N.J.R. 2101(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 641(a))	19 N.J.R. 13(a)	R.1987 d.219	19 N.J.R. 880(a)
8:71	Interchangeable drug products	19 N.J.R. 615(a)		

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9:1-1.4	Submission of financial statements by independent special purpose and theological institutions	18 N.J.R. 2364(a)	R.1987 d.150	19 N.J.R. 514(b)
9:1-6.1	Approval of courses-for-credit offered by out-of-state institutions	18 N.J.R. 2365(a)	R.1987 d.151	19 N.J.R. 514(c)
9:4-1.5	Community college chargeback system	19 N.J.R. 14(a)	R.1987 d.152	19 N.J.R. 515(a)
9:5-1.1	Student dependency status defined	19 N.J.R. 264(c)	R.1987 d.204	19 N.J.R. 771(a)
9:6-6	Student membership on State college board of trustees	19 N.J.R. 265(a)	R.1987 d.205	19 N.J.R. 771(b)
9:7-2.6	Student assistance programs: student dependency status defined	19 N.J.R. 176(a)	R.1987 d.169	19 N.J.R. 515(b)
9:7-3.1	Tuition Aid Grant Program: 1987-88 Award Table	19 N.J.R. 177(a)	R.1987 d.170	19 N.J.R. 516(a)
9:7-4.11	Distinguished Scholars Program: academic criteria	19 N.J.R. 498(a)		
9:7-9	Congressional Teacher Scholarship Program	18 N.J.R. 2174(b)	R.1987 d.168	19 N.J.R. 516(b)
9:9-3.5	Capitalization of PLUS loan interest	19 N.J.R. 498(b)		
9:11-1.4	Educational Opportunity Fund: student dependency status defined	19 N.J.R. 266(a)		
9:11-1.5	Educational Opportunity Fund: undergraduate grants	19 N.J.R. 15(a)		
9:11-1.5	EOF: financial eligibility for undergraduate grants	19 N.J.R. 499(a)		
9:11-1.7	Educational Opportunity Fund: undergraduate grants	19 N.J.R. 399(a)		

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10:8	Personal needs allowance for indigent persons in State and county institutions	19 N.J.R. 617(a)		
10:49-1.5	Records retention by long-term care facilities	18 N.J.R. 2411(c)	R.1987 d.180	19 N.J.R. 643(a)
10:56-3	HCPCS codes for dental services	19 N.J.R. 15(b)	R.1987 d.166	19 N.J.R. 519(a)
10:60-2.2, 2.3, 3.1	Personal care assistant services	18 N.J.R. 2365(b)	R.1987 d.179	19 N.J.R. 643(b)
10:62-1, 2, 3	Vision Care Manual	18 N.J.R. 1246(a)		
10:63-1.14	Records retention by long-term care facilities	18 N.J.R. 2411(c)	R.1987 d.180	19 N.J.R. 643(a)
10:65-1.5, 1.8	Medical day care centers: recordkeeping	19 N.J.R. 30(a)		
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1252(a)		
10:81-2.6, 3.13	AFDC eligibility and full-time students	19 N.J.R. 618(a)		
10:81-3.12	PAM: parent-minor and AFDC	19 N.J.R. 31(a)		
10:81-3.34	PAM: temporary absence of child from home	18 N.J.R. 1675(a)	R.1987 d.175	19 N.J.R. 644(a)
10:81-3.38	AFDC qualification and child support orders	19 N.J.R. 618(b)		
10:81-4.9, 5.2, 7.1	PAM: administration of AFDC program	19 N.J.R. 341(a)		
10:81-11.3	AFDC: newborn child and application for Social Security number	19 N.J.R. 619(a)		
10:81-11.7, 11.9	PAM: annual notice of child support collections	19 N.J.R. 343(a)		
10:81-11.18	PAM: child support guidelines	18 N.J.R. 2178(a)		
10:82-1.2, 2.13, 5.11	AFDC payment levels	19 N.J.R. 500(a)		
10:82-1.3, 4.16	ASH: household defined; court-ordered support	19 N.J.R. 31(b)		
10:82-1.7, 1.8, 3.2	AFDC benefits and educational financial aid	19 N.J.R. 709(a)		
10:82-3.2, 4.13, 4.14, 4.15	ASH: resources and income in AFDC	19 N.J.R. 344(a)		
10:82-4.15	ASH: lump sum income	19 N.J.R. 32(a)	R.1987 d.178	19 N.J.R. 645(a)
10:82-5.10	Correction to Administrative Code	_____	_____	19 N.J.R. 663(a)
10:82-5.12	ASH: disregarded child support payments	19 N.J.R. 501(a)		
10:85-3.2	GAM: exemption from work requirement and unemployability	18 N.J.R. 2183(a)		
10:85-3.3	GAM: Medically Needy eligibility	18 N.J.R. 1781(a)		
10:85-3.3	General Assistance rate in residential health care facilities	_____	_____	19 N.J.R. 570(c)
10:85-3.3, 3.4	GAM: treatment of agent orange payments	19 N.J.R. 32(b)	R.1987 d.177	19 N.J.R. 645(b)
10:85-4.1, 9.4	General Assistance payment levels	19 N.J.R. 502(a)		
10:85-4.6, 9.4	Correction to Administrative Code	_____	_____	19 N.J.R. 663(a)
10:85-5.3	GAM: payment of medical insurance premiums	19 N.J.R. 33(a)	R.1987 d.176	19 N.J.R. 646(a)
10:85-5.3	Personal needs allowance for GA recipients in nursing homes and intermediate care facilities	19 N.J.R. 619(b)		

