

NEW JERSEY REGISTER



THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 19 NUMBER 22

November 16, 1987 Indexed 19 N.J.R. 2087-2224

(Includes adopted rules filed through October 23, 1987)

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: SEPTEMBER 21, 1987.
See the Register Index for Subsequent Rulemaking Activity.
NEXT UPDATE WILL BE DATED OCTOBER 19, 1987.

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Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **December 16, 1987**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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

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

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

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

RULE PROPOSALS

BANKING

(a)

THE COMMISSIONER

Residential Mortgage Interest Rate Limits

Proposed Amendment: N.J.A.C. 3:1-1.1.

Authorized By: Mary Little Parell, Commissioner, Department of Banking.

Authority: N.J.S.A. 31:1-1.

Proposal Number: PRN 1987-462.

Submit comments by December 16, 1987, to:

Robert M. Jaworski, Deputy Commissioner
Division of Consumer Complaints, Legal and
Economic Research
CN-040
Trenton, New Jersey 08625
Telephone: 609-292-7659

The agency proposal follows:

Summary

N.J.S.A. 31:1-1 provides that the Commissioner of Banking may promulgate rules setting a limit on the interest rate which may be charged on first mortgages on residences containing one to six units. The statute provides that the limit so set must be between six percent per annum and the monthly U.S. Government Long Term Bond Index plus eight percent. Pursuant to that statutory authority, the Commissioner set a maximum interest rate of 17 percent per annum in N.J.A.C. 3:1-1.1. This ceiling fails to conform to the statutory mandate whenever the bond index is less than nine percent per annum because the rate set in N.J.A.C. 3:1-1.1 of 17 percent per annum is not equal to or less than the upper range specified in the statute (that is, the bond index plus eight percent).

The amendments would remove the 17 percent figure and specify that the maximum interest rate which may be charged is at least six percent per annum but no greater than the bond index plus 3.5 percent per annum. This interest rate limit will always fall within the statutory guidelines.

In addition, the new interest limitation is more responsive to changes in interest rates. It will place in effect a more realistic figure than the current static figure of 17 percent. Therefore, it will be in the best interests of the citizens and economy of this State.

Social Impact

The proposed amendment will benefit both consumers and lenders. It would benefit consumers by establishing a lower interest rate ceiling than is currently provided whenever the bond index is less than 13.5 percent per annum. Thus it will provide consumers greater protection against unreasonable rates than currently exist. The proposed amendment would also benefit lenders by permitting a higher maximum interest rate when the bond index is greater than 13.5 percent.

In short, the proposed amendment would protect consumers from unreasonably high rates and yet allow lenders a fair return on their loans.

Economic Impact

No increased expenditure will result from the Department's administration of the amended rule nor will it require any increased effort on the part of lenders or borrowers to meet its requirements.

By ensuring lenders a fair rate of return when the bond index is high, the amendment will tend to keep funds available for the types of residential mortgage loans covered by the rule which might otherwise be directed into other types of investments.

Regulatory Flexibility Statement

The residential mortgage lender industry in New Jersey includes a number of small businesses, as that term is defined in the Regulatory Flexibility Act, P.L. 1986, c.169. The proposed amendment will not increase any costs of compliance or any reporting or recordkeeping requirements for those small businesses.

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

3:1-1.1 Interest rates

(a) (No change.)

(b) The maximum rate of interest to be charged on loans secured by a first lien on real property on which there is erected or to be erected a structure containing one, two, three, four, five or six dwelling units, a portion of which structure may be used for nonresidential purposes, consummated on or after October 20, 1981, shall be [17] at least six percent per annum but not more than the **Monthly Index of Long Term United States Government Bond Yields, compiled by the Board of Governors of the Federal Reserve System and as published by said Board of Governors in the monthly Federal Reserve Bulletin, for the second preceding calendar month plus an additional 3.5 percent per annum rounded off to the nearest quarter of 1 percent per annum.** Such interest shall be calculated in accordance with N.J.S.A. 31:1-1, as amended. Any provision in a mortgage commitment contracted prior to the effective date of this regulation providing for an increase in interest rates to be charged based on the highest lawful interest rate shall be null and void.

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

COMMUNITY AFFAIRS

(b)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules: Accessory Apartments

Proposed New Rules: N.J.A.C. 5:92-16.

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 1987-478.

Submit comments by December 16, 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 at N.J.S.A. 52:27D-303 states that "it is the intention of this act to provide various alternatives to the use of the builder's remedy as a method of achieving fair share housing." One alternative which a number of communities have wished to explore is the possibility of addressing a portion of their fair share through the creation of accessory apartments.

Therefore, the Council is proposing these rules to provide a standard regarding the number of accessory apartments one can expect to be created during the period of substantive certification. The rule also requires that an accessory apartment program be actively marketed within the community, affirmatively marketed consistent with N.J.A.C. 5:92-15 and be established such that 50 percent of the accessory units are affordable to low income households.

The proposed rules estimate that the number of accessory units that may be created during the substantive certification period is equal to one half of one percent (.005) of the base housing stock (as determined by the Council) multiplied by six years. This standard is based on a survey of the limited literature on this subject. It is viewed as a reasonable figure; yet it is not possible, at this point, to know how many property owners would actually be interested in this program. Rather than rejecting the accessory apartment concept, the Council had decided to explore this alternative to a "builder's remedy" by treating it as a pilot program. The Council has also devised conversion standards to guide the development of the apartments as viable affordable units.

Under the proposed rules, municipalities are able to receive approval on an accessory apartment program. However, the program shall be monitored and should the program lag behind schedule, the municipality shall be required to provide another method of fulfilling the fair share.

Social Impact

The proposed new rules will have a positive social impact in providing an additional means for the creation of low and moderate income units. This alternative to the "builder's remedy" could prove to be very effective in the more densely populated areas of the State where the supply of vacant, developable land is limited.

Economic Impact

The proposed new rules will have a positive economic impact on homeowners who no longer need the full use of their house. The rent derived from an accessory apartment can be used to supplement earnings and provide for a sharing of energy costs. In this respect, the elderly may be the greatest benefactors of this program.

Regulatory Flexibility Statement

The proposed new rules should benefit small contractors throughout the State who depend on home improvements, and also will benefit the owners of units that can support accessory units. The proposed compliance requirements apply to the use of accessory apartments by municipalities in achieving fair share, and do not affect small business as defined in the Regulatory Flexibility Act.

Full text of the proposed new rules follows:

SUBCHAPTER 16. ACCESSORY APARTMENTS

5:92-16.1 General provisions

(a) Municipalities may provide zoning for the creation of affordable accessory apartment units.

(b) "Accessory apartment" means a self-contained residential dwelling unit containing its own kitchen, sanitary facilities, and private entrance, which is created within an existing home, or through the conversion of an existing accessory building on the same site, or by addition to an existing home or accessory building.

5:92-16.2 Unit creation

(a) In determining that portion of its fair share obligation that it may allocate to accessory apartment, a municipality shall calculate one half of one percent (.005) of the base housing stock, multiplied by six years.

(b) For purposes of this section, the base housing stock shall be the number of dwelling units in the areas designated by the municipality for accessory apartments zoning that are of sufficient size and character, as determined by the Council, so as to permit conversion to an accessory apartment.

5:92-16.3 Conversion standards

(a) Any accessory apartment ordinance must insure compliance with all applicable zoning ordinances.

(b) Parking shall be provided for accessory apartment units.

(c) The creation of an accessory apartment shall not violate municipal on-site sewer requirements.

(d) An accessory apartment shall be considered rental rehabilitation and shall be subject to a 10 year affordability control pursuant to N.J.A.C. 5:92-12.2.

(e) The municipality shall provide a plan to promote the accessory apartment program for approval by the Council.

(f) An accessory apartment shall not be used in fulfillment of a municipality's rental component pursuant to N.J.A.C. 5:92-14.4 and is not eligible for rental bonus credits pursuant to N.J.A.C. 5:92-14.4(d).

5:92-16.4 Occupancy and marketing

(a) The municipality shall require that 50 percent of the accessory apartment units created be provided for low income households.

(b) The municipality shall insure that all accessory apartment units are affirmatively marketed pursuant to N.J.A.C. 5:92-15 et seq.

5:92-16.5 Terms

(a) Two years from the date of substantive certification, the municipality shall provide the Council with a report on the type and number of the created accessory apartment units.

(b) The municipality shall project the total in (a) above over the six year certification period to determine the total number of units expected to be created.

(c) If the total in (a) above is less than the total identified in the housing element, the municipality shall provide an alternative method of fulfilling the fair share obligation.

(d) If the alternate method adopted to fulfill the fair share obligation pursuant to (c) above involves the zoning of new sites, the municipality shall participate in any mediation sessions conducted by the Council.

(e) The municipality may provide a back-up plan to the accessory apartment program in the final housing element.

(a)

OFFICE OF OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY

Penalty for Failure to Report Suspected Abuse or Exploitation; Reporting of Penalties; Penalty for Willful Hindrance or Refusal to Comply

Proposed Amendment: N.J.A.C. 5:100-2.5

Comment Period Extension

Take notice that the comment period for the proposed amendment to N.J.A.C. 5:100-2.5 which was published in the September 21, 1987 issue of the New Jersey Register at 19 N.J.R. 1686(a) has been extended from October 21, 1987, as originally published, to November 29, 1987.

Submit comments by November 29, 1987 to:

Louis G. Karagias, Staff Attorney
Office of the Ombudsman for the Institutionalized Elderly
28 West State Street, Room 305
CN 808
Trenton, New Jersey 08625-0808

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF COASTAL RESOURCES

Wetlands Maps in Gloucester County

Proposed Amendment: N.J.A.C. 7:7-2.2

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

Authority: N.J.S.A. 13:9A-1 et seq. and 13:1D-1 et seq.

DEP Docket Number: 053-87-10.
Proposal Number: PRN 1987-476.

PROPOSALS

Interested Persons see: **Inside Front Cover**

ENVIRONMENTAL PROTECTION

A **public hearing** concerning this proposal will be held on:
 December 14, 1987 at 7:00 P.M.
 Glassboro State College
 Student Center, Ballroom
 Route 322
 Glassboro, N.J. 08029

Copies of the wetlands maps affected by this proposed amendment are available at Gloucester County Clerk's Office.

Submit comments by December 18, 1987 to:
 Michael Marotta, Esq.
 Office of Regulatory Services
 Department of Environmental Protection
 CN 401
 Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 13:9A-1 et seq., known as the Wetlands Act of 1970, the Department of Environmental Protection is authorized to regulate certain activities on mapped tidal wetlands throughout the State. The purpose of the proposed amendment is to update the upper wetlands boundary of the mapped wetlands of Gloucester County to reflect both natural changes and changes which have resulted from permitted filling and construction. Individual notice of affected property owners has been made and a public hearing scheduled, as required by the Wetlands Act of 1970. The list of affected wetlands appears at N.J.A.C. 7:7-2.2(c)9.

The Department is proposing to add 13 maps to its list of coastal wetlands maps for Gloucester County. These new maps identify approximately an additional 190.75 acres of land which have been determined by the Department to be coastal wetlands. The proposed amendment will also revise the location of coastal wetlands boundaries which appear on 11 existing maps. The relocation of the boundaries on these existing maps will result in the addition of approximately 16 acres of coastal wetlands, while about 64 acres of coastal wetlands will be removed. The net result will be the addition of 142.75 acres of coastal wetlands in Gloucester County.

Social Impact

The adoption of this proposed amendment would result in a positive social impact for those lands which will no longer be classified as coastal wetlands and would result in a negative social impact for those lands which have been added to the list.

The additional lands would be subject to the coastal wetlands regulations found in the Department's Rules on Coastal Resources and Development (N.J.A.C. 7:7E). In general, all development or disturbance within coastal wetlands are restricted except for mosquito control and continued commercial production of salt hay and other agricultural activities.

For those lands which would no longer be designated as coastal wetlands, the restrictions found at N.J.A.C. 7:7E would no longer apply.

Economic Impact

The proposed amendment is likely to result in a reduction in property value of those land areas which will be designated as coastal wetlands. However, a net beneficial economic impact is expected due to a reduction in potential flood damage, recovery costs, and the maintenance of high water quality levels.

Environmental Impact

The coastal wetlands area protects the land from the force of the sea, tempers the impact of weather, provides a habitat for waterfowl and for two-thirds of all our fish and shellfish. It also assists in absorbing discharge from the rivers of the land. Designation of specific wetlands areas and the regulation of activities in these areas will help to prevent further deterioration and destruction of wetlands. Among the regulated activities are dredging, filling, and the discharging of pollutants.

Regulatory Flexibility Statement

The Department has determined, pursuant to the Regulatory Flexibility Act (P.L. 1986, c.169) that the proposed amendment may impose additional requirements upon certain small businesses who may be engaged in activities upon lands which have been identified as coastal wetlands. In order to assure that the rule serves the purpose for which it is intended and implements the statutory purpose, it must apply to all persons who may engage in activities in wetlands. No distinction between small businesses and other parties can be made.

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

7:7-2.2 Wetlands

(a)-(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 wetland boundary on the following wetlands maps:

1.-8. (No change.)

9. Gloucester County

AGENCY NOTE: The following maps are proposed to be **altered**.

...	357-1812	364-1818
350-1824	357-1818	...
350-1830	357-1824	364-1836
...	...	371-1842
357-1800	364-1806	...
357-1806

AGENCY NOTE: The following maps are proposed to be **added** to the list of wetlands maps for Gloucester County.

...	...	357-1878
336-1860	350-1812	...
...	...	364-1848
343-1824	350-1860	...
343-1848	350-1878	364-1872
343-1854
343-1860	357-1854	371-1860
...

10.-11. (No change.)

(a)

DIVISION OF COASTAL RESOURCES

Shore Protection Program

Proposed Readoption: N.J.A.C. 7:7F

Authorized By: Richard T. Dewling, Commissioner,

Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 13:1D-1 et seq.; P.L. 1977, c.208.

DEP Docket Number: 054-87-10.

Proposal Number: PRN 1987-477.

Submit comments by December 16, 1987 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:7F will expire on December 6, 1987.

The Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Therefore, N.J.A.C. 7:7F is proposed for re-adoption without change.

P.L. 1978, c.157 authorized the Department of Environmental Protection to adopt rules to implement the Beaches and Harbors Bond Act of 1977 (P.L. 1977, c.208). These rules were promulgated and adopted on December 6, 1982. (see 14 N.J.R. 1365(b)) Funds from the Beaches and Harbors Bond Act of 1977 have been exhausted and the shore protection program is now being funded by the Shore Protection Bond Act of 1983 (P.L. 1983, c.356). The Shore Protection Bond Act provides \$40 million for State shore protection projects and for the State share of up to 75 percent of the cost of shore protection projects conducted in cooperation with counties or municipalities. The Shore Protection Bond Act also provides \$10 million for loans to counties and municipalities to help them meet their share of a shore protection project.

The purpose of these rules is to implement the shore protection bond acts and establish procedures for selection of shore protection projects and distribution of State shore protection grant and loan funds as well as any joint State/Federal funds.

Subchapter 1 establishes the scope, purpose and authority of the rules and provides definitions.

Subchapter 2 provides a means of selecting shore protection projects to be funded using the New Jersey Shore Protection Master Plan. It describes the major elements of the plan and provides for undertaking emergency projects.

Subchapter 3 defines eligibility for the shore protection program. It establishes the procedures for applying for shore protection funding and the funding formula and eligible costs, and it sets forth the necessary agreement between the State and local government receiving shore protection funding. Specific terms and requirements for shore protection loans are established. This subchapter also requires that any project funded by shore protection aid to comply with the substantive standards found in the Department's Rules on Coastal Resources and Development. (See N.J.A.C. 7:7E.) Subchapter 3 also establishes the timing for payment of the local share of the project cost and a means for reimbursement of local governments for applicable federal projects.

Subchapter 4 establishes contract management procedures for shore protection projects. It describes the contract selection process and the obligations of the contractor and the consulting engineer. It also provides the mechanism for alteration of the project or contract and the contract payment procedure. Enforcement measures regarding contractors are established in this subchapter as well.

Social Impact

The Shore Protection Program will continue to result in a beneficial social impact upon the coastal areas of the State of New Jersey. The program has encouraged and assisted the development of structures along the coast of the State which have helped to preserve beaches and lands along the coast generally.

Such development has enhanced the usefulness of such lands for all purposes, especially water related activities.

Economic Impact

The proposed re adoption would provide the Department with the standards and procedures to continue to discharge grant and loan funds from the Shore Protection Bond Act of 1983 (P.L. 1983, c.356). The program provides a benefit to local government by creating economic incentive and assistance for municipalities to undertake shore protection programs. Shore preservation is likely to enhance certain commercial activities such as those relating to tourism and recreation. The rules impose no additional costs on local governments beyond those already associated with the application process for any shore protection grants and loans.

Environmental Impact

The environmental impact will be positive through the continuation of the shore protection program and the resultant protection of the coastal resources of the State. Shore protection structures help to preserve the coastal lands from erosion. Erosion and sedimentation causes numerous adverse environmental impacts such as loss of productive soils, destabilization of slopes, increased flooding due to

reduced capacity of storm sewers and natural drainage channels. These conditions also cause increased turbidity and siltation of streams and decreased wetlands productivity.

Regulatory Flexibility Statement

As these rules govern the awarding of State shore protection grant and loan funds to counties and municipalities, rather than to private entities, they do not regulate small businesses. A regulatory flexibility analysis is, therefore, not necessary.

Full text of the proposed re adoption appears in the New Jersey Administrative Code at N.J.A.C. 7:7F.

DIVISION OF ENVIRONMENTAL QUALITY

(a)

Determination of Noise from Stationary Sources Proposed New Rules: N.J.A.C. 7:29B Comment Period Extension

Take notice that the Department of Environmental Protection is extending until December 4, 1987, the period for submission of written comments on the proposed adoption of rules concerning the Determination of Noise from Stationary Sources, N.J.A.C. 7:29B. The original proposal to adopt without change, as new rules, the expired rules concerning the Procedures for the Determination of Noise from Stationary Sources was published on August 17, 1987 in the New Jersey Register at 19 N.J.R. 1483(a). Please refer to the proposal for further information.

Submit comments by December 4, 1987 to:

James A. Blocher
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

(b)

Toxic Catastrophe Prevention Act Proposed New Rules: 7:31-1, 2, 3 and 4 Comment Period Extension

Take notice that the Department of Environmental Protection is extending until November 27, 1987, the period for submission of written comments on the proposed new rules concerning the Toxic Catastrophe Prevention Act program, N.J.A.C. 7:31-1, 2, 3 and 4. The proposed new rules were published on September 21, 1987 in the New Jersey Register at 19 N.J.R. 1687(a). Please refer to it for further information.

Submit comments by November 27, 1987 to:

Roger S. Haase, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

HEALTH

The following proposals are authorized by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health, and with the approval of the Health Care Administration Board.

(c)

HOSPITAL REIMBURSEMENT Financial Elements and Reporting Proposed Amendment: N.J.A.C. 8:31B-4.38

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Proposal Number: PRN 1987-467.

Submit comments by December 16, 1987 to:
Pamela S. Dickson, Director
Hospital Reimbursement
NJ State Department of Health
CN 260, Room 601
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The proposed amendment relates specifically to the recently adopted outpatient dialysis rules which exclude these services from Chapter 83 reimbursement restrictions. The proposed amendment extends uncompensated care coverage for these services by enabling hospital providers to receive reasonable costs for qualifying bad debt and charity care.

Social Impact

When the recent rule amendments on outpatient dialysis reimbursement were under consideration, there was concern that access to care for this excluded service may be affected where a provider incurred high levels of unpaid care. The proposed amendment would enable hospitals to continue to provide outpatient dialysis services to all patients regardless of their ability to pay.

Economic Impact

The Department of Health estimates that approximately 90 percent of all patients receiving outpatient dialysis care are eligible for Medicare coverage. Most patients qualify for Medicare coverage, but a waiting period of three months must elapse before coverage begins. Therefore, the patients who receive or potentially will receive Medicare benefits may be unable to pay during the waiting period if they cannot afford supplemental insurance and do not qualify for Medicaid coverage. As with any other covered Medicare outpatient service, the patient is responsible for payment of 20 percent of the Medicare payment rate. However, Medicare will reimburse providers for any copayments which are not actually collected so long as reasonable collection efforts were followed.

There are a few instances where a patient is ineligible for Medicare. The most prevalent cause for ineligibility is when the patient is an illegal alien.

The proposed amendment would reimburse hospitals for bonafide uncompensated care at the amount Medicare is willing to pay for these services. The aggregate amount in 1987 dollars, for all 21 hospitals, has been estimated to be approximately \$2,000,000. This amount was derived by extrapolating actual 1986 uncompensated care data provided to the Department by 11 of the 21 affected hospitals.

It should be noted that the hospitals will receive these payments through the Uncompensated Care Trust Fund. Currently the Trust Fund has a provision for outpatient dialysis services based on 1985 actual uncompensated care based on Chapter 83 prospective outpatient rates.

Regulatory Flexibility Statement

The proposed rule applies 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 amendment.

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

8:31B-4.38 Uncompensated care

- (a) Uncompensated care includes the reasonable cost of the following:
1-3. (No change.)

4. Charity care, as defined by following N.J.A.C. 8:31B-4.39(a)8 and bad debts, provided appropriate collection procedures are followed pursuant to N.J.A.C. 8:31B-4.40, for outpatient dialysis services provided to patients ineligible for Medicare coverage. Reasonable costs shall be limited to the lower of the hospital's charges or the prospectively determined composite rate as established by Medicare. The amount reported by the hospital as uncompensated care shall not include Medicare co-insurance amounts since Medicare will reimburse providers for that amount provided reasonable collection efforts are pursued.

- (b) (No change.)

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Renal Disease Services Standards and General Criteria for the Planning and Certification of Need for Regional End-Stage Renal Disease Services

Proposed Amendments: N.J.A.C. 8:33F-1.2 and 1.4

Authority: N.J.S.A. 26:2H-5 and 26.2H-8.

Proposal Number: PRN 1987-468.

Submit comments by December 16, 1987 to:

John A. Calabria, Chief
Health Systems Services
N.J. State Department of Health
CN 360, Room 604
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The threshold of medical/surgical and/or intensive/coronary care admissions required of an applicant to perform back-up and acute hemodialysis treatment is being lowered from 11,250 to 9,400 in order to reflect the Department's recent removal of same day surgical procedures from annual hospital admissions data. This apparent reduction merely maintains reasonable admissions criteria. Because of this revised reporting method, hospital admissions data will no longer include same day surgical procedures. The number of these procedures, however, will continue to be calculated separately by the Department. If these procedures had been included in hospital admissions data in 1986 they would have comprised approximately 16.8 percent of such admissions. Thus, the 11,250 admissions criterion is being decreased by the same percentage in order to take into account the revised reporting of hospital admission data.

Social Impact

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs . . ."

The Department anticipates that patients will have improved access to acute and back-up dialysis services in more New Jersey hospitals as a result of the proposed amendments.

Economic Impact

The proposed amendments to the End-Stage Renal Disease (ESRD) rules is not expected to add additional financial burden on patients, ESRD providers, the State or Federal government. Chronic

ESRD services are reimbursed through the Medicare program. The amendments to the chronic and acute provisions of the ESRD rule will not affect the volume of patients receiving reimbursement under the Medicare program.

Regulatory Flexibility Statement

Since only hospitals having well over 100 employees would be capable of qualifying for a certificate of need for acute and chronic dialysis services, no recordkeeping, reporting or other compliance requirements are placed upon small businesses by the proposed rules and a regulatory flexibility analysis is not required.

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

8:33F-1.2 Utilization standards

(a) The following minimum utilization rates shall apply for the initiation of new ESRD services.

1.-6. (No change.)

7. "Back-up" dialysis for ESRD chronic patients:

i. Facilities which provide only acute hemodialysis services are not intended to serve ESRD patients with irreversible renal failure. These patients should receive hemodialysis services only through approved ESRD facilities. Similarly, "back-up" dialysis provided for ESRD patients during inpatient stays are considered a component of an approved ESRD dialysis center which provides both acute and chronic hemodialysis. However, "back-up" dialysis provided for ESRD patients during inpatient stays may be provided by non-ESRD approved facilities under the following circumstances:

(1) The non-ESRD approved facility proposing to provide back-up dialysis must document at least [11,250] **9400** inpatient medical/surgical and/or intensive/coronary care admissions annually. In the case of multi-hospital systems, the [11,250] **9400** inpatient admissions must occur at one hospital in the system and may not be the sum of admissions at all hospitals comprising the system.

(2) To provide chronic "back-up" dialysis services, the applicant hospital with [11,250] **9400** inpatient medical/surgical and/or intensive/coronary care admissions must present written certification of the following to the Department of Health:

(A)-(B) (No change.)

(3) (No change.)

8. (No change.)

(b) (No change.)

8:33F-1.4 Acute hemodialysis standards

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

(c) Applications for certificate of need from non-ESRD approved facilities proposing to offer only acute hemodialysis services will be considered only under the following conditions:

1. The non-ESRD approved facility proposing to provide acute hemodialysis during an inpatient stay must document at least [11,250] **9400** inpatient medical/surgical and/or intensive/coronary care admissions annually. In the case of multi-hospital systems, the [11,250] **9400** inpatient admissions must occur at one hospital in the system and may not be the sum of admissions at all hospitals comprising the system.

2. To provide acute hemodialysis services, with its own resources, the coronary care admissions must present written certification that the proposed service is needed. In so doing, the applicant must provide written documentation of a minimum of 24 acute cases during the previous 12 months within the applicant institution. The 24 cases shall be limited to kidney disease patients and shall exclude those due to overdose and poisoning.

3. The non-ESRD approved facility with less than [11,250] **9400** inpatient medical/surgical and/or intensive/coronary care admissions and proposing to provide acute hemodialysis services must provide substantive data that the proposed acute hemodialysis service is needed. In so doing, the applicant must provide written documentation of a minimum of 24 acute cases during the previous 12 months within the applicant institution. The 24 cases shall be limited to kidney disease patients and shall exclude those due to drug overdose

and poisoning. A hospital participating in an Inter-Hospital Hemodialysis Outreach Program shall be exempt from the minimum 24 case requirement; and

4. The applicant with less than [11,250] **9400** annual inpatient admissions also must demonstrate that in the absence of the proposed service, the population to be served will be denied reasonable access based upon medical necessity to an approved hospital ESRD dialysis center providing inpatient dialysis. Reasonable access shall be interpreted to mean not more than 20 straight miles travel from the point of origin of the patients. The length of time it takes to confirm that a patient needs acute dialysis and to arrange the logistics of such treatment is such that a patient can easily be transferred to a hospital ESRD dialysis center during the time this is occurring and without jeopardy to the patient. A hospital participating in an Inter-Hospital Hemodialysis Outreach Program for acute hemodialysis shall be exempt from the aforementioned 20 straight miles travel requirement.

(d) (No change.)

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Psychiatric Inpatient Beds Child and Adolescent Acute Psychiatric Bed Standards

**Proposed Repeal: N.J.A.C. 8:43E-4.1 through
8:43E-4.4**

**Proposed New Rules: N.J.A.C. 8:43E-4.1 through
8:43E-4.21**

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1987-469.

Submit comments by December 16, 1987 to:

John A. Calabria, Chief
Health Systems Services
N.J. Department of Health
CN 360, Room 604
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Health is responsible for establishing rules governing the planning and Certification of Need for hospital and related health care facility services. In developing the proposed rules, the State Commissioner of Health obtained the recommendations of the Statewide Health Coordinating Council (SHCC) and its special advisory committee, the SHCC Children's Psychiatric Bed Task Force, as well as the Department of Human Services, Division of Mental Health and Hospitals.

The Department of Health, through N.J.A.C. 8:43E-4.1 et seq., instituted a moratorium on the establishment of new children's acute inpatient psychiatric beds in New Jersey in January, 1984. The implementation of the moratorium was necessary to enable the State Department of Health and the SHCC to (1) conduct a careful evaluation of the impact of the development of a network of community-based mental health services for children; (2) assess the future need for additional children's acute inpatient psychiatric beds in New Jersey; and (3) develop an effective methodology for measuring the need for beds statewide.

Now that the goals of the moratorium have been accomplished, the Department believes repealing the current rules is necessary to establish new criteria. This proposal serves the dual purpose of both repealing the existing moratorium on Children's Acute Psychiatric Beds and simultaneously presenting new standards and criteria for the review of Child and Adolescent Acute Psychiatric Inpatient Beds.

It is the public policy of the State that children should be served in community settings and that institutionalization should be used only as a last resort. Both the State Health Plan and the New Jersey

Behavioral Health Services Plan call for the development of community-based services for children and adolescents in the least restrictive setting. National experts on children's mental health services have encouraged states to promote the development of community systems for emotionally disturbed children in order to: (1) lessen the disruption to the child and family caused by frequent hospitalizations; (2) enhance the involvement of the family and other important individuals and systems in the child's treatment (for example, the schools, therapists, counselors); and (3) reduce the overall cost of care. These proposed new rules are offered to enhance and foster the development of a community-based system of care.

The proposed new rules contain specific sections and criteria regarding unit size, bed need, admissions policies, accessibility and continuity of care, length of stay, treatment program, staffing patterns and discharge planning. There is also information regarding reimbursement, capital financing, physical environment, State and local review, and impact on area psychiatric units.

Social Impact

Child and adolescent units at New Jersey's State psychiatric hospitals were reorganized by the Department of Human Services in 1980. At that time, the Division of Mental Health and Hospitals initiated the development of a statewide network of community-based mental health services for children and adolescents. A continuum of community mental health services has evolved which includes emergency screening in each service area of the state's twenty-one counties. Six regional programs were developed to provide crisis intervention services and short-term acute care services up to 28 days for both committed and voluntary youth. These programs, which have a capability of serving 800 youth annually, are located in a variety of milieu including residential group homes, foster care homes (with emergency services backup), and in general hospital inpatient units. Moreover, there has been an emphasis on the development and expansion of ambulatory care programs, such as outpatient and partial care which divert inpatient admissions and shorten length of stay. These programs provide clinical, social, and advocacy services for children while they remain at home with their families.

The moratorium was imposed in order to assess utilization of these new resources and their clinical and economic impacts. Five times the number of children are being served by the mental health system today than in 1979, with the majority of children being served by a community-based support network. Not only are more children being served in New Jersey, but they are being served in more diverse settings and programs.

In spite of the efforts to create a community-based network of children's services, some components of a comprehensive service continuum do not exist in many areas. The lack of a full continuum of children's mental health services often results in the inappropriate use of more restrictive settings, a backup in the inpatient care system, and long lengths of stay in inpatient facilities. These proposed rules will have a positive social impact by serving to integrate and strengthen the development of a continuum of psychiatric care for children.

Economic Impact

The implementation of these rules is expected to result in the addition of 78 new child and adolescent acute psychiatric beds statewide through 1990. These inpatient resources form a crucial part of the overall system. They not only provide treatment but gatekeeping to divert children from state hospitals to other more appropriate services. System costs are not expected to significantly increase because the bed additions will be introduced as part of a system of care with an emphasis on appropriate admissions, increased use of ambulatory services and the use of inpatient care only after alternatives to hospitalization have been fully evaluated. Moreover, the proposed rules are expected to contain the rise in health care costs in New Jersey by prohibiting the establishment of unnecessary resources and by requiring linkages with other appropriate community-based treatment options. The proposed rules are not expected to have any

negative impact on existing providers of child and/or adolescent acute psychiatric treatment services.

Regulatory Flexibility Statement

The Department of Health has determined that compliance with the proposed new rule, as well as with all of N.J.A.C. 8:33, is required by all health care facilities which provide health care services as defined in N.J.A.C. 8:33-1.6. The Department acknowledges that many applicants who desire to develop health care facilities which provide child and adolescent psychiatric services could conceivably have less than 100 full-time employees and therefore be categorized as small businesses as defined in Section 2 of the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169).

In order to assure the orderly development of health care services, the Department of Health must apply these rules equitably and uniformly regardless of type or size of the applicant organization. This action will assure that psychiatric care for children and adolescents is delivered in the form of quality programs, of demonstrated need, efficiently provided, properly utilized, and at a reasonable cost.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 8:43E-4.

Full text of the proposed new rules follow:

SUBCHAPTER 4. CHILD AND ADOLESCENT ACUTE PSYCHIATRIC BEDS

8:43E-4.1 Scope

(a) The New Jersey Department of Health currently licenses and regulates inpatient psychiatric beds in licensed general and special hospitals throughout the State. These rules set forth the criteria by which the Department of Health will review Certificate of Need applications for the addition or establishment of new Child and Adolescent Acute Psychiatric Beds in any existing or proposed health care facility in New Jersey, or in any facility designated as a Children's Crisis Intervention Service by the Department of Human Services.

(b) Children's acute psychiatric inpatient care is viewed as a single and highly specialized phase in an overall system of services for psychiatrically impaired youth. These inpatient services are designed to provide short-term treatment within a comprehensive network of mental health care in the community. This approach encourages and supports the delivery of services in the most appropriate and least restrictive setting.

(c) The rules in this subchapter apply exclusively to and identify standards for the review of Certificate of Need applications for child and adolescent acute psychiatric beds.

8:43E-4.2 Definitions

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

"Adolescent acute psychiatric beds" means beds in a designated unit of a licensed acute care or special hospital or in a designated free-standing psychiatric unit or facility, established for the provision of intensive treatment to persons generally between the ages of 13 and 18 who are experiencing an acute episode of a primary psychiatric disorder and have been medically evaluated to require the services of a specifically designated unit. The Diagnostic and Statistical Manual (DSM) III, which is published by the American Psychiatric Association, is the recognized guide for making diagnostic decisions.

"Case management service" means a mechanism to assure a comprehensive appraisal of a child's needs and to utilize the most appropriate resources within the child's community to meet these needs.

"Children's acute psychiatric beds" means beds in a designated unit of a licensed acute care or special hospital or in a designated free-standing psychiatric unit or facility, established for the provision of intensive treatment to persons generally under the age of 13 who are experiencing an acute episode of a psychiatric disorder and have been medically evaluated to require acute psychiatric inpatient ser-

vices. The Diagnostic and Statistical Manual (DSM) III, which is published by the American Psychiatric Association, is the recognized guide for making diagnostic decisions.

"Children crisis intervention service" means a regional community-based acute care inpatient psychiatric service designated by the Commissioner of the Department of Human Services to provide assessment, crisis stabilization, evaluation and treatment to children and adolescents with an average length of stay not to exceed 30 days. Children and adolescents are screened by local emergency/screening services and referred for admission if this level of inpatient care is indicated.

"Community outreach services" means a service provided to a child or adolescent and their caretaker in the setting where a crisis occurs, providing assessment and intervention services to determine the need for emergency and stabilization services, or referral to outpatient services, or admission to an inpatient facility or residential program.

"Department" means the New Jersey Department of Health.

"Emergency/screening mental health services" means a public or private ambulatory care service or a discrete program designated by the Commissioner of the Department of Human Services for the provision of emergency mental health services including assessment, psychiatric crisis intervention, psychiatric and medical evaluation, initial diagnosis, treatment, and referral services for mentally ill persons. These services are available on a 7-day, 24-hour basis to individuals experiencing an acute psychiatric crisis within a specified geographic service area as defined in N.J.S.A. 30:4-27, P.L. 1987, c.116.

"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.

"System of care" means a comprehensive spectrum of clinical services and other essential support services which are organized into a coordinated network to meet the multiple needs of emotionally disturbed children and adolescents and their families. This comprehensive continuum of services would include an array of mental health services including, but not limited to, provisions for emergency/screening, crisis intervention, outpatient services, partial hospitalization, as well as provisions for respite and home-based services, residential treatment services and inpatient hospitalization.

8:43E-4.3 Submission of Certificate of Need application

(a) Applications for establishment of new Children's Acute Psychiatric Beds will be competitively reviewed pursuant to batching procedures set forth in the N.J.A.C. 8:33-1.5. The following schedule will apply for the submission of Certificate of Need applications for child and adolescent psychiatric beds during calendar year 1988:

Deadlines for Actual Submission	Cycle Begins
January 1	February 15
July 1	August 15

(b) After calendar year 1988, the batching schedule will be established in N.J.A.C. 8:33-1.5 or if changes to the batching schedule are necessary, the changes will be announced by the Department of Health in the form of a Miscellaneous Notice published in the New Jersey Register.

8:43E-4.4 Unit size

(a) In order to support a core staffing pattern and the necessary range of services in the provision of acute psychiatric care to children and adolescents, the minimum number of beds which may be established in a single treatment unit is 12. The minimum size of a sub-unit of children's beds is four but must be proposed and operated in combination with adolescent beds in a treatment unit which includes at least 12 beds. These beds must be used exclusively for the provision of acute psychiatric services to children and adolescents.

(b) The maximum number of child and/or adolescent beds that may be established in a single, discrete treatment unit is 20.

(c) The Department may consider exceptions to (a) and (b) above when the applicant documents that at a higher or lower capacity, economies of scale will be achieved, the quality of care will be maintained in the treatment program, and access to care will be appreciably improved.

8:43E-4.5 Bed need

(a) The general formula for the determination of Child and Adolescent Acute Psychiatric Bed Need is as follows:

$$\text{New Beds Needed} = \text{Total Beds Needed} - \text{Available Beds}$$

$$(b) \text{ Total Beds Needed} = \frac{\text{Statewide Beds Needed}}{21} + \frac{\text{SD} \times (T-50)}{10}$$

1. SD = Standard deviation of bed need estimate for each county

2. T = Average T score of bed need distribution and T score of county-specific children's mental health risk factor

$$3. \text{ T Score for Bed Need} = \frac{\text{Average bed need} - \text{mean bed need} \times 10 + 50}{\text{SD}}$$

$$4. \text{ Average Bed Need} = \frac{\text{Normative bed need} + \text{Actual bed use}}{2 \times .85}$$

$$5. \text{ Normative Bed Need} = \frac{\text{Total annual patient days needed in State} \times \text{County Childrens population}}{\text{State childrens population} \times 365}$$

$$6. \text{ Actual Bed Use} = \frac{\text{Annual patient days utilized by children in each county}}{365}$$

7. Estimated Annual Patient Days Needed in State minus the sum of Patient days in the following categories:

i. Patient days in existing Children's Crisis Intervention Service (CCIS) Units as contained in the official inventory of general hospital and free-standing beds;

ii. 80 percent of the general hospital psychiatric patient days for children and adolescents, excluding any hospital-based CCIS unit patient days;

iii. 75 percent of the patient days at Trenton State Hospital, calculated by county, for 90 percent of admitted children and adolescents, using their first 30 days of hospital stay;

iv. 75 percent of the patient days at the Arthur Brisbane Children's Treatment Center (ABCTC), for all admitted children using their first 30 days of hospital stay;

v. 80 percent of the patient days expected by estimating the number of children and adolescents refused admission to a CCIS unit due to lack of capacity. An Average Length of Stay (ALOS) of 22.6 days utilized to reflect average of CCIS units.

vi. Patient days expected by the diversion of children and adolescents requiring acute inpatient psychiatric treatment from the juvenile justice system. Based on 5% of juvenile violent crimes, multiplied by CCIS ALOS (22.6 days).

$$8. \text{ T Score for Children's Mental Health} = \frac{\text{County Mental Health Risk Factor} - \text{mean Risk Factor}}{\text{Standard Deviation of County Risk Factors}} \times 10 + 50$$

9. County Mental Health Risk Factor = the mental health inpatient need scores for children and adolescents which were derived for each New Jersey county in a statistical procedure based on the correlation between the treated prevalence and incidence of mental illness among children and adolescents and the 28 area characteristics such as poverty, child abuse, school dropout rate, infant mortality and others.

(c) Available Beds = child and adolescent acute psychiatric inpatient beds as defined in N.J.A.C. 8:43E-4.3 which have been approved through the Certificate of Need process or are in operation. Beds allocated to each county are based on the averaging of distribution by population and actual bed usage.

(d) Data requirements are as follows:

1. Data utilized in (b)7 above shall be updated by the N.J. Department of Health in conjunction with the Department of Human Services and published annually.

2. Data in (b)9 above regarding the mental health risk factor is developed by the Division of Mental Health and Hospitals and will

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Interested Persons see Inside Front Cover

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be updated every three years. Copies can be obtained by writing to the Division at 13 Roszel Road, Princeton, N.J. 08540, or by calling (609) 987-0887.

3. Data utilized in (c) above shall be updated by the Department of Health at least 45 days prior to the Certificate of Need application submission. Copies of information for (b)7 and (c), can be obtained by writing to Health Systems Services, CN 360, Room 604, Trenton, N.J. 08625, or by calling (609) 292-5960.

(e) Each applicant must also justify the need for the number of Child and Adolescent Acute Psychiatric Beds proposed in the Certificate of Need application through provision of the following documentation:

1. A description of alternative settings and treatment models that are currently available for the provision of psychiatric services to emotionally disturbed children and adolescents in the service area, and a justification of the need to utilize an inpatient setting to accomplish treatment goals. The applicant must discuss how the proposed program/service would fit into a comprehensive system of care. Applicants must show linkages with these services through a formal affiliation agreement between the applicant and those community agencies/services whose geographic service area(s) coincide with the applicants' proposed primary service area(s). No child or adolescent acute psychiatric service 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.

2. 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 and must conform to N.J.A.C. 8:43E-4.9.

3. Projected numbers of admissions to the proposed children's acute psychiatric beds must be justified through 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. These would include local designated emergency/screening services, general hospitals, community mental health agencies, the Division of Youth and Family Services (DYFS), the family court, family crisis intervention units, and detention centers.

(f) In addition to (a) through (e) above, when the application is submitted by or on behalf of an existing provider for the purpose of increasing existing Child and Adolescent Acute Psychiatric Bed capacity, the applicant must additionally demonstrate the following:

1. Occupancy rates (based on total licensed bed capacity) for the previous 12 months must meet or exceed the following percentages in relation to unit size: over 16 beds—90 percent; 12 to 15 beds—85 percent; 11 beds or less—80 percent. At the proposed new capacity, it must be demonstrated that annual occupancy will exceed 80 percent within two years of operation.

2. Average length of stay (ALOS) must not exceed 110 percent of ALOS in existing Child and Adolescent Acute Psychiatric Beds statewide based on data reported to the Department for the previous calendar year.

3. Numbers of target population patients admitted during the previous two calendar years, their average length of stay, and patient days.

4. Numbers of target population patients referred but not accepted during the last two calendar years, and an explanation of their disposition.

(g) Applicants seeking to establish Child and Adolescent Acute Psychiatric Beds must meet the criteria mentioned below as well as the provisions at N.J.A.C. 8:43E-4.11. The applicant must directly or indirectly through Affiliation Agreements as required in N.J.A.C. 8:43E-4.5(e)1, and 8:43E-4.8 provide the following services:

1. Designated emergency and screening service, as defined in N.J.S.A. 30:9A and N.J.S.A. 30:4-27, P.L. 1987 Chapter 116, for the service area encompassed within the geographic area served by the proposed unit. Referral to the proposed Child and Adolescent Acute

Psychiatric Service by the appropriate designated emergency and screening service shall be in accordance with the procedures set forth at N.J.S.A. 30:4-27, P.L. 1987, Chapter 116, concerning admission to inpatient facilities for the treatment of persons who are mentally ill;

2. Intensive inpatient care which focuses on crisis intervention directed towards the resolution of a psychiatric emergency and an attempt to restore the child to his or her previous level of functioning;

3. Diagnostic evaluations to assess all the factors contributing to the child's emotional status;

4. Community outreach services for the purpose of providing case consultation and crisis intervention to prevent unnecessary hospitalization or a disrupted placement;

5. Case management services for the purpose of linking children and families to the appropriate array of aftercare services. This service would maintain advocacy responsibility for the child upon discharge (whether to a more intensive or to a less restrictive service) to insure that services to the child and adolescent are prioritized and coordinated by the various agencies involved in providing aftercare services to the child and family;

6. Community mental health services, including outpatient and partial care services, as defined in the *Rules and Regulations Governing Community Mental Health Services under the Community Mental Health Services Act N.J.S.A. 30:9A-1 et seq.* An exception will be permitted for applicants not providing these services where written affiliation agreements exist and the CMHC(s) within the proposed service area provide letters of support for the project;

7. An information and referral system to provide guidance and direction to referral source agents for children and adolescents for whom hospitalization has been deemed inappropriate or when the unit is at capacity by providing assistance to the referral source in securing the necessary alternative service(s) and by providing follow-up to determine if these services were obtained. Specific procedures and transfer agreements with specialized facilities for patients who cannot be accommodated on the unit shall be established and documented.

8:43E-4.6 Admissions criteria

(a) Written admissions criteria and policies must be developed by the facility and included as part of the Certificate of Need application.

(b) Written admissions criteria shall 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 insurance coverage;

5. Policy on the treatment of individuals requiring both psychiatric and medical care;

(c) Admissions criteria shall reflect the following:

1. The designated emergency screening service shall be the route of entry for patients in those areas which have a functioning service available. For areas without a designated or functioning screening service the applicant shall describe the procedure to credentialed professionals with admitting privileges. Children and adolescents who have been evaluated by a credentialed professional can be seen directly by a children's inpatient service, and may be admitted in accordance with admission procedures established by the applicant and contained in the application.

2. Provisions for accepting children in crisis.

3. Method for assuring that alternatives to inpatient hospitalization have been fully evaluated and deemed inappropriate or unavailable prior to admission.

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(d) The facility, or parts thereof, must provide assurances that it will request designation as a Mental Hospital or as a Children's Crisis Intervention Service by the Commissioner of the Department of Human Services for the provision of Child and Adolescent Acute Psychiatric Services.

(e) The admissions policy must assure that priority will be given to:

1. Children and adolescents who are at immediate risk of serious physical harm to self or others or of causing serious damage to property due to impaired judgement; and who display severely disruptive behavior, or intentional self-injury, or impulses to assault others or damage property;

2. Children or adolescents who are diagnosed as suffering from a serious psychiatric disorder with acute or severe behavioral disorganization who are unknown to the system and who need a complete diagnostic assessment and evaluation in order to determine the most appropriate range of services to prevent them from being served inappropriately or from going untreated;

3. Children and adolescents who have previously received psychiatric inpatient treatment and/or who have severe, incapacitating psychiatric disorders which require immediate treatment to prevent further deterioration;

4. Children and adolescents who present behavior problems associated with major mental illnesses which are too severe to be managed at a less intensive level of care. Alternatives to inpatient care should be fully evaluated and deemed inappropriate or unavailable prior to admission;

5. Children and adolescents with a secondary diagnosis of chemical dependency or retardation will be considered for admission only if there is another primary psychiatric diagnosis.

8:43E-4.7 Accessibility of care

(a) Provisions for assigning all admissions, including the medically indigent, to the applicant's psychiatric staff shall be documented.

(b) For facilities under the Standard Hospital Accounting and Rate Evaluation (SHARE) system, at N.J.A.C. 8:31A-1.1 et seq., the following thresholds have been established concerning payment for services:

1. Medicaid participation shall be considered a desirable feature of the Certificate of Need application by the Department of Health and will be given preference during the review process. If an applicant is not presently certified by Medicaid, the applicant must show evidence that an application for Medicaid participation has been submitted in order to receive such departmental preferences.

2. A minimum of 10 percent of the total occupied acute psychiatric bed complement shall be utilized annually for medically indigent patients within all Child and Adolescent Acute Psychiatric units. Within the 10 percent, a minimum of five percent must be available for free care to individuals under the Community Services Administration (CSA) poverty guidelines, with the balance available to individuals under partial pay arrangements. For existing facilities seeking to add adult, child and/or adolescent psychiatric beds, this requirement must be met in all licensed psychiatric beds of the facility at the completion of the project and prior to licensure of the new beds. The Department may consider exceptions to this requirement for facilities which demonstrate a significant financial hardship based on the case mix of patients by payer source.

3. 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 and Blue Cross/Blue Shield. For existing facilities, this requirement must be met in all licensed psychiatric beds of the facility at the completion of the project and prior to licensure of the new beds.

(c) The applicant must 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 free choice by

the patient or the patient's family. Existing facilities will document implementation of this policy by providing average length of stay data by payer source and diagnosis.

(d) The applicant must 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 must assure that individuals with a diagnosis of alcoholism and/or drug abuse exclusively (and with no primary psychiatric diagnosis) will 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 a primary psychiatric diagnosis are acceptable for admission where an applicant demonstrates availability of appropriate clinical services for this population.

(f) The applicant must assure compliance with all applicable Civil Rights and non-discrimination requirements of Federal and New Jersey law.

(g) All applicants must submit an annual report documenting compliance with these accessibility requirements. The Department may assess licensure or rate-setting penalties for non-compliance with Certificate of Need conditions.

8:43E-4.8 Continuity of care

(a) Applicants for acute psychiatric services for children and adolescents must present evidence that linkages will be established with community mental health agencies offering child and adolescent mental health emergency/screening, crisis intervention, outpatient care, partial hospitalization, case management and residential and group home care; with school systems and the local district offices of the Division of Youth and Family Services (DYFS) within the applicant's primary service area. Specific affiliation agreements with specialized facilities for patients who cannot be accommodated on the unit/facility should be established (for example, specialized programs for chemically addicted youth or youth with severe developmental disabilities which may impede their ability to participate in the therapeutic milieu of the inpatient program).

(b) The purpose of the affiliation agreements is to assure a full range of community-based services to emotionally disturbed youth and to develop a formal mechanism of communication and referral between public and private providers of services to the target population. Applicants are expected to participate in a system of care by showing evidence that written agreements have been established with other general hospitals, community mental health agencies, DYFS, the juvenile justice system, local education authorities and state or county hospitals (where appropriate) in the proposed service area as outlined in N.J.A.C. 8:43E-4.5(e) above. These affiliation agreements are to clarify admissions, referral, transfer, discharge, and service relationships between agencies. At a minimum, the affiliation agreements should address the following areas:

1. A description of the psychiatric patient population to be served by the unit;

2. Clear guidelines for admission to the children's acute psychiatric service, for integrating medical care, for handling crises and providing emergency backup support;

3. The development of a referral process for transfer of patients needing aftercare services and/or hospitalization or residential placement in a longer-term facility;

4. Case management responsibilities and treatment services; and

5. Policies regarding third party reimbursement.

8:43E-4.9 Average length of stay—Child and Adolescent Acute Psychiatric Services

Projected average length of stay (ALOS) in facilities proposing new Child and Adolescent Acute Psychiatric Beds shall not exceed 110 percent of ALOS of all existing Child and Adolescent Acute Psychiatric Units in the state, as reported in the full last calendar year of data available to the Department, and shall not exceed 30 days.

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HEALTH**8:43E-4.10 Aftercare services**

(a) The applicant shall demonstrate how all patients, regardless of the ability to pay, shall have arrangements provided for follow-up care on an outpatient basis to reduce recidivism and to prevent further deterioration which would require a more restrictive level of care. Aftercare services may be provided by the applicant directly or by referral to agencies with which the applicant has affiliated pursuant to N.J.A.C. 8:43E-4.8. At a minimum, aftercare services should provide linkages for clinical case management, partial hospitalization, crisis intervention, and respite care.

(b) The applicant shall also describe the mechanism by which needed residential or other specialized services are procured. The applicant shall assure availability of those services necessary to meet the needs of patients who are unable to utilize community mental health centers or private practitioners.

(c) In order to assure that the child receives the necessary aftercare services, a case management system is needed while the child is an inpatient, and will be continued upon discharge. The application shall fully describe the case management function.

8:43E-4.11 Impact on area psychiatric units

(a) Occupancy rates in all existing Child and Adolescent Acute Psychiatric Units impacted by the proposed new units or facility shall meet or exceed the following percentages in relation to unit size prior to the approval of additional Child and Adolescent Acute Psychiatric Beds: 16 to 20 beds—80 percent; 12 to 15 beds—75 percent; 11 beds or less—70 percent.

(b) The applicant must demonstrate that the proposed bed addition will not negatively impact utilization of existing Child and Adolescent Acute Psychiatric Units in the proposed service area. In reviewing impact, the review process may consider such issues as geographic accessibility, economic and financial efficiencies, referral patterns, commitment to serve the indigent, the demonstration of innovative financing mechanisms for the provision of indigent care, and the quality of services offered. Submission of statements from affected hospitals indicating support or no projected impact shall be considered evidence in demonstrating compliance with this standard.