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10:85-8.4	GAM: information concerning PAAD	18 N.J.R. 1343(b)		
10:87-2.3, 2.6, 2.19, 3.13—3.21	Food Stamp Program: employment and training requirements	Emergency (expires 6-2-87)	R.1987 d.202	19 N.J.R. 649(a)
10:94-5.4, 5.5, 5.6, 5.7	Medicaid Only: eligibility computation amounts	19 N.J.R. 245(a)	R.1987 d.174	19 N.J.R. 646(b)
10:100-3.6	Submission of cemetery petition by funeral directors	19 N.J.R. 345(a)		
10:100-App. A	Supplemental Security Income payment levels	19 N.J.R. 246(a)	R.1987 d.172	19 N.J.R. 533(a)

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CORRECTIONS—TITLE 10A

10A:1-1	Department operation and procedures	19 N.J.R. 620(a)		
10A:4-4.1	Inmate discipline: prohibited acts	19 N.J.R. 178(a)	R.1987 d.154	19 N.J.R. 534(a)
10A:4-5.2	Inmate discipline: schedule of sanctions at Youth Complex	19 N.J.R. 178(b)	R.1987 d.155	19 N.J.R. 534(b)
10A:9-4.6	Reduced custody consideration for inmates with mandatory minimum sentences of 24 months or less	19 N.J.R. 178(c)	R.1987 d.156	19 N.J.R. 534(c)
10A:16	Medical and health services	18 N.J.R. 1662(a)	R.1987 d.160	19 N.J.R. 535(a)
10A:16-6	Pregnant inmates	19 N.J.R. 503(a)		
10A:18	Mail, visits, and use of telephone	19 N.J.R. 33(b)		
10A:34-2	Municipal detention facilities	18 N.J.R. 2412(a)	R.1987 d.149	19 N.J.R. 548(a)

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11:1-24	Credit cards and payment of insurance premiums	18 N.J.R. 1999(a)		
11:2-17.11, 17.14	Settlement of automobile damage claims	18 N.J.R. 2415(a)		
11:3-10.3, 10.10	Settlement of automobile damage claims	18 N.J.R. 2415(a)		
11:3-16	Pre-proposal: Private passenger automobile rate filings	18 N.J.R. 1083(a)		
11:4-21	Limited death benefit policies	18 N.J.R. 1085(a)		
11:5-1.16	Obligations of real estate licensees	18 N.J.R. 1677(a)	R.1987 d.159	19 N.J.R. 551(a)
11:5-1.16	Real estate contracts and leases subject to attorney review	19 N.J.R. 503(b)		
11:5-1.16, 1.23	Public hearing: Obligations of real estate licensees	18 N.J.R. 2113(a)		
11:5-1.23	Obligations of real estate licensees	18 N.J.R. 1680(a)		
11:5-1.25	Sales of interstate properties	18 N.J.R. 2416(a)	R.1987 d.199	19 N.J.R. 647(a)
11:5-1.28	Certification as approved real estate education instructor	18 N.J.R. 1681(a)		
11:12	Pre-proposal: Legal services insurance	18 N.J.R. 1783(a)		
11:17-1	Surplus lines insurance guaranty fund surcharge	18 N.J.R. 1173(a)		