8:43E-4.12 Treatment program, staffing pattern, and discharge planning

(a) The proposed treatment program, staffing pattern, and discharge planning process must be identified within the Certificate of Need application. All applicants for Child and Adolescent Acute Psychiatric Beds must demonstrate the ability to comply with State psychiatric licensure standards as well as the current Joint Committee on Accreditation of Hospitals (JCAH) Standards applicable to psychiatric facilities and units, Title XIX (Medicaid) licensing and staffing standards, and appropriate seclusion and restraint standards. The treatment program and staffing pattern must be fully described and their clinical appropriateness clarified.

(b) The treatment program consists of the following:

1. The inpatient program shall provide a full range of psychiatric diagnostic and therapeutic interventions including, but not limited to, individual, group, psychopharmacological, family, and milieu therapy. The unit shall also make provisions for education and recreational activities. The applicant shall discuss the therapeutic rationale and the role of the various program components. The framework which will be used in organizing the daily activities shall be described. Further, the applicant shall discuss those measures which will be instituted to assure the availability of an ongoing and active treatment program.

2. The applicant shall discuss the provisions which will be made for the patient's nonpsychiatric care (that is, medical, dental).

3. The treatment program shall minimally focus on the following goals:

i. To protect the child or adolescent from harming himself or others;

ii. To conduct a detailed evaluation of child or adolescent's family for the purpose of providing a comprehensive diagnostic picture. This evaluation should take into consideration all the factors contributing

to the child's emotional status (that is, developmental issues, cognitive functioning, sociocultural and familial factors, interpersonal relationships and physical health.) The assessment should include an identification of the child or adolescent's strengths as well as his or her deficiencies. Both of these sources of data shall be used as the basis for the development of the child or adolescent's treatment plan:

iii. To use interdisciplinary assessment as the basis for the development of an individualized treatment plan which includes the coordination of service needs upon discharge;

iv. To stabilize and treat the child or adolescent's acute disorder and to prepare the child or adolescent for the next phase of treatment at either a less intensive or more intensive level of care;

(c) The staffing pattern consists of the following:

1. The application shall describe the management, organization, and staff that will be available on the unit during specific hours of operations, including evenings, nights, and weekends. Applicant shall present the criteria which will be used in organizing staff into the various service delivery components.

2. Until licensure standards are adopted by the Department of Health, the child or adolescent's acute psychiatric program should be staffed with a multidisciplinary team which should include the following: a board certified or eligible child psychiatrist and a board certified or eligible pediatrician, child psychologist, social worker, special education teacher, occupational, nursing and child care staff, and availability of other consultants as required to meet the special needs of the patients served (for example, pediatric neurologist, speech and language specialists, etc.) a case manager is a critical member of the treatment team and must be included as part of the staffing complement. A case manager should have working knowledge not only of child and adolescent development and mental health programs but of related health, education and social service resources in order to facilitate the child or adolescent's treatment plan.

3. The program should have adequate personnel and outreach capacity to evaluate the child's family and to work with the family on an ongoing basis while the child is in treatment.

(d) Discharge planning consists of the following:

1. The structure of the discharge planning process shall be described in the Certificate of Need application. Discharge planning should be viewed as an integral part of the child or adolescent's treatment plan and should therefore begin at intake.

2. In order to facilitate a smooth transition for the child or adolescent and coordination of the appropriate aftercare services, those individuals who will provide for the child or adolescent's post-discharge needs should be involved in the discharge planning process (that is, the patient, natural parents, foster family, therapeutic group home or residence and representatives from all appropriate agencies/services which will be involved with the child or adolescent).

3. The discharge planning system must show evidence that it is designed to effectively reduce length of stay to the most efficient, clinically appropriate level.

4. The following data should at a minimum be available to guide the discharge planning process:

i. A comprehensive psycho-social history to help determine future service needs;

ii. A comprehensive summary of all assessments which have been conducted (for example, psychiatric, physical, social, familial, economic, legal, vocational, and educational) along with a report on the child's progress and response to corresponding therapeutic interventions during hospitalization.

5. Referral/affiliation agreements for follow-up care must be in evidence. Referral/affiliation agreements must address the basic areas identified in N.J.A.C. 8:43E-4.8.

6. The applicant shall describe the mechanism which will be employed to assure that the aftercare services which are deemed to be clinically necessary for each patient upon discharge are made available.

HEALTH**PROPOSALS****8:43E-4.13 Appropriateness of cost for facilities under SHARE reimbursement**

(a) The projected SHARE reimbursement rate and projected per diem charges to private pay patients and commercial insurers must be provided in the Certificate of Need application. Sufficient details to determine the basis for these projections must be made available to the Department.

(b) The applicant must demonstrate that the proposed program design and staffing pattern will permit charges for direct patient care costs to be within an acceptable range of state-wide average charges for existing child or adolescent acute inpatient units as determined by the Department.

(c) The projected rates must be determined reasonable by the Department in comparison to average per diem rates of existing New Jersey facilities providing Child or Adolescent Acute Psychiatric Services within two years of operation.

(d) The method of physician billing to patients shall be detailed. Any physician costs included in the per diem rates shall be itemized and the projected charges identified.

(e) All ancillary and clinical support services which may be routinely provided to and charged to patients shall be detailed. A list of standard laboratory tests required upon admission shall be provided. No project shall be approved unless all mandatory laboratory and diagnostic tests as required are justified as medically necessary by the applicant.

(f) The policies and procedures for informing patients of the charges for care prior to or upon admission must be detailed.

(g) The number of single-bedded rooms must be itemized and justified.

8:43E-4.14 Capital financing

Financing construction, modernization/renovation, or major moveable equipment projects requires a minimum equity contribution from the applicant of at least 15 percent of total project costs, including all financing and carrying charges. Where a hospital demonstrates financial hardship to the satisfaction of the Department, this equity requirement may be reduced by one-half of one percent for each full percentage point the hospital uncompensated care percentage exceeds the statewide average uncompensated care percentage for acute care hospitals.

8:43E-4.15 Physical environment

(a) Services should be provided in an identifiable unit with adequate space to have areas for sleeping, dining, education, recreation, occupational/recreational therapy, and offices for evaluation and treatment, as well as provisions for outdoor space and space for non-therapeutic social activities. The unit should reflect a home-like environment to the extent possible; the design of the unit and its furnishings should be age appropriate. The relationship of the unit to other services and other factors designed to enhance the program should be considered in determining the location of the unit.

(b) The design of the facility should, within reasonable construction cost guidelines and consistent with applicable Federal and State life-safety and BOCA codes, provide the most appropriate clinical environment to meet treatment goals. Adequate space should be provided for the treatment staff either on, or in close proximity, to the unit. A floor plan or rough drawing of the proposed new facility or unit(s) should be contained in the application to demonstrate compliance with these standards and consistency with the proposed treatment plan.

8:43E-4.16 Local endorsement guidelines

The applicant must document adequate 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, as well as endorsement from local schools, local offices of DYFS and the juvenile justice system.

8:43E-4.17 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 receive a copy of the Certificate of Need 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 should 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 as identified in N.J.A.C. 8:33-3.1 et seq.

8:43E-4.18 New Jersey Department of Human Services endorsement

The Department of Human Services shall review every application for Child and Adolescent Acute Psychiatric Beds. This review will be based upon the criteria contained within these rules. A statement of non-endorsement by the Department of Human Services, due to the applicant's inability to meet the criteria for designation as a Mental Hospital or a Children's Crisis Intervention Service shall constitute a reason for denial by the Department of Health.

8:43E-4.19 Data

Each applicant will provide such utilization data as required by the Department of Health in order to implement the planning assessments necessary under the rules as part of an ongoing process of collecting, analyzing, and evaluating data pertaining to the psychiatric treatment of children and adolescents.

8:43E-4.20 Competitive review

(a) Where the need in a service area for additional Child and Adolescent Acute 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 applicants 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, 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. Projects which can be implemented 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. Projects which most closely conform to bed need for Child and Adolescent Acute Psychiatric Beds in the area, as presented in N.J.A.C. 8:43E-4.5;
5. Projects which meet the standard for geographic accessibility, where one could reach the unit from any point in the applicant's primary service area within one hour of travel time;
6. Projects which are determined to provide the highest level of quality in the proposed services based on staffing, program, and linkages to assure aftercare services;
7. Projects which demonstrate the greatest local endorsement including letters of support from Local Health Planning Agencies, County Mental Health Board(s), mental health providers and other entities as outlined in N.J.A.C. 8:43E-4.16 in the proposed service area;
8. Projects which have the endorsement of local school districts, local DYFS district offices, local jurisdictions of the Family Court, Family Crisis Intervention Units, and local detention centers;
9. Projects which demonstrate affiliation with residential and other ambulatory services including partial hospitalization, local schools, outpatient services, and crisis intervention services for the purpose of linking the child and family to the appropriate aftercare services.

8:43E-4.21 Enforcement and sanctions

(a) The Department in conjunction with the Department of Human Services shall monitor compliance with the terms and conditions of approved applications. The Department will determine

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whether the recipient of a Certificate of Need or its successor is operating a service which materially complies with the representations made in its application for that Certificate of Need and conditions assigned to its Certificate of Need approval. Failure to document compliance shall constitute an adequate basis for licensure suspension or revocation.

(b) Upon notice of the proposed denial of an application for the Certificate of Need or suspension or revocation of the license, the applicant/licensee shall have the right to request a hearing within 30 days in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14B-9, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

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STUDENT ASSISTANCE BOARD

The following proposals are authorized by the Student Assistance Board, Joseph Streit, Chairman.

Submit comments by December 16, 1987 to:

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

(a)

Student Assistance Programs

Foreign Nationals

Proposed Amendment: N.J.A.C. 9:7-2.3

Authority: N.J.S.A. 18A:71-26.5, 18A:71-26.8, 18A:71-47(a) and 18A:71-48.

Proposal Number: PRN 1987-470.

The agency proposal follows:

Summary

The proposed amendment provides that certain eligible categories of aliens who obtain temporary resident status and are issued a Temporary Resident Card (Form I-688) would be considered eligible non-citizens and may be qualified to receive State student assistance under the programs administered by the Student Assistance Board. This proposed amendment also conforms with recent changes in the regulations governing Federal student assistance programs.

Social Impact

The proposed amendment allows for additional categories of eligible aliens who obtain a Temporary Resident Card to qualify for State financial assistance in pursuing an undergraduate education. In addition, this amendment conforms with changes in Federal regulations, thus allowing institutions and students to focus on a uniform set of criteria in establishing eligibility for both State and Federal aid.

Economic Impact

The proposed amendment would not have any notable economic impact on State financial aid programs. Although the U.S. Department of Immigration and Naturalization Service was unable to provide any projections on the number of aliens in New Jersey who would be eligible for temporary resident status under this provision, New Jersey grant records identified only 29 students who were determined to be ineligible aliens during the 1986-87 academic year.

Regulatory Flexibility Statement

The proposed amendment does not require a regulatory flexibility analysis since it does not impose any requirements on small businesses. The proposed amendment only allows for certain categories of eligible aliens who obtain a Temporary Resident Card to qualify for State financial assistance.

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

9:7-2.3 Foreign nationals

(a) A foreign national must present affirmative evidence that he or she is not in the United States for the temporary purpose of obtaining an education. Such evidence must include documentation from the United States Immigration and Naturalization Service that the student may remain permanently in this country and such evidence must be placed in the student's file. The student must:

1. Be the holder of an Alien Registration Receipt Card form I-151 or I-551; or

2. Be the holder of an approval Notice from the Immigration and Naturalization Service form I-181 stating that the non-citizen has applied and met the requirements for Permanent Resident status; or

3. **Be the holder of a Temporary Resident Card form I-688 with a valid expiration date from the Immigration and Naturalization Service;** or

[3.]4. Be the holder of an Arrival Departure Record form I-94 endorsed by the Immigration and Naturalization Service showing one of the following:

i. Parole Indefinite/Humanitarian: Paroled pursuant to Sec. 212(d)(5) of the Immigration and Naturalization Act; or

ii. Refugees: Admitted as a refugee pursuant to Sec. 207 of the Immigration and Naturalization Act; or

iii. Granted Asylum: Asylum status granted pursuant to Sec. 208 of the Immigration and Naturalization Act; or

iv. Cuban-Haitian Entrant: Status pending; or

v. Conditional Entrant: Admission into this status through March 31, 1980.

[4.]5. The Arrival Departure Record form I-94 for persons in the aforementioned categories must be updated for each award year as required by the Immigration and Naturalization Service.

(b) (No change.)

(b)

Student Assistance Programs

Dependent/Independent Student Defined

Proposed Amendment: N.J.A.C. 9:7-2.6

Authority: N.J.S.A. 18A:71-26.8 and 18A:71-48.

Proposal Number: PRN 1987-471.

The agency proposal follows:

Summary

Current provisions of the definition of an independent student require that students under 24 years of age who are not claimed as tax exemptions by their parents must demonstrate at least \$4,000 in annual income in order to establish their independent status. The proposed amendment contains a revision to this definition which changes the requirement from \$4,000 in "income" to \$4,000 in "resources", which permits students to include financial aid and in-kind resources in the calculation of total resources.

Social Impact

The proposed amendment provides greater flexibility for those students under 24 years of age to meet the definition for independent student status in qualifying for State financial aid based on their own income and assets. This amendment also conforms with changes in Federal regulations, thus allowing institutions and students to focus on a uniform set of criteria relative to eligibility for both State and Federal aid.

Economic Impact

In November 1986, there were approximately 600 first-time freshman New Jersey Financial Aid Form filers and 1,000 upperclassmen receiving financial assistance who would no longer qualify as independent primarily as a result of the \$4,000 "income"

requirement. The proposed amendment will permit many of the estimated 1,600 students to qualify for independent status who would have been unable to establish independent status under the original \$4,000 income provision.

Regulatory Flexibility Statement

The proposed amendment does not require a regulatory flexibility analysis since it does not impose any requirements on small businesses. The proposed amendment will permit students who would have otherwise been unable to establish independent status to now qualify as independent students for state financial assistance.

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

9:7-2.6 Dependent/independent student defined

(a) (No change.)

(b) Except as provided in (c) below an individual meets the requirements of this section if such individual:

1.-5. (No change.)

6. Is a single undergraduate student with no dependents who was not claimed as a dependent by his or her parents (or guardian) for income tax purposes for the two calendar years preceding the award year and demonstrates to the student financial aid administrator total self-sufficiency during the two calendar years preceding the award year in which the initial award will be granted by demonstrating [an] annual total [income] **resources (including all sources of resources other than parents)** of at least \$4,000; or

7. Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances. For purposes of receiving State student assistance as an independent student due to unusual circumstances, at least one of the following criteria must be met:

i. (No change.)

ii. The student is a recipient of either Aid to Families with Dependent Children (AFDC) or general assistance in his or her own name and complies with the provisions of (b)6 above except for the [income] **resource** requirement set forth therein.

iii. The student is from a foreign country but has established permanent residency in the United States, is a refugee or has received political asylum, and complies with the provisions of (b)6 above except for the [income] **resource** requirement set forth therein. For the purposes of eligibility under this subparagraph, the student's parents must reside outside of the United States.

iv. The student has been separated from his or her parents and comes from a documented background of historical poverty as set forth in N.J.A.C. 9:11-1.5 (or as attested to by a social service agency or respected member of the student's community and acceptable to the director of the applicable student assistance program within the Department of Higher Education), is living with a relative who is providing support to the student, and complies with the provisions of (b)6 above except for the [income] **resource** requirement set forth therein.

v. The student was considered as an independent student for the purposes of New Jersey State student assistance programs during the 1986-87 academic year, and complies with the provisions of (b)6 above except for the [income] **resource** requirement set forth therein. This provision will be effective for the 1987-88 academic year only.

vi. (No change.)

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

(a)

Congressional Teacher Scholarship Program Teaching Obligations; Repayment Schedule; Postponement of Repayment

Proposed Amendments: N.J.A.C. 9:7-9.9, 9.11 and 9.12

Authority: N.J.S.A. 18A:71-15.3, Title V, Part E of the Higher Education Act of 1965, as amended by the Human Services Reauthorization Act of 1984, 20 U.S.C. 1119d-1119d-8 and the Higher Education Technical Amendments Act of 1987. Proposal Number: PRN 1987-472.

The agency proposal follows:

Summary

The proposed amendments incorporate four additional changes to Federal regulations for the Paul Douglas Teacher Scholarship Program, one of which is the change in the name of the program from the Congressional Teacher Scholarship to the Paul Douglas Teacher Scholarship Program. The other amendments allow for the scholar's teaching obligation to now be fulfilled by teaching in a private non-profit preschool, elementary or secondary school program in any state, along with a change in the interest rate for scholarship repayment adjusted annually to a rate which in no event is higher than the rate applicable to Title IV Federal loans during the same 12-month period. The final change relates to the period of deferment for repayment for a scholar who is seeking but unable to secure full-time employment whereby it is now limited to a single period not to exceed 27 months.

Social Impact

The proposed amendments provide the scholarship recipient with greater flexibility in meeting his or her teaching obligations and also align the interest rate for repayment under the Paul Douglas Teacher Scholarship Program with the lower rate currently charged for Title IV Federal loans during the same 12-month period thereby alleviating the monetary obligation for repayment by the recipient. The proposed amendments also more clearly define for the scholarship recipient the allowable period of deferment as it relates to securing full-time employment.

Economic Impact

The major economic impact of the proposed amendments would be to reduce the interest rate for scholarship repayment from at least a 14 percent charge to the current rate applicable to Title IV Federal loans, which is set at 10.27 percent for the 12-month period from July 1, 1987 through June 30, 1988. The interest rate for repayment will be adjusted annually; however, it is most likely that it will remain at a level below the original interest charge. In addition, due to specific changes in the Federal regulations governing the Paul Douglas Teacher Scholarship Program, the deferment of repayment for a scholar who is seeking but unable to secure full-time employment is now limited to a single period not to exceed 27 months whereby previously there was no limit on the number of periods or length of time for which this deferment could be granted.

Regulatory Flexibility Statement

The proposed amendments do not require a regulatory flexibility analysis since they do not impose any requirements on small businesses. The proposed amendments provide further opportunity and clarification for the scholarship recipient to meet the teaching obligations of the program as well as the allowable period of deferment for repayment respectively. They also align the interest rate for repayment with other Title IV Federal loans during the same 12-month period.

OAL NOTE: The current text of the rules herein proposed for amendment was adopted and published in the November 2, 1987 issue of the New Jersey Register at 19 N.J.R. 2055(a).

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

SUBCHAPTER 9. [CONGRESSIONAL] PAUL DOUGLAS
TEACHER SCHOLARSHIP PROGRAM

9:7-9.9 Teaching obligations of the scholarship recipient

(a) The scholar shall teach on a full-time basis in any state for a period of not less than two years for each year for which he or she received a [Congressional] **Paul Douglas** Teacher Scholarship, in a public or private nonprofit preschool, elementary or secondary school, or in a public or **private nonprofit** preschool, elementary, or secondary education program.

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

9:7-9.11 Repayment schedule for failure to meet teaching obligations or withdrawal from undergraduate degree program leading to teacher certification

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

(c) The interest charge shall be adjusted annually, from the time interest begins to accrue to the time the repayment period begins as described in (d) below, and shall be set [at a rate which is the greater of 14 percent annually or five percent above the average of the bond equivalent rates of 91-day Treasury bills auctioned during the most recent quarter ending March 31. The interest charge applicable during the repayment period shall be the greater of these rates as determined when the repayment schedule is established.] **by the U.S. Secretary of Education at a rate which in no event is higher than the rate applicable to loans under Part B of Title IV, HEA, during the same 12-month period. The interest rate applicable during the repayment period is the interest rate prescribed by the Secretary which is in effect as of the beginning date of the repayment period.**

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

9:7-9.12 Postponement of repayment schedule

(a) A scholar is not considered in violation of the repayment schedule and need not make scholarship repayments nor will interest accrue during the time he or she is:

1.-5. (No change.)

6. Unable to satisfy the terms of the repayment schedule established by the NJHEAA, and is also seeking and unable to find full-time employment as a teacher in a public or private nonprofit preschool, elementary or secondary school, or in a public or **private nonprofit** preschool, elementary or secondary education program **for a single period not to exceed 27 months** as evidenced by notarized copies of letters of application for teaching positions and any other documents as required by the Department of Higher Education, Office of Student Assistance.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Transportation Services Manual

Livery Service, Prior Authorization

Proposed Amendments: N.J.A.C. 10:50-1.1, 1.2, 1.3, 1.5, 2.5, 2.6, 3.1, and 3.2

Proposed Repeal: N.J.A.C. 10:50-1.4, 2.3, 2.4, and 2.7

Proposed New Rules: N.J.A.C. 10:50-1.4, 2.7, and 2.8

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6b(15), 7a, b, c; 30:4D-12; 42 CFR 440.170(a).

Proposal Number: PRN 1987-459.

Submit comments by December 16, 1987 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN-712
Trenton, NJ 08625

The agency proposal follows:

Summary

The Division of Medical Assistance and Health Services (the Division) is required to provide transportation services to Medicaid patients pursuant to federal regulations (42 CFR 440.170(a)). At present, ambulance and invalid coach services are provided. The Division now intends to include livery service as another means of providing transportation. The Division believes that livery service is the appropriate mode of transportation for ambulatory Medicaid patients who need transportation to and/or from providers of medical services, such as physicians.

The proposal defines "livery service" as a non-emergency, curb-to-curb transportation provided to a Medicaid-eligible individual who requires a ride to and/or from a medical care provider. Livery service provided to an individual to and/or from non-medical facilities is not reimbursable by Medicaid. Only a New Jersey-based company is eligible to participate as a Medicaid provider.

The requirements for livery service vehicles and drivers are contained in the proposal. Both vehicles and drivers must comply with all applicable New Jersey motor vehicle laws and regulations issued by the New Jersey Division of Motor Vehicles.

Providers of livery services will be required to complete a "Medicaid Provider Application" and other forms (accompanied by supporting documentation), and to submit them to the provider enrollment unit at The Prudential Insurance Company of American. If the provider's application is approved, the provider will receive a supply of claim forms from Prudential. Since participation in livery services is voluntary, all providers, including those currently furnishing ambulance and/or invalid coach services, must complete a separate provider application.

Prior authorization is not required for livery services. The reimbursement rates for livery service are described in the "economic impact statement" below.

The proposal also clarifies the requirements for prior authorization for Medicaid transportation services. In general, prior authorization is not required for ambulance service because the need for ambulance is often due to an emergency. However, prior authorization is required for air ambulance and helicopter service.

Prior authorization is required for invalid coach service. Providers may obtain prior authorization either in writing or verbally. The procedures are set forth in the text of the rule (N.J.A.C. 10:50-1.4, captioned "Prior Authorization"). There is also a provision for a retroactive request for authorization. If the provider cannot establish communication with the MDO (Medicaid District Office) because the office is closed and the service cannot be delayed, the provider may perform the service and submit a written request for retroactive authorization to the MDO. The MDO personnel will inform the provider in writing whether the request was approved or denied.

There are other technical changes associated with the proposal. The definitions of "ambulance service" and "invalid coach service" have been amended to indicate that the vehicles and staff must comply with regulations issued by the New Jersey Department of Health. The instructions for completing the claim form have been deleted from N.J.A.C. 10:50-2.5 and replaced at Exhibit I. The transportation certification is now at Exhibit II.

The proposal also indicates the correct procedure for reimbursement for hospital-based transportation service. If a Medicaid patient is transported to the base hospital, and is admitted or receives treatment, the hospital would submit the claim on form UB-82. If the patient is transported to another hospital (other than the base hospital), the hospital must submit a transportation claim form MC-12.

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If the hospital is enrolled as a Medicaid transportation provider, they will be reimbursed in accordance with the policies, procedures and fee schedules governing transportation providers.

Social Impact

This proposal will impact on Medicaid patients who need transportation to and/or from providers of medical services.

The addition of livery services should enable the patient to use the most appropriate means of transportation available.

The proposal will impact on providers of transportation services. Providers of ambulance and/or invalid coach services will have the option of becoming invalid coach providers.

The Division may receive applications from new providers who wish to furnish livery services. All providers of livery services are subject to the same application process, standards, policies and procedures, etc.

In addition, the requirements for prior authorization are applicable to transportation providers other than ambulance and livery services.

The rule will also impact on hospital-based transportation providers.

Economic Impact

Providers of livery services will be reimbursed \$5.00 per passenger for a one-way trip and \$10.00 for a round trip per passenger, plus 50 cents per loaded mile per passenger. There will be no reimbursement for waiting time for livery service.

There is no change in the reimbursement for ambulance and invalid coach services. The fees which appeared in N.J.A.C. 10:50-1.5, entitled "Basis of Payment", are being transferred to N.J.A.C. 10:50-3.2, entitled "HCPCS Code Numbers and Maximum Fee Schedule". The transportation charge is still \$20.00 for invalid coach (one way per patient) and \$40.00 for round trip. The fee for ambulance service remains at \$30.00 for a one-way transport and \$60.00 round trip. The other fees, such as loading time, waiting time, mileage, etc., remain the same.

The economic impact on providers will vary, depending on the number of Medicaid patients being transported.

The Division has no data currently available for livery service because this is a new type of transportation service being offered by the New Jersey Medicaid program.

There should be no significant additional administrative costs because the applications for provider enrollment and the claims for livery services will be processed by The Prudential Insurance Company of America, acting as Fiscal Agent for the Division. Prudential is already processing ambulance and invalid coach claims.

There is no cost to the Medicaid patient for this service.

Regulatory Flexibility Statement

It should be emphasized that participation as a provider of livery services in the New Jersey Medicaid program is voluntary. Therefore, no business is required to incur the costs associated with owning and operating a livery service. However, in the event a person wanted to become a livery service provider, there could be initial capital costs of purchasing the vehicles, obtaining the necessary license and registration, hiring qualified drivers. There would also be recordkeeping requirements associated with the provider application and related documents, the claim submittal, including documentation of the services rendered.

The Division believes that the requirements pertaining to licensure and registration are necessary because they are already prescribed by the New Jersey Division of Motor Vehicles and this Division must comply with them. The Division believes it is necessary to impose the administrative and recordkeeping requirements which are a fulfillment of the statutory requirement set forth in N.J.S.A. 30:4D-12. In essence, the Medicaid program is authorized to prescribe standards and to require providers to keep sufficient records to document the services that are rendered to Medicaid patients in order to be entitled to reimbursement.

The Division also believes that the standards, especially those pertaining to vehicle quality, licensure and registration are necessary

for the health, safety and welfare of the residents of this state, therefore, small businesses should not be exempted from the requirements of the proposed rules and amendments.

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

10:50-1.1 Scope

This manual describes the policies and procedures of the New Jersey Medicaid Program for reimbursement of providers of transportation services. Questions about this manual may be directed to any Medicaid [district office] **District Office** listed in this [subchapter] **Subchapter** or to the Division of Medical Assistance and Health Services, [P.O. Box 2486] **CN 712**, Trenton, New Jersey 08625.

10:50-1.2 Definitions

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

... ["Carrier"] **"Provider"** means ambulance service [or], [other medically indicated transportation service.] **invalid coach service, or livery service.**

[1.] ["Ambulance service" means the professional transportation of the sick, injured, infirm or otherwise disabled person from place to place in a vehicle specifically designed and equipped for such transportation, and operated by trained personnel. "Operated by trained personnel" means that at least one member of the ambulance crew is in possession of a current certificate of completion of the advanced Red Cross first aid courses or equivalent, for example, emergency medical technician (EMT) course. The medical condition is to be such that one normally would expect the need for the medical assistance of a second person within the ambulance after the patient has been placed into the vehicle.

i. The vehicle utilized to provide the ambulance service and the personnel whose duties involve care of the individual to be transported must meet the requirements specified in the definition stated above and the standards for ambulances set by "The American College of Surgeons and the Federal Highway Act.]"

... **"Ambulance service" means the provision of emergency or non-emergency medical transportation in a vehicle that is licensed, equipped, and staffed in accord with New Jersey Department of Health regulations, as specified in N.J.A.C. 8:40.**

[2.] ["Other medically indicated transportation service" means a form of transportation of sick, infirm or otherwise disabled persons who are under the care and supervision of a physician, and who require transportation from place to place for medical purposes and whose use of a lesser form of transportation, that is, cab, bus or private vehicle, would create a serious risk to life or health. For purposes of this manual, the invalid coach is defined as a vehicle for nonemergency, supervised health care transportation, which provides a driver compartment and a patient compartment which can accommodate an ambulatory, wheelchair or litter patient, which carries equipment and supplies as listed and which is designed and constructed to afford maximum safety and comfort to avoid aggravation of the patient's condition and exposure to complications. The patient's medical condition is to be such that one normally would not expect the need for the medical assistance of a second skilled person or more than one person in attendance once the patient has been placed into the vehicle.

i. Prior authorization is required for all invalid coach services (except as defined under N.J.A.C. 10:50-1.5).

ii. The following are the equipment, supplies, personnel and vehicle requirements for invalid coach:

(1) Equipment and supplies; walk-in type van equipped and supplied as follows:

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Interested Persons see Inside Front Cover

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(A) Padded interior roof with sufficient head clearance for wheel-chair patient;

(B) Floor and/or wall locks with safety straps for wheelchair;

(C) Two exterior amber signal lights mounted on the back of the roof and wired in conjunction with the four-way flashing, hazard warning-light signal system;

(D) Rearview truck-type mirror on each side of vehicle;

(E) Aspirator;

(F) First aid kit;

(G) A fire extinguisher having a laboratory reading of 5BC or more;

(H) Litter locks;

(I) Ramp or lift for wheelchair patients;

(J) Exterior identification of vehicle as a carrier of invalid persons.

(2) Personnel requirements:

(A) Uniformed driver-attendant;

(B) Driver-attendant to have certified advanced first aid training by the American Red Cross or equivalent, for example, emergency medical technician (EMT) course;

(C) Driver-attendant to have current motor vehicle operator's license issued by the New Jersey Division of Motor Vehicles or a valid nonresident driver's license meeting the requirements of that state.

(3) Other vehicle requirements:

(A) Vehicle currently licensed by the New Jersey Division of Motor Vehicles;

(B) Vehicle be maintained in safe operating condition and have a current New Jersey motor vehicle inspection sticker;

(C) Vehicle be equipped with heater and air conditioning unit to maintain a constant temperature of approximately 72 degrees Fahrenheit;

(D) Vehicle to be of sufficient size to accommodate a one-man litter or stretcher as may be required;

(E) Vehicle and occupants be covered by liability and other insurance in adequate amounts.

iii. Optional equipment:

(1) Oxygen administration devices may be carried in the vehicle, but must comply with New Jersey Department of Health regulations (see N.J.A.C. 8:40-4.9).

3. Helicopters or aircraft, under extenuating circumstances, may be used as a carrier to transport the sick, injured or disabled Medicaid-eligible patient (See N.J.A.C. 10:50-1.3.)

...
"Invalid coach service" means the provision of non-emergency medical transportation in a vehicle that is licensed, equipped, and staffed in accord with New Jersey Department of Health regulations, as specified in N.J.A.C. 8:40.

"Livery service" means non-emergency, curb-to-curb transportation provided to a Medicaid-eligible individual who requires a ride to and/or from a medical care provider.

["Multiple loading" means the invalid coach is limited to carrying no more than three patients at any one time. (Exception: See N.J.A.C. 10:50-1.5(j).) Ambulance to be limited to one patient per trip, except in extreme emergency situations.] "Multiple loading" means that more than one patient/passenger is being transported in the same vehicle at the same time.

["Multiple reauthorizations on a single physician's prescription; invalid coach only" means prior authorization may be given for more than one trip on a single physician's prescription when in the opinion of the local medical consultant the diagnosis is such that multiple trips would be required in a short period of time and the condition set forth would adopt itself to reasonable controls. A single authorization is limited to a maximum time period of one calendar month with the exception of invalid coach services to patients receiving dialysis treatments, which may be authorized up to three calendar months. Such authorizations require an attending physician's request (prescription) and verification of duration and time involved and number of pickups required and the reason.]

"Passenger" means a Medicaid-eligible individual who is transported in a livery service vehicle to and/or from a medical care provider.

"Physician" means a doctor of medicine or osteopathy licensed to practice medicine and surgery by the New Jersey State Board of Medical Examiners, or similarly licensed by comparable agencies of the state in which he or she practices.

["Prescription" means a transportation request certifying to the medical need for ambulance or invalid coach services. The prescription must include:

1. The Medicaid recipient's name and health services program (HSP) number.

2. The Medicaid recipient's illness or injury that necessitates transportation by ambulance or invalid coach.

3. The reason(s) the trip is necessary.

4. The name and address of the Medical care provider at the destination point.

5. The certifying physician's name (printed or typed), individual Medicaid practitioner (IMP) number and signature.]

"Prescription" means a certification of a patient's medical need for ambulance or invalid coach service.

["Transportation" means the use of an approved carrier to move the sick, injured or disabled person from place to place when considered medically necessary. Prior authorization is required except where specifically stated.

1. Each transportation carrier must be individually approved by the New Jersey Department of Human Services, Division of Medical Assistance and Health Services, as a provider before it can be reimbursed for transportation services rendered to Medicaid-eligible persons.

2. Prerequisite for a New Jersey-based ambulance or invalid coach service for Title XIX (Medicaid) approval is possession of a certificate of need and license issued by the New Jersey Department of Health (when required) and the stipulation, if any, that transportation services be limited to the area covered by the certificate of need. Ambulance carriers must also be approved by the Title XVIII (Medicare) program before they will be considered eligible for Medicaid reimbursement. Transportation carriers in states other than New Jersey must be approved by their state's Medicaid program and by the Medicare program if they desire reimbursement for ambulance services. All vehicles must meet the specifications described in this section.

3. As a condition of participation, the transportation provider agrees to bill the Medicaid program for services provided by the billing entity only. If the provider seeks reimbursement for services performed by any other organization or entity, whether a franchisee, independent contractor, etc., full disclosure in writing of the financial and organizational arrangement between said entities must be made to, and approved in advance by, the Division of Medical Assistance and Health Services.

4. Provider application (form FD-20) and provider agreement (form FD-62) forms may be obtained from the Medical Administration Division, Prudential Insurance Company of America, P.O. Box 471, Millville, New Jersey 08332, or from the Chief Provider Enrollment Unit, Division of Medical Assistance and Health Services, P.O. Box 2486, Trenton, New Jersey 08625.

5. For Medicaid approval, the completed provider application and agreement forms are to be submitted to:

Chief Provider Enrollment Unit
Division of Medical Assistance and Health Services
P.O. Box 2486
Trenton, New Jersey 08625]

"Transportation" means the use of an approved vehicle to move a Medicaid-eligible individual from place to place for the purpose of obtaining medical care.

10:50-1.3 General policies

(a) The approved process for becoming a transportation service provider is as follows:

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1. Each transportation provider must be individually approved for each type of service provided. The New Jersey Department of Human Services, Division of Medical Assistance and Health Services, with the Prudential Insurance Company of America acting as agent for the Division, must approve each provider before reimbursement can be made to that provider for transportation service.

2. Prerequisite for a New Jersey-based ambulance or invalid coach company for Title XIX (Medicaid) approval is possession of a Certificate of Need and license issued by the New Jersey Department of Health.

3. As a condition of participation, the transportation provider agrees to bill the Medicaid program for services provided by the billing entity only. If the provider seeks reimbursement for services performed by any other organization or entity, whether a franchise, independent contractor, etc., full disclosure in writing of the financial and organizational arrangement between said entities must be made to, and approved in advance by, the Division of Medical Assistance and Health Services.

4. "Medicaid Provider Application" (Form FD-20), "Provider Agreement" (Form FD-62) and the "Ownership and Control Interest Disclosure Statement" (HCFA-1513) may be obtained from The Prudential Insurance Company of America, Provider Enrollment Unit, P.O. Box 5007, Millville, New Jersey 08332.

i. An applicant seeking approval to provide livery service must attach to the "Medicaid Provider Application" (Form FD-20) a photocopy of each Vehicle Registration issued by the New Jersey Division of Motor Vehicles. The applicant must also indicate on the photocopy of the Vehicle Registration the respective vehicle fleet number.

ii. A Medicaid-enrolled provider of ambulance and/or invalid coach service seeking approval to provide livery service must complete another "Medicaid Provider Application" (Form FD-20).

5. The completed provider agreement, disclosure statement, and/or provider application shall be submitted to:

The Prudential Insurance Company of America
Provider Enrollment Unit
P.O. Box 5007
Millville, New Jersey 08332

6. Once approved, the applicant will receive a Medicaid provider number and an initial supply of pre-printed claim forms from The Prudential Insurance Company of America.

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

[(c)] (d) Helicopters or aircraft, under extenuating circumstances, may be used as a carrier to transport the sick, injured or disabled Medicaid-eligible patient.

1. Reimbursement is restricted to the emergency condition where transportation by air is medically considered the only acceptable form of travel and the conditions are such so that its implementation is feasible. The Division of Medical Assistance and Health Services retains the option to utilize this form of transportation in such situations where, at its discretion, it could represent a significant cost of savings factor when compared to ambulance or invalid coach service involving trips covering similarly long distances.

Redesignate existing (d)-(f) as (e)-(g) (No change in text.)

[10:50-1.4 Prior Authorization]

[(a) Prior authorization from the patient's Medicaid District Office is required for transportation, except for ambulance service.

(b) Procedures for obtaining prior authorization are as follows (also see pertinent prior authorization procedure throughout this chapter).

1. Written request: Submit a transportation claim (MC-12) together with a certification of medical necessity (prescription) from the prescribing physician. Upon receipt of this information, the Medicaid district office medical consultant will review the information to verify medical necessity, check the mode of transportation (invalid coach, air or other) and, if authorized, will sign the MC-12 in item 16. If denied, however, the medical consultant will indicate in the provided space, the reason for the denial. The Medicaid district office will retain the third copy for its files and forward the contractor and provider copies to the provider. After rendering the authorized

service, the provider will forward the completed claim (contractor's copy) within 90 days to the contractor for payment. (See subchapter 2, Billing Procedures.)

2. If time does not allow for a written authorization, the provider or attending physician should call the patient's Medicaid district office, explain the circumstances (for example, medical reason requiring this mode of transportation, patient's diagnosis, destination, and so forth) and request a verbal authorization. If authorization is granted, the provider may perform the authorized service, but must then submit the MC-12 and practitioner's certification (prescription) to the Medicaid district office for written authorization as in (b)1 above.

Note: For combination Medicare/Medicaid patients, refer to the note in N.J.A.C. 10:50-2.

3. Retroactive request (administrative emergency): When communication between the provider and the MDO could not be established (for example, weekend, holiday, evening, and so forth) and the provision of the service should not have been delayed, the provider may render the service and request retroactive authorization. This is not to be confused with medical emergencies as described in N.J.A.C. 10:50-1.2. In such instances, the request for retroactive authorization must be submitted to the MDO within five calendar days after the service is provided. If a verbal authorization is obtained under these circumstances, confirming written documentation must follow. The service rendered must be medically necessary and will be evaluated in the same way as prior authorization request by the Medical consultant.]

10:50-1.4 Livery service

(a) Livery service provided to an individual to and/or from non-medical facilities, such as educational, vocational, or nutritional sites, is not Medicaid reimbursable. Only a New Jersey-based company is eligible to participate in the New Jersey Medicaid Program as a provider of livery service.

(b) Vehicle requirements are as follows:

1. The vehicle used to provide livery service must not be more than five model years old at the time the service is provided and must have a seating capacity of not less than five nor more than ten persons, inclusive of the driver.

2. Any passenger car used to provide livery service must be a four-door vehicle.

3. In addition, every vehicle used to provide livery service must meet all of the following requirements:

i. Display a valid inspection decal issued by the New Jersey Division of Motor Vehicles;

ii. Display livery license plates; and

iii. Display external markings to indicate company name and vehicle number.

(c) The Division of Medical Assistance and Health Services will conduct periodic vehicle inspections to ensure compliance with these requirements.

(d) All drivers must be appropriately licensed as follows:

1. In accordance with N.J.S.A. 39:3-10.1, a driver of a motor vehicle with a capacity of more than six passengers used for the transportation of passengers for hire must possess a special driver's license issued by the New Jersey Division of Motor Vehicles.

2. An out-of-state resident who drives a livery service vehicle in the State of New Jersey must conform to the statutes relevant to livery service in his/her state of residence.

(e) All providers must make available their livery service to Medicaid-eligible individuals from 6 A.M. to 10 P.M., Monday through Saturday.

10:50-1.5 Prescription for transportation service

(a) A prescription is a certificate of a patient's medical need for ambulance or invalid coach service.

(b) A prescription may be furnished by any licensed physician/practitioner who has sufficient knowledge of the Medicaid-eligible individual's condition that necessitates transportation by ambulance or invalid coach. The prescription shall contain:

1. The certifying physician/practitioner's name (printed or typed) and Individual Medicaid Practitioner (IMP) Number.

2. The Medicaid-eligible individual's name.

3. The reason(s) the trip is necessary, including the Medicaid-eligible individual's condition that necessitates transportation by ambulance or invalid coach.

4. The signature of the certifying physician/practitioner or his or her authorized designee and the date. The authorized designee may be anyone so appointed by the physician/practitioner to carry out his/her orders and to sign on his or her behalf.

10:50-1.6 Authorization for transportation services

(a) Prior authorization from the Medicaid District Office is required for all transportation services except for ambulance service and livery service.

(b) Procedures for obtaining prior authorization are as follows:

1. **Written request:** The provider submits a "Transportation Claim" (Form MC-12) together with a prescription signed by a licensed physician/practitioner or his/her authorized designee. Upon receipt of this information, the Medicaid District Office Medical Consultant reviews the information to verify medical necessity, checks the mode of transportation, and if the request is authorized, signs the MC-12 in Item 16. If denied, however, the Medical Consultant indicates in the space provided the reason for the denial. The Medicaid District Office retains the third copy and forwards the Fiscal Agent and Provider copies to the provider.

2. **Verbal request for invalid coach service:**

i. The provider calls the Medicaid District Office and requests prior authorization.

ii. The Medicaid District Office completes a "Transportation Services—Information Sheet" (Form FD-60). The MDO Medical Consultant approves or denies the request.

iii. The provider is apprised by telephone of the MDO Medical Consultant's decision. If the request is approved, an authorization number is given to the provider and is also entered on the FD-60 which is signed by the MDO Medical Consultant or the MDO Director and is forwarded to the provider.

iv. The provider performs the invalid coach service and obtains a prescription signed by a licensed physician/practitioner or his/her authorized designee.

v. The provider forwards the "Transportation Claim" (Form MC-12), the prescription, and the "Transportation Services—Information Sheet" (Form FD-60) signed by the MDO Medical Consultant or the MDO Director to The Prudential Insurance Company of American for processing.

3. Prior authorization may be given for more than one invalid coach trip on a single physician's prescription, when, in the opinion of the Medicaid District Office Medical Consultant, the diagnosis is such that multiple trips would be required in a short period of time. A single authorization is limited to a maximum time period of one calendar month, with the exception of invalid coach services to patients requiring dialysis treatments, which may be authorized up to three calendar months. Such authorizations require a prescription covering the period of time that invalid coach services are requested.

4. Prior authorization for air ambulance and helicopter service must be obtained from the Medicaid District Office.

i. If verbal authorization is given by the MDO, the provider may perform the service, but must submit a "Transportation Claim" (Form MC-12) and prescription to the MDO for written authorization as specified in (c)1 above.

5. **Retroactive request for authorization:** When communication between the provider and the MDO can not be established because the MDO is closed and the provision of the service can not be delayed, the provider may perform the service. In such instances, the provider must submit a written request for retroactive authorization to the MDO for evaluation. The MDO will inform the provider in writing that the request has been approved or denied.

10:50-1.[5]7 Basis of payment

(a) ["Transportation charge" is an all-inclusive sum to cover the placing and removal of a patient into and out of the vehicle (ambulance or invalid coach) at the point of origin and the point of destination. This is not related to the medical condition of the patient. It is the medical state of the patient which determines the type of transportation required, that is, ambulance or invalid coach, and not the number of persons required to place or remove a patient into or out of a vehicle at his point of origin and the point of destination. By definition it also covers the time and expense involved in the pickup by the transportation carrier, as well as the time and expense in returning him to the ambulance or invalid coach and from there to his point of origin. It shall include a waiting period at the pickup point and/or the destination, that is, hospital, emergency room, x-ray department, and so forth, of up to 30 minutes per patient. It does not cover mileage based on a loaded mile.] "Transportation reimbursement allowance" is on a fee-for-service basis. The base allowance for ambulance and invalid coach services includes the placement and removal of a patient into and out of the vehicle at the point of origin and the point of destination. Livery service is designed for individuals who require no assistance in entering or exiting the vehicle.

(b) "Loaded mile" is mileage accrued when a vehicle is actually carrying a patient/passenger. Mileage is measured as a straight line between two points on a map, that is, from the point at which the patient/passenger enters the vehicle to the point at which he or she exits the vehicle.

(c) (No change.)

[(d) Ambulance service shall be reimbursed on the basis of customary charge, not to exceed the following maximums:

1. Transportation charge, one way—\$30.00.

2. Transportation charge, round trip—\$60.00.

i. A carrier when performing round-trip services shall be responsible for completing each round-trip obligation by honoring the return trip if occurring within 24 hours from the original pickup time. This responsibility is interpreted to include the carrier's guarantee that if he does not perform the return trip himself that arrangements are to be made with another transportation company to do so with no additional expense to the Medicaid program.

3. Mileage, \$1.00 per loaded mile;

4. Waiting time: \$10.00 per hour maximum waiting time is payable only on one-way trips and only after 30 minutes has elapsed. It is payable in one-quarter hour increments, for example, one-quarter hour—\$2.50, one-half hour—\$5.00, 3/4 hour—\$7.50, and one hour—\$10.00.]

[(e) Invalid coach service shall be reimbursed on the basis of customary charge, not to exceed the following maximums:

1. Transportation charge, one way, per patient—\$20.00.

2. Transportation charge, round trip, per patient—\$40.00.

i. The limit as to the number of patients being carried at one time is three. A carrier when performing round-trip services shall be responsible for completing each round-trip obligation by honoring the return trip if occurring within 24 hours from the original pickup time. This responsibility is interpreted to include the carrier's guarantee that if he does not perform the return trip himself that arrangements are to be made with another transportation company to do so with no additional expenses to the Medicaid Program.

3. Mileage, \$1.00 per loaded mile.

i. Charges when multiple loading occurs are limited to the mileage incurred by the patient whose point of origin and point of destination represents the greatest distance. No mileage charges are permitted for patients whose distance traveled lies in between these two points.

4. Waiting time: \$5.00 per hour maximum waiting time is payable only on one-way trips and only after 30 minutes has elapsed. It is payable in one-quarter hour increments, for example, one-quarter hour (\$1.25), one-half hour (\$2.50), 3/4 hours (\$3.75), and one hour (\$5.00). One hour is the maximum reimbursable waiting time. Waiting time is not payable for patients transported to receive dialysis services.]

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

[(g)] If the patient is admitted to the hospital, the ambulance charges are billed as part of the inpatient hospital service. If a patient is not admitted, (see (j) below) the ambulance charge is billed as a hospital outpatient service. For recipients in the Medically Needy Program, ambulance charges are not available for reimbursement when provided through a hospital except to pregnant women as part of their inpatient hospital services. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2.)

(e) **Hospital-based transportation service is reimbursable when a Medicaid-eligible individual is transported to the base hospital and admitted as an inpatient or treated as an outpatient. If the Medicaid-eligible individual is admitted, the hospital submits a claim for the service on Form UB-82 as a trailer. If the Medicaid-eligible individual is not admitted, the hospital submits a claim for the service on Form UB-82 as an outpatient service. A revenue code shall be used to identify the transportation service.**

1. **Hospital-based transportation service provided to a Medicaid-eligible individual who is transported to other than the base hospital is reimbursable on a fee-for-service basis in the same manner as a non-hospital-based transportation provider. In such instances, the hospital shall be enrolled as a transportation provider as defined in N.J.A.C. 10:50-1.2. A "Transportation Claim" (Form MC-12) shall be used when submitting a claim for transportation services, as described in N.J.A.C. 10:50-2.5.**

2. **Hospital-based transportation service provided to an individual eligible for the Medically Needy Program is reimbursable only when the individual is treated in the outpatient department of a hospital. Exception: Transportation service provided to an individual eligible for the Medically Needy Program as a pregnant woman is reimbursable when the individual receives either inpatient or outpatient care.**

(f) **Transportation service provided to an inpatient of a hospital by an outside provider shall be billed by the hospital as a "rebundled" service. When a transportation provider renders a round trip service to an individual whose status remains "inpatient", the transportation provider bills the hospital for the service. The hospital reimburses the transportation provider and submits a claim to the New Jersey Medicaid Program on Form UB-82 as a trailer. A revenue code shall be used to identify the transportation service as a "rebundled" service.**

[(h)](g) (No change in text.)

[(i)] (h) **No additional payment is made for the use of medical supplies and/or equipment [Exception: Oxygen may be reimbursed at \$6.00 per one-half hour with a one-half hour minimum in an ambulance or invalid coach.]with the exception of oxygen. (See N.J.A.C. 10:50-3.2(g)).**

[(j)] **The Medicaid Program has special conditions for invalid coach services for patients receiving dialysis treatment who require invalid coach transportation.**

1. **The Medicaid program does not pay for waiting time for patients transported to receive dialysis treatments.**

2. **Prior authorization is required for invalid coach services for patients receiving dialysis treatment; however, services may be authorized for up to three calendar months at a time.**

3. **The Program limits the number of persons in a multiple load for dialysis treatments to four.]**

10:50-2.3 [Patient identification] **(Reserved)**

[Verify that the patient is a Medicaid-eligible person at the time of each trip. Eligibility is verified by reviewing the patient validation form which is issued monthly. Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards. It is especially important to review a patient's validation form on each trip when extended plans of treatment have been authorized. Prior authorization is no guarantee that an individual is covered.]

10:50-2.4 [Prior authorization] **(Reserved)**

[(a)] **Services requiring prior authorization should not be provided until the authorization is granted. When submitting claims for payment make certain that item 16 on form MC-12 is signed by a**

Medicaid medical consultant and that the appropriate mode of transportation (invalid coach, air or other) has been checked off. To assure prompt claim consideration and to avoid claim rejection; always furnish the prescribing physician's name and individual Medicaid practitioner's number.

(b) **Since no prior authorization is required for ambulance service, provider must submit those claims directly to Prudential for reimbursement.]**

[10:50-2.5] **10:50-2.6** **Combination Medicare/Medicaid claims**

[Services covered under Medicare to a Medicare/Medicaid-eligible person shall be billed on form SSA-1491, Request for Medicare payment, and the claims sent directly to the Medicare intermediary, Prudential Medicare B Division, P.O. Box 3000, Linwood, New Jersey 08221. The provider must record the health insurance claim number in item 2 and the New Jersey Health Services case and person number in item 5 on the SSA-1491 form.]

(a) **Ambulance services reimbursable under Medicare and provided to a Medicare/Medicaid-eligible individual must be billed on the "Request for Medicare Payment-Ambulance" (Form HCFA-1491C). Claims must be sent directly to the Medicare Carrier, The Prudential Insurance Company of America, Medicare B Division, P.O. Box 3000, Linwood, New Jersey 08221. The provider must indicate the Health Insurance Claim Number in Item 2 and the HSP (Medicaid) Case Number and Patient Person Number in Item 5 on Form HCFA-1491C.**

[10:50-2.6] **10:50-2.5** **Transportation [claim] Claim [(MC-12)] (Form MC-12)**

(a) [Transportation claim form MC-12] **A "Transportation Claim" (Form MC-12) [should] shall be used when submitting a claim for transportation services. [, including the providing of oxygen when necessary.] See Exhibit I at the end of this Chapter for a copy of the "Transportation Claim" (Form MC-12) and the instructions for the proper completion of the form.**

[1. Instructions for completion of form MC-12.

i. **Items 1 through 4: Name, address, health services program case number, and person number. Copy the patient's name, H.S.P. case number and patient person number exactly as it appears on the validation form.**

ii. **Items 5 through 6: Self-explanatory; must be completed.**

iii. **Item 7: Other insurance or liability coverage. Check appropriate block to indicate whether the patient has other health insurance, liability coverage or no-fault auto coverage. If yes, you must attach a copy of the decline notice or a copy of the explanation of payment from carrier. (When the recipient is covered by both Medicare and Medicaid, see N.J.A.C. 10:50-2.5.)**

iv. **Item 8: Employment related. Check as appropriate; if patient's illness or injury is work related, enter name and address of employer.**

v. **Item 9: Provider name and address. (This information may be preprinted.)**

vi. **Item 10: Indicate whether injury resulted from an automobile accident, by checking appropriate block.**

vii. **Item 11: Physician ordering transportation. Enter the name and individual medical practitioner (IMP) number of the physician who ordered the transportation. Note: claims will be rejected if the information, above, is not entered in item 11.**

viii. **Item 12: Report of services. This must be completed as part of your request for prior authorization.**

(1) **Date of service.**

(2) **Insert the procedure code as specified in subchapter 1 of this chapter. It is understood that the procedure code used must accurately reflect the service provided.**

(3) **Place of origin: As printed directly above, select the applicable place of origin and insert the corresponding number under C.**

(4) **Under origin and destination give the street address and city, or in the case of an institution such as a hospital or long-term care facility, the name of the institution. Indicate other services rendered; for example, oxygen. When submitting your claim for payment show the distance traveled one way, from the origin to the destination. Indicate waiting time, if any, in accordance with subchapter 1. of**

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this chapter and attach an explanation of the need for waiting time to the MC-12 claim form.