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12:60	Prevailing wages for public works	19 N.J.R. 345(b)		
12:100-4.2	Protection of firefighters	19 N.J.R. 48(a)		
12:100-4.2, 5.2, 6.2, 7	Public employees and exposure to toxic and hazardous substances	19 N.J.R. 267(a)		

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COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

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13:19-9	Designated State official for notification of out-of-state motor vehicle convictions	19 N.J.R. 621(a)		
13:21-9.4	Restoration of driving privilege	19 N.J.R. 621(b)		
13:27-8.14	Advertising by persons not certified as landscape architects	19 N.J.R. 400(a)		
13:29-1.7	Conditional credit on Uniform CPA examination	19 N.J.R. 48(b)		
13:30-8.6, 8.15	Practice of dentistry and referral fees	18 N.J.R. 2419(a)	R.1987 d.158	19 N.J.R. 552(a)
13:31-1.12, 1.13, 1.14, 1.15	Licensure of electrical contractors	19 N.J.R. 49(a)		
13:31-1.16	Electrical contractor ID	19 N.J.R. 352(a)		
13:32-1.9	Master plumber ID	19 N.J.R. 352(b)		
13:35-1.5	Practice by medical school graduates in hospital residency programs	18 N.J.R. 2184(a)		
13:35-6.13	Medical Examiners Board: fee schedule	19 N.J.R. 353(a)	R.1987 d.201	19 N.J.R. 772(a)
13:36-1.9	Itemization of funeral expenses	18 N.J.R. 2186(a)		
13:39A-1.4	Licensure of physical therapists: fees and charges	18 N.J.R. 1177(a)		
13:39A-2.2	Authorized practice by physical therapist	18 N.J.R. 1177(b)		
13:39A-2.2, 3.3	Electromyographic testing by licensed physical therapist: public hearing	18 N.J.R. 1684(b)		
13:39A-3.3	Physical therapy: unlawful practices	18 N.J.R. 1178(a)		

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13:40-5.1	Preparation of land surveys	18 N.J.R. 2367(b)	R.1987 d.215	19 N.J.R. 881(a)
13:44B-1	Compensation of professional and occupational licensing board members	19 N.J.R. 444(a)		
13:45A-2	Motor vehicle advertising practices	18 N.J.R. 2419(b)		
13:45A-6.2	Unlawful automobile sales practices	18 N.J.R. 2115(a)		
13:45A-24	Sale of gray market merchandise	19 N.J.R. 179(a)		
13:46-5.23	Boxing: time between bouts	18 N.J.R. 2423(a)	R.1987 d.214	19 N.J.R. 882(a)
13:47-14.3	Rental of premises for bingo	18 N.J.R. 1180(b)		
13:47B-1.22	Approaches for vehicle scales	18 N.J.R. 2116(a)	R.1987 d.173	19 N.J.R. 552(b)
13:51	Chemical breath testing	19 N.J.R. 444(b)	R.1987 d.229	19 N.J.R. 882(b)
13:71-1.23, 1.24	Harness racing: correction to Administrative Code			19 N.J.R. 889(c)

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PUBLIC UTILITIES—TITLE 14

14:1	Change of address: Board of Public Utilities			19 N.J.R. 890(a)
14:3-7.9	Form of bill for metered service	18 N.J.R. 2425(a)	R.1987 d.163	19 N.J.R. 552(c)
14:3-7.12A	Residential electric and gas service during heating season	18 N.J.R. 2315(a)		
14:17	Change of address: Office of Cable Television			19 N.J.R. 890(a)
14:17-6.21	Cable TV: petition to set aside county refusal	19 N.J.R. 504(a)		
14:18-14.5, 14.6	Cable TV: notices of rate and channel line-up changes	19 N.J.R. 505(a)		

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14A:4-1.1—3.1	Solar energy property tax exemptions	19 N.J.R. 433(b)		
14A:11-4.2, 4.3, 4.4, 5.2, 5.3, 5.4	Reporting by retail fuel merchants and motor fuel dealers	19 N.J.R. 50(a)	R.1987 d.161	19 N.J.R. 552(d)

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STATE—TITLE 15

(TRANSMITTAL 1987-1, dated February 17, 1987)

PUBLIC ADVOCATE—TITLE 15A

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16:20A-2.4, 4.1, 4.2, 5.1	Federal Aid Urban System Substitution Program: audits by local government	19 N.J.R. 622(a)		
16:20B-1.2, 3.1, 3.2, 5.1	1984 Transportation Trust Fund aid: audits by local government	19 N.J.R. 623(a)		
16:21-3.2, 5.1	State aid to counties and municipalities: audits by recipients	19 N.J.R. 624(a)		
16:21A-3.2, 5.1	Bridge rehabilitation and improvement funds: audits by local government	19 N.J.R. 624(b)		
16:22-3.2, 5.1	Urban revitalization, special demonstration and emergency projects aid: audits by local government	19 N.J.R. 625(a)		
16:28A-1.4, 1.7, 1.11, 1.21, 1.28, 1.32, 1.33, 1.44, 1.46, 1.51, 1.69, 1.85, 1.104	No parking zones and bus stops on various State routes	19 N.J.R. 710(a)		
16:28A-1.7, 1.41, 1.108	No parking zones along U.S. 9 in Little Egg Harbor, and Routes 77 and U.S. 40-N.J. 45 in Salem County	19 N.J.R. 180(a)	R.1987 d.145	19 N.J.R. 553(a)
16:29-1.66	No passing zone along Route 140 in Carney's Point	19 N.J.R. 181(a)	R.1987 d.146	19 N.J.R. 553(b)
16:44-3.2, 3.4, 7.5-7.9	Contract administration: construction plans; deferred payments to contractors	19 N.J.R. 181(b)	R.1987 d.218	19 N.J.R. 883(a)
16:49-1.3	Transportation of hazardous materials	18 N.J.R. 933(a)	Expired	
16:51	Practice and procedure before Office of Regulatory Affairs	19 N.J.R. 182(a)	R.1987 d.148	19 N.J.R. 553(c)
16:75	NJ TRANSIT: bus allocation to private carriers	19 N.J.R. 506(a)		

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TREASURY-GENERAL—TITLE 17

17:1-1.10	Balances in withdrawn pension accounts	19 N.J.R. 446(a)		
17:1-1.10	Positive and negative balances in pension accounts	19 N.J.R. 447(a)		
17:1-2.37	Alternate Benefit Program: transmittal of employee contributions	18 N.J.R. 1256(a)		
17:1-4.36	Pension credit for peacetime military service	19 N.J.R. 353(b)	R.1987 d.198	19 N.J.R. 772(b)
17:1-12.8	State retirement systems: delinquent enrollment and employer liability	19 N.J.R. 626(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
17:2-1.4	Public Employees' Retirement System: candidates for member-trustee	19 N.J.R. 52(a)	R.1987 d.157	19 N.J.R. 565(a)
17:2-2.4, 3.1, 5.2 17:2-4.4	Enrollment in PERS Public Employees' Retirement System: accrual of loan interest	18 N.J.R. 2320(b) 19 N.J.R. 194(a)	R.1987 d.144	19 N.J.R. 566(a)
17:3-6.15	Teachers' Pension and Annuity Fund: compulsory retirement	19 N.J.R. 195(a)	R.1987 d.187	19 N.J.R. 648(a)
17:4-4.4 17:4-5.1, 5.2 17:8-3.7	Police and Firemen's Retirement System: loan interest Enrollment in Police and Firemen's Retirement System Supplemental Annuity Collective Trust: investment of contributions	18 N.J.R. 2437(b) 18 N.J.R. 2321(a) 19 N.J.R. 52(c)	R.1987 d.153 R.1987 d.167 R.1987 d.162	19 N.J.R. 566(b) 19 N.J.R. 566(c) 19 N.J.R. 567(a)
17:19-10 17:30 17:30	Architect-engineer selection process for State projects Urban Enterprise Zone Authority Urban Enterprise Zone Authority: comment period reopened	19 N.J.R. 627(a) 18 N.J.R. 2191(b) 19 N.J.R. 354(a)	R.1987 d.203	19 N.J.R. 773(a)
17:32	Municipal and county cross-acceptance of State Development and Redevelopment Plan	19 N.J.R. 509(a)		