(5) Fee requested: Indicate here your usual and customary charge.

ix. Item 13: Required information. 13A and B must be completed as part of the request for prior authorization.

(1) Indicate the primary diagnosis.

(2) Reason for transportation should indicate the nature and degree of the limitation(s) which necessitates such mode of transportation and the specific purpose of the trip(s).

(3) Self-explanatory. (For the definition of emergency conditions, see N.J.A.C. 10:50-1.2.)

(4) Self-explanatory.

x. Item 14: Authorization request information.

(1) Written requests are mandatory for multiple trips and for individual trips known in advance. The number of trips you are requesting must correlate with item 12. Transportation requests are authorized on a calendar month basis.

(2) Transportation for dialysis patients may be authorized for up to three calendar months. Indicate the number of dialysis trips you are requesting, as well as the calendar months during which the services will be provided. In requesting authorization for dialysis trips, the provider should request authorization on the claim form covering the first trip; claims for subsequent trips covered by that authorization should be sent directly to Prudential.

(3) Telephone authorization requests will only be accepted in unusual circumstances where time does not allow written requests. In those cases of approval, you must indicate the MDO-assigned authorization number on the blank provided in item 14.

(4) Multiple-load claim forms must be collated as follows:

(A) Providers must submit all claims for multiple-load patients batched together in one envelope;

(B) A separate claim form is to be submitted for each patient whether involved in a single or a multiple-load situation. In multiple loadings the charge for loaded mileage and the waiting-time charge (if any) is to be applied to only one patient claim form;

(C) All other patient claim forms in a multiple-load situation will include only a loading charge;

(D) In all instances, the multiple-load claim submitted for each Medicaid patient must have prior authorization by the medical consultant;

(5) Occupancy: Indicate the number of patients in the vehicle. Circle 4 only if all patients in the multiple load are being transported for dialysis treatment.

xi. Item 15: Provider certification and penalties for fraud. Please read the provider certification carefully. Note that the certification states that mileage can be charged only for one patient in a multiple load and a Medicaid Patient-Certification Form, signed by the patient, is on file for each service billed. The provider must sign and date the claim. Note that the billing date is the date the claim is mailed.

NOTE: Payments for services rendered to Medicaid-eligible persons will be from both Federal and State funds and any false claims, statements or documents, or concealment of a material fact, is punishable under Federal and State laws. Under Federal law, whoever furnishes items or services to an individual for which payment is or may be made in whole or in part out of Federal funds under a State Medicaid plan approved under Title XIX of the Social Security Act, and who solicits, offers or receives any kickback or bribe in connection with the furnishing of such items or services or the making or receipt of such payment, or rebate or any fee or charge for referring any such individual to another person for the furnishing of such items or services, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$10,000 or imprisoned not more than one year, or both.

xii. Item 16: For division use only. Authorization or denial: Make certain that you have obtained the approval of the Medicaid medical consultant for those claims requiring prior authorization, before submitting the claim for payment.]

[10:50-2.7 Automated Data Exchange

(a) Any approved provider may request approval to submit claims for reimbursement via an approved method of Automated Data Exchange. All costs of rental/purchase of a terminal, installation, maintenance, and usage of telephone lines are the responsibility of the provider.

(b) Requests for approval must be submitted to the appropriate Contractor:

The Prudential Insurance Co.

P.O. Box 471

Millville, New Jersey 08332

OR

Blue Cross of New Jersey

33 Washington Street

Newark, New Jersey 07102

(c) Any provider approved for an Automated Data Exchange claim submission system must comply with all regulations and restrictions set forth by the New Jersey Medicaid Program.

(d) A random billing sample will be audited after a three month period. The review to compare data received via the Automated Data Exchange against the medical records will consist primarily of statement of charges, nature of services rendered, employment or accident related, other coverage, patient/provider signature, and verification that charges and procedure codes match services performed.

1. Subsequent audits will be scheduled at six-months intervals if the error rate is acceptable.]

10:50-2.7 Transportation Certification (Form FD-305)

(a) A "Transportation Certification" (Form FD-305) must be used in conjunction with the "Transportation Claim" (Form MC-12) when billing for livery service only. See Exhibit II at the end of this Chapter, Chapter 50, for a copy of the "Transportation Certification" (Form FD-305) and the instructions for the proper completion of the form.

10:50-2.8 [Reserved]] Automated Data Exchange

(a) Any approved provider may request approval to submit claims for reimbursement via an approved method of Automated Data Exchange. All costs of rental and/or purchase of a terminal, installation, maintenance, and usage of telephone lines are the responsibility of the provider.

(b) Any provider approved for an Automated Data Exchange (ADE) claim submission system must comply with all regulations and restrictions set forth by The New Jersey Medicaid Program as indicated in the ADE documentation.

(c) Requests for approval shall be submitted to:

The Prudential Insurance Company of America

P.O. Box 471

Millville, New Jersey 08332

SUBCHAPTER 3. HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

10:50-3.1 Introduction

(a) The New Jersey Medicaid Program adopted the Health Care Financing Administration's (HCFA) Common Procedure Coding System (HCPCS). The HCPCS codes as listed in this Subchapter are relevant to Medicaid transportation services and must be used when filing a claim.

1. The responsibility of the transportation services provider when rendering services and requesting reimbursement is listed in Subchapter 1. and Subchapter 2. of [the Transportation Services Manual] **this manual.**

2. The column titled ["Medicaid Dollar Value"] **Maximum Fee Allowance** indicates the amount of reimbursement or the symbol B.R.:

i. "B.R." (By Report) is listed instead of a dollar amount. It means that additional information will be required in order to properly evaluate the service. Attach a copy of the report to the MC-12 claim form.

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10:50-3.2 [HCPCS CODES FOR TRANSPORTATION SERVICES] HCPCS CODE NUMBERS AND MAXIMUM FEE SCHEDULE

HCPCS Code	Description	[Medicaid Dollar Value]	Maximum Fee Allowance
(a) AMBULANCE SERVICE			
A0010	Ambulance Service, Basic Life Support (BLS) Base Rate, Emergency Transport, One Way	[\$24.00]	\$30.00
A0222	Ambulance Service, Return Trip, Transport [NOTE: For Medicaid reimbursement purposes A0222 is applicable to round trips only.]	[48.00]	30.00
[A0030]	[Ambulance Service, Conventional Air Service, Transport, One Way]	[*B.R.]	
[A0040]	Ambulance Service, Air, Helicopter Service, Transport		*B.R.
*B.R.—By Report			
(b) INVALID COACH SERVICE			
A0130	Non-Emergency Transportation: [Wheel-Chair] Wheelchair Van NOTE: Invalid Coach Service, One Way, Per Patient	[17.00]	20.00
Y0060	Invalid Coach Service [-], Round Trip, Per Patient	[34.00]	40.00
(c) LIVERY SERVICE			
Y0250	One Way, Per Passenger		5.00
Y0255	Round Trip, Per Passenger NOTE: Waiting time is not reimbursable for livery service.		10.00
[(c)] (d) MILEAGE			
A0020	Ambulance Service, (BLS) Per Mile, Transport, One Way NOTE: For Medicaid reimbursement purposes, mileage both one way and return/round trip is payable at [\$0.80] \$1.00 per loaded mile in both the ambulance and invalid coach. [A0020 is to be used to identify all mileage charges.] NOTE: [Maximum of three patients for Invalid Coach at one time—except for patients transported to receive dialysis treatments where a maximum of four patients is allowed. Medicaid will pay mileage for only one patient in a multiple load from the farthest location to the destination (and back if a round trip). Provider must submit all claims for multiple load patients together and certify on the claim forms that they are charging mileage only for the one patient who is being transported the farthest distance.] In a multiple-load situation, the charge for loaded mileage is applicable to “one” patient only. Reimbursement is limited to the distance traveled by the patient whose point of origin and point of destination represent the greatest distance. No mileage charge is permitted for additional patients whose distance traveled lies between these two points.	[0.80] per loaded mile	1.00
Y0260	Livery Service, Per Mile, Per Passenger		0.50

NOTE: The amount reimbursable for vehicle mileage accrued is on a per-passenger basis. However, when two or more passengers are transported in the same vehicle at the same time from the same departure point to the same destination point, mileage may only be charged for one passenger.

[(d)] (e) WAITING TIME—AMBULANCE SERVICE—ONE WAY TRIP ONLY

Y0050	Waiting Time—Ambulance Service—One Way Trip [only] Only		
	1/4 hour		2.50
	1/2 hour		5.00
	3/4 hour		7.50
	1 hour		10.00

NOTE: [Payable] Reimbursable only on one way trips and only after 30 minutes [has] have elapsed. It is [payable] reimbursable in 1/4 hour increments. [Maximum waiting time payable is 1 hour] Maximum reimbursement for waiting time is \$10.00 (1 hour).

[(e)] (f) WAITING TIME—INVALID COACH SERVICE—ONE WAY TRIP ONLY

Y0010	Waiting Time—Invalid Coach Service—One Way Trip [only] Only		
	1/4 hour		1.25
	1/2 hour		2.50
	3/4 hour		3.75
	1 hour		5.00

NOTE: [Payable] Reimbursable only on one way trips and only after 30 minutes [has] have elapsed. It is [payable] reimbursable in 1/4 hour increments. Maximum [waiting time payable is 1 hour] reimbursement for waiting time is \$5.00 (1 hour).

[(f)] (g) OXYGEN

A0070	Ambulance Service, Oxygen, Administration and Supplies, Life Sustaining Situation		6.00 per 1/2 hour
	Invalid Coach Service—Oxygen		6.00 per 1/2 hour

NOTE: [Payable to ambulance and invalid coach 1/2 hour minimum, payable in 1/2 hour increments.] Reimbursable in 1/2 hour increments after the first 1/2 hour has elapsed, for ambulance and invalid coach service.

EXHIBIT I

Instructions for the completion of the “Transportation Claim” (Form MC-12).

Items 1 through 4: Name, address, HSP (Medicaid) Case Number, and Patient Person Number. Copy the patient’s name, HSP (Medicaid) Case Number and Patient Person Number exactly as they appear on the Medicaid eligibility validation form.

Items 5 and 6: Self-explanatory; must be completed.

Item 7: Other insurance or liability coverage. Check appropriate block to indicate whether the patient has other health insurance, liability coverage or no fault auto coverage. If yes, you must attach a copy of the decline notice or a copy of the explanation of payment from carrier. (When the patient is covered by both Medicare and Medicaid, see Section 2.6.)

Item 8: Employment related. Check as appropriate. If patient’s illness or injury is work related, enter name and address of employer.

Item 9: Provider name, address, telephone number and provider number.

Item 10: Indicate whether or not injury resulted from an automobile accident by checking appropriate block.

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Item 11: Practitioner ordering transportation. Enter the name and Individual Medicaid Practitioner (IMP) Number of the physician/practitioner who ordered the transportation service. Note: Claims will be rejected if the above information is not entered in item 11. (Not applicable for livery service.)

Item 12: Report of services. Insert information under the following subsections:

Item 12A: Date of service.

Item 12B: Insert HCPCS (procedure) code as specified in Subchapter 3 of this manual. The HCPCS (procedure) code must accurately reflect the service provided.

Item 12C: Place of origin. From the list provided in Item 12, select the applicable place of origin and insert the corresponding number under C.

Item 12D: Indicate the street address and city of both the origin and destination points. Indicate name and address of hospital or long-term care facility, if applicable. Indicate the total number of miles being billed. Indicate waiting time, if any, in accordance with Subchapter 3 of this manual and attach an explanation of the need for waiting time to the MC-12 claim form. (Waiting time for livery service is not reimbursable.)

Item 12E: Fee requested. Indicate here your usual and customary charge.

Item 13: Required information.

Item 13A: Indicate the primary diagnosis. Must be completed as part of the written request for prior authorization. (Not applicable for livery service.)

Item 13B: Reason for transportation must indicate the nature and degree of the limitation(s) which necessitates such mode of transportation and the specific purpose of the trip(s). Must be completed as part of the written request for authorization.

Item 13C: Self-explanatory. (For the definition of emergency conditions, see Section 2.1.) (Not applicable for livery service.)

Item 13D: Self-explanatory.

Item 14: Authorization request information. (Not applicable for livery service.)

Indicate the number of trips for which you are requesting prior authorization, and the month(s) and year in which the service is expected to be provided. In requesting authorization for dialysis trips, the provider must request authorization on the claim form covering the first trip. Claims for subsequent trips covered by the authorization must be sent directly to The Prudential Insurance Company of America.

When telephone authorization is given, indicate the MDO-assigned authorization number in the space provided in Item 14.

In a multiple-load situation, the charge for loaded mileage and waiting time is applicable to one patient only and must be billed on the claim form corresponding to that patient only. All other claim forms in a multiple-load situation must include only a base charge. Providers must submit all claims in a multiple-load situation batched together in one envelope.

Occupancy: Indicate the number of patients in the vehicle.

Item 15: Provider certification and penalties for fraud. Please read the provider certification carefully. Note that the provider certifies that mileage is being charged only for one patient in a multiple-load situation and a "Medicaid Patient-Certification Form", signed by the patient, is on file for each service billed. (Not applicable for livery service.) The provider must sign and date the claim.

NOTE: Payments for services rendered to Medicaid-eligible individuals will be from both Federal and State funds and any false claims, statements or documents, or concealment of a material fact, is punishable under Federal and State laws. Under Federal law, whoever furnishes items or services to an individual for which payment is or may be made in whole or in part out of Federal funds under a State Medicaid plan approved under Title XIX of the Social Security Act, and who solicits, offers or receives any kickback or bribe in connection with the furnishing of such items or services or the making or receipt of such payment, or rebate or any fee or charge for referring any such individual to another person for the furnishing of such items or services, shall be

guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$10,000 or imprisoned not more than one year, or both.

Item 16: For Division use only. Authorization or denial: Make certain that you have obtained the approval of the Medicaid District Office Medical Consultant for those claims requiring prior authorization before submitting the claim for payment.

EXHIBIT II

Instructions for the completion of the "Transportation certification" (Form FD-305).

Section I, Items 1 and 2: Copy passenger's (recipient's) name, HSP (Medicaid) Case Number and Patient Person Number exactly as they appear on the Medicaid eligibility validation form.

Section I, Item 3: Indicate date of service and check appropriate box to indicate one way, round trip, or other.

Section I, Item 4: Enter address from which the passenger is transported.

Section I, Item 5: Enter address to which the passenger is transported.

Section I, Item 6: Enter address to which the passenger is returned, if different from Item 4.

Section I, Item 7: Check livery box.

Section I, Item 8: Check appropriate box.

Section I, Item 9: Not applicable.

Section II, Item A: Passenger's (recipient's) signature.

Section II, Item B: Driver's signature, printed name and vehicle fleet number.

Section II, Item C: Not applicable.

(a)

DIVISION OF PUBLIC WELFARE

General Assistance Manual

Monthly Case Reviews Form GA-19

Proposed Amendment: N.J.A.C. 10:85-3.5.

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:8-111(d).

Proposal Number: PRN 1987-458.

Submit comments by December 16, 1987 to:

Marion E. Reitz, Acting Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 10:85-3.5(a) updates the General Assistance Manual by deleting reference to Form GA-3, no longer used during monthly case reviews. For some time, the data previously recorded on Form GA-3 has been consolidated onto Form GA-19, Authorization and Case Review Card, making the GA-3 redundant and consequently obsolete. The proposed amendment is technical in nature and merely clarifies the use of Form GA-19 by municipal welfare departments.

Social Impact

The proposed amendment provides clarification as to which form is currently used during monthly case reviews. This should increase the uniformity of the monthly case reviews and/or determinations and simplify the process.

Economic Impact

Little or no change in government expenditure is expected as the proposed amendment does not affect the grant amounts.

INSURANCE

PROPOSALS

Regulatory Flexibility Statement

This proposal has been reviewed with regard to the Regulatory Flexibility Act, P.L. 1986, c.169 (N.J.S.A. 52:14B-16 et seq.), effective December 4, 1986. This rulemaking action imposes no compliance requirements on small businesses, therefore a regulatory flexibility analysis is not required.

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

10:85-3.5 Continuing eligibility

(a) **Monthly Review:** The eligibility of each case shall be reviewed at least once each calendar month. **The Form GA-19, Authorization and Case Review Card, shall be utilized during the review.** This review provides an opportunity for the municipal welfare department to evaluate any change in the client's circumstances or income and make appropriate adjustments on Form GA-19 in the amount of assistance to be granted. (See N.J.A.C. 10:85-7.2(a) regarding timely notice of adverse action.)

[1. Form GA-3 shall be utilized for the monthly review, including entry of all income received. Any changes in income shall be shown on Form GA-19.]

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

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

(b) Redetermination of eligibility: In order to continue granting assistance, the MWD shall make a complete redetermination for each case at least once every six months except that for the chronically ill, recertification by a physician via Form GA-18 shall be made at time intervals in accordance with N.J.A.C. 10:85-5.3(e)1i.

1. (No change.)

2. [Computation of Eligible Unit's Grant and Record of Payments,] **Authorization and Case Review Card, Form GA-19:** At the time of the redetermination, a new Form GA-19 shall be prepared by the MWD worker.

3.-4. (No change.)

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

the enactment of the Act to insure that the new rules are promulgated in a timely manner. This procedure provides interested parties with sufficient time to review and submit comments concerning the new rules prior to their formal proposal.

Summary

The pre-proposed new rules contain licensing and transitional rules designed to implement the "New Jersey Insurance Producers Licensing Act" (the Act) which is scheduled to be signed by Governor Kean. The Act amends certain provisions of the insurance licensing statute and repeals others under Title 17 and 17B. The Act reduces the kinds of insurance licenses issued by consolidating the present agent, broker and solicitor licenses into one "producer" license. It provides for five general insurance authorities: life, health, property/casualty, surplus lines and title insurance. Present limited lines licenses (for example, credit life, ticket property/casualty) are replaced by a registration process. The pre-proposed new rules further describe how the Department will continue to record information about certain business relationships, such as agent relationships between companies and producers and employer-employee relationships between producers.

Subchapter 1 of the pre-proposed new rules describes the general provisions of the rules. N.J.A.C. 11:17-1.1 sets forth the purpose and scope. It provides that the rules are part of the insurance laws of this State, and violation may result in sanctions as provided by law. Rules inconsistent with the new rules are repealed or superseded subject to the provisions regarding transition. Provisions of the Act and of the rules are to be applied to all licensees, limited insurance representatives and other persons specifically including those who obtain nonresident licenses for business written in New Jersey.

N.J.A.C. 11:17-1.2 defines a number of terms. N.J.A.C. 11:17-1.2(a) provides that the definitions contained in the Act are incorporated by reference. N.J.A.C. 11:17-1.2(b) defines other terms. Branch office is defined to mean a resident producer's subsidiary office in New Jersey, clarifying that the requirement to register branch offices is not applied to nonresident firms. Business name is defined to include the legal name of a licensed organization as well as any trade name under which an individual or organization licensee conducts insurance business. Credit life, accident and health insurance are defined the same as provided in N.J.S.A. 17B:29-2. Home state is defined to mean the state other than New Jersey where a nonresident licensee is licensed as a resident; under some states' laws, this may be where the principal office is located. Insurance-related conduct is defined to mean soliciting, negotiating or binding policies of insurance, and other conduct directly affecting the marketing of insurance products. Resident of New Jersey is defined to mean a person who either resides in New Jersey or maintains an insurance office here; nonresident is defined to be mutually exclusive. This definition is required to clarify the licensing requirements of individuals who live in one state and work in another, which has created apparent conflicts with the licensing laws of other states. Ticket life, ticket accident, and ticket property/casualty insurances are defined as under present law to mean those limited coverages of the risks of travel by persons whose primary business activity is being a travel agent or agent of a transportation company.

Subchapter 2 contains the licensing rules.

N.J.A.C. 11:17-2.1 provides that an insurance producer license will be issued by quarter with a general term of four years. Licensing quarters will begin on the first day of February, May, August and November of each year. A license first issued during a quarter will expire in the fourth year on the last day of the previous quarter before the license was effective. For example, any license issued between February 1, and April 30, 1989, will expire at the end of the previous quarter on January 31, 1993. Renewed licenses will be issued for a full four years. The license will contain the expiration date. When the temporary certificate process described in N.J.A.C. 11:17-2.4 is implemented, the effective date of a new license will be the effective date of the temporary certificate. For example, if the temporary certificate is effective April 20, 1989 and the license actually issued

INSURANCE

(a)

DIVISION OF LICENSING AND ENFORCEMENT

Insurance Producer Licensing

Notice of Pre-proposal of Repeals and New Rules

Pre-Proposed Repeal: N.J.A.C. 11:1-8.1, 11:1-9, 11:1-12.1, 11:1-12.3, 11:1-12.4, 11:1-12.6, 11:1-14, 11:1-18, 11:1-19 and 11:12-1.3.

Pre-proposed New Rules: N.J.A.C. 11:17-1, 2 and 5

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: Assembly Bill No. 3920, currently awaiting Governor Kean's signature.

Pre-proposal Number: PPR 1987-4.

Submit comments by December 16, 1987 to:

Verice M. Mason
Assistant Commissioner
Division of Legislative and Regulatory Affairs
Department of Insurance
201 East State Street
CN 325
Trenton, New Jersey 08625

The agency pre-proposal follows:

AGENCY NOTE: The pre-proposed new rules are intended to implement A-3920, also known as the "New Jersey Insurance Producer Licensing Act" (the Act), which is currently awaiting the signature of Governor Kean. They are being pre-proposed prior to

May 10, 1989, the license will be allocated to the February 1 through April 30 quarter and expire January 31, 1993.

N.J.A.C. 11:17-2.2 describes the specific kinds of insurance allocated to the five different general license authorities. Life authority includes those coverages defined by statute as life insurance, annuities and contracts on a variable basis. Those licensed under the Act need not obtain a separate insurance license to sell contracts on a variable basis. Nevertheless, N.J.A.C. 11:17-2.2(c) confirms that producers licensed with life authority must also hold any necessary Federal and State securities licenses.

Health authority is defined by reference to the statutes defining health insurance. Property/casualty authority is defined by reference to the various kinds or lines of insurance for which property/casualty insurance companies are granted authority in New Jersey. Surplus lines and title insurance authorities are defined as by statute.

N.J.A.C. 11:17-2.2(b) provides for the designation of authorities for nonresident licensees whose home state definitions of the kind of insurance authorized to be transacted do not precisely match that of New Jersey. For example, many states separately license those selling contracts on a variable basis, as did New Jersey under prior law. New Jersey will issue a license containing life authority to a nonresident regardless whether the applicant was authorized for contracts on a variable basis in the nonresident's home state. Nevertheless, issuing a New Jersey license containing a specific authority will not authorize the nonresident licensee to transact any business in New Jersey for which it has no identical authority in its home state.

N.J.A.C. 11:17-2.3 describes the information filing requirements for the issuance of initial licenses. Individuals will be required to file a producer license application that requests a specific authority, and which sets forth the applicant's legal name, home address, date of birth, social security number, business mailing and location address, business trade name if any and responses to certain questions concerning the applicant's character and fitness for licensing. The application must be dated and certified to be correct. If the applicant is a resident, the application shall be accompanied by certificates that show completion of an approved course of pre-licensing education and passage of the State licensing examination or a certificate waiving one or both of those requirements. If a nonresident, the application must be accompanied by a certification of license status from the applicant's home state showing that the applicant holds a valid license there. The application shall also be accompanied by necessary documents or written statements to explain answers to questions concerning the applicant's character and fitness for licensing, if necessary. For example, an applicant who reveals a criminal conviction must attach a copy of the judgment of conviction of the crime and certain other explanatory materials needed to evaluate whether a license may be issued. Individual applications shall also be accompanied by a criminal history verification form to obtain a police record check. Those requesting surplus lines authority must submit a bond. Necessary fees must accompany all applications.

Organization applicants (corporations and partnerships) will submit an application that contains the organization's legal name, business mailing and location address, other business names if any, and the names, license reference numbers and license authorities of its licensed officers and partners. Also required will be the names, addresses and license reference numbers of all persons owning five percent or more of the applicant organization. These applications will also require responses to questions concerning the applicant's fitness and financial responsibility. The application must be signed, dated and certified to be correct by all licensed officers or partners.

The organization license application must be accompanied by a copy of the certificate of incorporation or the filed partnership document showing the legal existence of the organization. If the organization has another business name, a copy of the document recording that name must be submitted. If the applicant is a corporation domiciled in another state and is applying for a resident license to open an office in New Jersey, the application must be accompanied by the certificate of authority evidencing that it has been authorized to

transact business in New Jersey by the New Jersey Secretary of State. Nonresident organizations must supply a certificate from their home state showing they are licensed there. If surplus lines authority is requested, a performance bond is required. As with the individual license, statements or documents may be required to explain responses to questions concerning character and fitness. Appropriate fees must accompany the application.

N.J.A.C. 11:17-2.4 authorizes the issuance of a temporary certificate when an individual resident applicant has met all qualifications for licensing. When implemented, the testing service will gather basic licensee data, in connection with test registration procedures and issue a temporary certificate to those passing the test, which shall serve as a temporary authority to begin work when the application and fees have been submitted.

N.J.A.C. 11:17-2.5 describes the renewal procedure. As indicated above, licenses will expire by licensing quarters and renewal shall be for a term of four years.

The Department will mail renewal applications approximately 60 days prior to the expiration date. Renewal applications will contain certain questions about licensee qualifications, and they must be signed, dated and certified to be correct by the applicant or a licensed officer or partner of an applicant organization. License renewal fees must be paid. Any licensee not desiring to renew its license must notify the Department by returning the renewal application marked "Do Not Renew" so that Department records may be properly noted. Renewal applications should be submitted at least 10 days before the old license expires.

Future license renewals will be accomplished through the computerized bank lock box procedure so as to reduce manual handling of renewal applications.

N.J.A.C. 11:17-2.6 describes the process for obtaining additional authorities which will be similar for both individuals and organizations. The license document itself will serve as the application. For individuals, the license will be submitted with appropriate notations requesting the additional authority, and signed, dated and certified by the applicant. If a resident, the necessary documents confirming professional qualification by prelicensing education and State examination (or a waiver) must accompany the request. For nonresidents, a recent home state certification of license status will be required. If requesting surplus lines authority, the required bond must be submitted. For licensed organizations, a request for additional authority must be signed by the licensed officer or partner that holds the additional authority requested. A \$20.00 processing fee is required.

When additional authorities are requested, the old license will be destroyed and a new license issued showing all authorities.

N.J.A.C. 11:17-2.7 contains mandatory provisions concerning business names and the updating of addresses. N.J.A.C. 11:17-2.7(a) provides that no producer may conduct insurance business under a name other than its legal name unless the name has been filed with and approved by the Department. Business names that include the licensee's legal name and words such as "agency" need not be filed. For example, a licensee named John B. Smith need not file if his business name is "John B. Smith Insurance Agency". If the license is issued containing the business name, it is deemed approved. Nonresident producers may conduct business only under their legal or business names in the state where they maintain a resident license.

N.J.A.C. 11:17-2.7(c) contains the standards for approval of business names. No business name may be misleading or deceptive, nor shall it be identical or confusingly similar to the business name of another currently licensed resident producer (legal names of nonresidents must be accepted). If the word "insurance" is used in the name, it must be joined with a word such as "agency" to distinguish the entity from an insurance underwriting company. Producer business names must not contain the names of or imply any affiliation with a government agency, nor shall they contain any franchise designation. A business name may not include any identification with a producer whose license has been revoked.

N.J.A.C. 11:17-2.7(d) describes the process for obtaining approval of a business name before filing with the Secretary of State, County Clerk, or other recording authority. This prior approval process avoids the problem experienced by some licensees who file a particular name and expend money for stationary, signs and other advertising only to find that the name cannot be approved by the Department and the time and expense has been wasted.

N.J.A.C. 11:17-2.7(e) describes requirements for licensee business addresses. All licensees are required to provide the Department with a complete and current business mailing address, which includes a street or location address. A post office box or post office call number is not sufficient. Individual licensees must also provide the Department with a residence address. Licensees must notify the Department within 20 days of any change of address; failure to do so may result in fines or other penalties. Legal process issued by the Commissioner such as subpoenas and orders to show cause will be deemed served when they are mailed to the licensee's address currently on file with the Department.

N.J.A.C. 11:17-2.7(f) describes the process for changing a legal or business name or address. The licensee will submit its current license document for cancellation and reissuance with the new information noted. No fee will be charged. If a name is changed, the request shall be accompanied by the appropriate recorded legal documents that evidence the change. For example, a corporation's change of name must be accompanied by the document filed with the Office of the Secretary of State amending the corporate certificate. An individual name change should be accompanied by a similar document, such as a marriage certificate or judgment in an action to change an individual's name.

N.J.A.C. 11:17-2.8 describes the requirements and registration process for branch offices. A licensee opening a branch office in New Jersey must register it within 30 days before beginning business by submitting a branch office registration form and the processing fee. The Department will then issue a branch office certificate. Producers must notify the Department of the closing of any branch office within 20 days and return the branch office certificate. A branch office certificate may not be transferred to another location; a new certificate must be issued for a different location.

N.J.A.C. 11:17-2.8(c) and (d) describe requirements for branch offices. The business hours must be established so as to provide reasonable availability to consumers. These hours and days and hours of work must be posted at the office. A branch office must be staffed by an individually licensed producer permanently assigned there and present or accessible during normal business hours.

N.J.A.C. 11:17-2.9 describes the various business relationships that will be recorded by the Department, and the methods and responsibilities of those who establish them.

N.J.A.C. 11:17-2.9(a) describes agency relationships between insurance companies and insurance producers. This process replaces the "appointment" process under prior law.

The agency relationship between an insurance company and licensed producer is established by a written contract executed by both parties; the parties must maintain copies of that contract and make them available for inspection by the Department upon request. The insurance company is responsible for notifying the Department of the existence of the agency relationship by filing a notice within 15 days of the execution of the contract on a form signed by a representative of the company. The form will set forth the company's name, address and New Jersey Insurance Department reference number; the contract date; and the producer's name, business address and reference numbers. The form filing shall be accompanied by a fee.

The company shall be responsible for determining that the producer is properly licensed with authority for one or more of the kinds of insurance for which the company is authorized in New Jersey. Unless the notice states that the agency contract is limited to certain of the general authorities for which the company and producer are jointly authorized, it will be deemed to mean that the producer is an agent for all jointly authorized kinds of insurance.

For example, if a company is authorized for both life and health insurance, and the producer authorized for both life and health insurance, the notice will be deemed to mean that the agency contract covers both life and health authorities. If the contract covers life authorities only, the form must so specify. The agency contract will be deemed to continue in effect until a notice of cancellation is filed with the Department by the company. Any notice of cancellation shall specify the reason. If the reason is misconduct by the licensee that may constitute a cause for action by the Department against the licensee, an additional copy of the notice must be mailed to the Department's Enforcement Division.

N.J.A.C. 11:17-2.9(a)7 provides that notwithstanding the lack of any agency contract relationship, a company shall be deemed to have authorized a producer from whom it accepts insurance business to receive premium payments on its behalf. This restates prior law applicable to the receipt of premiums by brokers who do not have established agency contracts with insurance companies.

N.J.A.C. 11:17-2.9(b) describes the filing requirements when a licensed producer employs another licensed producer. Employment contracts between producers shall be in writing, but they need not include all of the license authorities of the parties. For example, a producer may employ another producer to write life and health authorities only, even though the employed producer is also authorized to write property/casualty insurance. Both parties to the contract shall maintain copies and make them available to the Department upon request. Employing producers (employers) must notify the Department of the existence of the relationship by submitting a notice, which may be in letter form, indicating the name, license reference number and date of employment of the employed producer (employee). Employers are responsible for examining the credentials of an employee prior to hiring them, and for overseeing the insurance related conduct of an employee. Further, the employer will notify the Department upon the termination of the relationship, which likewise may also be communicated in letter form.

An employee may execute the employer's name to applications and policies if authorized by the employer and any company with which the employer maintains a written agency contract.

Producers may establish independent contractor relationships that do not require the filing of the notice of an employer-employee relationship. Acts of misconduct by an independent contractor will not create any responsibility by other independent contractors unless they knew of the activities or acted in concert.

N.J.A.C. 11:17-2.9(c) describes the filing required by a licensed producer who continues the business of a deceased or disabled producer. The Act changes prior law to eliminate temporary licensing of survivors or legal representatives. These individuals are now required to contract with a licensed producer to carry on the business. The producer entering into the contract will be required to notify the Department of the contract by filing a notice, which may be in letter form. The notice shall contain the name and reference number of the licensed producer, name and reference number of the deceased or disabled producer and the address where the business will be conducted. It shall confirm the date of death or disablement and the term of the contract. At the time the notice is sent, the deceased or disabled producer's license shall be returned to the Department for cancellation. The notice shall include other documents that may be necessary to show the legal capacity of the deceased or disabled producer's representative, such as a surrogate's short certificate.

N.J.A.C. 11:17-2.10 deals with limited insurance representatives. N.J.A.C. 11:17-2.10(a) describes the kinds of insurance that may be marketed through limited representatives. These are: bail bond; credit life; credit health; credit property/casualty; ticket life; ticket accident; ticket property casualty; group mortgage cancellation; mortgage guaranty; auto physical damage and liability only; and legal insurance.

N.J.A.C. 11:17-2.10(b) provides that insurance companies authorized to write limited lines must register their representatives. N.J.A.C. 11:17-2.10(c) requires that the insurance company and the representative execute a written contract, and that both parties retain

PROPOSALS**Interested Persons see Inside Front Cover****INSURANCE**

a copy of the contract and make it available to the Department if requested. Because no license is issued and no preclicensing requirements are established, N.J.A.C. 11:17-2.10(d) provides that the company will be responsible for determining that the representative is capable of acting on its behalf.

N.J.A.C. 11:17-2.10(e) and (f) describe the registration process. The company must register limited insurance representatives on a form that contains the company name, address and reference number as well as the representative's name and business location address. It must also describe the kind of insurance business to be conducted and the effective date of the contract. The one-time registration fee must be paid at the time the registration is filed. The contract will be deemed to continue in effect until a notice of cancellation has been filed with the Department. As with the notice of agency contract between insurance companies and licensed producers, the notice of cancellation shall specify the reason; if the reason for cancellation is misconduct, an additional copy must be mailed to the Department's Enforcement Division.

N.J.A.C. 11:17-2.10(g) provides that during the term of the contract between the limited insurance representative and the company, the representative will be deemed to be the company's agent for all insurance related conduct undertaken on the company's behalf.

N.J.A.C. 11:17-2.10(h) permits a company to contract with a licensed producer to market limited lines of insurance. For example, a company authorized for credit life insurance may contract with a producer authorized to write life coverages, and file a notice of agency contract in the usual matter.

N.J.A.C. 11:17-2.11 describes in more detail other information requirements for licensing. N.J.A.C. 11:17-2.11(a) describes the requirement for filing a social security number. Federal law restricts the use of social security numbers; they may only be collected for valid reasons. The Department requires a licensee's social security number for two reasons. First, many states use the social security number as an identifier to distinguish between two licensees with the same name. Due to the volume of nonresident licenses issued by the Department, the social security number is important to confirm identity. Secondly, the social security number is necessary in connection with the criminal history record check, as it is one of the identifying items of information required by police authorities.

N.J.A.C. 11:17-2.11(b) describes the criminal history information requirements to be submitted with initial applications. A New Jersey State Police request for criminal history record information and a fee to pay for its processing will be required with each application for an individual license and for the officers, directors, partners and owners of five percent or more of an applicant organization. The fee required is the fee set by the State Police. The Department will also have the option to require fingerprint impressions be taken, if necessary. The Department may likewise request copies of documents resulting from criminal proceedings to evaluate whether a convicted license applicant or licensee may nevertheless be licensed in accordance with the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A-169A-1. Failure to respond to a request will constitute grounds for denial of a license, or revocation or suspension of a current license.

N.J.A.C. 11:17-2.11(c) authorizes the Department to request and obtain financial history information, particularly information concerning legal proceedings to discharge debts either by Federal bankruptcy proceedings or in a proceeding for an assignment of assets to creditors. Failure to respond to such requests will constitute grounds for denial of a license, or suspension or revocation of a current license.

N.J.A.C. 11:17-2.11(d) describes the bond requirement for surplus lines authority. The bond shall be filed with an application and be in a form approved by the Commissioner. Failure to maintain the bond in full force and effect will void the license, as it is a condition precedent to holding a surplus lines authority. In the event the bond is cancelled, surplus lines authority shall also be automatically cancelled subject to the right of the licensee to request a hearing on the issue of whether the bond remained in effect, or whether a

replacement bond was obtained and filed. In order to determine the appropriate amount of the bond, licensees may be required to provide the Department with information about the volume of surplus lines business they transact.

N.J.A.C. 11:17-2.11(e) provides that licensed organizations must update information about the unlicensed officers, directors, partners and owners; this may be done by letter.

N.J.A.C. 11:17-2.12 describes the fees payable in connection with licensing. These fees were determined as the result of a study of present and anticipated revenues so as to maintain the level of revenues of the Department, as required in the Act. The license fee is established at \$300.00; this license fee is paid once for the entire four year license period. All other processing, filing or registration fees are \$20.00. Fees must be paid by check or money order made payable to the "State of New Jersey—General Treasury".

N.J.A.C. 11:17-2.12(b) provides an exemption from fees for disabled veterans who submit sufficient proof of a service connected disability.

N.J.A.C. 11:17-2.13 describes the procedure when a license is denied. If it appears from the application and documents submitted that an individual has not demonstrated the qualifications provided in the Act and rules, the Department will notify the applicant in writing. The notice of denial will specify the reason for denial, referencing the appropriate provision of the Act or these rules. A notice of denial will advise the applicant of its right to a hearing and procedures for requesting a hearing.

If an applicant requests a hearing, the Department will review the original application, its records and any additional information submitted to determine whether the applicant is qualified. If the applicant still appears to be disqualified, the Department shall find the matter constitutes a "contested case" as defined in the Administrative Rules of the Office of Administrative Law and shall forward the matter there for hearing.

These procedures need not be used when the application is returned for a ministerial error, such as failure to complete a required portion of the application or the failure to attach necessary documents.

The requirements and procedures for revocation or suspension of a license by the Department are not addressed by the pre-proposed new rules. However, the Department is in the process of drafting new rules for such license action, pursuant to the requirements of section 17 of Assembly Bill Number 3920.

N.J.A.C. 11:17-2.14 describes the procedure for termination of a license during its four year term and the reinstatement of the license if so requested. A licensee may terminate its license at its option. Nevertheless, the Department may refuse to accept the termination of an organization license unless all current licensed officers and partners consent to the cancellation. A license may be reinstated after termination within the four year license cycle without further payment of license fee by completing an application and paying the processing fee. Cancelling a license shall not, however, require the dismissal or cancellation of any proceedings against the licensee.

N.J.A.C. 11:17-2.15 describes the permanent license records that will be maintained by the Department and which of these records will be available to the public according to the Public Records Act, N.J.S.A. 47:1A-1 et seq. Public records for individual licensees are the licensee's name, license reference number, business name, if any, business mailing and location address, date of birth, license authorities, date first licensed, professional qualifications, date last licensed or current license expiration date; names of companies for which a notice of agency contract has been filed, including the date of the contract and date of termination, if any, and what authorities are covered by the contract; the names and reference numbers of licensed organizations for which the producer serves as a licensed officer or partner, the date the producer became a licensed officer and date terminated, if any; and the names and reference numbers of employed or employing producers and the dates the relationship began and terminated. Public records for a licensed organization will be the licensee's legal name, license reference number, other business name if any, business mailing and location address, license

authorities, date first licensed, date last licensed or current expiration date; names and reference numbers of licensed officers or partners; names and reference numbers of insurance companies with which notice of agency contracts have been filed, agency contract date and termination date, if any, and limits of authority, if any; names and reference numbers of employed producers, date relationship began and terminated.

N.J.A.C. 11:17-2.15(b) provides that certain records are specifically determined to be nonpublic records in accordance with the Public Records Act. A social security number is a nonpublic record. Criminal complaints, indictments, judgments of conviction and other such documents, as well as the criminal history records obtained from the criminal history record check, are nonpublic records. While these records may be public records elsewhere and obtainable through the courts, the Department will not disclose them. Because of the limited nature of the Department's inquiry, it may not be aware of other related proceedings, such as appeals, retrials, etc., or actions to expunge conviction, which affect the validity of the information in the Department's files.

Likewise, copies of petitions or discharges in bankruptcy, complaints, orders and other pleadings in actions for assignment to creditors, etc., submitted in connection with a license application, are determined to be nonpublic records. As with criminal history records, there is a likelihood that such information is inaccurate or incomplete when a request is made. In view of the substantial effect disclosure may have on reputation, and considering that such records are available elsewhere, the Department has determined that these will be nonpublic.

Similarly, copies of orders of suspension or revocation of professional or occupational license submitted in connection with a license application are determined to be nonpublic. As with criminal history and financial history information, such documents have a potential to be damaging to reputation and may not be valid when a request is made. They may constitute public records appropriate for disclosure by the other specific professional or occupational licensing authorities who conducted the proceedings, and available through them. Records concerning mental or physical disablement of a licensee will not be considered public records. They may contain privileged medical information.

Finally, investigative files in any matter pending investigation or any completed investigation in which no formal disciplinary action was taken are determined to be nonpublic records. The Public Records Act specifically provides that investigative files in matters pending investigation are nonpublic. The Department has also determined that records of completed investigations in which no formal disciplinary action was taken to suspend or revoke a producer's license should also be nonpublic. There is a substantial harm that reputation can be severely damaged by disclosure of unfounded complaints. Additionally, public disclosure of complaints or other statements concerning the conduct of a producer may inhibit persons with complaints from coming forward should their complaints and statements be subject to routine release.

N.J.A.C. 11:17-2.15(c) provides that information will be issued in a standard certification of license status. This is most often used to certify to another state that a New Jersey licensee holds a resident license here, but is also useful in response to any public information request concerning whether an individual or organization holds a current license. The standard certification will contain the licensee's name, date of birth if an individual, business address, license reference number, date first licensed; whether currently licensed or expired; kinds of insurance for which authorized; whether qualified by State licensing examination or the equivalent; and whether any formal disciplinary action was taken during the last four years.

N.J.A.C. 11:17-2.15(d) provides that the requirements to maintain records shall be subject to normal retirement or destruction dates as approved by the Division of the State Library. The Department will not provide copies of any written applications or other records when the information is available as an abstract of information contained on the Department's electronic data processing system. Experience

has shown that most requesters of information do not, in fact, need the original document, but just the information itself. The information will be readily available from the Department's data processing system.

Subchapters 3 and 4 are reserved.

Subchapter 5 describes special rules for transition. N.J.A.C. 11:17-5.1(a) provides that all standards of conduct in the Act shall be effective immediately. Pleadings in pending disciplinary actions begun under prior law shall be amended to charge violation of a comparable section of the new Act. Provisions of rules in subsequent proposals describing specific standards of conduct shall take effect on the date adopted or the effective date of the Act, whichever is later.

N.J.A.C. 11:17-5.1(b) provides that beginning May 1, 1988, the Department will cease issuing agent, broker and solicitor licenses. Producer licenses will be issued beginning July 1, 1988. New applicants in the interim will obtain a letter of temporary authority. N.J.A.C. 11:17-5.1(c) provides that those holding agent, broker or solicitor licenses with general authorities may continue to transact the business authorized by those licenses until their initial producer license is issued. N.J.A.C. 11:17-1.1(d) provides that property/casualty agent licenses which are scheduled to expire April 30, 1988, will continue in effect until the licensees obtain their initial producer license.

N.J.A.C. 11:17-5.2 describes the process for relicensing as producers those currently licensed with general authorities. On July 1, 1988, the Department will mail an initial producer license application to currently licensed agents, brokers and solicitors holding general authorities. These applications will contain dates of expiration staggered by quarter so that insurance license renewals will be spread out over a four year period. By staggering the renewals, surges of work created by the present system of renewal by license type will be eliminated. License fees charged for this initial renewal will be proportionate to the length of time the license will be effective. A credit will be given for license fees paid for any current agent, broker or solicitor license issued under prior law for a license year that has not begun. For example, property/casualty broker licenses were renewed on November 1, 1987 for a two year period at a cost of \$100.00 or \$50.00 per year. Since the second year of that license period will have not begun, those holding that license will be entitled to a \$50.00 credit against their producer license fee.

Those wishing to obtain a producer license are required to submit the application together with payment by July 31, 1988. Those holding current licenses who do not wish to renew as producers should return the application marked "Do Not Renew". Those not renewing may request a refund of any amount for which they would have obtained a credit by sending a letter with the returned application. Any license not renewed as a producer as of August 1, 1988 will be cancelled.

N.J.A.C. 11:17-5.2(h) provides that any existing company-producer agency relationships will be deemed to continue in effect unless terminated. Department records of those relationships will be re-recorded in the Department's reconstituted data base. Resolutions filed by affiliated companies for the joint appointment of agents will likewise continue in effect.

N.J.A.C. 11:17-5.2(i) provides for the updating of Department records of the licensed officer or partner of licensed producer organizations between August 1 and November 1, 1988. This information will not be automatically transferred to the new data base. Instead, licensed organizations will be required to file a statement with the Department naming those individually licensed officers or partners of the licensed organization who will be responsible for the organization's insurance related conduct. Because the Act does not require each individual producer to be licensed as either an officer or partner of an organization, many organizations are likely to reduce the number of named licensed officers or partners to those actually in supervisory positions.

N.J.A.C. 11:17-5.2(j) likewise provides that producers who employ other producers shall file statements confirming those relationships between August 1 and November 1, 1988.

N.J.A.C. 11:17-5.3 provides for transition to registration of limited insurance representatives, rather than licensing them as limited lines agents. Beginning May 1, 1988, no further limited lines licenses will be issued; rather, those individuals will be registered in accordance with the Act and these rules.

All presently licensed limited lines agents may continue to transact business until January 31, 1989. Between November 1, 1988 and January 31, 1989 all presently licensed limited lines agents will be registered by the companies they represent. If they are not registered, their authority to continue transacting business will expire. This registration process is a one-time only action, and the \$20 registration fee will be collected.

Since some insurance consultants presently in business do not hold agent, broker or solicitor licenses, N.J.A.C. 11:17-5.4 permits them until August, 1988 to obtain their producer license.

N.J.A.C. 11:17-5.5 provides that the time limits contained in the Act for taking the examination and applying for a license will be effective as of the date of the Act. A graduate of an approved course of prelicensing education has one year to take the State licensing examination after completing the course; a person passing the State licensing examination has one year to apply for a license. These time limits assure that those entering the industry are properly qualified.

N.J.A.C. 11:17-5.6 provides that the extension of license privileges by the transition rules does not supersede any order suspending or revoking any individual license.

These pre-proposed new rules are intended to replace and supersede N.J.A.C. 11:1-8.1, 9, 12.1, 12.3, 12.4, 12.6, 14, 18, 19 and 11:12-1.3, which are herein pre-proposed for repeal.

Social Impact

The pre-proposed new rules set forth the manner by which the Act will be implemented to license producers and register limited insurance representatives. Informational requirements for licensing are streamlined and made more compatible with electronic data processing. The pre-proposed new rules further describe the transition process by which present licensees will be relicensed as producers or registered as limited insurance representatives.

Implementation of the Act will reduce the number of insurance licenses issued from over 90,000 to less than 50,000, and when fully implemented should permit a reduction in Department resources required for licensing by almost 50 percent. By simplifying and automating many of the processes, service should be greatly improved and the time now required to issue licenses substantially reduced.

In addition, the Department is authorized to assess the character of license applicants by obtaining criminal and financial history information in order to protect the interests of New Jersey consumers. The Department may request a licensed producer or license applicant to submit copies of any petition or complaint in bankruptcy, discharge in bankruptcy or copies of any pleadings in a proceeding for assignment to creditors to determine the character and financial stability of a license applicant or current licensed producer.

Economic Impact

The pre-proposed new rules will eventually cut Division of Licensing operating expenses by nearly half, from more than \$700,000 annually to less than \$400,000 a year. The license fee for a producer is established at \$300.00 for four years. The fees are designed to be revenue neutral as required by the Act. The aggregate amount of fees for each producer will be determined by the number of licenses he or she holds. Therefore, some producers will experience higher or lesser fees than at present.

Regulatory Flexibility Statement

The pre-proposed new rules affect small businesses as that term is defined in the Regulatory Flexibility Act, P.L. 1986, c.169. Small businesses comprise the majority of businesses regulated by these proposed new rules. To provide for uniform and consistent appli-

cability of these rules and to avoid the granting of a prescribed advantage to insurance producers who are small businesses, no differential treatment is accorded small business by these pre-proposed new rules.

As a result of the pre-proposed new rules, the amount of documents and application information requested by the Department of Insurance will be substantially reduced. In addition, the provisions concerning fees are revenue neutral. Therefore, new rules will provide neither a financial benefit or disadvantage to small businesses.

Full text of the pre-proposed new rules follows.

SUBTITLE M. PRODUCER LICENSING REGULATION

CHAPTER 17. ADMINISTRATION

SUBCHAPTER 1. GENERAL PROVISIONS

11:17-1.1 Purpose and scope

(a) These rules implement provisions of P.L. 1987, c. , the New Jersey Insurance Producer Licensing Act (the Act). These rules concern the licensing and conduct of insurance producers and shall be considered part of the insurance law of the State of New Jersey, and violation of any provision shall be sufficient cause for action against any person as permitted by statute. Specification of the standards of conduct shall not, however, prohibit the application of other insurance statutes or rules to licensed producers.

(b) Provisions of the New Jersey Insurance Producer Licensing Act and of these rules shall be applied to all licensees, limited insurance representatives and other persons, including nonresident licensees in connection with the licensing and standards of conduct on business for which a New Jersey insurance producer license is required.

11:17-1.2 Definitions

(a) Words and terms contained in the Act, when used in this chapter, shall have the meanings as defined in the Act, unless the context clearly indicates otherwise.

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

"Act" means the New Jersey Insurance Producer Licensing Act, P.L. 1987, c. .

"Administrative Procedure Act" means the act concerning practices and proceedings of New Jersey public agencies pursuant to N.J.S.A. 52:14B-1 et seq.

"Branch office" means an office in New Jersey other than a principal office where a resident licensee conducts insurance business.

"Business name" means the legal name of a corporation or partnership, and any trade or fictitious name under which a licensee or license applicant conducts or intends to conduct insurance business.

"Credit life insurance" and "credit accident insurance" mean the insurance coverages as defined in N.J.S.A. 17B:29-2.

"Credit property/casualty insurance" means insurance against loss of or damage to property serving as security on a specific loan or credit transaction except automobiles.

"Home state" means the state other than this State in which a nonresident licensee or license applicant holds a resident insurance license.

"Insurance related conduct" means soliciting, negotiating or binding policies of insurance; all communication with insureds concerning any term or condition of a policy of insurance; office management policies affecting insureds; processing claims; and transmitting funds between insureds, producers, premium finance companies and insurance companies.

"Nonresident" (of New Jersey) means a person who does not either reside in New Jersey or maintain an office in New Jersey where insurance business is transacted.

"Resident" (of New Jersey) means a person who either resides in New Jersey or maintains an office in New Jersey where insurance business is transacted.

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“Ticket life insurance”, “ticket accident insurance” and “ticket property/casualty insurance” mean the insurance coverages sold covering only the risk of travel in connection with a ticket sold by a travel agent or an agent of any railroad company, steamship company, airline company, car rental company or bus company.