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TREASURY-TAXATION—TITLE 18

18:5-3.6	Purchase of cigarette revenue stamps	18 N.J.R. 2378(b)		
18:5-3.6, 3.7, 3.8	Purchase of cigarette tax stamps	19 N.J.R. 511(a)		
18:7-1.16, 5.2	"Financial business corporation" defined; computation of entire net income	19 N.J.R. 712(a)		
18:12-7.12	Homestead Rebate: extension of time to file	18 N.J.R. 2460(a)	R.1987 d.223	19 N.J.R. 884(a)
18:14-2.11	Veteran's and senior citizen's property tax deductions	19 N.J.R. 195(b)	R.1987 d.224	19 N.J.R. 884(b)
18:15-14.6	Farmland assessments	19 N.J.R. 447(b)		
18:24-1.1	Sales and use tax forms	18 N.J.R. 2192(a)		
18:24-1.2	Sales and Use Tax: "periodicals"	18 N.J.R. 1928(a)		
18:26-12.2	Representation of estates	18 N.J.R. 2321(b)	R.1987 d.225	19 N.J.R. 885(a)
18:35-1.19	Filing extension for property tax credit: expired rule			19 N.J.R. 890(b)
18:38	Litter control tax	19 N.J.R. 400(b)		

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TITLE 19—OTHER AGENCIES

19:4-4.152, 4.154, 4.155, 6.28	Commercial Park Zone	19 N.J.R. 53(a)	R.1987 d.212	19 N.J.R. 774(a)
19:4-6.28	Rezoning in Little Ferry	19 N.J.R. 53(b)		
19:4-6.28	Rezoning in Secaucus	19 N.J.R. 54(a)	R.1987 d.211	19 N.J.R. 774(b)
19:4-6.28	Zoning change in Secaucus	19 N.J.R. 448(a)		
19:4-6.28	Zoning change in Little Ferry	19 N.J.R. 512(a)		
19:17-2.1, 3.1-4.5	PERC: Appeal Board procedure	19 N.J.R. 196(a)		
19:17-2.1, 3.1—4.5	PERC Appeal Board procedure: rescheduled public hearing	19 N.J.R. 404(a)		

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TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:40-1.2	Slot machine jackpot payouts	18 N.J.R. 2005(a)		
19:41-9.7	Fee for casino hotel alcoholic beverage license	18 N.J.R. 1687(a)		
19:44-8.3	Minibaccarat training	18 N.J.R. 2322(a)		
19:44-17.11	Advertising by gaming schools	18 N.J.R. 2439(a)	R.1987 d.188	19 N.J.R. 648(b)
19:45-1.1, 1.37, 1.40, 1.40A	Slot machine jackpot payouts	18 N.J.R. 2005(a)		
19:45-1.12	Minibaccarat	19 N.J.R. 54(b)		
19:45-1.32, 1.43	Hard count room procedures	18 N.J.R. 1929(a)		
19:46-1.12	Minibaccarat	19 N.J.R. 54(b)		
19:46-1.16, 1.18, 1.20	Gaming equipment and evidence of cheating or tampering	18 N.J.R. 2121(a)		
19:46-1.26	Slot machine jackpot payouts	18 N.J.R. 2005(a)		
19:47-7.7	Minibaccarat	19 N.J.R. 54(b)		
19:50-1.6	Security of alcoholic beverages	18 N.J.R. 2323(a)		
19:50-1.6	Operating conditions of alcoholic beverage licensees	18 N.J.R. 2439(b)	R.1987 d.165	19 N.J.R. 567(b)
19:65-1.2, 2.1, 2.4, 2.5, 2.7, 2.9, 2.10, 2.11	Casino Reinvestment Development Authority projects	19 N.J.R. 404(b)	R.1987 d.213	19 N.J.R. 775(a)

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