SUBCHAPTER 2. LICENSING RULES

11:17-2.1 Term of license

(a) The standard term of an insurance producer license shall be 16 licensing quarters. Licensing quarters shall begin on the first day of February, May, August and November of each year. Licenses shall expire in the fourth year on the last day of the quarter before the quarter in which the license was effective.

(b) Each license issued shall contain an expiration date. An initial license shall be deemed effective as of the date of issuance of any temporary certificate issued pursuant to N.J.A.C. 11:17-2.4 [of these rules].

11:17-2.2 License authorities

(a) Producers licensed in accordance with the Act and these rules shall be authorized to write the kinds of insurance designated if qualified by each authority set forth below.

1. Life Authority: All coverages defined as “life insurance” in N.J.S.A. 17B:17-3; all coverages defined as an “annuity” in N.J.S.A. 17B:17-5; and all coverages defined as “contracts on a variable basis” in N.J.S.A. 17B:28-1.

2. Health Authority: All coverages defined as “health insurance” in N.J.S.A. 17B:17-4.

3. Property Casualty Authority: All coverages written by authorized insurers for fire and allied lines, earthquake, growing crops, ocean marine, inland marine, workers’ compensation and employers’ liability, automobile liability bodily injury, automobile liability property damage, other liability, boiler and machinery, fidelity and surety, credit property/casualty, burglary and theft, glass, sprinkler leakage and water damage, livestock, smoke or smudge, physical loss to buildings, radioactive contamination, mechanical breakdown or power failure, other property or casualty loss, municipal bond insurance and mortgage guaranty insurance.

4. Surplus Lines Authority: All coverages written by unauthorized insurers and defined as “surplus lines” in N.J.S.A. 17:22-6.42.

5. Title Insurance Authority: All policies of insurance guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, incumbrances upon, defects in or the unmarketability of the title to said property, guaranteeing, warranting or otherwise insuring by a title insurance company the correctness of searches relating to the title to real property, or doing any real business in substance equivalent to any of the foregoing.

(b) The Department is authorized to issue nonresident licenses containing the above authorities regardless of whether the authority conferred by the nonresident applicant’s home state license precisely matches the kinds or lines of insurance described above, so long as they are generally comparable. No nonresident licensee shall be authorized to transact business for any kind or line of insurance for which the licensee is not authorized in its home state.

(c) No person shall be authorized to transact business regarding contracts on a variable basis unless that person also holds a securities license as required by any other state or Federal law.

11:17-2.3 Application filing requirements for initial licenses

(a) A first time applicant for an individual license shall submit the following:

1. A properly completed application requesting issuance of an insurance producer license with one or more authorities, which shall contain the applicant’s legal name, home address, date of birth, social security number, business mailing and location address, business trade name, if any, and responses to questions concerning applicant’s character and fitness for licensing. The application must be signed, dated and certified to be correct by the applicant;

2. If a resident, a certificate evidencing completion of an approved course of prelicensing education or a certificate evidencing waiver of that requirement; and a certificate evidencing that the applicant has passed the State licensing examination for the authority or authorities requested, or a certificate evidencing waiver of the examination requirement;

3. If a nonresident, a recent certification from the insurance licensing agency of the applicant’s home state that he or she holds a currently valid license authorizing transaction of insurance business for the kinds of insurance for which application is made;

4. Any documents or statements required to explain responses to questions concerning the applicant’s character, fitness or financial responsibility;

5. A properly completed criminal history verification form;

6. If the application requests surplus lines authority, a bond conforming to the requirements of N.J.A.C. 11:17-2.11; and

7. A valid check or money order for the fees required in accordance with N.J.A.C. 11:17-2.12.

(b) A first time applicant for an organization license shall submit the following:

1. A properly completed application requesting issuance of an insurance producer license for one or more authorities, which shall contain the organization’s legal name; business mailing and location address; other business names, if any; names, license reference numbers and license authorities of each licensed officer or partner; names, addresses and license reference numbers of all persons owning five percent or more of the organization; and responses to questions concerning the applicant’s character, fitness and financial responsibility. The application must be dated, signed and certified to be correct by all officers or partners of the organization that hold, or have applied for, New Jersey insurance producer licenses;

2. If the applicant is a New Jersey corporation or partnership, a copy of the Certificate of Incorporation or of the partnership document, stamped “filed” by the Office of the Secretary of State, County Clerk or other authority as applicable. If the application includes a business name other than the organization’s legal name, the applicant shall also submit a certificate stamped “filed” by the Office of the Secretary of State, County Clerk or other authority, as applicable, confirming that the business name has been properly recorded;

3. If the applicant is a foreign corporation or partnership applying for a resident license to open an office in New Jersey, a certificate filed by the Office of the New Jersey Secretary of State authorizing the applicant to transact business in New Jersey;

4. If the applicant is a foreign corporation or partnership applying for a nonresident license, a recently issued certification by the licensing authority in the applicant’s home state evidencing that the applicant is authorized there to transact insurance business with comparable authorities;

5. Properly completed criminal history verification forms for each officer, director, partner or owner of five percent or more of the applicant organization;

6. If applying for surplus lines authority, a bond conforming to the requirements of N.J.A.C. 11:17-2.11(d);

7. Any documentation required to explain responses to questions concerning the applicant’s character, fitness and financial responsibility; and

8. A valid check or money order for the fees required by N.J.A.C. 11:17-2.12.

11:17-2.4 Temporary certificates

The Commissioner or his or her designee is authorized to issue a temporary certificate evidencing that an applicant may begin work when the applicant has submitted in proper form the items required by N.J.A.C. 11:17-2.3 if the submission does not disclose any matter that may disqualify the applicant from being licensed. Any certificate issued in accordance with this subparagraph shall expire no more than 60 days after issuance.

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11:17-2.5 License renewal procedure

(a) A current licensee shall renew a license in the following manner:

1. At least 10 days before the license expiration date, each licensee shall submit a properly completed renewal application together with a valid check or money order for fees in accordance with N.J.A.C. 11:17-2.12. The renewal application shall be signed, dated and certified to be correct by the licensee or a licensed officer or partner of a licensed organization. The licensee shall certify that it continues to be qualified in accordance with the insurance laws of New Jersey.

(b) Failure to submit the renewal application for receipt by the date of expiration shall be deemed to establish that the license expired on the date shown, and that the licensee was not thereafter authorized to engage in any activities for which the license is required.

(c) Any licensee who does not desire license renewal shall notify the Department by submitting the renewal application marked on the face, "Do Not Renew".

11:17-2.6 Additional authorities

(a) A currently licensed individual producer may obtain additional authorities as described in N.J.A.C. 11:17-2.2 by submitting the following:

1. His or her current license, marked to request the additional authority or authorities, dated, signed and certified to be correct by the applicant. The applicant shall certify that he or she continues to be qualified in accordance with the insurance laws of New Jersey;

2. If a resident, a certificate evidencing completion of an approved course of prelicensing education, if required, or a certificate evidencing waiver of this requirement, and a certificate evidencing that the applicant has passed the State licensing examination for the authority or authorities requested or a certificate evidencing waiver of this requirement;

3. If a nonresident, a recent certification issued by the licensing authority in the applicant's home state, evidencing that the applicant holds a current license with comparable authority;

4. If applying for surplus lines authority, a bond conforming to the requirements of N.J.A.C. 11:17-2.11(d); and

5. A valid check or money order for the processing fee as required by N.J.A.C. 11:17-2.12.

(b) A currently licensed organizational producer may obtain additional authorities as described in N.J.A.C. 11:17-2.2 by submitting the following:

1. Its current license, marked to request the additional authority or authorities, dated, signed and certified to be correct by a licensed officer or partner who holds or has applied for that authority;

2. If a nonresident applicant, a recent certification issued by the licensing authority in the applicant's home state, evidencing that the applicant holds a currently valid license with comparable authority in that state;

3. If applying for surplus lines authority, a performance bond as required in accordance with N.J.A.C. 11:17-2.11(d); and

4. A valid check or money order for the processing fee described in N.J.A.C. 11:17-2.12.

11:17-2.7 Legal and business names; addresses

(a) No resident licensed producer may conduct insurance business under a name other than its legal name unless the name has been filed with and approved by the Department. Nothing in this section shall prohibit the transaction of business under the licensee's legal name and the words "agency", "insurance agency", "brokerage" or words of similar import. Issuance of a license containing the name shall be deemed to mean the name was approved.

(b) No nonresident licensed producer may conduct business under a name other than its legal or business name in the state where it maintains a resident license.

(c) Standards for approval of business names are as follows:

1. No business name shall have the capacity or tendency to be misleading or deceptive;

2. No business name shall be identical or confusingly similar to the business name of another currently licensed resident producer;

3. If the word "insurance" or its equivalent is contained in the name, it must be joined with wording such as "agency" or "brokerage" to distinguish the entity from an insurance underwriting company;

4. No business name shall express or imply any identification or affiliation with a Federal, State or other government entity, including any department, division, bureau or any subdivision of such entities;

5. No business name shall consist of or include any franchise designation; and

6. No business name shall contain the name of, or imply any affiliation with, a producer whose license has been revoked.

(d) An applicant may obtain prior Departmental approval of a proposed business name before the filing of the name with the Secretary of State, County Clerk or other authority by submitting the proposed name or names for consideration. Names granted prior approval but not filed with the appropriate authority shall expire 90 days after the date of prior approval.

(e) The requirements for business addresses and notification of change of business mailing or location address and home address are as follows:

1. All licensees shall provide the Department with a complete and current business mailing address, which shall include a street or location address. Individual licensees shall also provide the Department with a complete and current residence address.

2. All licensees shall provide the Department with written notification of any change of business mailing or location address and residence address within 20 days of the change.

3. Any legal process issued pursuant to the statutory authority of the Commissioner including, but not limited to, subpoenas, orders and orders to show cause may be served by sending the documents to the business mailing or residence address of the licensee then on file with the Department.

(f) A licensee shall advise the Department of a change of any legal name, business name or a change of business mailing and location address by noting the change on its current license and returning it to the Department for cancellation and reissuance of a new license containing the updated information. No fee shall be required for such changes. If the notice is to change a legal or business name, the request shall be accompanied by a copy of the document filed in the office of the Secretary of State, County Clerk or other authority evidencing that the change has been properly recorded.

11:17-2.8 Branch office requirements

(a) Licensees shall file with the Department a branch office registration form within 30 days before business is first conducted there. A branch office registration form shall be accompanied by the processing fee specified in N.J.A.C. 11:17-2.12. The appropriate registration form will be prescribed by the Department.

(b) Upon receipt of a properly completed branch office registration form and fee, the Department shall issue a branch office certificate. Branch office certificates shall expire contemporaneously with the producer's own license. The branch office certificate shall not authorize the transaction of business at any location other than that named.

(c) The licensee shall advise the Department in writing of the closing of any branch office within 20 calendar days of the closing by returning the branch office certificate for cancellation.

(d) A branch office shall be open to the public during such hours and days of the week as to provide the public reasonable access to the branch office. The branch office shall post the hours and days of operation in a manner reasonably calculated to inform the public.

(e) No branch office may be opened or operated unless at least one licensed individual insurance producer is permanently assigned to that office and present or accessible during normal business hours.

11:17-2.9 Business relationships

(a) The agency relationship between an insurance company and a licensed producer is subject to the following requirements:

1. An agency relationship between an insurance company and licensed producer may be established by written contract executed

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by both parties. Both parties shall maintain copies of agency contracts and make them available for inspection by the Department upon request.

2. An insurance company contracting with a licensed insurance producer shall be responsible to advise the Department of that relationship by filing a notice within 15 days after execution of the contract, on a form prescribed by the Department containing the company's name, reference number and address; the producer's name, reference number and business address; and the effective date of the contract. The form shall contain the name and title of the company official who signed and certified the notice. The notice shall be submitted with the fee set forth in N.J.A.C. 11:17-2.12.

3. Prior to executing any agency contract, the insurance company shall determine that the producer is properly licensed with authority for the kinds of insurance described in the contract. The company officer executing the notice shall certify that he or she examined the credentials of the producer and is satisfied that the producer is currently licensed with the authorities for one or more of the kinds of insurance for which the company is authorized.

4. Unless otherwise specified in the notice, filing a notice of agency contract shall be deemed to mean that the producer is an agent for all kinds or lines of insurance for which the company and producer are jointly authorized.

5. The agency contract shall be deemed to continue in effect until a notice of cancellation of that contract is filed by the insurance company with the Department on a form prescribed by the Commissioner.

6. The notice of cancellation filed shall specify the reason for cancellation. If the reason is conduct by the producer that may constitute cause for disciplinary action against the producer, an additional copy of the notice of cancellation shall be mailed to the Department's Enforcement Division.

7. Notwithstanding the lack of any contract establishing an agency relationship, any insurer that delivers in this State to any insurance producer a contract of insurance pursuant to the application or request of such producer, acting for an insured other than himself, shall be deemed to have authorized such producer to receive on its behalf payment of any premium which is due on such contract at the time of its issuance or delivery or the payment of any installment of such premium or any additional premium which becomes due or payable thereafter on such contract, provided such payment is received by the producer within 90 days after the due date of the premium or installment or after the date of delivery of a statement by the insurer of such additional premium.

(b) The employment of another producer by a producer is subject to the following requirements:

1. Licensed producers may enter into employment contracts by which the employed producer (employee) conducts business under the supervision of and in the name of an employing producer (employer). The contract may specify that it does not include all license authorities of the parties. The contract shall be in writing. Both parties shall retain copies and shall make them available to the Department upon request.

2. An employer who has entered into such a contract shall notify the Department of the agreement by submitting a document signed by the employer, or licensed officer or partner if an organization, containing the employee's name, license reference number and the date of employment. The employer shall examine the credentials of the employee to determine that he or she is licensed to conduct the kinds of business described in the contract.

3. An employee may, if authorized by the employer and any insurance company for which the employee is an agent, execute the employer's name to contracts of insurance in accordance with a written agency contract.

4. An employer shall oversee the insurance related conduct of an employee. In any disciplinary proceeding, the existence of the employment contract shall be prima facie evidence that the employer knew of the activities of the employee.

5. Upon determination of any employment contract, the employer shall notify the Department in writing of the termination of the relationship.

6. Existence of a business relationship between two licensed producers by which each acts as an independent contractor shall not require the filing of any notice in accordance with this provision, nor create any responsibility for the acts of the other in the absence of knowledge or concerted action.

(c) A licensed producer continuing the business of a deceased or disabled producer is subject to the following requirements:

1. A licensed producer who contracts with the surviving spouse, next of kin or administrator or executor of a deceased producer, or the legal guardian of a producer who has become mentally or physically disabled, to continue the business of the deceased or disabled producer shall immediately notify the Department in writing.

2. The notice shall contain the name and license reference number of the licensed producer; name and license reference number of the deceased or disabled producer; address where the business will be conducted; date of death or disablement; term of contract; and the name and address of the deceased or disabled producer's representative.

3. The notice shall be signed by the licensed producer and filed with the Department.

4. The notice shall be accompanied by the deceased or disabled producer's current license returned for cancellation and such other documents as may be necessary to show the legal capacity of the deceased or disabled producer's representative. The licensed producer shall notify the Department when the contract has terminated.

11:17-2.10 Limited insurance representatives

(a) The following kinds of insurance may be marketed through limited insurance representatives:

1. Bail bonds;
2. Credit life;
3. Credit health;
4. Credit property casualty;
5. Ticket life;
6. Ticket accident;
7. Ticket property casualty;
8. Group mortgage cancellation;
9. Mortgage guaranty;
10. Auto physical damage and liability only; and
11. Legal insurance.

(b) An insurance company authorized to write the lines of insurance described in (a) above shall register its limited insurance representatives with the Department in accordance with this section.

(c) Prior to registering any limited insurance representative, the insurance company and the representative shall execute a written contract describing the duties and responsibilities of each. Both parties shall retain a copy of the contract and shall make it available to the Department upon request.

(d) The insurance company shall satisfy itself that the proposed limited insurance representative is competent, honest, financially responsible and capable of acting as its representative.

(e) The insurance company shall register its limited insurance representatives on a form prescribed by the Commissioner containing its company name, address and reference number; the representative's name, business mailing location address; kind of insurance business to be conducted; and the effective date of the contract. The fee described in N.J.A.C. 11:17-2.12 shall be paid at the time of initial registration.

(f) The contract will be deemed to continue in effect until the insurance company files a notice of cancellation of the registration with the Department on a form prescribed by the Commissioner. The notice shall specify the reason for cancellation. If the reason is conduct of the representative that may constitute cause for disciplinary action against the representative, the company shall mail an additional copy of the notice to the Department's Enforcement Division.

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(g) During the existence of the contract and until notice of cancellation has been filed, the limited insurance representative shall be deemed to be acting under the supervision of the insurer and as an agent for it, with respect to any insurance related conduct and pursuant to the contract between the parties.

(h) Nothing in this provision shall prevent licensed insurance producers from marketing the kinds of insurance described in (a) above so long as they are licensed with the appropriate authority according to N.J.A.C. 11:17-2.2. Nothing in this section shall prevent companies authorized to write such insurance from entering into an agency contract with a licensed producer and filing a notice of agency contract in accordance with N.J.A.C. 11:17-2.9(a).

11:17-2.11 Licensing information requirements

(a) No insurance producer's license or renewal shall be issued unless the applicant discloses his or her social security number(s) on the application form. This subsection shall not apply to applicants who are exempt from applying for a social security number.

1. The Department shall use the social security number(s) of an applicant for the following purposes:

- i. To establish the identification of individuals; and
- ii. To establish the identification of individuals who are indebted to the Department for unpaid insurance fees and for the purpose of satisfying such indebtedness in accordance with N.J.S.A. 54A:9-8.1 et seq.

2. The Department shall not utilize social security numbers for any purpose other than those specified in this subsection.

3. The Department shall inform an applicant required to disclose a social security number that disclosure is mandatory and shall inform the applicant of the uses that will be made of that number under this subsection.

(b) The following requirements relate to the provision of criminal history information by licensed producers and license applicants:

1. An applicant for an individual license shall submit with his or her initial application a New Jersey State Police Request for Criminal History Record Information and the fee required to pay for its processing.

2. An applicant for an organization license shall submit with its application New Jersey State Police Requests for Criminal History Record Information, and the fee required to pay for their processing, for each officer, director, partner and owner of five percent or more. Applicants who contemporaneously submit organization and individual applications need not submit duplicates.

3. Upon request by the Department, any licensed producer or license applicant, or any officer, director, partner or owner of five percent or more of any applicant organization, shall have fingerprint impressions taken and submit them to the Department on a New Jersey State Police fingerprint card, with the fee required to pay for their processing.

4. Upon request by the Department, a licensed producer or license applicant shall supply copies of any complaint, indictment, judgment of conviction or other related documents.

5. Failure to respond to any specific request or to submit documentation requested shall constitute grounds for denial of the license, or suspension or revocation of any current license.

(c) Upon request by the Department, a licensed producer or license applicant shall supply copies of any petition or complaint in bankruptcy, discharge in bankruptcy, or copies of any pleadings in a proceeding for assignment to creditors. Failure to respond to any specific request or to submit documentation requested shall constitute grounds for denial of the license, or suspension or revocation of any current license.

(d) The following provisions apply to the bond requirement for surplus lines authority:

1. The bond required to be filed in connection with the application of any person for a producer license with surplus lines authority shall be on a form approved by the Commissioner.

2. Failure to maintain a bond in full force and effect and in the full amount required will serve to void the authority to act as a

surplus lines producer as of the date of expiration or cancellation of the bond. Voiding or cancelling surplus lines authority shall be subject to the right of any producer to a hearing in accordance with the Administrative Procedure Act N.J.S.A. 52:14B-1 et seq. on the issue of whether the filed bond remained valid or a replacement bond was obtained and filed.

3. Upon request by the Department, licensees shall provide information concerning the volume of surplus lines business transacted.

(e) Licensed organizations shall notify the Department within 30 days of the addition or deletion of any unlicensed officer, director, partner or owner of five percent or more of the licensed organization.

11:17-2.12 Fees

(a) The following fees shall be payable as set forth in this chapter:

1. License fee: \$300.00;
2. Filing or processing initial application: \$20.00;
3. Additional authority filing: \$20.00;
4. Reinstating terminated license before its stated expiration date: \$20.00;
5. Any branch office registration: \$20.00;
6. Filing or processing any Notice of Agency Contract: \$20.00; and
7. Any limited insurance representative registration: \$20.00.

(b) All fees shall be paid by check or money order made payable to: State of New Jersey—General Treasury.

(c) Disabled veterans may be exempted from payment of the fees described in (a) above upon submission to the Department of a completed form DD-214 or recent certificate of the United States Veterans Administration confirming a current service connected disability.

11:17-2.13 Denial of license

(a) Whenever it appears from an application, attached documents and Department records that an applicant has not demonstrated the qualifications prescribed in the Act and these rules, the Department shall advise the applicant in writing that the license requested is denied and specify the reason for denial. The notice of denial shall further advise the applicant of the right to request a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules N.J.A.C. 1:1-1 et seq. and the procedure for doing so.

(b) Upon receipt of a request for a hearing on a license denial, the Department shall review the application and attachments, its records and any additional information submitted to determine whether the license may be issued. If after this review the Department finds the applicant is not qualified, it shall find that the matter is a contested case and transmit it to the Office of Administrative Law for hearing.

(c) Nothing in this section shall prevent the return of an application to the applicant for correction of ministerial errors.

11:17-2.14 Termination and cancellation of license; reinstatement after termination

(a) A licensee may terminate a current producer license by returning the license document to the Department for cancellation at any time before expiration. The Department may refuse to accept a request for cancellation of an organization license unless all current licensed officers or partners consent to the request.

(b) A producer license may be reinstated after termination during the same license period by completing an application in accordance with the provisions of N.J.A.C. 11:17-2.3. No additional license fee for that period shall be required but the processing fee provided in N.J.A.C. 11:17-2.12 shall be paid.

(c) Submitting a license for cancellation shall not void or terminate any disciplinary proceedings against the licensee, nor prevent imposition of any penalty, ordered restitution or costs.

(d) In the event a license is lost or destroyed the licensee may request a duplicate by submitting a certified statement attesting to the loss with the fee required for processing.

11:17-2.15 Licensee records

(a) The following licensee records shall be public records in accordance with N.J.S.A. 47:1A-1 et seq.:

1. Individual licensee: Name, license reference number, business name, business mailing and location address, date of birth, license authorities, date first licensed, professional qualification, date last licensed or current license expiration date; names of companies for which notice of agency contracts have been filed, date of agency contract and date of termination of agency contract, if any, and limits on authority, if any; names and reference numbers of licensed organizations for which the producer serves as a licensed officer or partner, date became a licensed officer or partner and date terminated, if any; names and reference numbers of employed or employing producers, date relationship began and terminated.

2. Licensed organization: Legal name of producer, license reference number, other business name, if any, business mailing and location address; license authorities, date first licensed, date last licensed or current expiration date, names and reference numbers of licensed officers or partners; names and reference numbers of insurance companies for which notice of agency contracts have been filed, agency contract date and termination date, if any, limits of authority, if any; names and reference numbers of employed producers, date relationship began and terminated.

(b) The following licensee records are specifically determined to be nonpublic records in accordance with N.J.S.A. 47:1A-1 et seq.:

1. Social security number;

2. Criminal complaints, indictments, judgments of conviction and other separate documents submitted in connection with a license application concerning whether an applicant is disqualified by reason of conviction of a crime;

3. Criminal history records obtained as the result of any criminal history check;

4. Petitions or discharges in bankruptcy, complaints, orders or other pleadings in actions for assignment to creditors and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified by reason of unworthiness;

5. Copies of orders of suspension or revocation issued by professional or occupational licensing authorities, and other separate documents submitted in connection with a license application concerning whether the applicant is disqualified by reason of unworthiness;

6. Records concerning the medical disability of any licensee; and

7. Investigative files in any matter pending investigation, or in any completed investigation in which no formal disciplinary action was taken.

(c) Upon request by any person, the Department shall issue a certification of the license status of any currently licensed producer or producer licensed within the preceding four years. Such certification shall contain the licensee's name, address, date of birth, license reference number, date since continually licensed, whether currently licensed or expired, kinds of insurance for which authorized whether qualified by examination or the equivalent, and whether any formal disciplinary action was taken during the last four years.

(d) Nothing in this section shall compel the Department to maintain licensee records beyond normal retirement or destruction schedules as approved by the Division of State Library, or to retrieve and provide a copy of any written record required to be filed with the Department when the information requested is available as a certified abstract of information contained in the Department's electronic data processing system.

SUBCHAPTERS 3 AND 4. (RESERVED)

SUBCHAPTER 5. TRANSITION RULES

11:17-5.1 Effective date

(a) The standards of conduct described in the New Jersey Insurance Producer Licensing Act shall take effect as provided by statute. All pleadings in any pending disciplinary action filed on or

before the effective date of the Insurance Producer Licensing Act shall be deemed amended to charge violation of a comparable section.

(b) Beginning May 1, 1988, the Department shall cease issuing agent, broker and solicitor licenses under prior law. Beginning July 1, 1988, all licenses shall be issued in accordance with the provisions of the New Jersey Insurance Producer Licensing Act and this chapter. New license applicants between May 1, 1988 and July 1, 1988 shall, if qualified, be issued a temporary certificate authorizing them to work pending licensure as a producer.

(c) All those holding licenses as life agents, life brokers, life solicitors, property/casualty agents, property/casualty brokers, property/casualty solicitors, surplus lines agents and title agents may continue to transact business authorized by those licenses after the effective date of the Act, and until renewed as insurance producers in accordance with N.J.A.C. 11:17-5.2.

(d) All those licensed as property/casualty agents, whose licenses expire April 30, 1988, may continue to transact any business authorized by those licenses until renewed as producers in accordance with N.J.A.C. 11:17-5.2.

11:17-5.2 Relicensing current licensees as producers

(a) On or before July 1, 1988, the Department shall mail an initial producer license renewal application to each currently licensed agent, broker and solicitor with general authorities described in N.J.A.C. 11:17-2.5. These applications shall be directed to the business address then on file with the Department.

(b) Initial producer license renewal applications shall set forth the date of expiration of the initial producer license, which shall be by licensing quarter so as to spread future renewals over four years.

(c) License fees charged for the initial producer license renewal shall be proportionate to the number of licensing quarters until expiration, and shall provide credit for fees paid for any license issued under prior law for a license year that has not begun by August 1, 1988.

(d) On or before July 31, 1988, all currently licensed agents, brokers and solicitors with general authorities described in N.J.A.C. 11:17-2.2 shall apply for renewal as a producer by completing the application and returning it with a valid check or money order for the fee charged.

(e) Any person licensed under prior law who does not desire to renew as a producer may return the initial producer renewal application marked "Do Not Renew" and request a refund of any fees paid for a license issued under prior law for a license year that has not begun by August 1, 1988.

(f) Unless renewed as a producer in accordance with this chapter, any license issued under prior law as an agent, broker or solicitor with authorities described in N.J.A.C. 11:17-2.2 shall be cancelled effective August 1, 1988.

(g) All licensed producers currently appointed as agents by any company under prior law shall be deemed to continue as a producer with a valid agency contract with that company unless and until a notice of cancellation of agent has been filed in accordance with N.J.A.C. 11:17-2.9. Any resolutions filed by affiliated companies for the joint appointment of agents under prior law will continue in effect until the Department receives notice to the contrary.

(h) After August 1, 1988, but before November 1, 1988, all licensed organizations shall file a statement with the Department naming those producers who serve as the licensed officers or partners of the licensed organization. Such a statement shall be dated, signed and certified by at least one licensed officer or partner.

(i) On or after August 1, 1988, but before November 1, 1988, all producers who employ other producers as provided by N.J.A.C. 11:17-2.9(b) shall file statements conforming to the requirements of that section. Such statements shall be dated, signed and certified to be correct by the employing producer.

11:17-5.3 Limited insurance representatives

(a) On or after May 1, 1988, any company writing insurance that may be marketed through limited insurance representatives shall

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register, in accordance with N.J.A.C. 11:17-2.10, any new representatives not licensed under prior law.

(b) All those licensed as bail bond agents, credit life agents, credit health agents, credit property/casualty agents, ticket life agents, ticket accident agents, ticket property/casualty agents, group mortgage cancellation agents, mortgage guarantee agents and auto physical damage and liability only agents may continue to transact any business authorized by those licenses until January 31, 1989.

(c) On or after November 1, 1988, but before February 1, 1989, all companies writing insurance business that may be marketed through limited insurance representatives shall file a statement registering those licensed under prior law and pay the registration fee provided in N.J.A.C. 11:17-2.12.

11:17-5.4 Insurance consultants

Insurance consultants who do not hold a license issued under prior law must obtain a producer license by August 1, 1988.

11:17-5.5 Prelicensing education and examination

(a) Beginning on the effective date of the Act, no license shall be issued to any individual who has passed the State licensing examination more than one year before the date of application. For purposes of this subsection, the date of application shall be deemed to be the date the application was received by the Department.

(b) Beginning on the effective date of the Act, no person shall be admitted to the State licensing examination who has completed the course of prelicensing education more than one year before the date of administration of the State examination.

11:17-5.6 Effect of license revocation or suspension

Nothing in these rules shall authorize any person whose license has been revoked or suspended to continue to transact insurance business after the date of revocation or suspension.

LAW AND PUBLIC SAFETY

(a)

**DIVISION OF CRIMINAL JUSTICE
POLICE TRAINING COMMISSION**

Radar Instructor Certification

Proposed Amendment: N.J.A.C. 13:1-4.6

Authorized By: Donald R. Belsole, Director, Division of Criminal Justice.

Authority: N.J.S.A. 52:17B-71(h).

Proposal Number: PRN 1987-473.

Submit comments by December 16, 1987:

Leo A. Culloo, Administrator
Police Training Commission
Division of Criminal Justice
25 Market Street
CN 085
Trenton, New Jersey 08625-0085

The agency proposal follows:

Summary

The proposed amendment alters N.J.A.C. 13:1-4.6 to provide that the requirements for certification of radar instructors be met by those who instruct at commission-approved schools and law enforcement agencies. This proposed amendment clarifies the intent of the existing rule to provide certification requirements for radar instruction in both types of training operations.

Social Impact

This amendment will insure that police officers who receive instruction in radar operation at a law enforcement agency will be taught by certified instructors who have met the same requirements for certification as those who are certified to teach radar operations at a commission-approved school.

Economic Impact

There will be no adverse economic impact on governmental bodies and on the public. This amendment will enable police officers to receive radar operation instruction at law enforcement agencies by certified radar instructors.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed rule will not impose reporting, recordkeeping, or other compliance requirements on small businesses inasmuch as the rule relates solely to the certification of radar instructors.

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

13:1-4.6 Certification requirements for instructors of specialized subjects

(a) Applicants who seek certification to instruct in specialized subjects must possess the basic qualifications set forth in N.J.A.C. 13:1-4.1 through 13:1-4.4 and, further, must comply with the following requirements:

1.-2. (No change.)

3. An individual seeking certification as a radar instructor **at a commission-approved school or at a law enforcement agency** must meet the following requirements:

i. Prior completion of a Course for Radar Operators, which shall have included a minimum of eight hours of training consisting of four hours of classroom instruction and four hours of supervised practice training;

ii. Two years of experience as a radar operator, with a minimum of 80 hours of hands-on experience; **and**

iii. Successful completion of a commission-recognized Course for Radar Instructors.

(b)

**BOARD OF ARCHITECTS AND CERTIFIED
LANDSCAPE ARCHITECTS**

Licensing Examination Fees

Proposed Amendment: N.J.A.C. 13:27-5.8

Authorized By: New Jersey State Board of Architects and Certified Landscape Architects, James Gaspari, President.

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

Proposal Number: PRN 1987-474.

Submit comments by December 16, 1987 to:

Barbara S. Hall, Executive Director
State Board of Architects and Certified
Landscape Architects
1100 Raymond Boulevard, Room 511
Newark, New Jersey 07102

The agency proposal follows.

Summary

The proposed amendment will alter the fees to be charged for and redesignate the components of the licensing examination administered by the Board of Architects and Certified Landscape Architects (Board) taken in New Jersey. The fee increases proposed by the Board reflect comparable increases in the fees charged by the National Council of Architectural Registration Boards (NCARB), which writes the examination given by the Board.

Social Impact

It is anticipated that the proposed amendment will have no social impact inasmuch as the fee increase should not affect the ability of the applicants to take or pass the examination.

Economic Impact

The proposed amendment to N.J.A.C. 13:27-5.8 will impact on all prospective licensees insofar as it will cost more to take the architect-

tural examination. Such impact is justified, however by the need to account for higher fees imposed by NCARB.

Regulatory Flexibility Statement

The rule as proposed for amendment applies exclusively to applicants for the examination and thus, does not apply to "businesses" whatsoever. Furthermore, the rule does not involve any reporting or recordkeeping practices, nor does it necessitate the retention of any professional services by licensees and/or small businesses in order to comply with the requirements.

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

13:27-5.8 Fees

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

(c) The fees for the licensing examination are as follows:

1. Entire Architectural Registration Examination—[\$260.00] **\$350.00**;

i. [Section I:] **Division A: Pre-Design** [\$40.00] **\$35.00**;

ii. [Sections II and III:] **Division B: Site [and Building] Design** [\$100.00] **\$70.00**;

iii. **Division C: Building Design** **\$90.00**;

iv.[iii. Section IV] **Division D: [(1)] Structural General** \$20.00;

v.[(2)] **Division E: Structural Lateral Forces** [\$14.50] **\$15.00**;

vi.[(3)] **Division F: Structural Long Span** [\$10.50] **\$15.00**;

vii.[(4)] **Division G: Mechanical, Plumbing, Electrical and Life Safety Systems** [\$20.00] **\$35.00**;

viii.[(5)] **Division H: Materials and Methods** [\$25.00] **\$35.00**;

ix.[iv. Section V] **Division I: Construction Documents and Services** [\$30.00] **\$35.00**;

x.[v.] The fee for retake of any part of the exam is the same as listed above.

2. (No change.)

(d)-(l) (No change.)

(a)

**DIVISION OF CONSUMER AFFAIRS
OFFICE OF WEIGHTS AND MEASURES**

Ready-to-Eat Food

Proposed Repeal and New Rule: N.J.A.C. 13:47C-2.5

Authorized By: Thomas W. Kelly, State Superintendent, Office of Weights and Measures.

Authority: N.J.S.A. 51:1-61.

Proposal Number: PRN 1987-475.

Submit comments by December 16, 1987 to:

Thomas W. Kelly,
State Superintendent
Office of Weights and Measures
Division of Consumer Affairs
Department of Law and Public Safety
187 West Hanover Street
Trenton, NJ 08625

The agency proposal follows:

Summary

In accordance with the provisions of N.J.S.A. 51:1-61, the State Superintendent proposes to revise N.J.A.C. 13:47C-2.5, the rule which presently prescribes the methods of sale for shellfish. The methods of sale for shellfish were proposed for regulation by amendment to N.J.A.C. 13:47C-2.1 published in the October 5, 1987 issue of the New Jersey Register at 19 N.J.R. 1787(b). Proposed new rule N.J.A.C. 13:47C-2.5 will prescribe the methods of sale for ready-to-eat foods.

Social Impact

This new rule will prescribe the methods of sale for ready-to-eat foods which until recently were vended by delicatessen, restaurant

and fast food retail outlets. Presently these foods are also being sold by supermarkets, grocery and convenience stores in prepackaged form. There exists a conflict, at the retail sales level, between traditional methods of sale and modern merchandising techniques within these industries. This rule will remove this conflict by providing clearly defined methods of sale for ready-to-eat foods.

Economic Impact

This new rule will benefit both the field weights and measures officer and the general public in that standard methods of sale will set forth clear criteria for the sale of ready-to-eat food that, due to modern packaging techniques, are presently packaged, offered, or exposed for sale in a variety of ways.

Regulatory Flexibility Statement

The proposed new rule will relieve the small businessman from the task of registering many of the listed foodstuffs offered and exposed for sale as combination packages with the State Superintendent, thus lessening such businessman's recordkeeping tasks.

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

[13:47C-2.5 Shellfish]

[(a) All fish, crustaceans, shellfish and mollusks, and products of which the basic ingredients are composed of fish, crustaceans, shellfish or mollusks not in package form when offered for sale or sold at retail shall be so offered for sale or sold by a net weight only.

(b) The following items of fish, crustaceans, shellfish and mollusks are exempt from the requirements of (a) above; provided they are offered for sale or sold as directed:

1. When all such fish, crustaceans, shellfish or mollusks are offered for sale or sold for immediate consumption on the premises of the seller;

2. Fresh oyster when shucked shall be offered for sale or sold by liquid measure or count;

3. Fresh clams when shucked shall be sold by count or liquid measure. Clams when unshucked shall be sold by count;

4. Live crabs shall be sold by count;

(c) When any single service container is used for the purpose of determining the liquid measure at the time of sale, it shall be one that has received approval by the State Superintendent of Weights and Measures for commercial purposes. When liquid measuring devices are used, they must not only have received approval from the State Superintendent of Weights and Measures as to type and construction; but they must also have been individually tested and sealed by a weights and measures officer.]

13:47C-2.5 Ready-to-eat food

(a) **The following may be sold by net weight, measure or count:**

1. **Items sold for, or intended to be sold for, consumption on the premises of the seller;**

2. **Items sold as one of three or more different elements, excluding condiments, comprising a ready-to-eat meal sold as a unit, for consumption elsewhere than on the premises where sold;**

3. **Ready-to-eat chicken parts cooked on the premises but not packaged in advance of sale;**

4. **Sandwiches when offered or exposed for sale on the premises where packed or produced and not intended for resale.**

(b)

**NEW JERSEY RACING COMMISSION
Thoroughbred Rules
Limitations on Entering or Starting Nerved Horses
Notice of Correction: N.J.A.C. 13:70-20.11.**

Take notice that an error appears in the October 5, 1987 issue of the New Jersey Register at 19 N.J.R. 1788(a) concerning N.J.A.C. 13:70-20.11, Limitations on entering or starting. N.J.A.C. 13:70-20.11 should appear as follows:

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PUBLIC UTILITIES

13:70-20.11 Limitations on entering or starting

(a) (No change in text.)

(b) Blocking of nerve functions via surgical neurectomy, cryogenic techniques, or any other desensitizing means, whether permanent or temporary, is defined as "nerving" and is subject to the following restrictions in New Jersey:

1.-2. (No change in text.)

3. It shall be the responsibility of the **owner and/or** trainer to report all "nerved" horses to the State Veterinarian or Associate State Veterinarian.

4. (No change in text.)

(a)

NEW JERSEY RACING COMMISSION

Harness Rule

Registration of Nerved Horses

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

13:71-20.23.

Authorized By: Charles K. Bradley, Deputy Director,

New Jersey Racing Commission

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1987-461.

Submit comments by December 16, 1987 to:

Charles K. Bradley, Deputy Director

New Jersey Racing Commission

CN 088, Justice Complex

Trenton, New Jersey 08625

The agency proposal follows:

Summary

This new rule was originally proposed on June 1, 1987 in the New Jersey Register at 19 N.J.R. 919(a). However, because of written comments received, substantive changes were made in format, and general medical terminology was changed to more precise and medically correct terms. The rule is now repropounded with these changes. This proposal clarifies the anatomical location where a horse can be nerved. It also broadens the responsibility of reporting the nerved horses to include the trainer of the horse, since in many instances, the owner is not present when the horse is determined by the trainer and the veterinarian that this would be beneficial to the horse.

Social Impact

The proposed new rule will benefit both the wagering public and the participants in the race. The proposal clarifies where horses can be nerved in order to insure that the horse has feelings in his feet, and will not be a hazard on the racetrack. Pursuant to the proposed new rule, the Commission will mandate that all horses that have been nerved in conformance with the amended rule be designated in the program so that the public will be aware that a horse has been nerved.

Economic Impact

The economic impact of the proposal will be minimal to the industry and the public since it merely requires the trainer, as well as the owner, to report all nerved horses to the State Veterinarian.

Regulatory Flexibility Statement

Since the proposed new rule deals with horses that are competing at the racetrack, and does not impose compliance requirements upon small businesses as defined by the Regulatory Flexibility Act, P.L. 1986, c.169, a regulatory flexibility analysis is not required.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:71-20.23.

Full text of the proposed new rule follows.

13:71-20.23 Registration of nerved horses

(a) Blocking of nerve functions via surgical neurectomy, cryogenic techniques, or any other desensitizing means, whether permanent or temporary, is defined as "nerving".

(b) Only posterior digital "nerving" will be permitted on horses to be raced. The procedure must be performed posterior to the first phalanx at a level below the base of the sesamoid bones.

(c) Horses that are "nerved" above the area specified in (b) above will not be permitted to race in New Jersey.

(d) It shall be the responsibility of the owner and/or trainer to report all "nerved" horses to the State or Associate State Veterinarian.

(e) A list of all "nerved" horses shall be posted on the bulletin board at the entry room by the State Veterinarian.

PUBLIC UTILITIES

(b)

OFFICE OF CABLE TELEVISION

Telephone Service Standards

Notice of Pre-Proposal of New Rule

Authorized By: Bernard R. Morris, Director, Office of Cable Television.

Authority: N.J.S.A. 48:5A-2 and 10.

Pre-Proposal Number: PPR 1987-3.

A **public hearing** to solicit comments prior to proposing a rule in this matter will be held on:

Tuesday, December 1, 1987 at 10:00 A.M.
Board of Public Utilities, Hearing Room I
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

Submit comments by December 16, 1987 to:

Bernard R. Morris, Director
Office of Cable Television
Two Gateway Center
Newark, New Jersey 07102

This is a Notice of Pre-Proposal for a rule amendment (see N.J.A.C. 1:30-3.2). Any rule concerning the subject of the pre-proposal must comply with the rulemaking provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Office of Administrative Law's rules for agency rulemaking. N.J.A.C. 1:30.

The agency pre-proposal follows:

The Office of Cable Television (OCTV or Office) is responsible for the franchising of cable television operators in the State of New Jersey and for the regulation of these operators once franchised. One of the primary functions of the OCTV is to investigate complaints lodged by cable television subscribers. An area of cable television service which the OCTV receives numerous complaints concerns the ability to reach a cable television company by telephone. This appears to be a significant problem of cable television subscribers across the State. During the first six months of 1987 the Office received approximately 1,250 complaints from consumers stating they had difficulty reaching a cable company by telephone. This is the largest number of complaints for any category compiled by the OCTV staff during this period. Based on sources such as trade journals and industry feedback, this seems to be a major problem for cable companies nationwide.

The Office believes this level of complaints requires action be taken to alleviate the problems. It believes that a rulemaking concerning this issue may be appropriate. Given the many variables involved, however, it is desirable to gather more information prior to the promulgation of a rule. It is not immediately clear what form a proposed rule should take or the respective benefits and burdens a rulemaking would impart on cable television operators and their subscribers.

Based on the Office's staff review of individual systems involving severe telephone accessibility problems and its understanding of the cable television industry, the Office recognizes that many factors influence the difficulty of getting in touch with a cable television

company by telephone. These include the hardware of telephone traffic, the number of customer service representatives (CSR's), personnel training, subscriber billing, the hours during which the cable office is open and technical system service problems such as outages.

The Office's experience supports the conclusion that there is a great deal of variation in the types of telephone systems used by cable companies to receive and handle telephone traffic. These range from relatively simple configurations where the cable operator uses individually dialed telephone lines to very complex systems where an on premises computerized switching network (such as a private branch exchange or PBX), receives and processes telephone traffic. This results in a corresponding variation in the amount and type of information available on the system's status.

A preliminary analysis leads the Office to the view that a rule be in one or more of the following formats:

A. A rule which would require cable television operators to report information to the Office on various aspects of the telephone system operation. This could include information on the number of calls processed, the number of calls placed on hold, the average length of time a person is on hold, the number of callers which receive a busy signal and/or the percentage of calls which are abandoned. This information would be compiled by the Office for evaluation and possible follow-up action.

B. A rule could be promulgated which would require cable television operators to have minimum telephone system capabilities. This would require a given number of incoming trunk lines to receive calls and/or a minimum number of CRS's or any other appropriate equipment or personnel standards to ensure the adequate handling of telephone traffic. Any such standards could be based on the size of the system.

C. Cable television operators could also be required to meet certain performance standards. A rulemaking could require companies to meet specified standards. These could be in terms of the average time a subscriber is on hold, or the percentage of abandoned calls or any other readily identified standard.

In order to establish rules which adequately ensure proper telephone accessibility to cable television companies without imposing undue or unnecessary burdens on cable television operators, the Office of Cable Television requests information and comments on the following:

1. The nature and severity of the problem of reaching cable television operators in general;
2. The appropriateness of a rulemaking proceeding conducted by the Office to remedy any problems with the telephone systems of cable operators. Any such discussion should include consideration of the alternatives available to the Office;
3. An analysis of the feasibility of the rulemaking approaches that have been suggested, along with an analysis of the costs and benefits to subscribers and cable television operators of those approaches;
4. In the context of the rulemaking approaches which have been suggested, what information must be collected by the Office and what standards would be appropriate;
5. Alternatives to the rulemaking approaches which have been suggested; and
6. Any other relevant facts and/or issues.

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

Submit comments by December 16, 1987 to:
 Charles L. Meyers
 Administrative Practice Officer
 Department of Transportation
 1035 Parkway Avenue
 CN 600
 Trenton, New Jersey 08625

(a)

DIVISION OF DESIGN

Soil Erosion and Sediment Control Vegetative and Engineering Standards Proposed New Rules: N.J.A.C. 16:25A

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 4:24-39 et seq. "Soil Erosion and Sediment Control Act Chapter 251, P.L. 1975.
 Proposal Number: PRN 1987-466.

The agency proposal follows:

Summary

The Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. requires that the State Department of Transportation certify a plan for any project, as defined in the Act, the DOT proposes to construct and shall file a certification with the Soil Conservation District.

The Department will base the certification on the vegetative and engineering standards as developed jointly by the Departments of Transportation, Environmental Protection, and Agriculture (the State Soil Conservation Committee) pursuant to the Soil Erosion and Sediment Control Act. The Department's proposal will regulate the control of soil erosion and sedimentation on transportation projects undertaken by the DOT itself and by including the appropriate vegetative and engineering measures in the contract with independent contractors.

The Department has developed the vegetative standards by incorporating those items, factors and procedures which are appropriate for transportation projects. The engineering standards are the same as those described in the Soil Erosion and Sediment Control Act with the addition of standards pertinent to transportation projects.

Social Impact

The proposed new rules will have a favorable impact on the citizens of New Jersey through increased protection from off-site erosion and sedimentation damages resulting from land disturbance for transportation construction. Soil losses from construction sites which result in the impairment of storm drain systems, streams and lakes and increase the potential for flooding and related damages will be more adequately controlled.

A positive environmental impact is anticipated with reduced sedimentation damage. Water quality will be enhanced and storm-water damage will be reduced.

Economic Impact

The proposed new rules will have a favorable economic impact on the public which will be assured that the best available technology for controlling erosion will be utilized to minimize off-site sedimentation damage costs. Some minor increases in initial construction costs will result. Subsequent remedial construction costs for correction of erosion problems will be reduced as will maintenance costs after completion of a project.

Regulatory Flexibility Statement

The proposed new rules do not affect small businesses because they do not impose reporting, recordkeeping or other requirements on small businesses. The proposed new rules affect vegetative and engineering standards concerning soil erosion and sediment control on Transportation projects.

Full text of the proposed new rules follows.

CHAPTER 25A

SOIL EROSION AND SEDIMENT CONTROL STANDARDS

SUBCHAPTER 1. GENERAL PROVISIONS

16:25A-1.1 Purpose

This chapter implements P.L. 1975, chapter 251, Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., to establish soil

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erosion and sediment control standards for Department of Transportation certification of its projects to the soil conservation districts.

16:25A-1.2 Definitions

All definitions in chapter 251 Laws of 1975, are incorporated by reference into these rules.

SUBCHAPTER 2. VEGETATIVE AND ENGINEERING STANDARDS

16:25A-2.1 Standards for soil erosion and sediment control

(a) The Department of Transportation adopts and hereby incorporates into these rules by reference as standards for soil erosion and sediment control those standards published in the "Soil Erosion and Sediment Control Standards", and identified as adopted on _____, 1987 as the technical basis for Department of Transportation certification of soil erosion and sediment control plans for Department of Transportation projects. Specifically these standards include the following:

1. VEGETATIVE STANDARDS

Temporary Vegetative Control for	
Soil Stabilization	1.1.0
Permanent Vegetative Control for	
Soil Stabilization	1.2.0
Stabilization with Mulch Only	1.3.0
Permanent Stabilization With Sod	1.4.0
Topsoiling	1.5.0
Selection and Planting of Native and	
Naturalized Vines, Shrubs and Trees for	
Critical Area Planting	1.6.0
Tree Protection During Construction	1.7.0
Maintaining Vegetation	1.8.0
Soil Stabilization Matting	1.9.0
Slope Boards	1.10.0
Preparation of Existing Soil	1.11.0

2. ENGINEERING STANDARDS

Land Grading	2.1.0
Diversion	2.2.0
Grassed Waterway	2.3.0
Sediment Basin	2.4.0
Slope Protection Structures	2.5.0
Channel Stabilization	2.6.0
Detention Basin for Control of	
Downstream Erosion	2.7.0
Subsurface Drainage	2.8.0
Traffic Control	2.9.0
Dust Control	2.10.0
Lined Waterway	2.11.0
Riprap	2.12.0
Sediment Barrier	2.13.0
Conduit Outlet Protection	2.14.0
Stabilized Construction Entrance	2.15.0
Storm Sewer Inlet Protection	2.16.0
Grade Stabilization Structure	2.17.0
Parking Lot Storage	2.18.0
Rooftop Storage	2.19.0
Underground Tanks	2.20.0
Channel Liner (Riprap)	2.21.0
Cut to Fill Slope Treatment	2.22.0
Temporary Dams	2.23.0
Water Course Check Dam	2.24.0
Sediment Barrier (Hay Bales)	2.25.0
Sediment Barrier (Hay Bales)	2.26.0
Inlet Protection—Hay Bale Barrier	2.27.0
Inlet Sediment Trap	2.28.0
Storm Sewer Inlet Protection	2.29.0
Level Spreader	2.30.0
Temporary Slope Drain	2.31.0
Floating Turbidity Barrier	2.32.0
Staked Turbidity Barrier	2.33.0
Sediment Basins	2.34.0

3. Copies of the Vegetative and Engineering Standards may be obtained by contacting the following:

- N.J. Department of Transportation
Bureau of Landscape Architecture
CN 600
1035 Parkway Ave.
Trenton, NJ 08625
(609) 530-5670
- District I Design Office
1259 Rt. 46, 2nd Floor
Parsippany, N.J. 07054
(201) 263-5100
- District II Design Office
Jct. Rt. 1, 9, 21 & 22
Newark, N.J. 07114
(201) 648-3029
- District III Design Office
1147 Amboy Ave.
Edison, N.J. 08837
(201) 499-5090
- District IV Design
530 Fellowship Road
Mt. Laurel, N.J. 08054
(609) 866-4953

OAL NOTE: A copy of the DOT Standards are on file with and may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, CN 301, Trenton, New Jersey, 08625.

TRANSPORTATION OPERATIONS

(a)

**Restricted Parking and Stopping
Routes N.J. 35 in Ocean County, N.J. 47 in
Gloucester County, N.J. 49 in Salem County, and
N.J. 50 in Cape May County
Proposed Amendments: N.J.A.C. 16:28A-1.25, 1.33,
1.34 and 1.100**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-138(g),
39:4-139 and 39:4-199.

Proposal Number: PRN 1987-465.

The agency proposal follows:

Summary

The proposed amendments will establish "no parking" zones along Routes N.J. 35 in Seaside Park and Seaside Heights Boroughs, Ocean County and N.J. 50 in Upper Township, Cape May County; "time limit parking" zones along Route N.J. 35 in Seaside Park Borough, Ocean County and "no parking bus stop" zones along Routes N.J. 47 in Glassboro Borough, Gloucester County and N.J. 49 in the City of Salem, Salem County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon requests from local officials to protect motorists and pedestrians in the area and in the interest of mass transportation, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking" zones along Routes N.J. 35 and N.J. 50, "time limit parking" zones along Route N.J. 35 and "no parking bus stops" zones along Routes N.J. 47 and N.J. 49 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:18A-1.25, 1.33, 1.34 and 1.100 based upon the requests from local officials and the traffic investigations.

Social Impact

The proposed amendments will establish "no parking" zones along Routes N.J. 35 in Seaside Park and Seaside Heights Boroughs, Ocean County and N.J. 50 in Upper Township, Cape May County; "time

limit parking" zones along Route N.J. 35 in Seaside Park Borough, Ocean County and "no parking bus stop" zones along Routes N.J. 47 in Glassboro Borough, Gloucester County and N.J. 49 in the City of Salem, Salem County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and involved municipalities will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no parking" zones signs and the municipalities will bear the costs for "no parking bus stops" and "time limit parking" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

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

16:28A-1.25 Route 35

(a) The certain parts of State H[h]ighway Route 35 described in this section are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-17. (No change.)

18. No stopping or standing in Seaside Park and Seaside Heights Boroughs, Ocean County:

i. Along both sides:

(1) Within the entire limits of Seaside Park Borough and Seaside Heights Borough including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation[,] except in areas of approved bus stops and time limit parking.

19.-21. (No change.)

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

(e) The certain parts of State highway Route 35 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established time limit parking zones:

1. In Seaside Park Borough, Ocean County:

i. West side:

(1) One hour time limit parking between 4th and 5th Avenues from 8:00 A.M. to 6:00 P.M. daily.

(2) One hour time limit parking between 10th and 11th Avenues from 8:00 A.M. to 6:00 P.M. daily.

(3) One hour time limit parking between 8th and 9th Avenues from 8:00 A.M. to 6:00 P.M. daily.

(4) One hour time limit parking between K and L Streets from 8:00 A.M. to 6:00 P.M. daily.

ii. East side:

(1) One hour time limit parking between L and M Streets from 8:00 A.M. to 6:00 P.M. daily.

(2) One hour time limit parking between 8th and 9th Avenues from 8:00 A.M. to 6:00 P.M. daily.

(3) One hour time limit parking between 12th and 13th Streets from 8:00 A.M. to 6:00 P.M. daily.

16:28A-1.33 Route 47

(a) (No change.)

(b) The certain parts of State highway Route 47 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-7. (No change.)

8. Along the southbound (westerly) side in Glassboro Borough, Gloucester County:

i. Far side bus stop:

(1) Grove Street—Beginning at the southerly curb line of Grove Street and extending 100 feet southerly therefrom.

9. Along the northbound (easterly) side in Glassboro Borough, Gloucester County:

i. Mid-block bus stops:

(1) Between High Street and Grove Street.

(2) Beginning 490 feet south of the southerly curb line of High Street and extending 135 feet southerly therefrom.

16:28A-1.34 Route 49

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

(c) The certain parts of State highway Route 49 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along East Broadway westbound on the northerly side in the City of Salem, Salem County:

i. Far side bus stop:

(1) Market Street—Beginning at the westerly curb line of Market Street and extending 110 feet westerly therefrom.

ii. Near side bus stop:

(1) Front Street—Beginning at the easterly curb line of Front Street and extending 155 feet easterly therefrom.

16:28A-1.100 Route 50

(a) The certain parts of State [H]highway Route 50 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. (No change.)

2. No stopping or standing in Upper Township, Cape May County:
i. Along both sides from Dennisville Road—School House Lane/Reading Road to the Upper Township—Corbin City corporate line.

(a)

Turns

Route N.J. 82 in Union County

Proposed New Rule: N.J.A.C. 16:31-1.24.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-183.6, 39:4-123.

Proposal Number: PRN 1987-464.

The agency proposal follows:

Summary

The proposed new rule will establish "no left turn" movement along Route N.J. 82 in Union Township, Union County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from local officials of Union Township to provide a steady flow of traffic and preclude traffic congestion getting to the Money Store, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no left turn" movement was warranted.

The Department therefore proposes new rule N.J.A.C. 16:31-1.24 based upon the request from local officials and the traffic investigation.

Social Impact

The proposed new rule will establish "no left turn" movement along Route N.J. 82 in Union Township, Union County for the safe and efficient flow of traffic, the enhancement of safety, and the well-

PROPOSALS

Interested Persons see Inside Front Cover

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being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and municipality will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no left turn" zones. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed new rule does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

Full text of the proposed new rule follows.

16:31-1.24 Route 82

(a) Turning movements of traffic on the certain parts of Route 82 described in this section are regulated as follows:

1. No left turn west on Morris Avenue to south into driveways for 2801 Morris Avenue (Money Store) and north from the driveways of 2801 Morris Avenue (Money Store) to west on Morris Avenue.

appear to be any significant adverse economic impact to the retirement system or to persons who may be affected by this proposed amendment.

Regulatory Flexibility Statement

Since the rules of the Division of Pensions only impact upon public employers and/or employees, this proposed amendment will not have any adverse effect upon small businesses or private industry in general, therefore, a regulatory flexibility analysis is not required.

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

17:1-1.10 Minimum adjustments

(a) (No change.)

[(b) Bad balances of \$50.00 or less in accounts that have been withdrawn will be written off. However, if a withdrawn member can satisfactorily prove with convincing documentation that monies are due from the withdrawn account, such refunds shall be made, notwithstanding the fact that the bad balance had been previously written off.]

(b) Rules concerning bad balances in retirement accounts are as follows:

1. No rebates or additional contributions shall be made for retired members if the adjustments involve amounts that range from a positive to a negative of \$5.00. All balances within this range will be written off.

2. In the event the positive or negative balance is greater than \$5.00 but produces a monthly retirement adjustment of less than \$1.00, no recalculation of monthly benefits will be computed. Positive balances will be rebated and negative balances will be written off.

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

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Administration

Minimum Adjustments

Proposed Amendment: N.J.A.C. 17:1-1.10.

Authorized By: Douglas R. Forrester, Director, Division of Pensions.

Authority: N.J.S.A. 52:18A-96 et seq.

Proposal Number: PRN 1987-463.

Submit comments by December 16, 1987 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front St.
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment attempts to clarify that positive and negative balances within the range of \$5.00 regarding the accounts of retired members of the State-administered retirement systems will be written off. If there is a negative or positive balance in excess of \$5.00 and such balance results in a monthly retirement adjustment of less than \$1.00, no recalculation of monthly retirement benefits will be computed and, in such cases, positive balances will be rebated and negative balances will be written off.

Social Impact

The proposed amendment will only affect those retirees whose accounts have positive or negative balances within the \$5.00 range or whose positive or negative balances in those accounts only result in an adjustment to their monthly retirement allowances of \$1.00 or less.

Economic Impact

Since the expected amounts of adjustments are minimal compared to the total financial assets of the retirement systems, there does not

OTHER AGENCIES

(b)

NEW JERSEY TURNPIKE AUTHORITY

**Purchasing and Contracting
Classification Rating**

Proposed Amendment: N.J.A.C. 19:9 Exhibit A

Authorized By: New Jersey Turnpike Authority,

William J. Flanagan, Executive Director.

Authority: N.J.S.A. 27:23-1.

Proposal Number: PRN 1987-479.

Submit comments by December 16, 1987 to:

William J. Flanagan, Executive Director
New Jersey Turnpike Authority
New Brunswick, New Jersey 08903

The agency proposal follows:

Summary

Since the inception of the Turnpike Authority's procedure for prequalification of contractors, construction costs have increased considerably. These higher costs will undoubtedly require contractors who wish to bid on Turnpike construction contracts to prequalify again due to the fact that they were prequalified for their previous experience on Turnpike contracts of lesser value. Thus, it is necessary to revise the Classification Rating to prequalify bidders for Widening contracts that will far exceed the cost of anything the Authority has had in the past for similar projects. It is anticipated that certain individual contracts for the construction of the 1985-90 Widening Program will fall into the \$10 million dollar cost category and above. For these reasons, it is proposed that the addition of a new prequalification rating be established in the Authority's procedures to enhance the classification of qualified construction firms of national

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reputation. Therefore, the Authority proposes to add a new Classification Rating, namely, up to \$10 million maximum. The prior maximum, other than "Unlimited," was \$5 million.

Social Impact

The proposed amendment is designed to expedite prequalification for bidding on needed highway construction projects and, therefore, its impact on the citizens of New Jersey will be positive. The proposal will update the Classification Rating to take into account rising costs due to inflation, thus aiding contractors applying for prequalification.

Economic

By facilitating a needed highway project, this amendment will foster economic growth and, therefore, its impact on the citizens of New Jersey, the contractors and the economic well-being of both should be positive.

Regulatory Flexibility Statement

The proposed amendment imposes no recordkeeping, bookkeeping or other compliance requirements on small businesses. Therefore, a regulatory flexibility analysis pursuant to P.L. 1986, c.169 is not required.

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

EXHIBIT A

CONTRACTOR'S CLASSIFICATION

CLASSIFICATION
RATING:

...
A.-E. (No change.)

F. up to \$10,000,000 maximum
[F.] **G. Unlimited**
Special Rating (No change.)

RULE ADOPTIONS

ADMINISTRATIVE LAW

OFFICE OF ADMINISTRATIVE LAW

(a)

Uniform Administrative Procedure Rules Scheduling of Proceedings; Prehearing Conferences

Adopted Amendment: N.J.A.C. 1:1-9.1

Proposed: September 8, 1987 at 19 N.J.R. 1591(a).
Adopted: October 16, 1987 by Ronald I. Parker, Acting Director,
Office of Administrative Law.
Filed: October 20, 1987 as R.1987 d.463, **without change**.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Effective Date: November 16, 1987.
Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 1:1-9.1 Scheduling of proceedings
(a)-(c) (No change.)
(d) A prehearing conference may be scheduled in any case, other than one requiring a conference hearing, whenever necessary to foster an efficient and expeditious proceeding.
(e)-(g) (No change.)

(b)

Interlocutory Review; Initial Decision in Contested Cases; Exceptions and Replies

Adopted Amendments: N.J.A.C. 1:1-14.10, 1:1-18.1 and 1:1-18.4

Proposed: September 8, 1987 at 19 N.J.R. 1592(a).
Adopted: October 16, 1987 by Ronald I. Parker, Acting Director,
Office of Administrative Law.
Filed: October 20, 1987 as R.1987 d.462, **without change**.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Effective Date: November 16, 1987.
Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 1:1-14.10 Interlocutory review
(a)-(i) (No change.)
(j) Except as limited by (m) below and N.J.A.C. 1:1-18.4(a), any order or ruling reviewable interlocutorily is subject to review by the agency head after the judge renders the initial decision in the contested case, even if an application for interlocutory review:
1.-3. (No change.)
(k)-(l) (No change.)
(m) Orders or rulings issued under (k)1, 2, 3 and 5 above may only be appealed interlocutorily; a party may not seek review of such orders or rulings after the judge renders the initial decision in the contested case.
- 1:1-18.1 Initial decision in contested cases
(a)-(g) (No change.)

(h) Upon filing of an initial decision with the transmitting agency, the Office of Administrative Law relinquishes jurisdiction over the case, except for matters referred to in N.J.A.C. 1:1-3.2(c)1 through 5.

1:1-18.4 Exceptions: replies

(a) Within 10 days from the receipt of the judge's initial decision, any party may file written exceptions with the agency head and with the Clerk. A copy of the exceptions shall be served on all other parties. Exceptions to orders issued under N.J.A.C. 1:1-3.2(c)4 shall be filed with the Director of the Office of Administrative Law.

(c)

Settlements; Initial Decision

Adopted Amendment: N.J.A.C. 1:1-19.1

Proposed: September 8, 1987 at 19 N.J.R. 1593(a).
Adopted: October 16, 1987 by Ronald I. Parker, Acting Director,
Office of Administrative Law.
Filed: October 20, 1987 as R.1987 d.461, **without change**.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Effective Date: November 16, 1987.
Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 1:1-19.1 Settlements
(a) (No change.)
(b) If the judge determines from the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues and controversy, the judge shall issue a decision incorporating the full settlement terms and approving the settlement.
1. Where the agency head has not consented to the settlement terms, the decision shall be an initial decision.
2. Where the agency head has consented to the settlement terms, the decision approving settlement shall not contain the statement required by N.J.A.C. 1:1-18.3(c)12 and shall be deemed the final decision.

(d)

Uncontested Cases in the Office of Administrative Law

Adopted Repeal: N.J.A.C. 1:1-21.6

Proposed: September 8, 1987 at 19 N.J.R. 1593(b).
Adopted: October 16, 1987 by Ronald I. Parker, Acting Director,
Office of Administrative Law.
Filed: October 20, 1987 as R.1987 d.464, **without change**.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Effective Date: November 16, 1987.
Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 1:1-21.6 Extensions
(No change in text.)

AGRICULTURE

(a)

DIVISION OF RURAL RESOURCES

State Agriculture Development Committee Review of Non-Agricultural Development Projects in Agricultural Development Areas by Public Bodies and Public Utilities

Adopted New Rules: N.J.A.C. 2:76-7

Proposed: June 15, 1987, at 19 N.J.R. 1009(a).

Adopted: October 22, 1987 by Arthur R. Brown, Jr., Chairman,
State Agriculture Development Committee.

Filed: October 23, 1987 as R.1987 d.482, with substantive changes
not requiring additional public notice, and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 4:1C-19, 4:1C-25.

Effective Date: November 16, 1987.

Expiration Date: August 29, 1989.

Summary of Public Comments and Agency Responses:

COMMENT: The Committee's proposed Policy P-10 which outlines the responsibilities of the County Agriculture Development Boards (CADBs) and the Committee in the review and evaluation of the non-agricultural development projects in Agricultural Development Areas (ADAs) should be published in the New Jersey Register.

RESPONSE: Many comments were received on the policy referenced above. Although the policy was not published in the Register, it was included with copies of the proposed rule which were mailed and distributed to CADBs, the Committee's Advisory Board and other known interested agencies. While the policy is available for public review and comment, it is still in draft form and is not intended for publication as a proposed rule at this time. The comments received on the policy will be kept on file and addressed at the time the policy is finalized and prepared for publication as a proposed rule.

COMMENT: Several public bodies and public utilities stressed that accurate geographic information from the CADB about the ADA is "absolutely mandatory" in order to be able to provide notice and meaningful discussion regarding consequences of a proposed alternative, including one which would avoid an ADA. It was requested that ADAs be mapped so they can be included in the planning process and thereby avoided where possible.

RESPONSE: The Committee acknowledges that identifying agricultural development areas which are defined by criteria is difficult and staff has undertaken efforts to determine those areas more precisely. Until such time as those maps are finalized, the most accurate method of ascertaining whether a project is located in an ADA continues to be the application of the respective County's certified ADA criteria to the particular site in question.

COMMENT: The definition of non-agricultural projects for which a public utility or public body intends to advance a grant, loan, interest subsidy or other funds should be clarified.

RESPONSE: The definition of nonagricultural projects can be found under the definition of "Project" in N.J.A.C. 2:76-7.2.

COMMENT: The inclusion of an Initiation of a Level of Action Analysis in the definition of "Initiation of an Action" in N.J.A.C. 2:76-7.2 is improper and should not be used to signify the initiation of an action.

RESPONSE: The Committee agrees with the comment and has deleted this reference in the definition.

COMMENT: The definition of "Initiation of an Action" at N.J.A.C. 2:76-7.2 regarding application or notification of a project before a municipal governing body or body thereof and the advancement of a grant, loan, interest subsidy or other funds is vague in identifying the time at which notice to the board and the Committee should be made by the public or public utility.

RESPONSE: The Committee felt that the event of filing an application before a municipal governing body was unclear with regard to the kind of projects which would be subject to the provision; the phrase has been deleted from the definition of "Initiation of an Action". With regard to the clarity of "advance a grant, loan, interest subsidy or other funds",

the Committee acknowledged that the definition was broad and encompassing, but that efforts made at this time to specify precise events would result in narrowing the scope of the definition.

COMMENT: The definition of the "Initiation of an Action" is unclear about the use of State versus Federal monies where local bodies retain substantial discretion over how Federal monies are spent.

RESPONSE: The Federal government is exempt from the provisions of this rule. Otherwise, public bodies or public utilities must comply with the rule, regardless of the original source of the funds.

COMMENT: Dwellings constructed with assistance of state low-interest loans are not required to have approval of the municipal planning board, thereby precluding the point where the CADB would be notified.

RESPONSE: This situation is addressed in the rule as proposed. In this case, the public body or public utility advancing the funds for the project would be required to notify the CADB.

COMMENT: The definition of "Project" in N.J.A.C. 2:76-7.2 should be broadened to include nonagricultural uses as such as public buildings and parks.

RESPONSE: The Committee chose not to broaden the scope of the definition from what was originally specified in the enabling legislation (Agriculture Retention and Development Act N.J.S.A. 4:1C-11 et seq.).

COMMENT: It is recommended that only one notice of intent be filed with the CADB to eliminate unnecessary paperwork, as opposed to both the CADB and the Committee as currently required.

RESPONSE: The Committee disagrees that the filing of the notice of intent be limited to the CADB. It is clearly stated in the enabling legislation that both the Committee and CADB be notified. Since the bulk of the paperwork is required with the preparation of the project documentation, the filing of an additional copy should not be considered an undue hardship.

COMMENT: The requirement in N.J.A.C. 2:76-7.3(c) for "an evaluation of an alternative which would not include action in an ADA" in the Notice of Intent would extend the environmental schedule with the identification and evaluation of new alternatives. Many projects have only a build and a no-build alternative and even projects which have several build alternatives may have all alternatives located in an ADA.

RESPONSE: The Committee recognizes that, in the case of highway alignments and other major infrastructure projects, considerable technical analysis is involved in the evaluation of each alternative and that the preparation of an equivalent level of review and analysis on a new location outside the Agricultural Development Area might unduly extend an agency's environmental analysis schedule. Nevertheless, the Committee feels that the public body or public utility must at least address the feasibility of locating the project outside an ADA and how the impacts of the project might potentially be affected by doing so.

COMMENT: It was requested that public utility "transmission lines and appurtenances, whether in a public or private right-of-way or easement" be added to those projects exempt from the rule; N.J.A.C. 2:76-7.3(b) currently exempts utility distribution lines. Such lines are usually extended to meet existing or approved development, rather than precede the development in a speculative nature.

RESPONSE: The Committee feels that while large transmission lines may be extended to meet existing development, such lines or routes may be disruptive to an agricultural area, and therefore, should not be exempt from the rule.

COMMENT: The language of N.J.A.C. 2:76-7.3(b) should be clarified as to the specific kinds of roadside public utility distribution lines that are exempted from the rule. Comments were divided on whether or not water and sewer lines should be exempted, while all respondents on this issue supported the exemption of electric and gas lines.

RESPONSE: The Committee feels that gas and electric distribution lines are typically extended to meet existing development rather than cross open agricultural areas in a speculative nature. While this may occur with all public utilities, it is more often the case that approval of sewer and water lines into a newly serviced area precedes development into such an area and therefore should not be exempt from the rule. The language of N.J.A.C. 2:76-7.3(b)1 has been clarified to specify the reference to electric and gas distribution lines.

COMMENT: The review exemption allowed in N.J.A.C. 2:76-7.3(b) for "minor improvements and/or repairs to existing transportation . . . systems that do not increase existing capacity or extend service into previously unserved areas" should be interpreted to include such safety related projects, even if the taking additional right-of-way is required.

ADOPTIONS

AGRICULTURE

RESPONSE: The Committee agrees with the nature of the comment, but feels it is already sufficiently covered as the proposed rule is written. No changes have been made to the review exemption.

COMMENT: Reference to the use of a Final Environmental Impact Statement (EIS) in N.J.A.C. 2:76-7.4(b) is not appropriate for the initiation of an action. Rather, only the draft EIS should serve as the initiation of an action.

RESPONSE: The Committee agrees with the comment and has deleted reference to the final EIS in N.J.A.C. 2:76-7.4(b).

COMMENT: Identification of specific block and lots, as required by N.J.A.C. 2:76-7.4(d), with regard to proposed highway alignments at the Initiation of an Action phase (Draft EIS) would create significant impacts upon the property acquisition process by land speculators.

RESPONSE: The Committee recognizes that the likelihood of land speculation does exist, but at the time a Draft EIS is issued, the general location of the project alignment is known and fairly detailed maps are prepared and published as part of the report. Provision of accurate block and lot information, to the extent known, would facilitate review and evaluation by the CADB and the Committee.

COMMENT: The proposed rules do not address how the Committee will respond to the information that is required to be submitted.

RESPONSE: The Committee agrees with the comment and reference has been added to N.J.A.C. 2:76-7.4(a) regarding the use of the information submitted by the public body or public utility.

COMMENT: The scale and format of the key map required by N.J.A.C. 2:76-7.4(d)2.i.(2) from the project initiator should be clearly specified, the "land adjacent to the site" in N.J.A.C. 2:76-7.4(d)2.i.(4) should be explained further, and a site plan for the project itself should be required in subsection (d).

RESPONSE: While the Committee agrees that the detailed information facilitates the review and evaluation of the project, requiring a particular scale and format of maps might cause undue additional work on the part of the public body or public utility and might not be appropriate for all projects. If the board finds it absolutely necessary to obtain such a map, the rules provide an avenue by which it might be requested in N.J.A.C. 2:76-7.4(a). The Committee agrees with the second two recommended additions to the rule and has added these to N.J.A.C. 2:76-7.4(d).

COMMENT: The impacts of the project on agricultural activities are of a similar nature to the information currently required in N.J.A.C. 2:76-7.4(d) and should be addressed by the project initiator.

RESPONSE: The Committee agrees with the comment and has included the list of additional factors to be addressed in N.J.A.C. 2:76-7.4(d).

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

SUBCHAPTER 7. REVIEW OF NON-AGRICULTURAL DEVELOPMENT PROJECTS IN AGRICULTURAL DEVELOPMENT AREAS

2:76-7.1 Applicability

This subchapter applies to any public body or public utility which intends, within an agricultural development area, to exercise the power of eminent domain for the acquisition of land, or advance a grant, loan, interest subsidy or other funds within an agricultural development area for the construction of dwellings, commercial or industrial facilities, transportation facilities, or water or sewer facilities to serve non-farm structures.

2:76-7.2 Definitions

"Advance a grant, loan, interest subsidy or other funds" means the provision of funds in the form of a grant, loan or interest subsidy or other financial assistance for the construction of a project as defined in this subchapter.

"Agricultural development area" means the agricultural land area identified by the board and certified by the Committee pursuant to N.J.S.A. 4:1C-18 and N.J.A.C. 2:76-1.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agriculture retention board established pursuant to N.J.S.A. 4:1C-17.

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

"Initiation of an action" means the earliest of the following events: the filing of a complaint by a public body or public utility with the New Jersey Superior Court for permission to exercise the power of eminent domain; the issuance of a draft environmental impact statement or environmental assessment; *[the initiation of a level of action analysis by the New Jersey Department of Transportation;]* the approval of a project as a "categorical exclusion" by the Federal Highway Administration; *[the application for or notification of a project before a municipal governing body or body thereof;]* or, in the case of the advancement of funds, the time at which a public utility or public body decides to make a final commitment to advance a grant, loan, interest subsidy or other funds toward a project.

"Notice of intent" means the written notification by a public body or public utility to the Committee and the board and the supporting documents and information pursuant to N.J.A.C. 2:76-7.3(c) and (d).

"Project" means the use or purpose for which any public body or public utility intends to acquire land within an agricultural development area through the exercise of the power of eminent domain, or the construction, within an agricultural development area, of dwellings, commercial or industrial facilities, transportation facilities, or water or sewer facilities to serve non-farm structures, for which construction any public body or public utility intends to advance a grant, loan, interest subsidy or other funds.

"Proposed action" means the intention of any public body or public utility to exercise the power of eminent domain for the acquisition of land or advance a grant, loan, interest subsidy or other funds for a project as defined in this subchapter.

"Public body" means any State, regional, county or municipal agency or governing body, including but not limited to special districts and authorities.

"Public utility" means and includes every public utility enumerated in N.J.S.A. 48:2-13, and every natural gas pipeline utility as defined at N.J.S.A. 48:10-2 et seq. vested with the power of eminent domain and subject to regulation under State or Federal law.

"Secretary" means the Secretary of Agriculture.

2:76-7.3 Responsibilities of the public body and/or public utility

(a) A notice of intent shall be filed with the board and the Committee by any public body or public utility which intends, within an agricultural development area, to:

1. Exercise the power of eminent domain for the acquisition of land; or
2. Advance a grant, loan, interest subsidy or other funds for the construction of a project as defined in this subchapter.

(b) The following are exempt from the requirements of (a) above:

1. Extension of roadside public utility ***electric and gas*** distribution lines; and
2. Minor improvements and/or repairs to existing transportation and water or sewer infrastructure systems that do not increase existing capacity or extend service into previously unserved areas.

(c) The notice of intent shall include:

1. A statement of the reasons for the proposed action;
2. An evaluation of alternatives which would not include action in the agricultural development area;
3. Information about the project and its impact as outlined in N.J.A.C. 2:76-7.4.

(d) The notice of intent shall be filed with the board and the Committee at least 30 days prior to the initiation of an action described in (a) above. The time at which the action is initiated shall be as defined in N.J.A.C. 2:76-7.2.

2:76-7.4 Information about the project

(a) The information outlined in (d) below regarding the proposed action and project shall be required in the notice of intent submitted to the board and the Committee by the public body or public utility ***and shall be used, along with other relevant information, by the board and the Committee to evaluate the impact of the project on the agricultural activities in the Agricultural Development Area***. If the board

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determines that further information is required to complete its evaluation, such information shall be submitted by the public body or public utility within 10 working days of the request.

(b) If a draft *[or final]* environmental impact statement has been prepared in connection with the proposed action or project and includes all of the information required in (d) below, then that statement, along with the information required in N.J.A.C. 2:76-7.3(c) and together with a cover letter to the board and the Committee stating that the enclosed statement is intended to serve as a notice of intent to undertake an action within an agricultural development area, shall fully comply with the notice requirement, provided that such statement is served upon the board and the Committee at least 30 days prior to the initiation of the proposed action.

(c) If a draft *[or final]* environmental impact statement prepared in connection with the proposed action or project does not contain all of the information required in (d) below, including the information required in N.J.A.C. 2:76-7.3(c), then that statement, together with all additional information necessary and a cover letter to the board and the Committee stating that the enclosed statement is intended to serve as a notice of intent to undertake an action within an agricultural development area, shall fully comply with the notice requirement, provided that such statement is served upon the board and the Committee at least 30 days prior to the undertaking of the proposed action.

(d) The following information must be submitted for each project:

1. The name of the public body or public utility involved, its address, telephone number and the name of a contact person.

2. The location and land use of the project as follows:

i. The location of the project, including:

(1) The municipality(ies), block and lot number(s) ***to the extent known***;

(2) A key map adequately locating the site or proposed route of the project;

(3) The current use of the site; and

(4) The land use of area adjacent to the site, including:

(A) Current buffers between the project and farmland; and

(B) The proposed use of buffers between the project and farmland.

(C) Land use on adjacent lots.

ii. A description of the project, including:

(1) The type of project (utility, residential, commercial, industrial, etc.);

(2) The purpose of the project;

(3) The total area of the project;

(4) The phases of the project;

(5) The infrastructure required, including roads and utilities (water, electric, gas, etc.); and

(6) The alternatives considered, if any.

(7) The site plan, if available.

3. A discussion of farm activities impacts on the project through consideration of the following issues from the public body or public utility's perspective and identification of feasible solutions to these potential problems:

i. Potential complaints concerning noise from use of farm machinery, irrigation pumps or other equipment;

ii. Potential complaints concerning odors associated with live-stock, poultry, crops or manure spreading;

iii. Potential complaints concerning use of herbicides, pesticides and fertilizers; and

iv. Potential dust problems.

***4. A discussion of project impacts on farm activities, including:**

i. Prevention of access to an actively farmed area;

ii. Potential increase in vandalism of farm equipment, buildings and/or crops;

iii. Potential increase in farm trespass;

iv. Potential increase in vehicle traffic;

v. Potential increase in litter (glass, plastic and/or paper) that may affect the farm operation; and

vi. Potential impact on aesthetics of the area.*

***[4.]**5.* A discussion of the project's impact on water resources *with respect to the agricultural operation*, including:**

i. The following aspects of water diversion:

(1) Surface runoff affecting water bodies, including irrigation ponds;

(2) Groundwater aquifers affected; and

(3) Rechanneling of streams or water courses;

ii. The potential effect on surface and groundwater quality; and

iii. The site's function as a water recharge area.

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(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Planned Real Estate Development

Department Fees

Adopted Amendments: N.J.A.C. 5:23-4.20 and 8.17; 5:26-2.3 and 2.4

Proposed: September 21, 1987 at 19 N.J.R. 1684(a).

Adopted: October 23, 1987 by Leonard S. Coleman, Jr.,

Commissioner, Department of Community Affairs.

Filed: October 26, 1987 as R.1987, d.490, **without change.**

Authority: N.J.S.A. 52:27D-124 and 45:22A-27e.

Effective Date: November 16, 1987.

Expiration Date: N.J.A.C. 5:23: April 1, 1988. N.J.A.C. 5:26: March 1, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: Comments were received from representatives of private inspection agencies contending that the agencies' revenues from electrical inspections would be reduced, rather than increased, as a result of the adoption of the proposed amendments, despite the fact that the proposal provided for an across-the-board 25 percent fee increase which would be applicable to the private agencies, pursuant to statute, as well as to the Department. This would be so because an ambiguity in the procedure for calculating fees which the agencies have construed in a manner that increases their fees but which the Department has advised them, in correspondence not related to these proposed amendments, that they would have to construe in the manner less favorable to them once the fees were reevaluated and revised.

RESPONSE: The Department's response is that this across-the-board increase is not the planned reevaluation which is to serve as the basis of the fee change that would result in resolution of this ambiguity, and no requirement is being established in conjunction with this rule change that would require a change in the procedure for calculating fees.

COMMENT: Representatives of the private agencies also contend that the Department is obligated to analyze the financial requirements of the agencies in setting inspection fees.

RESPONSE: The Department responds that the statute requires the Department's fees to cover the costs of its inspections and requires the private agencies' fees to be the same as those of the Department, whatever those might be.

COMMENT: Two representatives of developers protested that the increased fees for planned real estate development applications threatened to diminish the affordability of the units.

RESPONSE: The Department does not think it very likely that an increase of \$275.00 per project plus \$30.00 per unit will have a noticeable effect on affordability.

COMMENT: One of the developer representatives also asked that provision be made in the rules for a streamlined review process.

RESPONSE: While there is, indeed, no change proposed to the rules in this regard, it is the Department's intention, as stated, to use extra fee revenue to cover the cost of the added staff that is needed to expedite the review process.

Full text of the adoption follows.

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5:23-4.20 Department fees

(a) (No change.)

(b) Departmental plan review fee: The fees listed in (c) below shall be in addition to a departmental plan review surcharge in the amount of 30 percent of each listed fee. Where the department performs plan review only, the plan review fee shall be in the amount of 20 percent of the new construction permit fee which would be charged by the department pursuant to these regulations. The minimum fee shall be \$25.00.

(c) Departmental (enforcing agency) fees:

1. (No change.)

2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the mechanical systems and equipment, the number of plumbing fixtures and stacks, the number of electrical fixtures and devices and the number of sprinklers and standpipes at the unit rates provided herein plus any special fees. In each case, the minimum fee for basic construction work shall be \$25.00.

i. Volume or cost: The fees for new construction or alteration are as follows:

(1) Fees for new construction shall be based upon the volume of the structure. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The new construction fee shall be in the amount of \$0.0145 per cubic foot of volume for buildings and structures of all use groups and types of construction as classified and defined in articles 3 and 4 of the building subcode; except that the fee shall be \$0.008 per cubic foot of volume for use groups A-1, A-2, A-3, A-4, F-1, F-2, S-1 and S-2, and the fee shall be \$0.004 per cubic foot for structures on farms used exclusively for the storage of food or grain, or the sheltering of livestock, with the maximum fee for such structures on farms not to exceed \$625.00.

(2) Fees for renovations, alterations and repairs shall be based upon the estimated cost of the work. The fee shall be in the amount of \$13.00 per \$1,000. From \$50,001 to and including \$100,000, the additional fee shall be in the amount of \$10.00 per \$1,000 of estimated cost above \$50,000. Above \$100,000, the additional fee shall be in the amount of \$8.00 per \$1,000 of estimated cost above \$100,000. For the purpose of determining estimated cost, the applicant shall submit to the department, if available, cost data produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid, if available, shall be submitted. The department will make the final decision regarding estimated cost.

(3)-(4) (No change.)

(5) Fees for minor construction work shall be based upon the estimated cost of the work. The fee shall be in the amount of \$13.00 per \$1,000 of estimated cost or fraction thereof.

ii. Plumbing fixtures and stacks: The fees shall be as follows:

(1) The fee shall be in the amount of \$5.00 per fixture or stack for all fixtures except as listed in (2) below.

(2) The fee shall be in the amount of \$35.00 per special device for grease traps, oil separators, water-cooled air conditioning units, utility service connections, boilers and furnaces.

(3) (No change.)

iii. Electrical fixtures and devices: The fees shall be as follows:

(1) For from one to 50 receptacles or fixtures the fee shall be in the amount of \$25.00; for each 25 receptacles or fixtures in addition to this, the fee shall be in the amount of \$4.00; for the purpose of computing this fee, receptacles or fixtures shall include lighting outlets, wall switches, fluorescent fixtures, convenience receptacles or similar fixture, and motors or devices of less than one horsepower or one kilowatt.

(2) For each motor or electric device of more than one horsepower or one kilowatt the fees shall be in the amount of \$5.00.

(3) (No change.)

(4) For each service panel of 100 amperes capacity or less, the fee shall be in the amount of \$13.00; for each service panel of greater than 100 amperes capacity, the fee shall be increased \$7.00 for each 100 ampere increment.

(5) (No change.)

3. The fee for a demolition permit shall be \$35.00 for a structure of less than 5,000 square feet in area and less than 30 feet in height, for one or two-family residences (use group R-3 of the building subcode), and structures on farms used exclusively for storage of food or grain, or sheltering of livestock, and \$65.00 for all other use groups.

4. The fee for a permit for removal of one building from one lot to another or to another location on the same lot shall be in the amount of \$7.00 per \$1,000 of the estimated cost of moving, plus the estimated cost of new foundation and all work necessary to place the building in its completed condition in the new location.

5. The fee for a permit to construct a sign shall be in the amount of \$0.65 per square foot surface area of the sign, computed on one side only for double-faced signs. The minimum fee shall be \$25.00.

6. The fee for a certificate of occupancy shall be in the amount of 10 percent of the new construction permit fee which would be charged by the department pursuant to these regulations. The minimum fee shall be \$65.00, except for one or two-family (use group R-3 of the building subcode) structures of less than 5,000 square feet in area and less than 30 feet in height, and structures on farms used exclusively for storage of food or grain, or sheltering of livestock, for which the minimum fee shall be \$35.00.

i. The fee for a certificate of occupancy granted pursuant to a change of use group shall be \$95.00.

ii. The fee for certificate of continued occupancy shall be \$65.00.

iii-iv. (No change.)

v. Sprinklers and standpipes: The fee shall be as follows:

(1) For one to 20 heads, the fee shall be \$35.00; for 21 to 100 heads, the fee shall be \$65.00; for 101 to 200 heads, the fee shall be \$125.00; for 201 to 400 heads, the fee shall be \$325.00; for 401 to 1,000 heads, the fee shall be \$450.00; for over 1,000 heads, the fee shall be \$575.00.

(2) The fee for standpipes shall be \$125.00 each.

7. The fee for a permit to install an elevator shall be \$200.00.

8. The fee for plan review of a building for compliance under the alternated systems and non-depletable energy source provisions of the energy subcode is as follows: \$150.00 for one and two-family homes and light commercial structures having the indoor temperature controlled from a single point, and \$750.00 for all other structures.

9. The fee for an application for a variation in accordance with N.J.A.C. 5:23-2.10 shall be \$325.00 for class I structures and \$65.00 for class II and class III structures. The fee for resubmission of an application for a variation shall be \$125.00 for class I structures and \$35.00 for class II and class III structures.

10. Fees for the periodic departmental reinspection of equipment and facilities granted a certificate of approval for a specified duration in accordance with N.J.A.C. 5:23-2.23 shall be as follows:

i. For elevators, escalators and moving walks requiring reinspection every six months, the fee shall be \$50.00 except for each five-year inspection and witnessing of tests on elevators, for which the fee shall be \$160.00.

ii. For dumbwaiters requiring reinspection every 12 months, the fee shall be \$20.00.

iii. For cross connections and backflow preventers that are subject to testing, requiring reinspection every three months, the fee shall be \$25.00 for each device when they are tested (thrice annually) and \$65.00 for each device when they are broken down and tested (once annually).

iv. For sprinklers requiring reinspection every 12 months, the fee shall be \$125.00 for systems of up to 100 sprinkler heads and \$6.50 each 150 additional sprinkler heads.

11. The fee to be charged for an annual construction permit shall be charged annually. The fee shall be a flat fee based upon the number of maintenance workers employed by the facility and who are primarily engaged in work that is governed by a subcode. Managers, engineers and clericals shall not be considered maintenance

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workers for the purpose of establishing the annual construction permit fee. Annual permits may be issued for building/fire protection, electrical and plumbing. Fees shall be as follows:

- 1-25 workers (including foreman) \$325.00/worker
- each additional worker over 25 \$125.00/worker
- 12. (No change.)

5:23-8.17 Asbestos Safety Control Monitor

(a)-(e) (No change.)

(f) Authorization and reauthorization fees are as follows:

1. Authorization fee: Any asbestos safety control monitor submitting an application to the department under this subcode, for approval as an asbestos safety control monitor shall pay a fee of \$2,500 for the authorization which is sought, plus an amount equal to six percent of the gross revenue earned from asbestos safety control monitor activities, payable quarterly.

2. Reauthorization fee: Any asbestos safety control monitor submitting an application to the department under this subcode for reapproval as an asbestos safety control monitor shall pay a fee of \$1,250 plus an amount equal to six percent of the gross revenue of four consecutive quarters starting with the previous year's last quarter. The fee shall be payable quarterly with the first quarter due with application.

5:26-2.3 Request for exemptions

(a) Any person who believes that a planned real estate development or retirement community may be exempt from the provisions of the Act, or who is contemplating a planned real estate development or retirement community which he believes may be exempt, may apply to the Director for a Letter of Exemption. Such application shall be in writing and shall list the reasons why such planned real estate development or retirement community or proposed planned real estate development or proposed retirement community may be exempt from the Act. An application for exemption pursuant to N.J.A.C. 5:26-2.2(a) shall be accompanied by a fee of \$80.00.

(b)-(e) (No change.)

5:26-2.4 Application for registration: submission and fees

(a) An application for registration shall consist of a statement containing the items set forth in N.J.A.C. 5:26-3 and shall be submitted in the manner and form as provided therein together with the filing fee in the amount of \$775.00 plus \$75.00 per lot, parcel, unit or interest, made payable to the Treasurer, State of New Jersey. In the event lots, parcels, units or interests are added during registration, an additional fee of \$75.00 per lot, parcel, unit or interest shall be paid. There will be no refund for deletions.

(b) (No change.)

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(a)

DIVISION OF WATER RESOURCES

Shellfish-Growing Water Classification

Adopted Amendments: N.J.A.C. 7:12-1.1, 1.2, 1.4, 1.5, 1.6, 1.8, and 2

Adopted Repeal: N.J.A.C. 7:12-1.3

Adopted New Rules: N.J.A.C. 7:12-2 and 3

Proposed: July 6, 1987 at 19 N.J.R. 1129(a).

Adopted: October 19, 1987 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: October 23, 1987 as R.1987 d.488 with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and with portions not adopted.

Authority: N.J.S.A. 13:1D-9 and 58:24-1 et seq.

Effective Date: November 16, 1987.

Expiration Date: June 6, 1988.

DEP Docket Number: 025-87-06.

Summary of Public Comments and Agency Responses:

The public comment period ended on August 5, 1987. **No comments were received.**

On adoption, the Department has deleted the area described in N.J.A.C. 7:12-3.2(a)20viii as special restricted and inserted a revised description including all those waters of Cape Horn Marina and tributaries upstream from a straight line connecting two Department maintained markers. This change is based on water quality data received by the Department.

The Department intended on proposal to delete the word "Condemned" and insert "Special Restricted" in N.J.A.C. 7:12-4.1(a)lii(1) because the waters described in N.J.A.C. 7:12-3 were reclassified from Condemned to Special Restricted. The term Special Restricted is inserted on adoption to clarify the Department's intent. It does not represent a substantive change in the rule because the reference is to waters described in N.J.A.C. 7:12-3, all of which are Special Restricted.

The area described in N.J.A.C. 7:12-4.2(a)lii was reclassified on proposal from Condemned to Seasonally Approved. In describing the northern boundary of the area, the last sentence of subparagraph ii provides: "The northern boundary of this Condemned area shall be the Thomas A. Mathis Bridge". The sentence should refer to this "seasonally approved area". The word "Condemned" is deleted and the term "Seasonally Approved" is inserted on adoption to clarify the Department's intent.

N.J.A.C. 7:12-6 is deleted on adoption after further consideration by the Department. Pursuant to Miscellaneous Notice in the May 18, 1987 New Jersey Register at 19 N.J.R. 888, the rule N.J.A.C. 7:12-1.7, Closure of approved areas and seasonally approved areas for shellfish harvesting, was removed from the New Jersey Administrative Code. The Department mistakenly included and proposed by new rule to recodify N.J.A.C. 7:12-1.7 as N.J.A.C. 7:12-6 on proposal.

Several typographic and transcription errors are also corrected in this adoption.

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

SUBCHAPTER 1. *[CLASSIFICATION OF CERTAIN SHELLFISH WATERS]* *GENERAL PROVISIONS*

7:12-1.1 General Provisions

(a)-(g) (No change.)

(h) Special shellfish buoys, signs, and markers showing areas other than Approved are considered to be under the control of the State as provided by RS 12:4-2 and any person who removes or destroys these buoys, signs and/or markers shall be liable to a penalty of \$60.00; or any person who damages or removes any shellfish sign, buoy, or marker showing a shellfish area classified other than Approved may be prosecuted for criminal mischief, N.J.S.A. 2C:17-3. These signs, markers and buoys are provided as a means of public information only.

(i) Charts designating growing water classifications as hereinafter referenced are available from the Bureau of Marine Water Classification and Analysis Offices, Marine Police Stations, and Shellfisheries Field Offices at Bivalve and Nacote Creek. However, all persons are cautioned that emergency closures may be necessary and may not be charted. These Shellfish Growing Water Classification Charts are developed from Nautical Charts Number 12327 New York Harbor, 80th Edition, December 29, 1984; Number 12324 Intracoastal Waterway, Sandy Hook to Little Egg Harbor, 23rd Edition, June 1, 1985; Number 12316 Intracoastal Waterway, Little Egg Harbor to Cape May, 22nd Edition, May 4, 1985; and Number 12304 Delaware Bay, 30th Edition, March 16, 1985. The Department of Environmental Protection hereby condemns all shellfish growing waters as described in this chapter and other places from which

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shellfish are or may be taken as listed in N.J.A.C. 7:12-9 at all times of the year, except when otherwise noted in N.J.A.C. 7:12-4, 5 and 6.

(j) Designated areas utilized in conjunction with one of the Special Permit Programs under N.J.A.C. 7:12-9 which are leased from the State and may contain shellfish harvested from the Seasonal Special Restricted or Special Restricted area, are under the Relay Program, N.J.A.C. 7:12-9.7, and may be harvested only upon notification by the Bureau of Marine Water Classification and Analysis, Division of Water Resources. Non-leased lots within these designated areas are not available to harvest of shellfish at any time.

7:12-1.2 Definitions

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

“Approved areas” means water meeting the sanitary standards for approved shellfish harvesting as recommended by the Interstate Shellfish Sanitation Conference. Waters not classified as Prohibited, Special Restricted, Seasonal Special Restricted, or Seasonal shall be considered Approved for the harvest of shellfish.

“Condemned areas” means waters not meeting the established sanitary standards as recommended by the Interstate Shellfish Sanitation Conference. Condemned areas are comprised of the following classifications: Prohibited, Special Restricted, Seasonal Special Restricted and Seasonal.

“Department maintained markers” means any special shellfish buoy, range, stake or marker maintained by the Department of Environmental Protection, for the purpose of aiding in the delineation of water classified for shellfish harvesting.

“Marina” is any structure (docks, floating docks, etc.) that supports five or more boats, built on or near the water, which is utilized for docking, storing or otherwise mooring vessels and usually but not necessarily provides services to vessels such as repairing, fueling, security, etc.

“Prohibited areas” means certain Condemned areas meeting specified sanitary standards as set forth by the Interstate Shellfish Sanitation Conference (ISSC), formerly the National Shellfish Sanitation Program.

“Special Restricted areas” means certain Condemned areas meeting specified sanitary standards as set forth by the Interstate Shellfish Sanitation Conference. Application for removal of shellfish to be used for human consumption from areas classified as Special Restricted will be considered for transplant, transfer, relaying, and depuration/controlled purification.

“Transfer” means the movement of shellfish from leased land located in a Condemned area to leased lands located in an Approved area for the purposes of propagation and/or purification.

7:12-1.3 (Reserved)

(See repealed text in New Jersey Administrative Code.)

SUBCHAPTER 2. SHELLFISH GROWING WATER CLASSIFICATION—PROHIBITED

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

(a) The following shellfish growing waters are classified Prohibited:

1. General areas as follows:

- i. All lagoons dredged for the purpose of access to property and/or the dockage of boats; and
- ii. All marinas, anchorages or other places where docking or mooring facilities are provided for boats.

2. Northern New Jersey area: All the waters lying west and north of Raritan Bay, including the Raritan River, Arthur Kill, Kill Van Kull, Newark Bay, Passaic River, Hackensack River, Upper Bay, Hudson River and tributaries thereof.

3. Monmouth County area (Note that a portion is also designated as a Special Restricted area and a portion is also designated as a Seasonal Special Restricted area. See N.J.A.C. 7:12-3 and 5):

i. All those waters of Raritan Bay, Raritan River and Arthur Kill (and tributaries) lying south and west of the New Jersey/New York boundary and lying west of a line beginning on the northernmost point of land on Conaskonk Point, Union Beach, New Jersey and bearing approximately 345 degrees T to the southernmost point of land on Sequine Point, near *[Princess Day]* *Princes Bay*, Staten Island, New York, where this line terminates;

ii. All those waters of Raritan Bay and its tributaries lying south of a line beginning on the northernmost point of land on Conaskonk Point (Union Beach) and bearing approximately 092 degrees T to the northernmost point of land on Point Comfort (Keansburg) where this line terminates;

iii. All waters of Pews Creek and tributaries thereof;

iv. All waters of Compton Creek and tributaries thereof;

v. All those waters of Raritan Bay and Lower Bay enclosed by the New Jersey/New York boundary and a straight line beginning on the southwesternmost point of land on Rockaway Point, Long Island, New York and bearing approximately 222 degrees T to the northernmost point of land on Sandy Hook, New Jersey and then following the shoreline of Sandy Hook west and south to a point on the shoreline where this line intersects a line beginning at the navigation aid at Sandy Hook Point designated as Equal Interval 6 second and Vertical Beam light 38ft 15M Bell (E. Int 6 sec and VB 38ft 15M Bell) and then following this line bearing approximately 278 degrees T to the channel marker designated as GR “TC” Interrupted Quick Red Light (GR “TC” IQ R) located at the intersection of Raritan Bay East Reach, Sandy Hook Channel, and Terminal Channel, and then following the southwesternmost boundary of the Raritan Bay East Reach Channel in a northwesterly direction until it intersects the New Jersey/New York boundary where this line terminates. (Note: This closure adjoins those Prohibited waters defined in (a)20i below); and

vi. All those waters enclosed by a line beginning where the structure (old ferry pier) forming the western extent of the Atlantic Highlands Municipal Harbor (First Avenue, Borough of Atlantic Highlands) and then following the western extent of this structure in a northerly direction to its northernmost extent, and then connecting this structure with the breakwater (this breakwater or rockpile forms the northern boundary of the municipal harbor) and following the northern side of the breakwater in an easterly direction to the breakwater’s easternmost extent, where it is marked by the navigation marker designated as ‘Flashing light 4sec 29ft 8M’ (FI 4sec 29ft 8M) and then bearing approximately 201 degrees T to the mainland where this line terminates.

4. Sea Girt area: All of Wreck Pond and tributaries thereof.

5. Manasquan River area (Note: A portion is also designated as a Special Restricted area. See N.J.A.C. 7:12-3): All of the Point Pleasant Canal.

6. Bay Head and Metedeconk River area (Note: A portion is also designated as a Special Restricted area. See N.J.A.C. 7:12-3):

i. All of Twilight Lake and its tributaries including it access channel upstream from where its mouth meets Northern Barnegat Bay or Bay Head Harbor;

ii. All those waters of Beaverdam Creek and its tributaries west of a line beginning on the southwesternmost point of land forming the eastern side of the lagoon located just west of the westernmost extent of Boat Point Drive in Point Pleasant and bearing approximately 097 degrees T to navigation marker Flashing Green light “3” (FL G “3”) and then bearing approximately 210 degrees T to the easternmost point of land on Wardells Neck east of the easternmost extent of North Drive in Brick Township; and

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iii. All those waters of the Metedeconk River and its tributaries west of a line beginning on the southeasternmost point of land of Wardells Neck east of the easternmost extent of South Drive in Brick Township and then bearing approximately 180 degrees T to navigation marker Flashing Red light "2" (FL R "2") and then bearing approximately 165 degrees T through navigation marker Flashing Green light "1" (FL G "1") to the shoreline in West Mantoloking where this line terminates.

7. Toms River area: All those waters of Toms River and tributaries west from a straight line beginning at Good Luck Point and bearing approximately 342 degrees T to the easternmost point of land in Dover Township where the Thomas A. Mathis Bridge (Route 37) intersects the shoreline.

8. Brigantine area (Note: *[A portion is]* ***Portions are*** also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4):

i. All of Baremore Quarters inside of a line from the northern end of 10th Street South and bearing approximately 332 degrees T to 470 West Shore Drive and terminating.

9. Atlantic City area (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4):

i. All of Clam Creek and contiguous harbors; and
ii. All of Inside Thorofare and West Canal.

10. Great Egg Harbor River (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4).

i. All Great Egg Harbor River and tributaries upstream from a line starting at a Department maintained marker at the mouth of Powell Creek and bearing approximately 248 degrees T across the river to another Department maintained marker.

11. Ocean City *[A]**a*rea: All of the body of water known as The Lagoon (location of Coast Guard Station, Ocean City).

12. Strathmere and Sea Isle City area (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4):

i. An area adjacent to the Town of Strathmere inshore from a line along the western side of the Ocean Drive Bridge to the portion that opens, then bearing approximately 212 degrees T to the boat ramp at the end of Bayview Avenue, Strathmere;

ii. All of the unnamed tributary to the east of Whale Creek;

iii. All of Ludlam Thorofare from a line bearing approximately 229 degrees T through Flashing Red light 120 (FL R 8ft "120") to a line bearing approximately 305 degrees T through Flashing Red light 138 (FL R 8ft "138"); and

iv. All of Sunks Creek, Mill Creek, Ware Thorofare and tributaries thereof.

13. Avalon area:

i. All those waters contained within a line from the Avalon Yacht Club proceeding in a southwest direction across the mouth of Cornell Harbor, then along that shoreline and across the mouth of Pennsylvania Harbor, then continuing along that shoreline and across the mouth of Princeton Harbor, then continuing along the eastern shoreline of Gravens Thorofare to its junction with Long Reach, then along the northeast shoreline of Long Reach in a southeasterly direction across the mouths of several lagoons, then to the end of 51st Street, Avalon, then along Ocean Drive in a northerly direction, then along 7th Street, Avalon, to the point of origin at the Avalon Yacht Club and terminating.

14. Stone Harbor area (Note: Portions are also designated as Special Restricted and Seasonal. See: N.J.A.C. 7:12-3 and 4):

i. All of the Great Channel south and east of a line from a Department maintained marker at the mouth of Muddy Hole and bearing approximately 014 degrees T to another Department maintained marker on the opposite shore.

ii. All the body of water running parallel with Seven Mile Beach, not including tributaries;

iii. All of Oldman Creek;

iv. All of Oyster Creek;

v. All of Scotch Bonnett;

vi. All that creek connecting Oyster Creek and Scotch Bonnett;

vii. All of Muddy Hole;

viii. All of Stone Harbor Canal;

ix. All of Hetty Creek;

x. All of Crooked Creek;

xi. All of Mulford Creek and the creek connecting it with Crooked Creek; and

xii. All of Holmes Creek upstream of a line across the creek beginning at the first drainage ditch on the north bank inside the creeks' mouth.

15. Jenkins Sound:

i. All of Jenkins Sound and Genesis Bay;

ii. All of Nichols Channel, Dung Thorofare and Bluefish Creek;

iii. All of Jenkins Channel and Drum Thorofare; and

iv. All of Great Flat Thorofare.

16. The Wildwoods area (Note: A portion is also designated as a Special Restricted area. See N.J.A.C. 7:12-3).

i. All of Hereford Inlet. (Note: This condemnation adjoins the closure defined in (a)20viii below);

ii. All of Grassy Sound Channel and tributaries thereof;

iii. All those waters lying between North Wildwood Boulevard and Jenkins Channel and Jenkins Sound, including Gravelly Run and Turtle Gut;

iv. All of Beach Creek and tributaries thereof;

v. All of Grassy Sound and tributaries thereof;

vi. All of Old Turtle Thorofare and tributaries thereof;

vii. All of Tempe Creek and tributaries thereof;

viii. All of Cresse Creek and tributaries thereof;

ix. All of Richardson Sound and tributaries thereof;

x. All of Post Creek and Ottens Harbor and tributaries thereof;

xi. All of Sunset Lake and tributaries thereof;

xii. All of Richardson Channel and tributaries thereof;

xiii. All of Swain Channel;

xiv. All that unnamed body of water connecting Swain Channel and Jarvis Sound (Intracoastal waterway); and

xv. All of Reubens Thorofare and tributaries thereof.

17. Cape May (Note: A portion is also designated as a Special Restricted area. See N.J.A.C. 7:12-3):

i. All of Upper Thorofare and tributaries thereof;

ii. All of Middle Thorofare and tributaries thereof;

iii. All of Lower Thorofare and tributaries thereof;

iv. All of Skunk Sound and tributaries thereof;

v. All of Cape Island Creek and tributaries thereof;

vi. All of Cape May Canal and tributaries thereof; and

vii. That area of Cape May Harbor described in N.J.A.C. 7:12-3(a)32i which lies adjacent to the U.S.C.G. harbor area inshore from a line connecting Flashing Green light number 5 (FL G 2.5 sec. "5") with can buoy number 11 (C "11").

18. Delaware Bay area (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4):

i. All that portion of Delaware Bay contained within a line beginning at the pumping station at the mouth of Fishing Creek, Cape May County, bearing approximately 296 degrees T and extending into the bay for one nautical mile, then bearing approximately 199 degrees T to Flashing light number 4 (R "4" Fl R 2.5 sec) at Crowshoal, then continuing to Cape May Lighthouse and terminating. The closure includes all tributaries flowing into the above described area, including Fishing Creek, Cox Hall Creek and Pond Creek. This condemnation adjoins the closure defined in (a)20ix below.

ii. All of Dias Creek;

iii. All of the Bidwell Creek;

iv. All that portion of Delaware Bay inshore of a line from the marker (Department maintained) on the point of land on the west shore of West Creek and bearing approximately 142 degrees T to the mainland south of Goshen Creek and terminating:

(1) All of Goshen Creek and tributaries thereof;

(2) All of Dennis Creek and tributaries thereof;

(3) All of East Creek and tributaries thereof; and

(4) All of West Creek and tributaries thereof;

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v. All of Riggins Ditch and tributaries thereof;
 vi. All of Maurice River and tributaries upstream of a line from the end of Berry Avenue (Shellpile) and bearing approximately 214 degrees T across the river to a Department maintained marker and terminating; and

vii. All of Cohanse River and tributaries upstream of a line from QK Fl 24ft 5M "1" and bearing approximately 097 degrees T across the mouth, to a Department maintained marker and terminating.

19. All of the New Jersey portion of the Delaware River and tributaries thereof lying northwest of a straight line beginning at the southern dome (Salem Nuclear Power Plant) and bearing approximately 230 degrees T towards the point of land, on the southern shore, at the mouth of Blackbird Creek.

20. Atlantic Ocean:

i. All of the ocean waters east of a line connecting the northernmost point of Sandy Hook and the southwesternmost point of Rockaway Point and south of the New York State line and extending to and following the New Jersey three nautical mile jurisdiction limit in a southerly direction until it intersects a line bearing approximately 269 degrees T connecting a point with coordinates of latitude 40 degrees 20.8 minutes N., longitude 73 degrees 47.7 minutes W. (generally marked by a buoy charted as W Or "BA" Gp Fl(4) 20 sec WHISTLE marking the separation zone of the Ambrose-Barnegat traffic lane) and the radio tower located at the New Jersey Marine Police Station, 128 Ocean Avenue, Borough of Monmouth Beach, with coordinates of latitude 40 degrees 20.5 minutes N., longitude 73 degrees 58.5 minutes W., then along that line to a point 1.5 nautical miles directly offshore, then along the shoreline in a southerly direction 1.5 nautical miles offshore until it intersects a line beginning at the water tank located on 509 Monmouth Avenue, Borough of Spring Lake, with coordinates of latitude 40 degrees 08.8 minutes N., longitude 74 degrees 02.2 minutes W., and bearing approximately 085 degrees T through the dome of the Essex-Sussex Hotel, 700 Ocean Avenue, Borough of Spring Lake, with coordinates of latitude 40 degrees 08.8 minutes N., longitude 74 degrees 01.5 minutes W., then proceeding from that point of intersection in a westerly direction along that line towards the above noted dome until it is 0.5 nautical miles directly offshore, then continuing in a southerly direction 0.5 nautical miles offshore for approximately 4.2 nautical miles to a point with coordinates of latitude 40 degrees 4.7 minutes N., longitude 74 degrees 1.8 minutes W., then bearing approximately 280 degrees T to the water tank located at 1123 Burnt Tavern Road, Borough of Point Pleasant, with coordinates of latitude 40 degrees 05.0 minutes N., longitude 74 degrees 03.9 minutes W., and terminating. This closure adjoins those Prohibited waters in (a)3v above and those Special Restricted waters defined in N.J.A.C. 7:12-3.2;

ii. All of the ocean waters inshore of a line beginning at the water tank located on Lake Avenue, Borough of Bay Head, with coordinates of latitude 40 degrees 04.1 minutes N., longitude 74 degrees 02.7 minutes W., and bearing approximately 146 degrees T for approximately 2.2 nautical miles until it intersects a line bearing approximately 056 degrees T from the water tank located on Normandy Way in the Normandy Beach section of Dover Township, with coordinates of latitude 39 degrees 59.9 minutes N., longitude 74 degrees 03.8 minutes West. This point of intersecting lines is approximately two nautical miles from the shoreline and has coordinates of latitude 40 degrees 01.6 minutes N., longitude 74 degrees 00.5 minutes West. The line then continues bearing approximately 236 degrees T (reciprocal 056 degrees T) from the point of intersection towards the above noted water tank in Normandy Beach for approximately 1.4 nautical miles until it is one nautical mile directly offshore, then continuing in a southerly direction one nautical mile offshore until it intersects a line bearing approximately 132 degrees T from the water tank located on 127 Decatur Avenue, Borough of Seaside Park, with coordinates of latitude 39 degrees 56.1 minutes N., longitude 74 degrees 04.7 minutes W., then proceeding in a southeasterly direction along that line for approximately 0.6 nautical miles until it intersects a line bearing approximately 096 degrees T from the water tank located on the corner of Barnegat Avenue and 12th Avenue,

Borough of Seaside Park, with coordinates of latitude 39 degrees 54.9 minutes N., longitude 74 degrees 05.0 minutes West. This point of intersecting lines is approximately 1.5 nautical miles from the shoreline and has coordinates of latitude 39 degrees 54.7 minutes N., longitude 74 degrees 02.7 minutes West. The line continues from this point along the shoreline in a southerly direction 1.5 nautical miles offshore until it intersects a line bearing approximately 096 degrees T from the cupola located on top of Island Beach State Park's Maintenance Center (the old Coast Guard Station number 110), with coordinates of latitude 39 degrees 53.7 minutes N., longitude 74 degrees 04.9 minutes West. This point of intersecting lines has coordinates of latitude 39 degrees 53.6 minutes N., longitude 74 degrees 02.9 minutes West. The line continues from this point bearing approximately 218 degrees T (reciprocal 038 degrees T) to the first ocean bath house and concession building from the entrance of Island Beach State Park (approximately 3.3 statute miles south of the park's entrance) with coordinates of latitude 39 degrees 51.2 minutes N., longitude 74 degrees 05.2 minutes W., and terminating;

iii. All of the ocean waters inshore of a line beginning at the water tank located on 813 Boulevard, Borough of Surf City, with coordinates of latitude 39 degrees 39.6 minutes N., longitude 74 degrees 10.1 minutes W., and bearing approximately 120 degrees T for approximately two nautical miles from the shoreline to a point with coordinates of latitude 39 degrees 38.6 minutes N., longitude 74 degrees 07.7 minutes W., then from this point which is approximately two nautical miles offshore, the line runs parallel to the shoreline in a southerly direction for approximately 1.2 nautical miles to a point with coordinates of latitude 39 degrees 37.7 minutes N., longitude 74 degrees 08.4 minutes W., then bearing approximately 300 degrees T for approximately 2.2 nautical miles to the water tank located on 112 West 17th Street, Borough of Ship Bottom, with coordinates of latitude 39 degrees 38.7 minutes N., longitude 74 degrees 10.8 minutes W., and terminating;

iv. All of the ocean waters inshore of a line beginning at the water tank at 44th Street and Bayshore Avenue, City of Brigantine, with coordinates of latitude 39 degrees 23.5 minutes N., longitude 74 degrees 23.8 minutes W., and bearing approximately 179 degrees T for approximately 2.5 nautical miles to a point with coordinates of latitude 39 degrees 21.0 minutes N., longitude 74 degrees 23.7 minutes W. (generally marked by a buoy charted "1" Fl G 4s GONG at the entrance to Absecon Inlet), then bearing approximately 299 degrees T (reciprocal 119 degrees T) for approximately 1.1 nautical miles towards the outermost tip of Garden Pier, Atlantic City, until it is 0.25 miles directly offshore, then parallel along the shoreline in a southwesterly direction, 0.25 nautical miles offshore, for approximately 1.2 nautical miles until it intersects a line bearing approximately 153 degrees T from the center of Convention Hall, Atlantic City, then proceeding in a southeasterly direction along that line for approximately 1.75 nautical miles to a point with coordinates of latitude 39 degrees 19.4 minutes N., longitude 74 degrees 25.1 minutes W., then from this point which is approximately 2 nautical miles offshore, the line runs parallel to the shoreline in a southwesterly direction for approximately 2.1 nautical miles to a point with coordinates of latitude 39 degrees 18.4 minutes N., longitude 74 degrees 27.5 minutes W., then bearing approximately 333 degrees T (reciprocal 153 degrees T) for approximately 1.9 nautical miles to the outermost tip of Ventnor City Fishing Pier located at the Boardwalk and South Cambridge Avenue, City of Ventnor, then along that pier to the shore and terminating. This closure adjoins those Special Restricted waters defined in N.J.A.C. 7:12-3.2(a)23i;

v. All of the ocean waters inshore of a line beginning at the base of the jetty located on the beach near the intersection of Seaspray Road and Waverly Boulevard, City of Ocean City (first stone jetty projecting into Great Egg Harbor Inlet on the northeasternmost end of the city), and continuing along that jetty in a southeasterly direction to its outermost tip, then in a general southerly direction, the line continues and connects the tips of the stone jetties projecting into the ocean until reaching the tip of the stone jetty located at the end of the 15th Street (just south of the Ocean City Fishing Club

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Pier), then bearing approximately 230 degrees T for approximately 2.8 nautical miles to the water tank located at 4600 Haven Avenue (46th Street intersects across from this location), Ocean City, with coordinates of latitude 39 degrees 14.3 minutes N., longitude 74 degrees 37.6 minutes W., and terminating;

vi. All of the ocean waters inshore of a line beginning at the City of Ocean City's Beach Patrol, First Aid and Rest Room Building located on the beach at 34th Street, with coordinates of latitude 39 degrees 15.0 minutes N., longitude 74 degrees 36.6 minutes W., and bearing approximately 126 degrees T for approximately 1.5 nautical miles from the shoreline to a point with coordinates of latitude 39 degrees 14.1 minutes N., longitude 74 degrees 35.0 minutes W., then bearing approximately 216 degrees T along the shoreline in a south-westerly direction 1.5 nautical miles offshore, for approximately 2.3 nautical miles to a point with coordinates of latitude 39 degrees 12.3 minutes N., longitude 74 degrees 36.7 minutes W., then bearing approximately 306 degrees T for approximately 1.4 nautical miles to the outermost tip of Anglers Fishing Club's Pier, 5825 Central Avenue, Ocean City, then along that pier to the shoreline and terminating;

vii. All of the waters east of the Ocean Drive Bridge crossing Townsend Inlet and inshore of a line beginning at the water tank located on the corner of 80th Street and Central Avenue, City of Sea Isle City, with coordinates of latitude 39 degrees 07.8 minutes N., longitude 74 degrees 42.8 minutes W., and bearing approximately 151 degrees T for approximately 2.5 nautical miles from the shoreline until it intersects a line bearing approximately 127 degrees T from the water tank located on the corner of 13th Street and Dune Drive, Borough of Avalon, with coordinates of latitude 39 degrees 06.4 minutes N., longitude 74 degrees 42.8 minutes West. This point of intersecting lines is approximately 1.5 nautical miles from the shoreline and has coordinates of latitude 39 degrees 05.3 minutes N., longitude 74 degrees 40.9 minutes West. The line continues from this point along the shoreline in a southerly direction 1.5 nautical miles offshore for approximately 1.1 nautical miles until it intersects a line bearing approximately 127 degrees T from the water tank located on the corner of 38th Street and Dune Drive, Borough of Avalon, with coordinates of latitude 39 degrees 05.5 minutes N., longitude 74 degrees 43.7 minutes West. This point of intersecting lines is approximately 1.5 nautical miles from the shoreline and has coordinates of latitude 39 degrees 04.5 minutes N., longitude 74 degrees 41.9 minutes West. The line continues from this point bearing approximately 247 degrees T (reciprocal 067 degrees T) for approximately three nautical miles to the standpipe located on 95th Street between Second and Third Avenues, Borough of Stone Harbor, with coordinates of latitude 39 degrees 02.3 minutes N., longitude 74 degrees 45.6 minutes W., and terminating;

viii. All of the ocean waters inshore of a line beginning at the American Legion Building (the old Coast Guard Station) located at the corner of Second Avenue and 117th Street, Borough of Stone Harbor, with coordinates of latitude 39 degrees 02.4 minutes N., longitude of 74 degrees 46.2 minutes W., and bearing approximately 180 degrees T for approximately 3.4 nautical miles to a point with coordinates of latitude 38 degrees 59.0 minutes N., longitude 74 degrees 46.2 minutes W. (generally marked by a buoy charted as R "8" Fl R 4sec BELL at the entrance of Hereford Inlet), then bearing approximately 246 degrees T for approximately 4.9 nautical miles to the 641 ft Fl R Lt LORAN TOWER located on the United States Coast Guard Electronic Engineering Center, Lower Township, with coordinates of latitude 38 degrees 57.0 minutes N., and longitude of 74 degrees 52.0 minutes W., and terminating. This closure adjoins those Prohibited waters defined in (a)16i above; and

ix. All those waters inshore of a line beginning at the water tank located on the United States Coast Guard Training Center, City of Cape May, with coordinates of latitude 38 degrees 56.8 minutes N., and longitude 74 degrees 53.6 minutes W., and bearing approximately 151 degrees T for approximately 0.5 nautical miles from the shoreline to a point with coordinates of latitude 38 degrees 56.0 minutes N., longitude 74 degrees 53.0 minutes W., then parallel along the

shoreline in a westerly direction, 0.5 nautical miles offshore, for approximately 1.4 nautical miles until it intersects a line bearing 166 degrees T from the water tank located on the corner of Madison Avenue and Columbia Avenue, City of Cape May, with coordinates of latitude 38 degrees 56.2 minutes N., longitude 74 degrees 54.9 minutes West. This point of intersecting lines is approximately 0.5 miles from the shoreline and has coordinates of latitude 38 degrees 55.3 minutes N., longitude 74 degrees 54.6 minutes West. Then proceeding in a southeasterly direction along that line for approximately 1.5 nautical miles to a point with coordinates of 38 degrees 53.9 minutes N., longitude 74 degrees 54.2 minutes W., then proceeding in a westerly direction two nautical miles offshore for approximately 5.7 nautical miles until it intersects a line bearing approximately 033 degrees T connecting a point with coordinates of latitude 38 degrees 54.3 minutes N., longitude 75 degrees 01.7 minutes W. (generally marked by a buoy charted as R "2" Fl R 4s) and a point with coordinates of latitude 38 degrees 56.0 minutes N., longitude 75 degrees 00.3 minutes W. (generally marked by a buoy charted as R "4" Fl R 2.5sec marking the southwest side of Crow Shoal). This point of intersecting lines has coordinates of latitude 38 degrees 55.5 minutes N., longitude 75 degrees 0.7 minutes West. Then proceeding in a northeasterly direction for approximately 0.5 nautical miles to the point with coordinates of latitude 38 degrees 56.0 minutes N., longitude 75 degrees 00.3 minutes W., then along the line described in (a)18i above to the Cape May Point Lighthouse (FL 15 sec. 165 ft. 24M) and terminating. This closure adjoins those Prohibited waters described in (a)18i above.

SUBCHAPTER 3. SHELLFISH GROWING WATER CLASSIFICATION—SPECIAL RESTRICTED

7:12-3.1 Use of shellfish grown in waters classified as Special Restricted for human consumption

Shellfish grown in waters classified as Special Restricted may be utilized for human consumption only pursuant to a special permit issued by Department under N.J.A.C. 7:12-9.

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

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

1. All of Sandy Hook ***Bay*** bounded by a line beginning at the south end of that pier maintained by the United States Navy in Leonardo, New Jersey (Department of the Navy, Naval Weapons Station Earle, NWS-Earle) where it intersects the shoreline and following the shoreline in a generally southeasterly direction until it reaches the structure forming the western extent of the Atlantic Highlands Municipal Harbor, and then following the western edge of this structure in a northerly direction to its northernmost extent, and then connecting this structure with the breakwater (this breakwater or stonepile forms the northern boundary of the municipal harbor) and following the northern side of the breakwater in an easterly direction to its easternmost extent, where it is marked by the navigational marker designated as 'Flashing light 4 second 29ft 8M' (Fl 4sec 29ft 8M) and then bearing approximately 201 degrees T to the mainland, and then following the shoreline in a generally southeasterly direction ***[of]* *to*** the westernmost extent of the Route 36 highway bridge spanning the Shrewsbury River and then following the northern edge of that bridge to where it intersects the shoreline on Sandy Hook, and then following the shoreline in a generally northerly direction until it intersects a line connecting Sandy Hook light, Fixed light 88ft 19M (F 88ft 19M) to the northernmost extent of the NWS-Earle pier, and following that line bearing approximately 262 degrees T to the northernmost extent of the NWS-Earle pier and then following the westernmost side of the pier in a southwesterly direction to this line's point of origin where the pier intersects the shoreline. (Note: This designation of Special Re-

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stricted waters adjoins those waters defined as Seasonal Special Restricted in N.J.A.C. 7:12-5 and as Special Restricted in N.J.A.C. 7:12-3.2(a)2.

2. All of the Shrewsbury River and tributaries (not including the Navesink River) south from the northernmost edge of the Route 36 Highway Bridge.

3. All of the Navesink River and tributaries.

4. All of Shark River and tributaries. This closure adjoins those Prohibited waters defined in N.J.A.C. 7:12-2.1(a)20i.

5. All of the Manasquan River and tributaries except the Point Pleasant Canal (See N.J.A.C. 7:12-2(a) 5ii). (Note: This closure adjoins those Prohibited waters defined in N.J.A.C. 7:12-2.1(a)20i).

6. Bay Head and Mantoloking area: All those waters of Northern Barnegat Bay and tributaries north of a straight line beginning on the easternmost point of land on Swan Point and bearing approximately 141 degrees T to Flashing Green light "25" (Fl G 8ft "25") off Mantoloking, and then following the east side of the inland waterway channel bearing approximately 227 degrees T to can bouy "27" (C "27") then bearing approximately 210 degrees T to the most westerly point of land on Curtis Point where this line terminates.

7. Island Beach areas: Mantoloking to Berkeley Township (Note: A portion is designated Seasonal. See N.J.A.C. 7:12-4): All those waters of Barnegat Bay and its tributaries east of a line beginning on the western most point of land on Curtis Point (Brick Township) and then bearing approximately 186 degrees T to the most westerly point of land on Dutchman's Point (just south of Mantoloking Shores), then bearing approximately 210 degrees T to Flashing Red light "2" (Fl R "2") off Normandy Beach, then bearing approximately 169 degrees T to the nearest island to the south, then along the shore of that island to its southernmost point, then bearing approximately 177 degrees T to the east tip of the two islands off Ocean Beach, continuing along the east shore of that island to its southernmost point, then bearing approximately 200 degrees T to Flashing Green light "11" (Fl G "11") off West Point Island, then bearing approximately 190 degrees T to the westernmost tip of the next (unnamed) island to the south, then bearing approximately 209 degrees T to the westernmost point of land on Pelican Island, then bearing approximately 129 degrees T to Flashing Green light "3" (Fl G "3") marking the channel to Seaside Heights, then bearing approximately 170 degrees T to the southwest corner of the bulkhead west of the Berkeley Yacht Basin, then bearing 174 degrees T to the western end of the municipal pier off 5th Avenue in Seaside Park then bearing approximately 210 degrees T to the western end of the municipal pier off 14th Avenue in Seaside Park, then bearing approximately 186 degrees T to the next point of land, then bearing approximately 178 degrees T and terminating at the next point of land at Island Beach State Park.

8. Barnegat Bay-Brick Township and Dover Township from Swan Point to Toms River (Note: A portion is also designated Seasonal. See N.J.A.C. 7:12-4):

i. All those waters of the small unnamed creek just north of Havens Cove, west from a straight line across the mouth of said creek beginning at the point of land on the south bank (forming its mouth) and bearing approximately 033 degrees T toward the mouth of a small lagoon along the north bank;

ii. All of Kettle Creek and tributaries north and west from a straight line beginning at Seaweed Point and bearing approximately 241 degrees T to Andrew Point at Green Island;

iii. All those waters of Silver Bay and its tributaries west of a straight line beginning at the southernmost point of land on Andrew Point (Green Island) and bearing approximately 181 degrees T and terminating on the most easterly point on Cattus Island Park (Ocean County);

iv. All the waters of Applegate Cove south and west of a straight line beginning on Tilton Point and bearing approximately 334 degrees T, to the easternmost point of land on the northern shore of Applegate Cove; and

v. All those waters of Shelter Cove west from a straight line connecting the points of land at its mouth, then all those waters west

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and north of a line from the southernmost point of land at the mouth of Shelter Cove and bearing approximately 154 degrees T to Flashing Red light "40" (Fl R "40"), then bearing approximately 181 degrees T toward Good Luck Point and terminating at its point of intersection with the Mathis Bridge, connecting the mainland with Pelican Island; the southern boundary of this condemned area shall follow said bridge in a westward direction and terminate at its connection with the mainland shore. The bridge is a common boundary line with (a)9 below.

9. Toms River area: All of those waters forming the mouth of Toms River west from a straight line beginning at Good Luck Point and bearing approximately 353 degrees T toward the most easterly point of land at Windsor park (north of the Mathis Bridge), and terminating at its point of intersection with the Mathis Bridge; the northern boundary of this condemned area shall follow said bridge in a westward direction and terminate at its connection with the mainland shore. (Note: This designation adjoins the Prohibited waters described in N.J.A.C. 7:12-2.1(a)7.)

10. Barnegat Bay-Berkeley Township area, Toms River to Potter Creek: All the waters of Barnegat Bay and its tributaries (including all of Potter Creek) west of a line beginning on the north bank of the entrance to Good Luck Point Marina (at Good Luck Point) ***then proceeding*** along the offshore ends of the piers in a southerly direction to the eastern end of Barnegat Pier, then bearing approximately 215 degrees T to Flashing Red light 4s "60" (Fl R 4s "60") north of Berkeley Shores, then bearing approximately 221 degrees T to and terminating at the most easterly point of land on the south bank of Potter Creek.

11. Barnegat Bay-Berkeley Township, Potter Creek to Sunrise Beach (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i. Potter Creek to Cedar Creek area: All those waters west of a line beginning at the easternmost point of land (directly east of the terminus of Island Drive, Berkeley Township) on the south bank of Potter Creek (this point of land coincides with that described in (a)10 above and bearing approximately 182 degrees T to the northernmost point on the pier located on the northernmost point of land at Berkeley Island Park (Ocean County Park System);

ii. Cedar Creek to Laurel Harbor area: All those waters west of a line beginning at the bulkhead (located on the northeasternmost point of land at the mouth of Cedar Creek) located on the southeasternmost extent of Berkeley Island Park (Ocean County Park System) and bearing approximately 161 degrees T to the northernmost point of land on the unnamed island located just east of Laurel Harbor, and then following the eastern shoreline of this island in a southerly direction to the southernmost extent of this island, and then bearing approximately 207 degrees T to the Department maintained marker located on the northernmost point of land on the mainland (located at the northeastern extent of Laurel Boulevard in Lacy Township) and then following the shoreline in a southerly direction, and then westerly to the southernmost extent of land in Laurel Harbor (located at the southwesternmost extent of Laurel Boulevard in Lacy Township and then bearing approximately 229 degrees T to the unnamed point of land that forms the southeastern bank at the mouth of the Laurel Harbor lagoon complex where it terminates. This condemnation includes all waters of Cedar Creek and its tributaries as well as waters comprising the Laurel Harbor lagoon complex; and

iii. All those waters west (upstream) from a line beginning at the northernmost point of land, on the southern bank, that helps form the cove at the mouth of the southern lagoon complex adjacent to the community of Sunrise Beach and bearing approximately 335 degrees T to the northeasternmost telephone/electric pole (3MV, BT 36) on Capstan Drive (Sunrise Beach community), then from this pole, across the mouth of Stouts Creek, bearing approximately 352 degrees T and terminating at the small point of land on the west bank of a small unnamed creek along the opposite (northern) shore of Stouts Creek.

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12. Western Barnegat Bay—Forked River to Conklin Island. (Note: A portion is designated as Seasonal. See: N.J.A.C. 7:12-4):

i. All waters of Forked River and its tributaries west of a line beginning on the easternmost point of land immediately north of Forked River (approximate location: latitude 39 degrees 49 minutes 38 seconds N., longitude 74 degrees 9 minutes 38 seconds W.) and bearing approximately 167 degrees T to the easternmost point of land on the southern bank at the mouth of Forked River;

ii. All of Oyster Creek;

iii. All waters south and west of a line beginning on the northern bulkhead at the mouth of an unnamed lagoon (lying between Beacon Drive and Nautilus Road in Ocean Township) and bearing approximately 180 degrees T to Department maintained marker "AA" (located approximately 400 yards east of Flashing Red light "2" (Fl R "2")) at the mouth of Waretown Creek) and then bearing approximately 195 degrees T to the Department maintained marker "BB" (located approximately 400 yards east of the mouth of South Harbor) and then bearing approximately 200 degrees T, through Department maintained marker "CC", to Flashing Red light "2" (Fl R "2") marking the entrance to the Barnegat Beach lagoon system where it terminates; and

iv. All waters west and south (including all waters of Double Creek) beginning at the easternmost extent of the bulkhead (Flashing Red light "2") located along the shoreline of the Barnegat Public Dock and bearing approximately 180 degrees T to the northernmost point of land on the northwest peninsula on Conklin Island.

13. Barnegat Bay-Little Egg Harbor and Long Beach Island area; Barnegat Light to Holgate (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4):

i. An area adjacent to the Borough of Barnegat Light inshore from a line connecting jetties and/or pier ends along the shore (not including the main inlet jetties). The line extends from the end of the small jetty immediately adjacent (west) to the Barnegat Lighthouse (Aband Lt HO), and continues along that shoreline in a general southwesterly direction to the entrance of the first man-made boat harbor or lagoon currently named Lighthouse Marina, then all of those waters south and east of a line beginning at the point formed on the northern bank at the entrance to this boat harbor or lagoon and bearing approximately 227 degrees T directly through light "1" (Fl "1") to its terminus on the High Bar Peninsula;

ii. All those waters of Barnegat Bay enclosed by a line beginning on the northernmost point of land forming the northern mouth of the most northerly lagoon located between Butler and Meadow Streets in High Bar Harbor (Long Beach Township) and bearing approximately 270 degrees T to the northeasternmost point of land on the northernmost of the two island just offshore, (Edwin B. Forsythe National Wildlife Refuge-Barnegat Division) then bearing approximately 014 degrees T to the westernmost point of land at the northern extremity of the High Bar spoil area (also known as "The Dike") where this line terminates;

iii. All of Harvey Cove north and east of a straight line drawn across its entrance from the point of land forming its mouth on the southernmost bank and bearing approximately 010 degrees T to a point of land on the northern bank; and

iv. All those waters of the tributaries or creeks of Cedar Bonnet Island north of Route 72 (Manahawkin Causeway) enclosed by a line beginning on the easternmost bank at the mouth of the easternmost creek or tributary and then bearing approximately 270 degrees T to the western bank at the mouth of this tributary, and then following the shoreline easterly to the next tributary, creek, or lagoon's mouth, where it bears approximately 270 degrees T to the western bank of this body of water where it terminates.

14. Manahawkin Bay, Mallard Island, Beach Haven West (Village Harbor) area (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4):

i. All of Cedar Creek, Manahawkin Creek and the waters adjacent to Beach Haven West (Village Harbor) north and west from a line beginning on the northern bank at the entrance to Cedar Creek and bearing approximately 150 degrees T to a small island, then bearing

approximately 209 degrees T to the western end of the most westerly island along the Manahawkin Causeway, then bearing approximately 181 degrees T to the easternmost point of land on the northwest bank of Mill Creek Thorofare, then bearing approximately 174 degrees T to the northernmost point of land on Thorofare Island, then following the shoreline of Thorofare Island to its southernmost point of land, then bearing approximately 266 degrees T to its terminus on the easternmost point of land on Popular Point; and

ii. All of those waters in unnamed creek north and west of a line beginning on Oyster Point and bearing approximately 032 degrees T to its terminus on the northeast shore of the unnamed creek. This line of closure is an extension of a line (terminating on Oyster Point) defined in N.J.A.C. 7:12-4.2.

15. All of Cedar Run and tributaries west from a straight line across the creek bearing 210 degrees T from Flashing Red light number "2" (Fl R "2") in Cedar Run. (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4.5[5]*4*.)

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

17. All of Parker Run and its tributaries west (upstream) from a straight line across the creek between the peak of the Ocean County pavilion on the north bank and bearing approximately 140 degrees T to navigational aid Flashing Green light number "1" (FL G "1") on the south bank.

18. Tuckerton area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4.): All of Tuckerton Creek and tributaries thereof, north and west of a straight line connecting the west and east banks of the cove formed by the alignment of the range (Department maintained) located on the west bank of Tuckerton Cove. When the range is aligned, the bearing it creates is approximately 047 degrees T (reciprocal 227 degrees T).

19. Atlantis and Mystic Islands area:

i. All of Big Thorofare and tributaries west and/or south (upstream) of the Great Bay Boulevard bridge which crosses same; and

ii. All of Big Creek and tributaries thereof.

20. Mullica River Great Bay area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i. Mullica River and tributaries (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4): All of Mullica River and tributaries thereof, upstream from a straight line beginning at the easternmost point of Moss Point and bearing approximately 093 degrees T to the southwesternmost point of land on the north bank of the northernmost ditch (Bloody Ditch) separating Blood Point from the mainland;

ii. All of Nacote Creek and tributaries thereof;

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

(1) All of Ballanger Creek and tributaries upstream from a straight line connecting two Department maintained markers; and

(2) All of Winter Creek and tributaries upstream from a straight line connecting two Department maintained markers;

iv. Roundabout Creek area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4.): All of Roundabout Creek and tributaries upstream from a straight line connecting two Department maintained markers;

v. All of Judies Creek and tributaries upstream from a straight line connecting two Department maintained markers (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4.)

vi. All of Mott Creek and tributaries thereof;

vii. All of Oyster Creek and tributaries thereof; and

viii. *[All those waters of Jenny Creek, Little Thorofare and tributaries enclosed by (and south and east of) Great Bay Boulevard (Little Egg Harbor Township) and a line beginning on the shoreline immediately adjacent to navigation marker Flashing Red light "2" (Fl R "2") located on an unnamed point of land immediately east of Cape Horn and bearing approximately 270 degrees T to the easternmost

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point of land on Cape Horn where this line terminates.]* ***All those waters of Cape Horn Marina and tributaries upstream from a straight line connecting two Department maintained markers.***

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

i. All of Doughty Creek and that portion of Somers Cove lying north of a line commencing at the Department maintained marker at the southeast entrance to Somers Cove and bearing approximately 274 degrees T across the cove to the Department maintained marker on the north bank of the unnamed ditch; and

ii. All of Conover Creek and tributaries thereof.

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

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

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

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

ii. All of Absecon Creek and adjacent Absecon Bay northwest of a line from the Department maintained marker on the northern shore of Absecon Bay and bearing approximately 216 degrees T to the Department maintained marker on the adjacent shoreline and terminating;

iii. All of Jonathan Thorofare;

iv. All of Newfound Thorofare;

v. All of Duck Thorofare;

vi. All of Clam Thorofare and the canals in Venice Park section of Atlantic City;

vii. All of Beach Thorofare from Absecon Channel to Great Egg Harbor Inlet; and

viii. All of Beach Thorofare from Absecon Channel to the Route 40 Bridge.

24. Pleasantville-Northfield-Linwood-Margate-Ventnor-Longport area (Note: A Portion is also designated as Seasonal. See N.J.A.C. 7:12-4.):

i. All of Shelter Island waters;

ii. All of Hospitality Creek;

iii. All of Great Thorofare and all of Beach Thorofare from the Route 40 Bridge to a line from the tip of the stone jetty at the end of Atlantic Avenue (Longport) and bearing approximately 003 degrees T to the westernmost bulkhead in the Seaview Harbor Community at 69 Sunset Boulevard West;

iv. All of the unnamed thorofare between *[Port]* ***Pork*** Island and Lone Cedar Island;

v. All of Dock Thorofare and tributaries contained within a line from the point of land on the north side of Mulberry Island (at Dock Thorofare) and bearing approximately 077 degrees T to the southeasternmost point of land on Kiahs Island, then along that shoreline in a northerly, then easterly direction to a Department maintained marker, then bearing approximately 340 degrees T to and including the unnamed creek just east of Stillman Creek, then along the shoreline of Dock Thorofare in a westerly direction including Stillman Creek and continuing along the shoreline to the point of origin at the mouth of Mulberry Thorofare and terminating; and

vi. Lakes Bay (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4.): All of Lakes Bay north of a line from the Pleasantville Yacht Club and following the channel markers Fl G "15", Fl G "13", Fl G "11", Fl R "8" to Fl G "7", then bearing approximately 061 degrees T across the northernmost tip of a small unnamed island to Great Island.

25. Ocean City-Somers Point area (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4):

i. All of Bass Harbor Thorofare from Ship Channel to a line beginning at a Department maintained marker on the southern shore of Steelman Bay and bearing approximately 306 degrees T, touching the shoreline of an unnamed island and continuing to a Department maintained marker on the opposite shore and terminating;

ii. All of Patcong Creek and tributaries upstream from a line beginning at Channel Marker number 1 (Fl "1") and bearing approximately 110 degrees T to a Department maintained marker and terminating;

iii. All of Beach Thorofare, Peck Bay and adjacent thorofares contained within a line beginning at the western end of West 16th Street, Ocean City and bearing approximately 342 degrees T to Flashing Red light 16 (Fl R "16"), then along the south side of the unnamed island (on which Flashing Red light 16 (Fl R "16") is located) to its westernmost point, then across the small thorofare to the nearest point of land on Shooting Island and following the southeastern shoreline of Shooting Island, then in a northerly direction to a Department maintained marker, then bearing approximately 240 degrees T across the thorofare to the northernmost point of land on the unnamed island (located southwest of Shooting Island), then along the shoreline in a westerly direction to another Department maintained marker, then bearing approximately 203 degrees T through Flashing Green light 37 (Fl G "37") to a Department maintained marker on the Ocean City shoreline, then along the Ocean City shoreline in a northeasterly direction to its point of origin at West 16th Street and terminating;

iv. All of Crook Horn Creek and tributaries from the 34th Street Bridge to but not including Edward Creek;

v. All of Crook Horn Creek from Edward Creek to Middle Thorofare;

vi. All of Upland Thorofare and tributaries thereof; and

vii. All of Beach Creek north of the railroad bed.

26. Great Egg Harbor River (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4):

i. All of Great Egg Harbor River and tributaries between the following lines:

(1) A line beginning at Flashing Red 8 (Fl R "8") and bearing approximately 208 degrees T across the river to a Department maintained marker at the mouth of an unnamed creek; and

(2) A line from a Department maintained marker at the mouth of Powell Creek and bearing approximately 248 degrees T across the river to another Department maintained marker;

ii. All of Lakes Creek.

27. Tuckahoe River: All the waters of Tuckahoe River and tributaries upstream from a straight line beginning on the east bank of the mouth of Job Creek ***bearing*** approximately 023 degrees T to the island offshore along the shore of the island and terminating on the opposite bank of Tuckahoe River.

28. Strathmere and Sea Isle City area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i. That portion of Ludlam Bay lying west of a line beginning at the Department maintained marker on the southern shore of Ludlam Bay and bearing approximately 330 degrees T to a Department maintained marker on an unnamed island then bearing approximately 245 degrees T to the Department maintained range marker on the mainland;

ii. All of Big Elder Creek;

iii. All of Little Elder Creek; and

iv. The area of Townsend Channel adjacent to the town of Townsends Inlet contained within a line beginning at the street end of 77th St. and running to a Department maintained marker at the mouth

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of Middle Thorofare, then to the southernmost pier in Townsend Channel (at the end of 94th Street) then running along that pier to the shore and terminating.

29. Avalon area:

i. That portion of Ingram Thorofare lying south from a line across Ingram Thorofare beginning at a small ditch on the west side of Ingram Thorofare just north of the 21st Street Bridge and bearing approximately 105 degrees T across the northern tip of a small island to the opposite shore of Ingram Thorofare, then to another line across Ingram Thorofare beginning on the south bank of a small unnamed creek bearing approximately 119 degrees T through Flashing Green light (Fl G 8 ft. "11") and terminating on the opposite shore;

ii. All of South Channel from a straight line beginning at the easternmost tip of the unnamed island at the confluence of South Channel and North Channel and bearing approximately 115 degrees T to the opposite shore of South Channel to a line that begins at the northernmost point of the unnamed island on the north side of the western entrance to South Channel and bearing approximately 246 degrees T and terminating on the western bank of the entrance to Leonard Thorofare; and

iii. All of Leonard Thorofare.

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

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

31. The Wildwoods area:

i. All that portion of Taylor Sound west and north of a line beginning on the northwest bank of the entrance to Reubens Thorofare and bearing approximately 029 degrees T to the opposite shore then along the shoreline to a line bearing approximately 031 degrees T through the easternmost point of the second largest island in Taylor Sound, to the south shore of Jones Creek, then along the shoreline in an easterly direction to the point of origin and terminating; and

ii. All of Jarvis Sound south and west of a line connecting two unnamed tributaries (and passing through buoy 45) at the northern end of Jarvis Sound then along the shoreline in a westerly direction to the junction with Reubens Thorofare and Upper Thorofare, then across Upper Thorofare bearing approximately 311 degrees T then along the southern shoreline of Jarvis Sound across the mouth of Middle Thorofare and Lower Thorofare, then along the shoreline in a northerly direction across the mouth of Shell Thorofare and terminating at the point of origin.

32. Cape May area: All of Cape May Inlet and Cape May Harbor inside a line beginning at Flashing Light 7M (Fl 4 sec. 30 ft. 7M) at the outermost end of east jetty at Cape May Inlet, along the jetty and shoreline until it intersects a line connecting the 641 ft. Loran Tower on the north side of the inlet and range light QK 36 2sec. marking the entrance channel through Cape May Inlet, then along the shoreline in a westerly direction and across Skunk Sound to a line connecting flashing red light (Fl R 4 sec.) marking the entrance to Cape May Canal and the radio tower at the U.S.C.G. Receiving Station, along that line to the shoreline, along the shoreline to a line beginning at the tank on the U.S.C.G. Training Center and bearing approximately 331 degrees T to buoy C "11" then along a line connecting buoy "C" with flashing green light 5(Fl G 2½ sec. "5") then to the shore bearing approximately 157 degrees T, then along the shoreline to the light (Fl G 4 sec. 37 ft. 7M) at the end of the jetty then across the inlet to the flashing light 7M (Fl 4 sec. 30 ft. 7M) and terminating.

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

i. Maurice River and Maurice River Cove: Maurice River and tributaries thereof and that portion of Maurice River Cove between the following two lines:

(1) A straight line known as the Summer Line beginning at the East Point Lighthouse and bearing approximately 311 degrees T to a marker on the western bank at the mouth of New England Creek; and

(2) A line from the end of Berry Avenue (Shellpile) and bearing approximately 214 degrees T across the River to a Department maintained marker; and

ii. Dividing Creek (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4): All of Dividing Creek and tributaries upstream from a line beginning on the southerly bank at the entrance to Hansey Creek and bearing 217 degrees T to the opposite shore of Dividing Creek;

iii. Oranoaken Creek (Note: A portion is also designated as Seasonal. See: N.J.A.C. 7:12-4): All of Oranoaken Creek in the area known as The Glades and north of Weir Creek;

iv. The Glades: All the water known as The Glades north from their confluence with Weir Creek, including that portion of Oranoaken Creek north from Weir Creek;

v. Straight Creek: All of Straight Creek;

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

(1) All of Nantuxent Creek upstream from a straight line across the creek beginning at the confluence of the next large tributary (unnamed) on the south side of Nantuxent Creek downstream from Hay Cut Creek and bearing approximately 300 degrees T;

(2) All of Cedar Creek upstream from a straight line across the creek beginning at the confluence of the first tributary on the north side of Cedar Creek upstream from the mouth of Cedar Creek and bearing 153 degrees T; and

(3) All of Beach Creek.

vii. Fortescue Creek: All of Fortescue Creek;

viii. All of that portion of Delaware Bay and tributaries thereof inshore of a line from a Department maintained marker at Beadon Point and bearing approximately 309 degrees T towards flashing light (Fl 4 sec. 33 ft. 6M), but terminating at a Department maintained marker on the shoreline at Nantuxent Point; and

ix. Cohansey Cove area: All of Delaware Bay and Cohansey Cove included within a line from within a line from QK Fl 24 ft. 5M "1" and bearing approximately 245 degrees T to buoy "10", then bearing approximately 099 degrees T to a Department maintained marker on the mainland, then along the mainland (including tributaries) in a northwesterly direction to a Department maintained marker at the mouth of Cohansey River, then bearing approximately 277 degrees T to QK Fl 24 ft. 5M "1", the point of origin and terminating.

34. Delaware River area:

i. All of the New Jersey portion of the Delaware River and its tributaries thereof and the New Jersey section of Delaware Bay and its tributaries between the two lines described herein:

(1) A straight line beginning at the tower at Dunks Point and bearing approximately 237 degrees T across the bay passing through Nun Buoy 2 marking Arnold Point Shoal and terminating on the Delaware Shore; and

(2) A straight line beginning at the southern dome (Salem Nuclear Power Plant) and bearing approximately 230 degrees T towards the point of land, on the southern shore, at the mouth of Blackbird Creek.

SUBCHAPTER 4. SEASONALLY APPROVED SHELLFISH GROWING WATERS

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

(a) The following shellfish growing waters designated on the charts referred to in N.J.A.C. 7:12-1.1 shall be Special Restricted for the

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harvest of shellfish from May 1 through October 31 yearly and Approved for the harvest of shellfish from November 1 through April 30 yearly:

1. Southern Barnegat Bay area:

i. Potter Creek to Laurel Harbor: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All those waters east of the line described in N.J.A.C. 7:12-3.2(a) I i and I ii and west of a line beginning at the easternmost point of land on the southern bank of Potter Creek and bearing approximately 161 degrees T to Intracoastal Waterway channel marker Red Nun 62 (N "62") and then bearing approximately 181 degrees T to Flashing Red light 15 ft. "64" PA (Fl R 15 ft. "64" PA) and then bearing approximately 252 degrees T to the Department maintained marker located on the northeasternmost point of land on the mainland, (located just northeast of the northeastern extent of Laurel Boulevard in Lacy Township) where it terminates. (This designation of Seasonally Approved waters directly adjoins those defined as Special Restricted in N.J.A.C. 7:12-3.2(a) I i and I iii.)

ii. Barnegat Bay-Forked River to Barnegat: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All those waters east of the ***Special Restricted*** waters described in N.J.A.C. 7:12-3 and west of a line beginning at the easternmost point of land immediately north of Forked River (Department maintained marker) approximate location: latitude 39 degrees 49 minutes 53 seconds N., longitude 74 degrees 9 minutes 17 seconds W.) and bearing approximately 167 degrees T to Flashing Red light "2" (Fl R "2") located off the mouth of Forked River, and then bearing approximately 212 degrees T to Flashing light "3" (Fl "3") marking the entrance to the channel to Oyster Creek, and then bearing approximately 204 degrees T through Department maintained ***[marker]* *markers "A" and "B" to Department maintained marker "C"** located approximately 0.4 nautical miles east of Flashing Red light "2" (Fl R "2") marking the entrance to Waretown Creek, then bearing approximately 194 degrees T through Department maintained markers "D" and "E" to Department maintained marker "F" located approximately ***[9.5]* *0.5*** nautical miles east of Flashing Green light "1" (Fl G "1") marking the entrance to Lochiel Creek and the Pebble Beach lagoon complex, and then bearing approximately 180 degrees T through Department maintained marker "G" and terminating at the range marker (Department maintained) located on Conklin Island.

2. Barnegat Bay to Little Egg Harbor Bay-Long Beach Island area:

i. Northern Long Beach Island: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All that portion of Barnegat Bay and Manahawkin Bay lying east of a line beginning on the northern point of land forming the mouth of the most northerly lagoon located between Butler and Meadow Streets in High Bar Harbor (Long Beach Township) and bearing approximately 270 degrees T to the northeast point of the northernmost of the two islands just offshore, (Edwin B. Forsythe National wildlife Refuge-Barnegat Division) then along the west shore of that island to its southeast point, then bearing approximately 131 degrees T across the unnamed gut or thoro fare to the northeast point of the southernmost island, then along the east shore of that island to its easternmost point, then bearing approximately 144 degrees T to the most easterly point on Vol Sedge, then along the southeastern shore of that island to its southernmost point, and then bearing approximately 170 degrees T to the easternmost extent of the southern island of Vol Sedge, then bearing approximately 213 degrees T to the westernmost tip of Loveladies Harbor (marsh), then bearing approximately 190 degrees T to the westernmost point of land at the end of Bay View Road which forms the (southern bank) entrance to the Loveladies Harbor lagoon complex, then proceeding to where a line bearing approximately 177 degrees T to the standpipe in Harvey Cedars intersects the shoreline just west of Bay Terrace

(Harvey Cedars), and then following the bulkhead or shoreline in a southerly direction, until reaching the southwesternmost point of land, located at the westernmost extent of Maiden Lane (Harvey Cedars), and then bearing approximately 220 degrees T to a point of land just north of the northernmost extent of Kent Place (Harvey Cedars), and then following the western shoreline or bulkhead in a southerly direction across the mouths of the two lagoons. (The northernmost lagoon located between Buckingham Avenue and Lange Avenue in Long Beach Township shall remain Prohibited, and the southernmost lagoon, which is located immediately south of Lange Avenue shall also remain Prohibited) to the bulkhead on the point of land on the southern bank forming the entrance to the second of these lagoons, then bearing approximately 205 degrees T to the northernmost corner of the largest of the unnamed islands (just northeast of Fl 8 ft. "85") off the mouth of Harvey Cove (Harvey Cove itself shall remain Special Restricted, See: N.J.A.C. 7:12-3.2(a)) then along that island's northern shoreline to its easternmost point then bearing approximately 115 degrees T to the westernmost point of land just west of the westernmost extent of West Salem Avenue in Harvey Cedars, then bearing approximately 219 degrees T to the westernmost point of land (marsh) located west of the westernmost extent of James Street in Long Beach Township, then bearing approximately 196 degrees T to the westernmost point of land located on the properties labeled as block 104, lot 10 and block 102, lot 10 (located just southwest of the westernmost extent of a private road known as Little Bridge Road) in Long Beach Township, then bearing approximately 209 degrees T to the end of the pier at the end of Bay Shore Street in Long Beach Township, then bearing approximately 247 degrees T to Flashing Green light "1" (Fl G "1"), then bearing approximately 224 degrees T to Flashing Red light "2" (Fl R "2"), then bearing approximately 211 degrees T to a Department maintained marker on Cedar Bonnet Island, then following the east shore of that island to where the eastern shoreline of Cedar Bonnet Island intersects with Route 72 (Manahawkin Causeway) and then following the southern edge of that highway in an easterly direction to its terminus where Route 72 intersects with Long Beach Island (in Ship Bottom).

ii. Southern Long Beach Island: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All those waters lying east of a line beginning at the point where Route 72 (Manahawkin Causeway) intersects with Long Beach Island (in Ship Bottom) and proceeding in a westerly direction as it follows the southern edge of Route 72 (this line coincides with that described in (a)2(i) above to where the highway intersects with the westernmost shoreline of Cedar Bonnet Island, and then following that shoreline in a generally southerly direction, but following all changes in direction of the shoreline until reaching the southernmost point of Cedar Bonnet Island, and then bearing approximately 190 degrees T to the unnamed island immediately south (this island is generally considered part of the Cedar Bonnet group) and then following that shoreline in a southerly direction to that island's southernmost point where it intersects a line beginning at the range markers (Department maintained) located on the above unnamed island and following that line bearing 203 degrees T to Flashing Red light 8 ft. "28" (Fl R 8 ft. "28") marking the intracoastal waterway, then bearing approximately 177 degrees T to the most northerly point of land on High Island and then following this island's eastern shoreline to its southernmost point, then bearing approximately 107 degrees T to channel marker Red Nun "36" (RN "36"), then bearing approximately ***[188]* *118*** degrees T to Flashing Red light "38" (Fl R "38"), then following the west side of the intracoastal waterway bearing approximately 097 degrees T to channel marker R "42" (R "42") then bearing approximately 220 degrees T to channel marker Nun "44A" (N "44A"), then bearing approximately 208 degrees T to Flashing Green light 8 ft. "47" (Fl G 8 ft. "47"), then bearing approximately 254 degrees T to Can buoy "49" (C "49"), then bearing approximately 212 degrees T to Flashing Green light "53" (Fl G "53"), then bearing approximately 175 degrees T to the north-

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ernmost point of the easternmost Marshelder Island, and then following the eastern shoreline of this island in a southerly direction to this island's southernmost point, and then bearing approximately 200 degrees T to Flashing Red light 8 ft. "64" (Fl R 8 ft. "64"), then bearing approximately 233 degrees T to the northernmost point on Mordecai Island, then following the western shore of that island to its westernmost point, then bearing approximately 245 degrees T to Flashing Green light "75" (Fl G "75"), then bearing approximately 210 degrees T to channel marker Can "77" (C "77"), then bearing approximately 195 degrees T to channel marker Can "81" (C "81"), and then bearing approximately 135 degrees T to the point where the northern boundary of the Edwin B. Forsythe National Wildlife Refuge-Barneget Division, Holgate Unit, intersects the shoreline (Long Beach Township) where this line terminates.

3. Mullica River-Great Bay area:

i. Mullica River; Seasonal—Special Restricted May 1 through October 31, Approved November 31 through April 30 yearly:

(1) All those waters of the Mullica River (excluding Nacote Creek and the small cut or thoro fare separating Moss Point from the mainland which shall remain Special Restricted) lying between a straight line beginning at the northernmost point of land on Akimbo Point and bearing approximately 070 degrees T to the southernmost point of land on Doctor Point (downstream boundary) and a straight line beginning at the easternmost point of land on Moss Point and bearing approximately 093 degrees T, to the southwesternmost point of land on the north bank of the northernmost ditch (Bloody Ditch) separating Blood Point from the mainland (upstream boundary). The line defining the upstream boundary described here coincides with that described in N.J.A.C. 7:12-3.2(a)20i.

ii. Ballanger Creek area: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All of Ballanger Creek and tributaries upstream from a straight line beginning at the westernmost point of land on the south bank of Ballanger Creek and bearing approximately 000 degrees T to the opposite shore of the creek to the Department maintained markers located upstream and as defined in N.J.A.C. 7:12-3:

(2) All of Winter Creek from its juncture with Ballanger Creek upstream to the Department maintained marker described in N.J.A.C. 7:12-3.2(a)20iii(2).

iii. Roundabout Creek area: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All of Roundabout Creek and tributaries upstream from a straight line beginning at the southernmost point of land on the east bank of Roundabout Creek and bearing approximately 306 degrees T to the opposite shore of the creek to the Department maintained markers described in N.J.A.C. 7:12-3.2(a)20iv.

iv. Judies Creek: Seasonal—Special Restricted May 1 through October 30 yearly, Approved November 1 through April 30 yearly:

(1) All of Judies Creek and tributaries upstream from its confluence with Basses Bay to the Department maintained markers as described in N.J.A.C. 7:12-3.2(a)20v.

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

i. ii. (No change.)

5. Brigantine Area: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. All the waters of St. George's Thoro fare from the point of land on the eastern shore, at the mouth of Conch Lagoon, and bearing approximately 358 degrees T to the north side of St. George's Thoro fare, then along that shoreline in a westerly direction to a Department maintained marker at Rum Point, then bearing approximately 108 degrees T to the opposite shore of St. George's Thoro fare, then along that shoreline in a generally easterly direction, eventually crossing the mouths of Sea King Lagoon and Conch Lagoon to the point of origin.

6. Lakes Bay-Shelter Bay-Risley Channel Area: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. (No change.)

7. Ocean City-Somers Point Area-Great Egg Harbor Bay: Seasonal—Special Restricted May 1 through October 31, yearly, Approved November 1 through April 30 yearly;

i-iii. (No change.)

8. Strathmere Area: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly: All that portion of Main Channel and Whale Creek within the area enclosed by a straight line from the north end of the Ocean Drive Bridge, along the western side of the bridge to the portion that opens, then bearing approximately 212 degrees T to the boat ramp located at the end of Bayview Avenue, Strathmere, then along that shoreline to the mouth of Whale Creek, then along the eastern bank of Whale Creek (excluding unnamed tributary) to the Department maintained marker at the junction with Ludlam Bay, then bearing approximately 305 degrees T to another Department maintained marker on the opposite bank, then along that shoreline in a northeasterly direction to the mouth of the creek, then along a straight line across Main Channel bearing approximately 026 degrees T to a small ditch on the opposite shore, then along that shoreline to its point of origin at the Ocean Drive Bridge and terminating.

9. Sea Isle City Area: Seasonal—Condemned May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. All of Mill Thoro fare and tributaries thereof, and portions of Townsend Sound north of a line from a Department maintained marker on the prominent point of land along the western shoreline of Townsend Sound and bearing approximately 105 degrees T to another Department maintained marker at the mouth of an unnamed tributary on the opposite shoreline.

10. Great Sound area:

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

(1) (No change.)

11. Delaware Bay area:

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

(1) (No change.)

ii. East Point area: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) (No change.)

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

(1) (No change.)

iv. Dividing Creek: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All of Dividing Creek and tributaries including Weir Creek lying between the line described in N.J.A.C. 7:12-3.2 and a line beginning at the southernmost point of land on the west bank at the mouth of Dividing Creek and bearing 000 degrees T to the opposite shore of Dividing Creek;

v. Oranoaken Creek: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) (No change.)

vi. Nantuxent Cove, Back Creek and portion of Cedar Creek and Nantuxent Creek: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All of Nantuxent Cove north of a line beginning at the light (Fl 4 sec 36 feet (6M) located at the western tip of Nantuxent Point and bearing approximately 289 degrees T to the light (Fl 6 sec 21 feet 6M) located at the southern tip of Ben David Point, all of Back Creek and tributaries, including Tweed Creek, all of Nantuxent Creek lying downstream from the line described in N.J.A.C. 7:12-3.2 and all of Cedar Creek lying downstream from the line described in N.J.A.C. 7:12-3.2.

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7:12-4.2 Seasonally Approved Growing Waters (Approved January 1 through April 30 yearly, Special Restricted May 1 through December 31 yearly)

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

1. Island Beach areas: Mantoloking to Island Beach State Park: Seasonal—Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All of those areas lying between the lines described in N.J.A.C. 7:12-3.2(a)7, 9, and 10 and a straight line beginning at the most westerly point of land on Dutchman's Point, just south of Mantoloking Shores, and bearing approximately 227 degrees T to the most northwesterly point of land on NW Point Island, off Chadwick Beach, then following that island's northeasterly shore to its most easterly point of land, then bearing approximately 191 degrees T to the northwesternmost tip of the most northern of the two islands off Ocean Beach, then bearing approximately 246 degrees T to Flashing light "1" (Fl "1"), then bearing approximately 186 degrees T to Flashing Red light "2" (Fl R "2") off Ortleigh Beach, then all those waters lying between the eastern shoreline and the Thomas A. Mathis Bridge and a straight line bearing approximately 230 degrees T to Flashing Green light 15ft "43" PA (Fl G 15ft "43" PA) which forms a common point of termination with the Seasonal area line described in (a)2ii below.

ii. All of those areas lying between the lines described in N.J.A.C. 7:12-3.2(a)7, 8, 9, and 10 including all those waters north of a straight line extending from the northernmost cupola on Island Beach State Park (currently the Island Beach State Park Maintenance Center, formerly the old USCG Station number 110) and bearing approximately 303 degrees T through Flashing Red light 4s "60" (Fl R 4s "60") just north of Berkeley Shores. The northern boundary of this *[Condemned area] ***Seasonally approved area*** shall be the Thomas A. Mathis Bridge.

2. Barnegat Bay-Brick Township and Dover Township area: Seasonal—Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All of those areas of Barnegat Bay lying between the Special Restricted waters at the mouth of Kettle Creek as described in N.J.A.C. 7:12-3.2(a)8 and a straight line beginning at Seaweed Point and bearing approximately 135 degrees T to Flashing Red light 15ft "30" PA (Fl R 15ft "30" PA) off Seaweed Point, and then bearing approximately 251 degrees T to Andrew Point on Green Island.

ii. All of those areas of Barnegat Bay lying between the Special Restricted waters as described in N.J.A.C. 7:12-3.2(a)8 and a straight line extending from the point of land forming the northern bank mouth of Shelter Cove and bearing approximately 160 degrees T to Flashing Red light "40" (Fl R "40"), then all those waters lying between the western shoreline (mainland) and the Thomas A. Mathis Bridge and a straight line bearing approximately 152 degrees T to Flashing Green light 15ft "43" PA (Fl G 15ft "43" PA) which forms a common point of termination with the Seasonal area line described in (a)1i above.

3. Manahawkin Bay, Mallard Island, Beach Haven West (Village Harbor) area: Seasonal—Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All those waters of Manahawkin and Little Egg Harbor Bays lying between the Special Restricted waters described in N.J.A.C. 7:12-3.2(a)14 and a straight line beginning on the westernmost end of the most westerly island along the Manahawkin Causeway (Route 72), then bearing approximately 173 degrees T to the most easterly point of Thorofare Island, then bearing approximately 218 degrees T to Department maintained marker "J", then bearing approximately 275 degrees T to Department maintained marker "K", then bearing approximately 032 degrees T and terminating on the southeasternmost point of Oyster Point.

4. Cedar Run area: Seasonal—Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

(i) (No change.)

5. Tuckerton area: Seasonal—Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All those waters of Tuckerton Cove lying north and west of a straight line and south and east of the line described in N.J.A.C. 7:12-3.2(a)18 beginning at the southeasternmost point of land on Gaunt Point and bearing approximately 235 degrees T to the easternmost point of land on Thorofare Point where this line terminates.

6. Mullica River-Great Bay area: Seasonal—Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. (No change.)

7. Brigantine area: Seasonal—Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly: An area adjacent to the city of Brigantine inshore from a line beginning at the telephone pole (A4229) at the north end of 13th Street North and bearing approximately 325 degrees T through Steelman Bay to Flashing light 5 (fl "5"), then to the northwest tip of George's Dock (1427 North Shore Drive), then proceeding in a westerly direction to the first pier and west of the Brigantine County Club (1048 North Shore Drive), then to the pier end at 1002 North Shore Drive (next to dead end street), then to the third pier end west of the Lafayette Boulevard Street end (860 North Shore Drive), then from pier end to 800 West Shore Drive, then to pier end at 714 West Shore Drive and bearing approximately 173 degrees T into Shore Drive and bearing approximately 173 degrees T into Wading Thorofare until it intersects a line connecting Flashing lights 6 and 8 (Fl R "6" and Fl R "8") in Wading Thorofare, then along the line connecting Flashing lights 6 and 8 (Fl "6" and Fl "8") to Flashing light 8, then bearing approximately 211 degrees T to a point of land on the west shore of Bonita Tideway, then along the shoreline in a southerly direction to the first unnamed creek past Sand Creek, then bearing approximately 030 degrees T to the point of land on the opposite shore and terminating.

8. Ocean City-Somers Point area: Seasonal—Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. (No change.)

ii. Great Egg Harbor Bay, Great Egg Harbor River and Middle River: Seasonal—Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

(1) All that portion of Great Egg Harbor Bay, Great Egg Harbor River and Middle River contained within a line beginning at the southwest tip of Drag Island and bearing approximately 266 degrees T through the south side base of the second electric tower (uncharted) to the northern-point at the mouth of the Tuckahoe River, then along the western shoreline of Great Egg Harbor River in a northwesterly direction to Middle River, then along the south shore of Middle River to the tributary leading to Swan Pond, then directly across Middle River and along the shore to Great Egg Harbor River, then along the shore of Great Egg Harbor River to Flashing Red 8 (Fl R "8") and bearing approximately 208 degrees T to a Department maintained marker at the mouth of an unnamed creek, then along the eastern shore of Great Egg Harbor River in a downstream direction to the north shore of Patcong Creek, then across the line marking the mouth of Patcong Creek described in N.J.A.C. 7:12-3.2(a)25, then along the north shore of Great Egg Harbor Bay and Drag Channel to the Garden State Parkway, then along the eastern side of the Garden State Parkway of Drag Island, then along the shoreline in a westerly direction to its origin at the southwest tip where this line terminates.

SUBCHAPTER 5. SEASONAL SPECIAL RESTRICTED SHELLFISH GROWING WATERS

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

(a) The Seasonal Special Restricted waters described below shall be Prohibited for the harvest of shellfish from October 1 through

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

(1) (No change.)

7:12-1.7 (Reserved) See Miscellaneous Notice in the May 18, 1987 Register at 19 N.J.R. 888.

**SUBCHAPTER 6. *[CLOSURE OF APPROVED AREAS AND SEASONAL APPROVED AREAS FOR SHELLFISH HARVESTING]*
*(RESERVED)***

*[7:12-6.1 Closure of Approved areas and Seasonal Approved areas for shellfish harvesting

(a) As a result of prevailing weather conditions and the effect therefrom on existing sewage treatment systems, the Department hereby:

1. Suspends N.J.A.C. 7:12-1.4 and 1.5 (Seasonally Approved growing waters) previously approved for direct market harvesting of shellfish. The direct market harvesting of shellfish in these waters is hereby prohibited.

2. Prohibits the direct market harvesting of shellfish in all approved area waters of the State.

(b) Upon a determination that the said waters, set forth in subsection (a) above are safe for the direct market harvesting of shellfish, the Commissioner of the Department of Environmental Protection shall rescind this emergency rule, area by area, to their prior classification upon public notice thereof, which notice shall subsequently be published in the New Jersey Register.]*

SUBCHAPTER 7. SANCTUARIES

7:12-7.1 Sanctuaries

(a) The Department may establish areas known as sanctuaries to be utilized for research purposes such as spawner areas. Sanctuaries shall be delineated by the Department. Shellfish may be relocated to such an area to supply brood stock to re-establish populations elsewhere. When shellfish from waters other than Approved are relocated to areas classified as Approved or Seasonal Approved, the relocation site (sanctuary) will be Prohibited to the harvest of all shellfish.

1. Spawner sanctuaries:

i. Hard clam sanctuary site 1: (Note: See Miscellaneous Notice at 18 N.J.R. 1000(a)). The Department condemns and prohibits the taking of all shellfish from those State waters classified as Approved including specifically those waters of Parker Cove in Little Egg Harbor bounded by latitude 39 degrees 26.49 minutes N, longitude 74 degrees 17.11 minutes W; latitude 39 degrees 36.49 minutes N, longitude 74 degrees 17.04 minutes W; latitude 39 degrees 36.42 minutes N, longitude 74 degrees 17.11 minutes W.

ii. Hard clam sanctuary site 2. Barnegat Bay adjacent to the Blind Camp (Note: See Miscellaneous Notice at 19 N.J.R. 569(a)): The Department condemns and prohibits the taking of shellfish from those State waters previously classified as Approved including specifically those waters of Barnegat Bay bounded by latitude 39 degrees 46 minutes 02.92 seconds N., longitude 74 degrees 11 minutes 06.16 seconds W.; latitude 39 degrees 46 minutes 02.92 seconds N., longitude 74 degrees 10 minutes 59.78 seconds W.; latitude 39 degrees 45 minutes 58.31 seconds N.; longitude 74 degrees 10 minutes 5.31 seconds W.; latitude 39 degrees 45 minutes 58.31 seconds N.; longitude 74 degrees 11 minutes 06.16 seconds W., containing 5.006 acres.

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. SPECIAL PERMIT

7:12-9.1 General provisions

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

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

(d)-(i) (No change.)

(j) The Department may apply more restrictive delineations to harvest areas that are described in N.J.A.C. 7:12-3 and 5 by specifying the sections available for harvest on the special permit. These limitations will be made at the discretion of the Department when deemed necessary to protect the health, safety, and welfare of the public.

7:12-9.2 Applications

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

(c) It is the responsibility of the permittee to keep the Bureau of Marine Water Classification and Analysis informed of his current mailing address. A change of address from that submitted on the aforementioned application, as well as subsequent changes therefrom, must be reported by the permittee, in writing, to the Leeds Point office within one week of the change.

7:12-9.3 Bait program; Sea clams

(No change in text.)

7:12-9.4 Bait program; Soft clams and/or Hard clams

(No change in text.)

7:12-9.5 Depletion program

(No change in text.)

7:12-9.6 Soft clam depuration harvester program

(No change in text.)

7:12-9.7 Relay program

(a) (No change.)

(b) Permits 5a and 5b shall be valid only under the following specific requirements or conditions. Violation may subject the holder to prosecution under N.J.S.A. 58:24-3. These rules must be read together with the shellfisheries regulations which appear at N.J.A.C. 7:25-15.1.

1.-2. (No change.)

3. The inclusive dates of the permit shall be specified on the face of the special permit unless revoked or suspended by the Department prior to the dates indicated and for cause. A schedule of harvest dates by section and landing sites will be sent by the Department to the permittee at the address on file with the Bureau of Marine Water Classification and Analysis (Leeds Point). A change of address must be reported to the Bureau of Marine Water Classification and Analysis (Leeds Point) by the permittee within one week of the change.

4.-8. (No change.)

9. All hard clams taken from the designated relay waters shall be relayed to the special leased plots on a schedule set by this Department and shall remain upon said leased plots until written permission for harvest has been granted by the Bureau of Marine Water Classification and Analysis. Relayed hard clams are required to remain for a minimum of 30 days in the special relay leased plots. The minimum 30-day purging period will begin on a schedule established by the

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Department. Additionally, the water temperature of the Approved waters during the minimum 30-day purging period shall be at or above 13 degrees centigrade (55 degrees Fahrenheit) as determined by the Bureau of Marine Water Classification and Analysis. Reharvesting of the relayed shellfish will be regulated by the Department of Environmental Protection's Division of Water Resources, Bureau of Marine Water Classification and Analysis. Reharvesting of shellfish from the special relay leased plots may commence only after receipt of written permission from this office.

10.-16. (No change.)

17. Participants shall not harvest approved clams from their leased plots on the same trip they plant clams from the day's relay. Persons harvesting clams from relay lots after written permission has been received from the Bureau of Marine Water Classification and Analysis shall not have any "RELAY" transport bags, as described in N.J.A.C. 7:25-15.1 of the relay rules, in their vehicles or vessels at the time they harvest.

18.-21. (No change.)

7:12-9.8 Transfer program

(a) (No change.)

(b) Permit No. 6 shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1.-5. (No change.)

6. Shellfish transferred to leased lots in Approved or Seasonal Approved waters shall remain upon said transfer lots until written approval for reharvest has been granted by the Department's Division of Water Resources, Bureau of Marine Water Classification and Analysis.

7. To facilitate compliance with (b)6 above, the permittee shall notify the Bureau of Marine Water Classification and Analysis by letter after the final transferring to a particular leased lot. The minimum 30-day purging period will not begin until the latter of both notice of final transferring is received and the water temperature of the Approved waters is maintained at or above 13 degrees centigrade (55 degrees Fahrenheit) as determined by the Bureau of Marine Water Classification and Analysis.

8. From the time the transfer permit is issued until written notification for reharvest is received by the permittee, the transfer lot(s) which appear on the permit shall be considered condemned for the harvest of shellfish. Transfer lots located in water that may be approved during the purging period shall be marked at the corners with Condemned Area signs (supplied by the Bureau of Marine Water Classification and Analysis) during the Condemned period.

9.-11. (No change.)

c. (No change.)

7:12-9.9 Transplant program

(a) The purpose of Permit No. 7 (Transplant Permit Seed Oysters) is to allow for the harvest and possession of seed oysters from waters classified other than Approved for transplanting to leased lots in Approved waters for purging of pollutants, growth and ultimate marketing after written release by the Bureau of Marine Water Classification and Analysis. The purging period will be for a minimum of 30 days at which the water temperature of the approved waters is maintained at or above 13 degrees centigrade (55 degrees Fahrenheit) as determined by the Bureau of Marine Water Classification and Analysis.

(b) Permit No. 7 shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1.-5. (No change.)

6. Seed oysters transplanted to leased lots in Approved waters shall remain upon said lots until written approval for reharvest has been granted by the Department's Division of Water Resources, Bureau of Marine Water Classification and Analysis.

7. To facilitate compliance with (b)6 above the permittee shall notify the Bureau of Marine Water Classification and Analysis by letter after the final transplanting to a particular leased lot. The

minimum 30 day purging period will not begin until the latter of both notice of final transplanting is received and the water temperature of the Approved waters is maintained at or above 13 degrees centigrade (55 degrees Fahrenheit) as determined by the Bureau of Marine Water Classification and Analysis.

8. Lots being planted will be staked, by the lessee, and maintained in that condition during the effective period of the special permit. Transplant lot(s) located in waters that may be approved during the purging period shall be marked at the corners with Condemned Area signs (supplied by the Bureau of Marine Water Classification and Analysis) during the Condemned period.

9.-10. (No change.)

(c) (No change.)

7:12-9.10 Possession and/or plant program; bait store (No change in text.)

7:12-9.11 Possession and/or processing plant program; depuration plant

(a) (No change.)

(b) Permit No. 8 shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1.-2. (No change.)

3. This permit shall apply only to the waters delineated on a chart provided by the Bureau of Marine Water Classification and Analysis and further specified (for reasons of public health protection and resource management) as to the area of harvest, on a day-to-day basis by the designated enforcement unit(s).

4. (No change.)

5. The harvester from which said shellfish are purchased shall possess a valid commercial shellfish harvesting license issued by the New Jersey Division of Fish, Game and Wildlife and a valid Permit No. 4 issued by the Bureau of Marine Water Classification and Analysis of the Division of Water Resources.

6.-18. (No change.)

(c) (No change.)

7:12-9.12 Possession and/or processing plant program; seed oysters

(a) The purpose of Permit No. 8c ("Possession Permit for Seed Oysters") is to allow the lessee of shellfish grounds to purchase seed oysters harvested in waters classified other than Approved for planting on his leased lots in Approved waters for purging of pollutants, growth and ultimate marketing after written release by the Bureau of Marine Water Classification and Analysis.

(b) Permit No. 8c shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1.-2. (No change.)

3. The harvester from which said seed oysters are purchased shall possess a valid Permit No. 7 issued by the Bureau of Marine Water Classification and Analysis.

4.-5. (No change.)

6. Seed oysters transplanted to leased lots in Approved waters and/or Seasonal Approved waters shall remain upon said lots until written approval for reharvest has been granted by the Department's Division of Water Resources, Bureau of Marine Water Classification and Analysis.

7. To facilitate compliance with (b)6 above, the permittee shall notify the Bureau of Marine Water Classification and Analysis by letter after the final planting on a particular leased lot. The minimum 30-day period will not begin until the latter of both notice of final planting is received and the water temperature of the Approved waters is maintained at or above 13 degrees centigrade (55 degrees Fahrenheit).

8. From the time the Possession Permit for Seed Oysters is issued until written notification for reharvest is received by the permittee, the transplant lot(s) which appear on the permit shall be considered condemned for the harvest of shellfish. Transplant lots located in waters that may be approved during the purging period shall be

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staked and marked at the corners with Condemned area signs (supplied by the Bureau of Marine Water Classification and Analysis) during the Condemned period.

- 9. (No change.)
(c) (No change.)

7:12-9.13 Hard clam depuration/harvester (pilot) program; depuration harvester permit (No change in text.)

7:12-9.14 Hard clam possession and/or processing plant (pilot) program; depuration plant (No change in text.)

7:12-9.15 Non-Human Consumption and Scientific Collection Program (No change in text.)

DIVISION OF WATER RESOURCES

(a)

Flood Hazard Area Delineation and Redelineation Flood Plain Delineations of Passaic River, Rockaway River and Tributaries, Whippany River and Tributaries, Pequannock River, Lake Hopatcong and Tributaries, Hohokus Brook, Pond Brook, and Tributaries of the Rahway River

Adopted Amendment: N.J.A.C. 7:13-7.1

Proposed: April 6, 1987 at 19 N.J.R. 489(a). Adopted: October 19, 1987 by Richard T. Dewling, Commissioner, Department of Environmental Protection. Filed: October 23, 1987 as R.1987 d.489, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-1 et seq. and N.J.S.A. 58:16A-50 et seq.

DEP Docket Number: 007-87-03. Effective Date: November 16, 1987. Expiration Date: May 4, 1989.

Summary of Public Comments and Agency Responses:

A public hearing was held on April 22, 1987 in Whippany, New Jersey. Seven people testified at the hearing and five written comments were submitted by the close of the comment period on May 6, 1987.

COMMENT: The upstream limit for Hatfield Creek should be Gathering Road rather than Church Street as mentioned in the hearing notice.

RESPONSE: The hearing notice was incorrect, but the proposal, found at 19 N.J.R. 489(a), was correct.

COMMENT: Certain areas within the New Jersey Flood Hazard Area along the Rockaway River in Victory Gardens have been filled but were not so noted on the proposed maps.

RESPONSE: The Department agrees and has decided not to adopt the proposed revision.

COMMENT: The Rockaway River alignments in the vicinity of Change Bridge Road in Montville Township were more accurately depicted in the previous delineation maps than in the new proposed maps.

RESPONSE: The maps have been changed back to show the previous delineation.

COMMENT: The delineations of the Pequannock River in the Township of West Milford were inaccurate, showing a slightly larger flood hazard area than actually exists.

RESPONSE: The maps have been changed to reflect the updated information.

COMMENT: One of the flood profile sheets contained a typographical error in the numbering of elevations, such that two adjacent plates each showed a different elevation for the same point.

RESPONSE: The maps have been corrected.

COMMENT: The maps of Troy Brook were inaccurate. They included a small dam which has been removed, and they showed the stream as having one channel where in fact it has been split into two channels.

RESPONSE: The maps have been changed to reflect the updated information.

COMMENT: Upstream improvements should be made to Watnong Brook to alleviate downstream flooding problems of area residents.

RESPONSE: The discussion of structural flood relief measures is beyond the scope of the Floodway Delineation Program. The Floodway Delineation Program exists solely to identify the boundaries of the floodway and the New Jersey Flood Hazard Area.

COMMENT: The proposed delineation of Watnong Brook in the vicinity of Route 53 and Tarin Drive in Parsippany should parallel the west side of Route 53.

RESPONSE: Initial field work by the Department did not substantiate this assertion. Further investigation will be undertaken.

COMMENT: The recently issued Federal Insurance Rate Map for the Town of Dover is more restrictive than the proposed State floodway and flood hazard area delineation maps.

RESPONSE: A slight inaccuracy in the Federal Flood Insurance maps has been brought to the attention of Federal Flood Insurance authorities.

AGENCY NOTE: The changes discussed in the preceding summary did not require changes to the proposed text upon adoption. The changes are reflected on revised maps which are available for inspection during normal working hours at the Office of the Bureau of Flood Plain Management, 1911 Princeton Avenue, Trenton, New Jersey and at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

Full text of the adoption follows.

7:13-7.1 Delineated floodways

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

(d) A list of streams in the Passaic-Hackensack Basin and a list of delineated streams in the Raritan Basin follows:

1.-54. (No change.)

55. Passaic River, Rockaway River and Tributaries, Whippany River and Tributaries, Pequannock River, Lake Hopatcong and Tributaries, Hohokus Brook, Pond Run, and Tributaries of the Rahway River

Passaic River, from the Township of Fairfield-West Caldwell municipal boundary upstream to the West Caldwell-Roseland boundary; Rockaway River, from its confluence with the Passaic River upstream to Pollard Mountain Road bridge in Jefferson Township; Hatfield Creek, from its confluence with the Rockaway River upstream to Gathering Road; Crooked Brook, from its confluence with the Rockaway River upstream to Church Street; Den Brook, from its confluence with the Rockaway River upstream to 1,270 feet upstream of Shongun Road bridge; Beaver Brook, from its confluence with the Rockaway River upstream to Beach Glen Road; Fox Brook, from its confluence with the Rockaway River upstream to 960 feet upstream of Fox Lake Dam; Rockaway River Tributary No. 1, from the confluence with Rockaway River upstream 5,800 feet; Green Pond Brook, from the confluence with the Rockaway River upstream to the Rt. 80 ramp; Rockaway River Tributary No. 5, from its confluence with Rockaway River

upstream to footbridge across Cozy Lake; Rockaway River Tributary 5-1, from its confluence with Rockaway River Tributary No. 5 upstream 240 feet; Rockaway River Tributary No. 6, from its confluence with Rockaway River upstream to Milton Road highway bridge; Rockaway River Tributary No. 7, from its confluence with Rockaway River upstream to Welden Road highway bridge; Whippany River, from its confluence with Rockaway River upstream to Morris Township municipal boundary; Troy Brook, from its confluence with the Whippany River upstream to Cherry Hill Road; West Brook, from its confluence with the Troy Brook upstream to Lake Structure; Eastmans Brook, from the confluence with Troy Brook upstream to upstream end of Lake Parsippany; Black Brook, from its confluence with the Whippany River to upstream corporate limit of Hanover Township; Pinch Brook, from its confluence with Black Brook to the upstream corporate limit of East Hanover Township; Malapardis Brook, from its confluence with the Whippany River upstream to South Jefferson Road; Watnong Brook, from Rt. 10 Highway bridge upstream 8,330 feet; Pequannock River, from the downstream Jefferson municipal boundary upstream to the Oak Ridge Reservoir Dam; Lake Hopatcong; Weldon Brook Tributary, Weldon Brook from the confluence with Lake Hopatcong upstream to East Shawnee Trail; Lake Hopatcong Tributary No. 2, from the confluence with Lake Hopatcong upstream to Lorretta Long Drive highway bridge; Hohokus Brook, upstream from the Wyckoff-Franklin Lakes municipal boundary upstream to 400 feet upstream of De Yoe Pond; Pond Brook, upstream from Oakland-Franklin Lakes municipal boundary upstream to Franklin Lakes Road; Wigwam Brook, from the downstream Orange boundary upstream to Watchung Street; East Branch Rahway River, from the downstream Orange boundary to upstream municipal boundary; East Fork of the East Branch Rahway River, from the junction with East Branch Rahway River upstream to Joyce Street.

AGENCY NOTE: All relevant information and documents are available for inspection during normal working hours at the Office of the Bureau of Flood Plain Management, 1911 Princeton Avenue, Trenton, New Jersey and at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey. Approximately 70 maps are on file for these delineations.

(a)

**Flood Hazard Area Redelineation of Green Brook
Adopted Amendments: N.J.A.C. 7:13-7.1(d)**

Proposed: August 3, 1987 at 19 N.J.R. 1384(a).

Adopted: October 16, 1987 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: October 23, 1987 as R.1987 d.487, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3; 13:1D-2 et seq. and 58:16A-50 et seq.

DEP Docket Number: 031-87-07.

Effective Date: November 16, 1987.

Expiration Date: May 4, 1989.

Summary of Public Comments and Agency Responses

Notice of the proposed amendment was published on August 3, 1987 in the New Jersey Register at 19 N.J.R. 1384(a). The notice also advised that a public hearing had been scheduled for August 21, 1987 at 1:00 P.M. at the New Jersey Records Storage Center, 2300 Stuyvesant Avenue, Trenton, New Jersey, to afford the public an opportunity to be heard on the proposed action by the Department. In addition, the Department issued a notice of public hearing on July 18, 1987 which was published in the Courier News, Bridgewater. Both notices invited written comments to be submitted on or before September 2, 1987. Two people were in attendance at the hearing. One written comment was submitted during the comment period which included a detailed map, plan and HEC-II hydraulic model.

COMMENT: One commenter stated that his company is constructing condominiums along Green Brook on Plainfield Avenue in Watchung and Berkley Heights upstream of the proposed bridge crossing. This land is within the area subject to this proposed amendment. The company has conducted its own flood delineation study utilizing the HEC-II hydraulic model. The results of the study differ from the State study in the upstream region within their property. The flood plain elevations are slightly higher than what is currently shown on the State maps.

RESPONSE: The Department has reviewed the map, plan and HEC-II hydraulic model submitted by the commenter. It is the finding of the Department that the commenter's studies are accurate. Due to the flood plain elevations being slightly higher, there will be a slight expansion in the area of the Department's jurisdiction with respect to the commenter's parcel of property. This change will not affect neighboring property owners. The map has been amended to reflect the data submitted by the commenter. The revised map has been filed with the Office of Administrative Law, Quakerbridge Plaza, Bldg. 9, Trenton, New Jersey, and is available for inspection there during normal working hours.

Full text of the adoption follows.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the revised delineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, N.J., and at the Department of Environmental Protection, Bureau of Flood Plain Delineation, 1911 Princeton Avenue, Lawrenceville, N.J. In addition, maps of the proposed delineations have been sent to the Clerks of the affected municipalities listed above and to the Planning Boards of the affected counties.

(a)

DIVISION OF WATER RESOURCES**New Jersey Pollutant Discharge Elimination System****Adopted Amendments: N.J.A.C. 7:14A-1, 2, 3, 5, 10 and 12**

Proposed: October 20, 1986 at 18 N.J.R. 2085(a)

Adopted: October 19, 1987 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: October 20, 1987 as R.1987 d.458, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with portions not adopted.**

Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 58:11-49 et seq., 58:10-23.11 et seq., 58:11-64 et seq., 13:1D-1 et seq., 13:1E-1 et seq., 58:4A-5, 58:4A-4.1, and 58:12A-1 et seq.

Effective Date: November 16, 1987.

Expiration Date: June 4, 1989.

DEP Docket Number: 042-86-09.

Summary of Public Comments and Agency Responses:

A public hearing on the rule proposal was held on November 13, 1986 at which 20 people testified. 26 written comments were received by the Department by the close of the public comment period on January 2, 1987.

COMMENT: Several commenters stated that the Department had not sufficiently evaluated the environmental and economic impact of the proposed rules. It was stated that the proposed rules would economically burden the regulated community and that the Department would not be able to enforce all of the new rules.

RESPONSE: The principal economic impact of the New Jersey Pollutant Discharge Elimination System ("NJPDES") rules is the annual fee which each NJPDES permittee is required to submit to the Department pursuant to N.J.A.C. 7:14A-1.8. This specific section was recently repealed and a new rule proposed on May 4, 1987 at 19 N.J.R. 706(a), adopted by the Commissioner on June 12, 1987, and became effective on July 6, 1987 (see 19 N.J.R. 1191). The amendments adopted herein will, as stated in the Economic Impact, neither increase nor decrease the cost of the NJPDES program. The adopted amendments may, however, have an adverse economic impact on individual members of the regulated community. It is the position of the Department that such impact is acceptable when it will result in the improved environmental quality of New Jersey's ground and surface waters.

The Legislature, in Section 2 of the Water Pollution Control Act, N.J.S.A. 58:10A-2, found and declared that "[i]t is the policy of this State to restore, enhance and maintain the chemical, physical, and biological integrity of its waters, to protect public health, to safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial and other uses of water." The Department is charged with the responsibility for administering the State's water pollution control program. The Department will strictly enforce all the provisions of the amendments adopted herein.

COMMENT: N.J.A.C. 7:14A-1.2(d)2. One comment was received requesting that the NJPDES rules specifically exempt indirect industrial dischargers who discharge to publicly owned treatment works (POTWs), stating that industrial dischargers are being billed double for permit fees. It was additionally stated that those indirect dischargers who are being permitted by local sewage authorities or municipal utilities authorities should not be required to obtain a NJPDES permit, as the local agency would be responsible for maintaining State and Federal standards.

RESPONSE: Since this comment goes beyond the scope of the proposed changes to this provision, it cannot be considered for adoption at this time. To do so would constitute a substantive change requiring reproposal pursuant to N.J.A.C. 1:30-4.3. However, the Department may consider such a change in future rulemaking.

COMMENT: N.J.A.C. 7:14A-1.2(e)10. Several comments were received stating that the decision to regulate nonoperating landfills should be made on a case by case basis because the Department is not regulating all facilities in a uniform manner, that an increase in the permitting of nonoperating landfills would exacerbate this problem, and that in many

cases these older nonoperating landfills are stabilized and create no adverse environmental impact.

RESPONSE: This subsection allows, but does not require, permits to be issued to landfills. However, the majority of operating and nonoperating landfills in the State have already been issued NJPDES permits. Based on the ground water monitoring data from these landfills, the Department has determined that most have discharged a measurable quantity of pollutants to ground water. The Department therefore believes it is appropriate to monitor discharges from both operating and nonoperating landfills.

COMMENT: N.J.A.C. 7:14A-1.2(e)10. One comment was received stating that some old closed sanitary landfills are already regulated under section 3004(u) of the Federal "Hazardous and Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act" (42 U.S.C. 6901 et seq.) (RCRA) which sets forth the appropriate corrective action for previously operated Solid Waste Management Units, and that application of this paragraph would be a duplication of effort.

RESPONSE: Section 3004(u) of the RCRA amendments refers to corrective action authorizations at RCRA regulated facilities. There are less than 300 facilities in New Jersey seeking RCRA permits and only a handful of these facilities contain landfills. The Department regulates the few landfills in this category under the NJPDES rules pursuant to the State's delegated authority to implement this provision of the Federal Act.

COMMENT: N.J.A.C. 7:14A-1.2(e)10. One comment was received which stated that the Department cannot use the regulatory process to require permits for the owners of former landfills when this is not authorized under the Water Pollution Control Act, and that N.J.S.A. 58:10A-6b contemplates the issuance of permits only where there is an active operation resulting in a discharge.

RESPONSE: Issuance of NJPDES permits to nonoperating landfills is fully supported by the State Act to regulate the actual or potential discharge to ground water. The Appellate Division of the New Jersey Superior Court has upheld the Department's authority to issue unilaterally a NJPDES ground water monitoring permit to the present owner of a closed landfill, even though the owner was not involved in the operation of the landfill, purchased the property after the landfill had ceased operations and never applied for a permit. *VI—Concrete Company v. State of New Jersey, Department of Environmental Protection*, Docket No. A-123-86T8, (App. Div., Aug. 17, 1987).

COMMENT: N.J.A.C. 7:14A-1.3(a)5. Three comments were received that stated that pursuant to *In the Matter of Ocean County Utilities Authority vs. DEP*, the only condition for acceptance of sewage sludge for disposal in a landfill is that the landfill have an approved system for the interception, collection, and treatment of leachate, pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

RESPONSE: The Department disagrees. It is the Department's position that under *In the Matter of Ocean County Utilities Authority* it is under no legal obligation to allow landfills to accept sewage sludge pursuant to the Solid Waste Management Act. In *Ocean County*, however, the Department determined that specific extenuating conditions existed which justified the landfill disposal of sludge generated by the Ocean County Utilities Authority.

COMMENT: N.J.A.C. 7:14A-1.3(a). Two comments were received that stated that this section should be amended to state that sludge may be disposed of at out-of-state landfills without the need for an Administrative Consent Order.

RESPONSE: No approval under the Water Pollution Control Act or the NJPDES rules is required for disposal of sludge in out-of-state landfills.

COMMENT: N.J.A.C. 7:14A-1.4. One comment was received which supported the Department's permit consolidation process, but felt the Department should not issue a permit with a term of less than three years just to coordinate the expiration dates of new or reissued permits with existing permits. It was additionally stated that if permits are to be recalled, additional permit fees should not be charged and existing permit conditions (such as effluent limitations and monitoring requirements) should not be modified.

RESPONSE: The Department may issue a permit for any term not to exceed five years. Permit fees are assessed on an annual basis and are not related to permit expiration and renewal dates. The intent of this section is not to call in existing discharge permits to be reissued with the new discharge permit, but to have the expiration dates of the new dis-

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charge permit coincide with that of the existing discharge permit. The Department, however, has the authority to "call-in" a permit at any time for modification of effluent limitations and monitoring requirements.

COMMENT: N.J.A.C. 7:14A-1.4(f)2. One comment was received pointing out a typographical error in this paragraph.

RESPONSE: This paragraph will be changed to state "Permit applicants . . ." instead of "Permit applications . . .".

COMMENT: N.J.A.C. 7:14A-1.7(e). Three comments were received which stated that this subsection should be amended to read that any changes, amendments and/or deletions of regulations adopted by the EPA which relate to any provision of these State rules shall be evaluated and considered by public notice within one year of EPA's adoption.

RESPONSE: The Department does not believe that changes to Federal regulations automatically trigger changes to State rules, and the provision will stand as proposed.

COMMENT: N.J.A.C. 7:14A-1.8(d)10i. One comment was received which stated that the currently used calculation for parameter mass loading may misrepresent a discharger's waste load when the discharge parameter concentration is less than the analytical method detection level.

RESPONSE: This provision was not proposed for amendment and will not be addressed in the context of this adoption.

COMMENT: N.J.A.C. 7:14A-1.9. Definition of "Residuals". Two comments were received challenging the proposed definition of "residuals". The commenters stated that since the United States Army Corps of Engineers and the United States Environmental Protection Agency now regulate disposal of residuals, this should be deleted from the proposed rule amendments.

RESPONSE: The Department has the clear regulatory authority to regulate the disposal of residuals. The Water Pollution Control Act defines dredge spoils as a pollutant. The Department does not, however, want to include dredge spoils within the definition of residuals. The Department will promulgate rules to control dredge spoils at a later date.

COMMENT: N.J.A.C. 7:14A-1.9. More than 35 comments were received objecting to new definitions for "infiltration percolation lagoon," "lagoon," "surface impoundment," and "tank". The objectors state that the Department should explain the purpose of changing from a design to a performance based classification system, that there will be confusion as to the classification of existing units, that the definitions are too broad, that there is currently no test method available to establish the impermeability of the liner of a surface impoundment, that this is not consistent with RCRA regulations, that existing facilities should be grandfathered in, that there is concern about the duplication of effort that this definition will cause with secondary containment structures that occasionally contain rainwater, that the new definition is more restrictive than that in the Solid Waste Management Plan, and that the definitions are so broad as to be administratively ineffective. Two commentators stated that while the new definitions would place an additional burden on the regulated community, the changes were necessary and appropriate.

RESPONSE: The Department will not adopt the proposed definitions of "infiltration percolation lagoon," "lagoon," "tank," and "surface impoundment". The Department is currently reviewing the regulatory programs which govern these activities.

COMMENT: N.J.A.C. 7:14A-1.9. Definition of "sewage authority". Two comments were received which stated that a definition of "sewage authority" should be included to show that use of that term relates to both sewage authorities and municipal utilities authorities.

RESPONSE: This definition was not proposed in the amendments and cannot be addressed at this time. The Department may consider this definition for inclusion in future regulatory changes.

COMMENT: N.J.A.C. 7:14A-1.9. Definitions of "monthly," "weekly," "average monthly discharge limitation," "daily discharge," "maximum daily discharge," "net," "oral notification," "written notification," "ambient," "monthly average," and "quarterly average." One comment was received requesting that the above definitions be either added or amended.

RESPONSE: These definitions were not proposed in the amendments and cannot be addressed at this time. The Department may consider these definitions in future regulatory changes.

COMMENT: N.J.A.C. 7:14A-1.9. Definition of "Construction". One comment was received which stated that the definition of construction should not be amended to exclude site preparation work, including clearing, and excavation material because clearing and grubbing are activities necessary to construct a facility.

RESPONSE: It is standard practice to separate clearing and grubbing from actual construction. The Department believes the proposed change is reasonable.

COMMENT: N.J.A.C. 7:14A-2.1(b). One comment was received which asked how far the Department intends to go in pursuit of landfill owners, stating it is beyond the authority provided under the State Act as well as the case law regarding parent-subsidiary relationships for the Department to attach liability to a parent corporation for the regulated activities of its subsidiary.

RESPONSE: The Department will use the full regulatory authority provided by law to pursue responsible parties.

COMMENT: N.J.A.C. 7:14A-2.1(b). One comment received suggested that both the owner and operator of a facility "certify" their approval of an application or a permit.

RESPONSE: The Department sees no basis for such an amendment. A permit, once issued, is effective and enforceable.

COMMENT: N.J.A.C. 7:14A-2.1(b)1 and 2. Several comments were received which objected to the proposed requirement to have both the owner and operator of a facility apply for NJPDES permit or Treatment Works Approval (TWA). The reasons stated included that a burden would be placed on an owner of a leased facility who could be liable for violations and fines in a situation where the owner has no control, and that many facilities have a number of partial owners who have no operational authority or control.

RESPONSE: N.J.S.A. 58:10A-6(a) states that "[i]t shall be unlawful for any person to discharge any pollutant . . .". N.J.S.A. 58:10A-3(1) defines person as "any individual, corporation . . .". The Department has a statutory mandate to issue NJPDES permits to both the owner and the operator (even partial owners and operators) of a facility. Note that this provision refers to NJPDES permits; it does not refer to TWAs.

COMMENT: N.J.A.C. 7:14A-2.1(b)1. Several comments were received questioning which types of facilities included in the definition of "Treatment Works" will be regulated by this requirement above and beyond those that are currently regulated. Commentators also questioned whether preexisting treatment works will be required to apply for a NJPDES permit.

RESPONSE: The definition of treatment works in the NJPDES rules is identical to that in the Water Pollution Control Act, N.J.S.A. 58:10A-3(s). Treatment works activities covered by the rules can be found in N.J.A.C. 7:14A-12. If an existing treatment works results in an unpermitted discharge, then a permit is required.

COMMENT: N.J.A.C. 7:14A-2.1(h)7. Several comments were received stating that the existing requirement of retaining data related to enforcement and corrective action at the facility for five years should not be changed, especially because most facilities retain data for only five years at the present time, and to change the regulations to require data retention for 10 years would put many facilities in immediate non-compliance.

RESPONSE: The Department has reevaluated this proposed change and agrees that at the present time it will be more appropriate to continue to require five years of enforcement and corrective action files.

COMMENT: N.J.A.C. 7:14A-2.1(h)8. Several comments were received requesting that the wording of this provision be changed to "to the extent practical, the locations of all sites involved in the storage of solid or liquid waste at the facility for which the NJPDES permit application is being made and the ultimate disposal sites of solid or liquid waste generated by any facility with a discharge."

RESPONSE: This concept was not proposed in the amendments. The Department may consider it in a future regulatory change.

COMMENT: N.J.A.C. 7:14A-2.1(h)4. Several comments were received that stated the commenters had no objections to identifying all the owners of a facility, but that certification of partial owners was not appropriate.

RESPONSE: The Department requires that partial owners comply with all the applicable conditions of a NJPDES permit. The Department does not distinguish between the owner or operator of a facility and a partial owner or operator of the facility.

COMMENT: N.J.A.C. 7:14A-2.1(h)9. Several comments were received which suggested that all wells, springs, other surface water bodies and drinking water wells listed in the public record or otherwise known to the applicant within one quarter mile of the facility be identified. The current rule calls for identification within one mile of the facility.

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RESPONSE: This concept was not proposed in the amendments. The Department may consider it in a future regulatory change.

COMMENT: N.J.A.C. 7:14A-2.1(k). One comment was received stating that consistency determinations for both discharges to ground water and discharges to surface water should be reviewed by the Department and not by a municipality.

RESPONSE: Consistency reviews are made by the Department, except in areas where there is a duly delegated 208 agency.

COMMENT: N.J.A.C. 7:14A-2.1(k). One comment was received stating that the definition of "connection" is not included in these amendments. The writer further stated that it is inappropriate to require both municipal and authority approvals for sewer connections, because by forming an authority the municipality has delegated responsibility to the authority with respect to sewage. The municipality retains control via zoning and issuance of building permits.

RESPONSE: The definition of "connection" was proposed and adopted as part of the "Sewer Connection Ban" rules (see 18 N.J.R. 216 3(a) and 19 N.J.R. respectively) as follows: "'Connection' means any physical or operational change to a collection system or to the plumbing or piping of any building, project, facility, or other structure either proposed or existing for which a building permit or other municipal approval including site plan or subdivision approval is required, and which connects directly or indirectly to any portion of a domestic treatment works." This definition was included as part of the NJPDES rules upon adoption of the "Sewer Connection Ban" rules effective November 2, 1987. In addition, a municipality and a local agency having the responsibility for sewage are not always the same entity. Where they are, only one party will provide an endorsement. Where there are two entities, however, the Department requires dual endorsements.

COMMENT: N.J.A.C. 7:14A-2.1(k)li. Several comments were received stating that requiring prior municipal or authority endorsements will delay the permit process, and that a parallel application process would serve the same purpose. In the alternative it was suggested that the requirement for endorsements be replaced by the requirement of notification by the applicant to the affected municipal and sewage authority.

RESPONSE: The Department believes prior endorsements are appropriate and the proposed amendment will stand.

COMMENT: N.J.A.C. 7:14A-2.1(k)2. Several comments were received stating that the Department should retain the endorsement exemption for industrial treatment works, and that reference to ground water discharges should be deleted. It was also stated that the word "new" be inserted as the first word of the sentence to clarify the Department's intent.

RESPONSE: The Department is not considering changing the requirement that exempts industrial treatment works from endorsement provisions. The Department does not agree that references to ground water discharges should be deleted or that the word "new" be inserted at the beginning of 7:14A-2.1(k)li and 2.1(k)lii to clarify the Department's intent.

COMMENT: N.J.A.C. 7:14A-2.1(k)3i. One comment received stated that the proposed rule should be amended to reflect that only permits for significant industrial users should be required to contain written municipal and authority endorsement, because a sewage authority would only be affected if the proposed discharge made changes to the input to the sewage authority.

RESPONSE: The Department believes that local endorsements are appropriate. Municipal and sewage authorities are responsible for controlling all wastewater entering their facilities and for planning aspects of all discharges within their authority. Consequently, endorsement is required.

COMMENT: N.J.A.C. 7:14A-2.1(k)4i. One comment received stated that the Department should change the rules to state that the affected municipality or authority has 60 days to respond to an application and that no comment within 60 days constitutes acceptance.

RESPONSE: The Department intends for a municipality or sewage authority to have 60 days to provide an endorsement. The Department will amend this subparagraph to clarify this point.

COMMENT: N.J.A.C. 7:14A-2.2. Six comments were received requesting additional language be added to this section to remove any negative connotations associated with an emergency permit, primarily by adding that a substantial improvement in the environment and/or the protection of human health will result if an emergency permit is issued.

RESPONSE: The Department believes that the proposed language set forth in this provision is appropriate.

COMMENT: N.J.A.C. 7:14A-2.2. One comment stated that there is no justification for the exclusion of discharge to surface water (NJPDES/DSW) from the emergency permit process, particularly when this type of permit could qualify for an emergency permit under N.J.A.C. 7:14A-2.2(a).

RESPONSE: The Federal NPDES program was delegated to New Jersey by the USEPA, and the USEPA has stated that they would not accept the emergency permit provision for discharge to surface water permits. At the present time, the only mechanism for an emergency discharge to surface water is through the provisions of the Spill Compensation and Control Act in the presence of a State "On-Scene Coordinator." N.J.S.A. 58:10-23.11 et seq. See also N.J.A.C. 7:14A-3.1.

COMMENT: N.J.A.C. 7:14A-2.3. Eight comments were received stating that it would be wrong to shut down essential services merely because of delayed written response or other human error.

RESPONSE: The permittee has six months to submit an application to renew a permit. When the existing permit expires, the permittee may not discharge without a permit. A permittee who intends to continue discharging beyond the expiration date of an existing permit is required to file an application for renewal at least 180 days prior to the expiration of that existing permit. N.J.A.C. 7:14A-2.3 clarifies that the burden is on the permittee to submit an application in a timely manner.

COMMENT: N.J.A.C. 7:14A-2.4(a). Several comments were received which criticized the Department's proposed two-part certification. It is argued that the purpose of certification is to maximize the accuracy of information submitted to the Department. The persons most knowledgeable regarding the contents of applications are the technical staff responsible for preparing a given application. Such technical staff have considerable expertise in matters of environmental regulation. Conversely, it is not realistic to assume that a vice president located a great distance from a facility in New Jersey who has no contract or direct first-hand knowledge of the facility, a senior officer in central corporate management, or the superintendent responsible for overall operation of a facility can be as knowledgeable regarding the contents of a NJPDES permit application as the staff who prepare the application. Nor is there any basis for the assumption, implicit in the proposed rule, that such technical staff are any less reliable than the very senior level persons to whom certification requirements apply under the proposed amendment. Accordingly, it is suggested that the certification language be modified to require a one-part certification by the person with principal responsibility for preparation of the subject NJPDES permit application or the highest ranking official at the facility, that the certification language be modified to require the signature of only a Plan Manager or a similar position as provided for under N.J.A.C. 7:14A-2.4(b)2, or that the certification language be modified to comport with companion regulations adopted by the United States Environmental Protection Agency at 40 CFR 122.22.

RESPONSE: The Department believes that it is appropriate that the "highest ranking corporate, partnership, or governmental officer or official at the facility" as provided at N.J.A.C. 7:14A-2.4(a)1 be held to have personal knowledge as to the truth, accuracy and completeness of all NJPDES permit applications. Responsibility for the operations at the site must be in some identifiable and responsible corporate, partnership, or governmental officer or official who has personal knowledge of these activities. The Department cannot be required to sanction the unwillingness of the owner or operator of a facility to identify an official willing to take responsibility for the operations at that facility. Although some of the required NJPDES permit application information may come from other individuals at the facility, the signing officer or official has a duty to make such information her/his personal knowledge prior to submittal to the Department. In addition, the Department believes that the required certification at N.J.A.C. 7:14A-2.4(a)2 is not unduly burdensome and that it is necessary to ensure full compliance with the Act and this subchapter by a corporation, partnership, sole proprietorship, or governmental entity by making the applicable official liable for submittals on behalf of the corporation, partnership, sole proprietorship, or governmental entity that are not "true, accurate and complete".

COMMENT: N.J.A.C. 7:14A-2.4(a). One comment was received which stated that the proposed certification language would, contrary to the Water Pollution Control Act at N.J.S.A. 58:10A-10(f), subject a corporate officer to civil or criminal sanctions where there is no knowledge on that individual's part that the information provided is inaccurate.

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Under the Act, penalties may be imposed only where a person "knowingly" makes a false statement or representation in any application or document.

RESPONSE: The Department disagrees. Pursuant to N.J.S.A. 58:10A-10(f), the Department may assess a civil penalty against a corporate officer for a willful or negligent failure to comply with the provisions of N.J.A.C. 7:14A-2.4(a) in the absence of any knowledge of wrongdoing on her/his part. However, the Department may only assess a criminal penalty under N.J.S.A. 58:10A-10(f) where the corporate official has "knowingly" made a false statement or representation in any application or document.

COMMENT: N.J.A.C. 7:14A-2.4(b). Two comments were received which requested that the Department, in requiring that "[a]ll reports required by permits" may be signed by a duly authorized representative, specify that such "position having responsibility for the overall operation of the regulated facility or activity, such as a position of plant manager, operator of a well or well field, superintendent or person of equivalent responsibility" include the laboratory technician or chemist who prepares such reports or an engineer.

RESPONSE: The Department believes that the inclusion of a laboratory technician, chemist or other similar position within the context of "duly authorized representative" would be inconsistent with the regulatory framework established in the signatory provision. It is the Department's position that corporate, partnership, sole proprietorship, and governmental compliance is furthered by placing liability for noncompliance on the shoulders of the highest officials.

COMMENT: N.J.A.C. 7:14A-2.5(a)li. Several comments were received requesting that N.J.A.C. 7:14A-2.5(a)l be changed to the following: "The permittee shall comply with all conditions of this permit. No pollutant shall be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit. The discharge of any pollutant not specifically authorized in the NJPDES application shall be evaluated by the Department, and the Department shall in its sole judgment, determine whether such discharge constitutes a violation of the permit. In any event it should not constitute a violation if the permittee can prove by clear and convincing evidence that the discharge of the unauthorized pollutant did not result from any of the permittee's industrial activities which contribute to the generation of its wastewaters. Any permit violation as determined by the Department constitutes a violation of the State Act or other authority of these regulations and is grounds for enforcement action; for permit termination; or for denial of a permit renewal application."

RESPONSE: The Department disagrees with the suggested language and has made no change to the proposal. The Department's language more accurately reflects the legislative intent and purpose of the enabling statute.

COMMENT: N.J.A.C. 7:14A-2.5(a)li. One comment was received which questioned why, if the Department has the authority to issue a NJPDES permit, it is necessary to state that a NJPDES permit will not be issued that is not in compliance with the State Act or this chapter.

RESPONSE: Although the commentor is technically correct in stating that it may not be necessary to reiterate this, this language is retained as a statement of the Department's position.

COMMENT: N.J.A.C. 7:14A-2.5(a)liii. One comment was received which requested that this section be changed to read "non-compliance" instead of "compliance."

RESPONSE: The Department has determined that this subparagraph will not be adopted. The Department has reconsidered this proposed addition and has decided that this section should not be revised to provide for a variance to achieve effluent concentration limits by dilution.

COMMENT: N.J.A.C. 7:14A-2.5(a)2. Several writers stated that this provision appears to be in contradiction to N.J.A.C. 7:14A-2.3(a).

RESPONSE: The Department agrees. This provision has been amended so as to be consistent with N.J.A.C. 7:14A-2.3(a), and is recodified at 7:14A-2.5(a)4.

COMMENT: N.J.A.C. 7:14A-2.5(a)2. One comment was received which suggested that the Department adopt wording changes to reflect a timely application rather than receipt of a permit, such as "... the permittee shall make a timely reapplication prior to recontinuing the regulated activity."

RESPONSE: The Department has amended this provision to be consistent with N.J.A.C. 7:14A-2.3, and has recodified it at 7:14A-2.5(a)4.

COMMENT: N.J.A.C. 7:14A-2.5(a)3. One comment requested that this paragraph be amended to comport with 40 C.F.R. 122.22(a)3.

RESPONSE: Since this comment goes beyond the scope of the proposed changes to this provision, it cannot be considered for adoption at this time. To do so would constitute a substantive change requiring reproposal pursuant to N.J.A.C. 1:30-4.3. However, the Department may consider such a change in future rulemaking.

COMMENT: N.J.A.C. 7:14A-2.5(a)4. Several comments were received which stated that the language "adversely affected" and "reasonable likelihood of adversely affecting" are not easily definable, and thus "ceasing discharge" is an action which should be considered depending upon the circumstances, but not unilaterally required.

RESPONSE: The Department believes that the proposed language does not clearly set forth when and how a discharger shall correct any adverse impact on the environment resulting from noncompliance with its NJPDES permit. The Department is clarifying the language of this provision upon adoption, and recodifying it at N.J.A.C. 7:14A-2.5(a)6.

COMMENT: N.J.A.C. 7:14A-2.5(a)5. Several comments were received which stated that this section should be changed to comport with 40 C.F.R. 122.41(e) and the existing N.J.A.C. 7:14A-2.5(a)5, because it is arguable as to what constitutes "as efficiently as possible," what is adequate funding and effective management, and that it is inappropriate to require operation of backup equipment except when necessary to maintain compliance with permit conditions.

RESPONSE: Since this comment goes beyond the scope of the proposed changes to this provision, it cannot be considered for adoption at this time. To do so would constitute a substantive change requiring reproposal pursuant to N.J.A.C. 1:30-4.3. However, the Department may consider such a change in future rulemaking.

COMMENT: N.J.A.C. 7:14A-2.5(a)5. Several comments were received which requested that operators of treatment works for sanitary landfills and land application of sludge and septage continue to remain exempt from required licensing under the "Water Supply and Wastewater Operators' Licensing Act", N.J.S.A. 58:11-64 et seq.

RESPONSE: The Department believes the proposed amendment which eliminates the specific licensing exemption under the "Water Supply and Wastewater Operators' Licensing Act", N.J.S.A. 58:11-64 et seq., is appropriate for the owner or operator of a sanitary landfill, which may include leachate collection and treatment systems. The Department's interpretation of N.J.S.A. 58:11-64 et seq. is that land application of sludge and septage operators are not required to obtain a wastewater operators license under this statute.

COMMENT: N.J.A.C. 7:14A-2.5(a)5. One comment stated that there are situations where a licensed operator is not necessary, as there is nothing to operate. Specifically, this commentor was concerned that a water treatment plant sludge lagoon, permitted by the Department as part of the water treatment process, should be incorporated with the water treatment plant operator license.

RESPONSE: A water treatment plant sludge lagoon is a treatment works as defined under N.J.A.C. 7:14A-1.9. State law and rules require a treatment works to have a licensed operator (Water Supply and Wastewater Operators' Licensing Act, N.J.S.A. 58:11-64 et seq. and the regulations concerning the Examining and Licensing of Operators, N.J.A.C. 7:10-13.10, respectively). The Licensing Board of Examiners considered the suggestion of incorporating the water treatment plant operator license with the industrial wastewater treatment system and decided that two separate licenses were appropriate.

COMMENT: N.J.A.C. 7:14A-2.5(a)6. One comment requested that this paragraph be clarified by stating the following: "... the filing of a request by the permittee for a permit modification, revocation and re-issuance, or termination shall not automatically stay any permit condition."

RESPONSE: As the inclusion of the word "automatically" does not have an impact, the Department has not made the suggested change.

COMMENT: N.J.A.C. 7:14A-2.5(a)9. Several comments were received which stated that this paragraph should be modified to comport with 40 C.F.R. 122.41(i).

RESPONSE: Since this comment goes beyond the scope of the proposed changes to this provision, it cannot be considered for adoption at this time. To do so would constitute a substantive change requiring reproposal pursuant to N.J.A.C. 1:30-4.3. However, the Department may consider such a change in future rulemaking.

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COMMENT: N.J.A.C. 7:14A-2.5(a)10ii. One comment was received which stated that the following should be added to this subparagraph: "If the permittee used a certified in-house lab and plans to have the laboratory criteria amended to include any new parameters not previously contained in the NJPDES permit, the permittee may use its in-house lab to conduct analyses on such new parameters for a period of up to 12 months, during which time proper documentation must be submitted to amend the laboratory criteria to include the new parameters."

RESPONSE: Since this comment goes beyond the scope of the proposed changes to this provision, it cannot be considered for adoption at this time. To do so would constitute a substantive change requiring reproposal pursuant to N.J.A.C. 1:30-4.3. However, the Department may consider such a change in future rulemaking.

COMMENT: N.J.A.C. 7:14A-2.5(a)12i. One comment was received which stated that this paragraph should be changed to read "would result in new or increased discharges" to be consistent with the language in the Water Pollution Control Act, specifically N.J.S.A. 58:10A-6f(4).

RESPONSE: The Department believes that the language proposed in the amendment, "could change the nature or increase the quantity of pollutants discharged" has the same regulatory effect as "new or increased."

COMMENT: N.J.A.C. 7:14A-2.5(a)12ii. Several comments were received which stated that it is inappropriate for the Department to require Department approval prior to undertaking any planned changes in the permitted facility. In addition, it was stated that, read literally, this would put the Department in the position of approving planned changes which will lead to non-compliance.

RESPONSE: The Department has reevaluated its position and will not adopt this change for N.J.A.C. 7:14A-2.5(a)12ii.

COMMENT: N.J.A.C. 7:14A-2.5(a)12vi(2). One comment requested that this sub-subparagraph should be amended to comport with 40 C.F.R. 122.41(K)6, which provides for a 24 hour time frame for reporting discharge non-compliance.

RESPONSE: This sub-subparagraph was not proposed for amendment and therefore no changes can be considered for adoption.

COMMENT: N.J.A.C. 7:14A-2.5(a)13ii. One comment stated that language relative to short term emergencies should be deleted in this section, stating that it is contrary to the statute and judicial interpretation.

RESPONSE: The Department has determined that it will reserve this section in order to ensure that rules that relate to sludge will be consistent with the Statewide Sludge Management Plan.

COMMENT: N.J.A.C. 7:14A-2.5(a)13iv. One comment stated that it is premature to include a reference to the Statewide Sludge Management Plan, which has not yet been promulgated and may be altered as a result of the public hearing process.

RESPONSE: The Department agrees. The Department will therefore reserve N.J.A.C. 7:14A-2.5(a)13iv until the Statewide Sludge Management Plan is adopted.

COMMENT: N.J.A.C. 7:14A-2.6(b)3. Several comments were received questioning the justification for financial assurance. Specifically, questions were received questioning what criteria would be used, stating that there are available civil and criminal provisions in the New Jersey and Federal Water Pollution Control Acts, and that this requirement should apply only to non-public entities.

RESPONSE: It is a reasonable condition of permit issuance to require financial assurance to ensure that the terms and conditions of the permit can be met. The Department may require financial assurance to secure from the permittee the financial means necessary to correct the environmental degradation which may result from the discharger's activities.

COMMENT: N.J.A.C. 7:14A-2.8(a)1ii. Two comments were received which requested that the language in this passage be changed to that adopted by the USEPA at 40 C.F.R. 38034.

RESPONSE: Since this comment goes beyond the scope of the proposed changes to this provision, it cannot be considered for adoption at this time. To do so would constitute a substantive change requiring reproposal pursuant to N.J.A.C. 1:30-4.3. However, the Department may consider such a change in future rulemaking.

COMMENT: N.J.A.C. 7:14A-2.9(b). Ten comments were received which stated that it is not necessary or appropriate for facilities which have their own State certified labs to go to another lab for sampling as required by this subsection.

RESPONSE: The Department recognizes that this will place an additional burden on some facilities. However, the Department feels that

laboratory data submitted by a permittee regarding compliance with a NJPDES permit is sufficiently critical to the protection of the public health, safety and the environment so as to require analysis by an independent laboratory in some circumstances.

COMMENT: N.J.A.C. 7:14A-2.11(b)1i(6). One comment stated that the certification for transfer of ownership should be signed by the plant manager or the person described in N.J.A.C. 7:14A-2.4(b)2.

RESPONSE: The Department disagrees. The Department has detailed the basis upon which it believes the proposed signatory provision is consistent with the environmentally protective NJPDES rules in the response to comments set forth at N.J.A.C. 7:14A-2.4 above.

COMMENT: N.J.A.C. 7:14A-2.12(b)4. One comment was received questioning the intent of the Department in eliminating the specific reference to "material shortage" as the basis for modification of a compliance schedule.

RESPONSE: The Department believes that "material shortage" is a vague term and is implicitly included within the term "other events."

COMMENT: N.J.A.C. 7:14A-2.14(a)10 and 2.14(a)11. It was requested that the following language be added:

"10. Correct technical mistakes, such as errors in calculation or mistaken interpretations of law made in determining permit conditions.

11. Change permit narratives to more accurately reflect changes in facility operation provided that such changes have no effect on permit limits."

RESPONSE: Since this comment goes beyond the scope of the proposed changes to this provision, it cannot be considered for adoption at this time. To do so would constitute a substantive change requiring reproposal pursuant to N.J.A.C. 1:30-4.3. However, the Department may consider such a change in future rulemaking.

COMMENT: N.J.A.C. 7:14A-2.15. Several comments were received which stated that the non-compliance and program reporting done by the Department provides valuable information to the regulated community and the public and that the Department would be remiss in deleting this section.

RESPONSE: The Department has determined that the reporting requirements mandated by the USEPA are inappropriate for inclusion in the Department's rules. The Department, however, will continue to provide non-compliance and program reporting in conformance with the Department's delegation agreement. This material is made available to the public.

COMMENT: N.J.A.C. 7:14A-3.10(c). One comment was received which requested that the first line of this section be changed from "may constitute" to "constitutes," suggesting that there is no need to have a detailed upset rule which, even if satisfied, leaves open the question of whether the permittee has established this as a defense.

RESPONSE: The comments go beyond the scope of the proposed changes to this provision and therefore cannot be considered for adoption at this time.

COMMENT: N.J.A.C. 7:14A-10.7. Many commentators objected to this section, stating that it is nearly impossible to determine the source of a violation of ground water standards since no background water quality is available for many sites, that a requirement that hydraulic conductivity of the liner be 1 x 10 cm/sec is appropriate for hazardous waste containment, and that the Department is attempting to classify spill containment structures as surface impoundments.

RESPONSE: As the Department will not adopt its proposed amendment to the definition of surface impoundment set forth in N.J.A.C. 7:14A-1.9, it has not adopted the proposed language.

COMMENT: One comment was received which challenged the authority of the Department to use Division Order No. 64, which establishes corrective action criteria for various carcinogenic and non-carcinogenic compounds.

RESPONSE: The comment goes beyond the scope of the proposed changes to these regulations and therefore cannot be considered at this time.

The Department has determined that the language of N.J.A.C. 7:14A-1.3(a)5 is inconsistent with the proposed Statewide Sludge Management Plan and is therefore reserving this section until adoption of the Plan.

The Department is expanding N.J.A.C. 7:14A-2.4(b) and (c) to both clarify the certification responsibilities of NJPDES permittees and to make this provision consistent with the signatory provisions set forth in other Department rules.

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The Department has deleted paragraph (a) in N.J.A.C. 7:14A-2.5 as proposed since the paragraph was merely a recitation of sections applicable in and of themselves.

The Department has reconsidered the proposed additions to N.J.A.C. 7:14A-2.5(a)lii and (a)liii and has decided that these subparagraphs should not be revised to provide for variance to achieve effluent concentrations limits by dilution. Such an amendment could have the effect of lessening the environmental protectiveness of the NJPDES permitting process. The Department is therefore initiating a change to the proposal upon adoption that deletes the proposed amendment.

The Department is initiating a change to the proposal upon adoption to N.J.A.C. 7:14A-2.14(a)l to clarify the extent to which the correction of a typographical error may be considered a minor modification of a final NJPDES permit. Specifically, the Department considers typographical errors to include language changes that have no legal or substantive effect.

The Department has deleted subsection (b) in N.J.A.C. 7:14A-10.7 as proposed due to its decision not to adopt the proposed definition of surface impoundment. As the present subsection (b) merely repeated the definition of my surface impoundment found and retained in N.J.A.C. 7:14A-1.9, it too is deleted upon adoption.

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]***).

7:14A-1.2 Scope

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

(c) No person shall discharge any pollutant except in conformity with a valid NJPDES permit. A discharger which existed prior to the effective date of this chapter who has submitted a complete application shall be deemed to satisfy only the requirement of applying for a permit. This shall not preclude the Department from taking any appropriate enforcement action for violation of the State Act, this chapter, or other applicable law or regulation.

(d) It is the intent of the Department to regulate, at a minimum, the following by means of the New Jersey Pollutant Discharge Elimination System (NJPDES) permit program:

1. (No change.)

2. Discharge of industrial pollutants by a significant indirect user and any other indirect discharger into a municipal or privately owned treatment works. All indirect dischargers are required to either obtain and comply with an individual NJPDES permit, or comply with the applicable NJPDES permit-by-rule provisions. No exemption, express or implied, conferred by this chapter from the requirement of obtaining an individual NJPDES permit shall be so construed as to bar criminal prosecution under N.J.S.A. 58:10A-10f of any indirect discharger who discharges in violation of the requirements of this chapter applicable to indirect dischargers who are not required to obtain individual NJPDES permits. See also N.J.A.C. 7:14A-13.4(c). Although all dischargers who discharge to privately owned treatment works may not be required to obtain a NJPDES permit, such dischargers shall comply with N.J.A.C. 7:14-3.13(a)13:

3.-14. (No change.)

(e) The Department may issue, at a minimum, permits under the NJPDES permit program for:

1.-9. (No change.)

10. Discharges from operating and non-operating sanitary landfills (a DGW or DSW).

7:14A-1.3 General prohibitions

(a) The Department shall not issue a NJPDES permit:

1. When the conditions of the permit do not provide for compliance with the applicable requirements of the State and Federal Acts or regulations;

2. When the NJPDES permit would be for the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

3.-4. (No change.)

***[5. To the owner or operator of any facility which disposes of sewage sludge into a landfill after March 15, 1985, except as necessary**

to meet short term emergencies identified by the Department. In such emergencies, the Department may grant written approval under the terms of an Administrative Consent Order for the disposal of dewatered sewage sludge in a Department designated landfill with a Department approved liner and leachate collection system.]*

7:14A-1.4 Consolidation of permit processing

(a) It is the intent of the Department to issue a single NJPDES permit which includes all of the discharges covered by this chapter. (See N.J.A.C. 7:14A-1.2(e)). The Department has designated the types of discharges separately because certain information required in the permit applications and certain provisions that will be established as permit conditions are only applicable to a specific type of discharge. Herein where a person is required to obtain a permit for a discharge covered under this chapter, this shall mean that a specific type of discharge shall be included in and regulated by the NJPDES permit. The general provisions of this chapter shall apply to all types of discharges included in the NJPDES regulations (Subchapters 1, 2, 7 and 8 of this chapter). Additional conditions may apply to specific types of discharges.

(b) Whenever a facility or activity has more than one type of discharge covered by this chapter, application for all required permits to discharge shall be made at the earliest required date of filing for any of the discharges in accordance with N.J.A.C. 7:14A-2.1(g) and 10.1.

(c) Whenever a facility or activity has more than one type of discharge covered by this chapter, processing of two or more applications for those permits shall, to the extent practicable as determined by the Department, be consolidated. The first step in consolidation shall be the simultaneous preparation of draft permits.

(d) Whenever draft permits are simultaneously prepared, the statements of basis (required under N.J.A.C. 7:14A-7.7) or fact sheets (N.J.A.C. 7:14A-7.8), administrative records (required under N.J.A.C. 7:14A-7.9), public comment periods (N.J.A.C. 7:14A-8.1), and any public hearings (N.J.A.C. 7:14A-8.3) on those permits shall also be consolidated. The final permits shall, to the extent practicable, be simultaneously issued. Final permits need not be simultaneously issued if, in the judgment of the Department, joint processing would result in unreasonable delay in the issuance of one or more approval(s) for discharge.

(e) Whenever an existing facility or activity requires additional permits covered by this chapter, the Department shall, to the extent practicable, coordinate the expiration date(s) of the new permit(s) with the expiration date(s) of the existing permit(s) so that all permits simultaneously expire. Processing of the subsequent application for renewal shall then be consolidated.

(f) Processing of permit applications under (b), (c), and (d) above may be consolidated as follows:

1. The Department, at its discretion may, to the extent practicable, consolidate permit processing;

2. Permit ***[applications]*** ***applicants*** may recommend whether or not the processing of their applications shall be consolidated.

7:14A-1.6 Conflict of interest

(a) Any board or body which approves all or portions of a permit shall not include as a member any person who receives, or has during the previous two years received, a significant portion of direct or indirect income ***[from]*** ***from*** permit holders or applicants for a permit.

(b) (No change.)

(c) For the purposes of this section, "direct or indirect income from permit holders or applicants for a permit" is not received when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the primary sources of income.

7:14A-1.7 Application

(a) (No change.)

(b) The Department may require an applicant to provide additional information where such information, in the opinion of the

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Department, is necessary to attain all relevant facts concerning the permit application or permit, including proprietary data. Any failure to submit such information shall constitute valid cause for denial of the permit or other remedy as provided by law. The applicant may, however, assert a claim of confidentiality pursuant to N.J.A.C. 7:14A-11.1 et seq.

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

(e) Any provision of this chapter or the application thereof to any person shall be revised automatically, as necessary to reflect more stringent requirements adopted by the EPA.

7:14A-1.9 Definitions

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

...
 "Construction" means any placement, assembly or installation of facilities, equipment or treatment works, or modification of existing buildings, structures or facilities which is necessary for the placement, assembly or installation of new source facilities, equipment or treatment works, or entering into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering and design studies do not constitute a contractual obligation for the purposes of this definition.

...
 ["Infiltration percolation lagoon" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area which holds an accumulation of liquid or solid wastes or wastes containing free liquids or other pollutants, which is not an injection well, and discharges to the soil, geologic material and/or the groundwater.]*

...
 ["Infiltration percolation lagoon" means a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold and transmit fluids to the subsurface and which is not an injection well.]*

...
 ["Lagoon" means any facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area which holds an accumulation of liquid or solid wastes or other pollutants for which the Department has not made a determination of whether it shall be classified as an infiltration percolation lagoon or surface impoundment.]*

...
 "Land application" means the controlled discharge of pollutants onto or into the surface soil horizon in such a manner that the materials are treated by and/or become incorporated into and blended with the soil.

...
 "Process to further reduce pathogens" (PFRP) means any sludge stabilization process which meets the criteria for PFRP set forth in Appendix II B in 40 CFR 257, including, at a minimum, composting, heat drying, heat treatment, and thermophilic aerobic digestion.

...
 "Process to significantly reduce pathogens" (PSRP) means any sludge stabilization process which meets the criteria for PSRP set forth in Appendix II A in 40 CFR 257, including, at a minimum, aerobic digestion, air drying, anaerobic digestion, composting and lime stabilization.

...
 "Residuals" means accumulated solids and liquids which are by-products of a physical, chemical, biological, thermal or mechanical process or partial process. Residuals include, at a minimum, sludge*[,] *and* seepage *[and dredge spoils]*.

...
 "Sludge" means the solid residue and associated liquid resulting from the physical, chemical or biological treatment of wastewater.

"Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area *[]*formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to*[] which]* hold*[s]* an accumulation of liquid or solid wastes or wastes containing free liquids, *[or other pollutants]* and which is not an injection well. *[]*Examples of surface impoundments are holding, storage, settling and aeration pits, and ponds and lagoons.*[]*

...
 ["Tank" means any stationary device which holds liquid or solid pollutant and which provides the necessary structural strength through self-supporting sides to totally contain the pollutant. (Structures which meet the definition of a tank under the Federal Solid Waste Disposal Act and State Solid Waste Management Acts may also meet the definition of an infiltration percolation lagoon, lagoon or surface impoundment under the NJPDES regulations.)]

7:14A-2.1 Applications for a NJPDES Permit

(a) (No change.)

(b) The following persons shall obtain a NJPDES permit:

1. A person who currently owns any part of a facility which include an activity regulated pursuant to this chapter; and
2. A person who currently operates any facility which includes an activity regulated pursuant to this chapter.

(c) Whenever, pursuant to (b)1 and/or 2 above, more than one person is required to obtain a NJPDES permit for one or more activities at a specific site, the Department shall issue a single permit which lists all of these persons as permittees.

(d) (No change in text.)

(e) A person whose facility is the cause of, or whose activity results in, more than one discharge at a single site, shall separately describe each discharge in the application.

(f) Any person whose facility is the cause of, or whose activity results in, a discharge which is the subject of any of the applications required by these regulations and which threatens public health, or causes or contributes to any contravention of applicable water quality standards or effluent limitations, may be required, notwithstanding the filing of an application or pending filing requirement, to abate such pollution.

(g) The schedule for submission of applications is as follows:

1. Any person planning to undertake any activity which shall result in a discharge to surface water (DSW) shall apply for a discharge allocation certificate (DAC) in accordance with N.J.A.C. 7:14A-3.3 unless prior to March 6, 1981 a facilities plan which includes such facility has been approved pursuant to Section 201 of the Federal Act. This provision does not exempt a facility from obtaining a NJPDES permit in accordance with this chapter.

2. Any person planning to undertake any activity which shall result in a discharge covered by this chapter (except for a discharge to surface water (DSW)) shall apply for a NJPDES permit in accordance with N.J.A.C. 7:14A-7.2 at least 180 days prior to building, installing, or substantially modifying any facility for the collection or treatment of any pollutant.

3. Any person planning to undertake any activity which shall result in a discharge covered by this chapter which does not require a facility for the collection or treatment of waste (such as land application of sludge) shall apply for a NJPDES permit at least 90 days prior to planned discharge.

4. (No change.)

5. Any person planning to continue discharging after the expiration date of an existing NJPDES permit shall file an application for renewal at least 180 days prior to expiration of the existing permit.

6. (No change.)

(h) All applicants for NJPDES permits shall provide the following information to the Department using the application form provided by the Department:

1.-3. (No change.)

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4. The name, address, and telephone number of all current owners and operators, as well as the ownership status, and status as Federal, State, private, public or other entity;

5.-6. (No change.)

7. Identification of administrative orders, administrative consent order*s*, notices of violations, complaints filed, or other corrective or enforcement action(s) required by any governmental agency(ies) with regard to the operation of the applicant at that site concerning pollution within the previous *[ten]* *five* years;

8.-10. (No change.)

(i) The Department may require that an applicant for an NJPDES permit provide additional data, reports, specifications, plans or other information concerning the existing or proposed pollution control program. For new discharges to ground water permits and all discharges to surface water permits, the Department shall not make a final determination on any application until such time as the applicant has supplied the requested information and corrected any deficiencies therein.

(j) Applicant*s* shall keep records of all data used to complete permit applications and any supplemental information submitted under N.J.A.C. 7:14A-2.1, 3.2(DSW), 4.4(IWMF), 5.8(UIC) and N.J.A.C. 7:14A-6 and 7:14A-10 for a period of at least five years from the date the application is signed.

(k) Applicants for NJPDES permits shall provide endorsements and comments as follows:

1. Prior to the submission of an application for a permit to discharge to surface or ground water, DAC, or to gain approval for a treatment works or sewer connection, the applicant shall submit (return receipt requested) a copy of the application and the applicable information required pursuant to this chapter to the affected sewage authority(ies) and to the municipality in which the discharge(s) will be located, with a request that they endorse the application.

i. Permit applications submitted to the Department for a new discharge to surface water or ground water, DAC, or to gain approval for a treatment works or sewer connection shall include the endorsement from both the affected sewage authority(ies) and municipality in which the discharge(s) will be located.

ii. Applications submitted to the Department for renewal of NJPDES permits or discharges which exist as of March 6, 1981 shall include a copy of all endorsements and comments received or a copy of the request for an endorsement and receipt (return receipt requested) sent to the affected sewage authority(ies) and municipality in which the discharge(s) will be located.

2. An endorsement by a municipality shall be as follows:

i. An endorsement by a municipality concerning a proposed discharge or treatment works shall include the following statements:

(1)-(2) (No change.)

ii. An endorsement shall be in the form of a resolution by the governing body.

iii. (No change.)

iv. (No change in text.)

3. An endorsement by an affected sewage authority shall be as follows:

i. (No change.)

ii. An endorsement by an affected sewage authority concerning a proposed discharge of pollutants or a treatment works shall include the following statements:

(1)-(2) (No change in text.)

iii.-iv. (No change in text.)

4. The lack of an endorsement for renewal of NJPDES permits *[or]* *of* discharges which exist as of March 6, 1981 may have the following effect:

i. ***The affected sewage authority or municipality must endorse the application or submit comments within 60 days of the request for endorsement.*** Prior to the expiration of the 60-day period to request an endorsement, the municipality or sewage authority may request a 30-day extension for review of a request for endorsement.

ii. Any document issued by a sewage authority or a municipality which is a tentative, preliminary, or conditional approval shall not be considered an endorsement.

iii. (No change in text.)

iv. Where the municipality or affected sewage authority denies an endorsement or does not issue an endorsement, the Department shall review the reasons for denial or for the lack of endorsement, if known. These reasons shall be considered by the Department in making a determination of whether to issue a draft permit in accordance with N.J.A.C. 7:14A-7.6.

5. The lack of an endorsement or denial of an endorsement for a new discharge to surface or ground water, DAC, or approval of a treatment works or sewer connection shall have the following effect:

i. When the affected sewage authority or municipality denies endorsement to a project, the permit application may be determined by the Department to be incomplete for processing.

ii. Where the municipality or affected sewage authority denies an endorsement or does not issue an endorsement, the Department shall review the reason for denial or for the lack of endorsement, if known.

7:14A-2.2 Emergency permits

(a) The Department may issue an emergency permit to allow the activities listed in (b) below only after making a finding that:

1. An imminent and substantial endangerment to human health will result unless an emergency permit is granted; or

2. Except with regard to an injection under the UIC program, an imminent and substantial endangerment to the environment will result unless an emergency permit is granted; or

3. A substantial and irretrievable loss of oil or gas resources will occur unless an emergency permit is granted to a Class II well under the UIC program; and

i. Timely application for a permit could not practicably have been made; and

ii. The injection will not result in the movement of fluids into underground sources of drinking water; or

4. A substantial delay in production of oil or gas resources will occur unless an emergency permit is granted to a new Class II well under the UIC program, and the authorization will not result in the movement of fluids into an underground source of drinking water.

(b) Notwithstanding any other provision of this chapter, the Department may issue an emergency permit, except for a DSW, to an owner and/or operator of a facility to allow:

1. Discharge of pollutants, where such discharge is unpermitted or the discharge consists of pollutants not covered by an effective permit; or

2. Treatment and storage or disposal of hazardous waste for a non-permitted IWMF facility or of hazardous waste not covered by the permit for an IWMF facility with an effective permit; or

3. A specific underground injection which has not otherwise been authorized by permit.

(c) The requirements for issuance of an emergency permit are as follows:

1. The Department may issue an emergency permit by either oral or written permission. Oral permission may only be given by the Director, Division of Water Resources, or his/her designee and shall be followed within five days by a written emergency permit.

2. The Department may issue an emergency permit for any duration not to exceed 180 days, except:

i. (No change.)

ii. That land application of municipal or nonhazardous sludge temporarily permitted in order to prevent an imminent and substantial endangerment to the health of persons shall be for ***a term*** no longer *[term]* than ***that*** required to prevent the hazard, or 180 days, whichever is less.

iii. That storage of municipal or nonhazardous sludge temporarily permitted in order to prevent an imminent and substantial endangerment to the health of persons shall be for a term no longer than that required to prevent the hazard, or one year, whichever is less.

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3. The Department shall clearly specify in the emergency permit the hazardous wastes to be received, and the manner and location of their treatment, storage, disposal, or injection.

4. The Department shall clearly specify in the emergency permit the rate, quantity, and quality of pollutants to be discharged and the monitoring which is required.

5. The Department may immediately terminate the emergency permit at any time following a determination that termination is appropriate to protect human health and the environment.

6. The Department shall publish, along with the emergency permit, a public notice of the emergency permit pursuant to N.J.A.C. 7:14A-8.1, including:

i.-v. (No change.)

7. The Department shall issue an emergency permit regarding injections only after a complete NJPDES permit application has been submitted, and shall only be effective until final action on the application.

8. The Department may condition the emergency permit regarding injection under the UIC program in any manner that the Department determines is necessary to ensure that the injection shall not result in the movement of fluids into an underground source of drinking water; and

9. The Department shall incorporate in the emergency permit, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter and 40 CFR Parts 264 and 266.

7:14A-2.3 Continuation of expired permits

(a) The conditions of an expired permit are continued in force pursuant to the "Administrative Procedure Act," N.J.S.A. 52:14B-11, until the effective date of a new permit if:

1. The permittee has submitted a timely and complete application for renewal as provided in N.J.A.C. 7:14A-2.1, 3.2 (DSW), 4.4 (IWMF), 5.8 (UIC), and 10; and

2. The Department, without fault on the part of the permittee, fails to issue a new permit with an effective date on or before the expiration date of the previous permit (e.g., when issuance is impracticable due to constraints of time or resources).

(b) (No change.)

(c) When the permittee is not in compliance with the conditions of the expired permit, the Department, in its discretion, may choose to do one or more of the following:

1.-4. (No change.)

(d) In the event that the permittee fails to submit a timely and complete application for renewal, all discharges of pollutants from the permittee's facility shall cease unless the Department, in its discretion, grants approval in writing to the permittee to continue to discharge in conformance with the terms and conditions of the expired permit. Such approval shall terminate upon the effective date of the renewed permit.

7:14A-2.4 Signatories

it to the Department the following two-part certification:

1. "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."

i. The certification required by (a)1 shall be signed by the highest ranking corporate, partnership, or governmental officer or official at the facility to which the information pertains.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this *[demonstration]* ***application*** and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false ***inaccurate or incomplete*** information, including the possibility of fine and/or imprisonment."

i. The certification required by (a)2 shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either the principal executive officer or ranking elected official.

(b) All reports required by permits, other information requested by the Department and all permit applications submitted for Class II wells under N.J.A.C. 7:14A-5.8 shall be signed by a person described in (a)2i above*, **who shall make the certifications set forth in (a)2 above,*** or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in (a) above;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as a position of plant manager, operator of a well or well field, superintendent or person of equivalent responsibility ***(a duly authorized representative may thus be either a named individual or any individual occupying a named position)***; and

3. The written authorization is submitted to the Department.

***4. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this section shall be submitted to the Department prior to or together with any report, information, or applications to be signed by an authorized representative;**

5. A duly authorized person shall make the following certification:

i. "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."

(c) **All signatures required by this section shall be notarized.***

7:14A-2.5 Conditions applicable to all permits

[(a) Permittees shall comply with all applicable conditions, including, at a minimum, this section and N.J.A.C. 7:14A-3.10 and 3.11 (DSW), 4.4, 4.5 and 4.6 (IWMF), 5.9 (UIC) and 6 (DGW).]

*[1.]***(a)*** Permittees shall comply with the following:

*[i.]***1.*** The permittee shall comply with all the conditions of its permit. No pollutant shall be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit. The discharge of any pollutant not specifically regulated in the NJPDES permit or listed and quantified in the NJPDES application shall constitute a violation of the permit, unless the permittee can prove by clear and convincing evidence that the discharge of the unauthorized pollutant did not result from any of the permittee's industrial activities which contribute to the generation of its wastewaters. Any permit noncompliance constitutes a violation of the State Act or other authority of this chapter and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application. The Department shall not issue a NJPDES permit when the conditions of the permit do not provide for compliance with the applicable requirements of the State and Federal Acts or regulations.

*[ii.]***2.*** A permittee shall not attain any effluent concentration by dilution. Nor shall a permittee increase the use of process water or cooling water or otherwise attempt to dilute a discharge as a partial or complete substitute for adequate treatment to attain permit limitations or water quality standards. ***[A request for a variance may be evaluated, on a case by case basis, pursuant to the variance procedures in N.J.A.C. 7:14A-9.6.]***

[iii. When evaluating requests for a variance from the requirements of this section, the Department shall consider the threat to human health or safety or the environment that would result from compliance.]

*[iv.]***3.*** (No change in text.)

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[2. If the permittee wishes to continue an activity regulated by a NJPDES permit after the expiration of the permit, the permittee shall apply for and obtain a new permit prior to recontaining the regulated activity.]

4. The permittee may only continue on activity regulated by a NJPDES permit after the expiration of the permit if it has complied with the provisions of N.J.A.C. 7:14A-2.3.

*[3.]****5.*** (No change.)

*[4.]****6.*** The permittee shall take *[all reasonable steps to minimize or prevent any discharge in violation of its NJPDES permit which has adversely affected or has a reasonable likelihood of adversely affecting human health or the environment and to take]* such corrective actions as are required under the Federal Act and State Act, and other relevant provisions of law, including, at a minimum, accelerated and/or additional types of monitoring, temporary repairs, ceasing discharge or other *[mitigating]* measures ***to mitigate the effects of violating its NJPDES permit*.**

*[5.]****7.*** The permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment works, facilities, and systems of treatment and control (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance includes, at a minimum, effective performance based on designed facility removals, adequate funding, effective management, adequate operator staffing and training and adequate laboratory and process controls including appropriate quality assurance procedures as described in 40 CFR 136 and applicable State law and regulations. All permittees who operate a treatment works shall satisfy the licensing requirements of the "Water Supply and Wastewater Operators Licensing Act," N.J.S.A. 58:11-64 et seq., or other applicable law. This provision requires the operation of back-up or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit or where required by applicable law or regulation.

*[6.]****8.*** A permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance shall not stay any permit condition.

*[7.]****9.*** A permit shall not convey any property rights of any sort or any exclusive privilege.

*[8.]****10.*** The permittee shall furnish to the Department within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating its permit, or to determine compliance with its permit. The permittee shall also furnish, upon request of the Department, copies of records required to be kept by its permit.

*[9.]****11.*** The permittee shall allow the Department, or an authorized representative, upon the presentation of credentials, to:

- i. Enter upon the permittee's premises where a discharge source is or might be located or in which monitoring equipment or records required by a permit are kept, for purposes of inspection, sampling, copying or photographing. Photography shall only be allowed as related to the discharge;
- ii.-iv. (No change.)

*[10.]****12.*** The permittee shall provide for monitoring and records as follows:

- i. (No change.)
- ii. The permittee shall perform all analyses in accordance with the analytical *[text]* ***test*** procedures approved under 40 CFR Part 136. Where no approved test procedure is available, the permittee shall indicate a suitable analytical procedure and shall provide the Department with literature references or a detailed description of the procedure. The Department shall determine the appropriate procedure and so require in the NJPDES permit. The laboratory performing the analyses for compliance with this regulation shall previously have been Approved and/or Certified by the Department for the analysis of those specific parameters in accordance with

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N.J.A.C. 7:18-1 et seq. Information concerning laboratory approval and/or certification may be obtained from:

*[New Jersey Department of Environmental Protection
Division of Administrative Operations
Bureau of Collection and Licensing Management Services
CN 402
Trenton, New Jersey 08625
(609) 292-4071]*

***New Jersey Department of Environmental Protection
Division of Financial Management, Planning and
General Services
Bureau of Revenue
CN 402
Trenton, New Jersey 08625
(609) 530-5760***

iii. The permittee shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by its permit, and records of all data used to complete the application for its permit, for a period of at least five years from the date of the sample, measurement, report or application. This period may be extended by written request of the Department at any time.

iv.-v. (No change in text.)

vi. If the permittee monitors any pollutant more frequently than required by its permit, using test procedures approved under 40 CFR 136 or as specified in its permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or MRF.

vii. (No change in text.)

*[11.]****13.*** The permittee shall conform with the signatory provisions pursuant to N.J.A.C. 7:14A-2.4.

*[12.]****14.*** The permittee shall conform to the reporting requirements as follows:

i. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could change the nature or increase the quantity of pollutants discharged.

ii. The permittee shall give reasonable advance notice to the Department *[and shall receive Departmental approval prior to undertaking]* ***of*** any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

iii. The permittee shall not transfer its permit to any person except after notice to the Department. The Department may require information, revocation, or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the appropriate Act. (See N.J.A.C. 7:14A-2.12; in some cases, modification or revocation and reissuance is mandatory.)

iv. The permittee shall report monitoring results at the intervals specified in the permit.

v. The permittee shall submit reports of compliance or non-compliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of its permit no later than 14 days following each schedule date.

vi. The permittee shall include the following in each report:

(1)-(4) (No change.)

vii. The permittee shall report all instances of noncompliance not reported under (a)12i, iv, v, and vi above, at the time monitoring reports are submitted. The reports shall contain the information required in the written submission listed in (a)12vi.

viii. Where the permittee becomes aware that it has failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, the permittee shall promptly submit such facts or information.

*[13.]****15.*** The permittee shall conform with the requirements for the disposal of sludge and septage under:

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- i. (No change.)
- ii. *["The Solid Waste Management Act" N.J.S.A. 13:1E-1 et seq., which provides that landfills shall not be used for the disposal of septage after March 15, 1981, and dewatered sewage sludge after March 15, 1985, except as necessary to meet short term emergencies identified by the Department. In such emergencies, the Department may grant written approval under the terms of an Administrative Consent Order for the disposal of dewatered sludge in a Department designated landfill. One year from the effective date of the NJPDES regulations, any person who is disposing of sewage sludge in a sanitary landfill shall submit to the Department a statement of the following:
 - (1) Justification for the need to dispose of dewatered sewage sludge in a landfill; and
 - (2) A description of the steps being taken to eliminate the need for landfilling of dewatered sewage sludge.]* ***(Reserved)***
- iii. (No change.)
- iv. *["The provisions concerning management of sludge in the Statewide Sludge Management Plan promulgated pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the State Act, and the Solid Waste Management Act, N.J.S.A. 13:1E et seq.]* ***(Reserved)***

7:14A-2.6 Establishing permit conditions

- (a) In addition to conditions required in all permits for all programs (N.J.A.C. 7:14A-2.5), the Department shall establish conditions, as required on a case-by-case basis, in permits for all programs under N.J.A.C. 7:14A-2.7 (Duration of permits), N.J.A.C. 7:14A-2.8(a) (Schedules of compliance), and N.J.A.C. 7:14A-2.9 (Monitoring).
- (b) In addition to conditions required in all permits for a particular program, N.J.A.C. 7:14A-3.10 and 3.11 (DSW), N.J.A.C. 7:14A-4.4 (IWMF), N.J.A.C. 7:14A-5.9 (UIC), and N.J.A.C. 7:14A-6 (DGW), the Department shall establish conditions in permits for the individual programs, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the State and Federal Acts, other applicable authority and the regulations promulgated thereunder.
 - 1.-2. (No change in text.)
 - 3. The Department may establish conditions for financial assurance in any NJPDES permit. Instruments that the Department may approve include, at a minimum, letters of credit, insurance, surety bonds, and trust funds.
 - (c) The Department shall incorporate all permit conditions either expressly or by reference in the permit. If incorporated by reference, the Department shall provide in the permit a specific citation to the applicable regulations or requirements.

7:14A-2.8 Schedules of compliance

- (a) The Department may, when appropriate, specify in the permit a schedule of compliance leading to compliance with the State and Federal Acts and all other applicable authority for this chapter.
 - 1. The Department shall establish schedules of compliance under this section as follows:
 - i.-ii. (No change.)
 - iii. For discharges into wells under the UIC program, schedules of compliance shall require compliance not later than three years after the effective date of the permit.
 - 2. Except as provided in (b)ii below, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.
 - i.-ii. (No change.)
 - 3. The Department shall require in the permit that the permittee shall, no later than 14 days following each interim date or the final date of compliance, notify the Department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if (a)liii above is applicable.

- (b) A NJPDES permit applicant or permittee may cease conducting activities regulated by the State Act rather than continue to operate and meet permit requirements as follows:
 - 1. (No change.)
 - i. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or
 - ii. (No change.)
 - 2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term shall include the termination date, the permit shall contain a schedule leading to termination which shall ensure timely compliance with applicable requirements, or for a DSW discharge, compliance no later than the statutory deadline in the Federal Act.
 - 3. If the permittee is undecided as to whether it shall cease conducting regulated activities, the Department may issue or modify a permit to contain two schedules:
 - i. One schedule shall lead to timely compliance with all applicable requirements, compliance for DSW permits shall be no later than the statutory deadline in the Federal Act;
 - ii. The second schedule shall lead to cessation of regulated activities by a date which shall ensure timely compliance with all applicable requirements, compliance for DSW permits shall be no later than the statutory deadline in the Federal Act;
 - iii. Both schedules shall contain an identical interim deadline requiring a final decision as to whether the permittee shall cease conducting regulated activities. A decision by the permittee to continue conducting regulated activities shall be made by a date which ensures sufficient time to comply in a timely manner with all applicable requirements.
 - iv. Each permit containing two schedules shall include a requirement that the permittee, after making a final decision under (b)3iii above, shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and shall follow the schedule leading to termination if the decision is to cease conducting regulated activities.
 - 4. (No change.)
 - (c) (No change.)
 - (d) New sources or sources which recommence discharging after terminating operations, and those sources which had been indirect dischargers which commence discharging into surface waters of the State, do not qualify for compliance schedules under this section except as provided in N.J.A.C. 7:14A-2.12(b)3. In addition, new sources requiring a discharge to surface water (DSW) permit are also subject to the requirements of N.J.A.C. 7:14A-3.3(DAC).
 - (e) All permittees shall provide a report indicating the status of compliance in accordance with N.J.A.C. 7:14A-2.5.

7:14A-2.9 Requirements for recording and reporting of monitoring results

- (a) (No change.)
- (b) The Department may, upon written notification, require any facility which possesses or is required to possess a NJPDES DSW, DAC, DGW, SIU or UIC permit to annually have one of its permit-required periodic sampling analyses performed by an independent laboratory which is not owned or controlled by the permittee. This shall be broadly construed to include all the sample analyses that are to be performed during the course of routine hourly, daily, monthly, quarterly, semi-annual, or annual sampling.

7:14A-2.11 Transfer of permits

- (a) Except as provided in (b) below, to reflect changes in ownership and identify the new permittee and incorporate such other requirements as may be necessary under the State and Federal Acts, a permit may be modified under N.J.A.C. 7:14A-2.12*[(c)lii]**(b)5* or a minor modification may be made under N.J.A.C. 7:14A-2.14(a)4.
- (b) As an alternative to transfers under (a) above, any NJPDES permit, except a UIC permit for a well injecting hazardous waste, may be automatically transferred to a new permittee if:

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1. The current permittee notifies the Department in writing by certified mail of the proposed transfer as follows:

i. Where production levels, products produced, rates of discharge, and wastewater characteristics will remain unchanged, the following information shall be submitted at least 90 days prior to a proposed "transfer date":

(1)-(5) (No change.)

(6) A notarized statement signed by the new principal officer stating that he/she has read the NJPDES permit and certifies (pursuant to N.J.A.C. 7:14A-2.4(d)) to abide by all the conditions of the permit and that the production levels, products produced, rates of discharge and wastewater characteristics shall remain unchanged.

ii. (No change.)

2. The current permittee [shall] includes in the notice of proposed transfer a written agreement between the existing and new permittees which includes a specific date for transfer of permit responsibility, coverage, and liability between the parties. In the case of a UIC permit, the notice shall demonstrate that the financial responsibility requirements of N.J.A.C. 7:14A-5.10(a)7 shall be met by the new permittee; and

3.-4. (No change.)

7:14-2.12 Modification, suspension or revocation of permits

(a) When the Department determines, pursuant to (b) below, that just cause exists to modify, suspend or revoke a NJPDES permit, the Department may modify, suspend, or revoke the permit accordingly, subject to the limitations of (c) below, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. (When the permit modification satisfies the criteria in N.J.A.C. 7:14-2.14 for "minor modifications", the permit shall be modified without a draft permit or public review. Otherwise, a draft permit shall be prepared and the procedures in N.J.A.C. 7:14A-7 and 8 shall apply.) When a permit is suspended or is revoked, the entire permit is reopened and subject to revision.

(b) The following are causes for modification, suspension, or revocation of a permit:

1. Material and substantial alterations or additions to the permitted facility, activity, or discharge which occurred after permit issuance which justify the application of permit conditions that are different or absent from those in the existing permit.

2. New information has been received by the Department. Permits other than for UIC Class II and III wells may be modified, suspended, or revoked during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For DSW general permits (N.J.A.C. 7:14A-3.9) this cause shall include any information indicating that the cumulative effects on the environment are unacceptable.

3. Promulgation of any applicable water quality standard, effluent standard, other standard or by judicial decision after the permit is issued. The Department may provide for a schedule of compliance in accordance with N.J.A.C. 7:14A-2.8 in order for the permittee to meet such standards.

4. Applicable only for modification of a compliance schedule, good cause, determined by the Department, and including an act of God, strike, flood, or other events over which the permittee has little or no control and for which there is no control and for which there is no reasonably available remedy. However, in no case shall a NJPDES compliance schedule be modified to extend beyond an applicable statutory deadline. (See also N.J.A.C. 7:14A-2.14(c) (minor modifications) and (c)11 below (DSW) innovative technology). This does not preclude the Department from the revocation or suspension of a compliance schedule for good cause shown.

5. Notification has been received by the Department (pursuant to N.J.A.C. 7:14A-2.5(a)12iii) of a proposed transfer of the permit. A permit may also be modified to reflect a transfer after the effective date of an automatic transfer (N.J.A.C. 7:14A-2.11(b)) but will not

be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(c) The Department may only modify, suspend or revoke a permit for discharges to surface water (DSW):

1. When the permittee has filed a request for a variance under Section 6 of the State Act (N.J.S.A. 58:10A-6) or Sections 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a), or for "fundamentally different factors" under the Federal Act within the time specified in N.J.A.C. 7:14A-3.2 and the Department processes the request under the applicable provision of N.J.A.C. 7:14A-9.7;

2. When required to incorporate an applicable toxic effluent standard or prohibition under 307(a) of the Federal Act or Sections 6 and 7 of the State Act (see N.J.A.C. 7:14A-3.13(a));

3. When required by the "reopener" conditions in a permit, which are established in the permit under N.J.A.C. 7:14A-3.13(a) (for toxic effluent limitations) or 40 CFR Section 403.10(e) (pretreatment program);

4. Upon request of a permittee who qualifies for effluent limitations on a net basis under N.J.A.C. 7:14A-3.14(h);

5. When a permittee is no longer eligible for net limitations, as provided in N.J.A.C. 7:14A-3.14(h);

6. As necessary under 40 CFR Section 403.8(e) (compliance schedule for development of pretreatment program) and N.J.A.C. 7:14A-13.1 et seq.;

7. Upon failure of the State to notify, as required by Section 402(b)(3) of the Federal Act, another state whose waters may be affected by a discharge from the State;

8. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR Part 125.3(c);

9. When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or by-product any toxic pollutant which was not reported in the permit application under N.J.A.C. 7:14A-10.3(a)11;

10. To establish a "notification level" as provided in N.J.A.C. 7:14A-3.13(a)6;

11. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under Section 202(a)(3) of the Federal Act for 100 percent of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under Section 202(a)(2) of the Federal Act. In no case shall the compliance schedule be modified to extend beyond an applicable Federal Act statutory deadline for compliance;

12. To include a plan or compliance schedule for the management of septage or sludge in accordance with the Statewide Sludge Management Plan.

(d) Suitability of the facility location for UIC and IWMF shall not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

7:14A-2.14 Minor modification of permits

(a) The Department, with the consent of the permittee, may modify a permit to make corrections or allowances for changes in the permitted activity listed in this section. Such changes shall be made without following the procedures set forth in N.J.A.C. 7:14A-7 and 8. A permit modification not processed as a minor modification under this section shall be made for cause and shall conform with the draft permit and public notice requirements of N.J.A.C. 7:14A-7 and 8 as required in N.J.A.C. 7:14A-2.12. Minor modification may only:

1. Correct typographical errors ***(and language changes that have no legal or substantial effect)***;

2.-4. (No change.)

5. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to

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have all pollution control equipment installed and in operation prior to discharge pursuant to N.J.A.C. 7:14A-3.3;

6. Change, for IWMF and DSW permits, the lists of facility emergency coordinators or equipment in the permit's contingency or emergency plan;

7. Change, for UIC permits:

i. The types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the Department after reviewing information required under N.J.A.C. 7:14A-10.13, would not interfere with the operation of the facility or its ability to meet conditions prescribed in the permit, and would not change its classification;

ii. The construction requirements approved by the Department pursuant to N.J.A.C. 7:14A-5.10 (establishing UIC permit conditions), provided that any such alteration shall comply with the requirements of this chapter;

8.-9. (No change.)

7:14A-2.15 (Reserved)

7:14A-3.3 Discharge allocation certificate (DAC)

(a) (No change.)

(b) When to apply: Any person planning to undertake any activity which will result in a DSW, except as exempted pursuant to N.J.A.C. 7:14A-2.1(g)1, shall apply for a DAC at least 90 days prior to the initiation of final engineering designs, specifications and plans of a treatment works.

(c)-(h) (No change.)

...

7:14A-5.17 Criteria and standards applicable to Class V injection wells

(a) (No change.)

(b) Inventory requirements: All Class V injection wells covered by rule shall submit inventory information to the Department. The authorization by rule for any Class V well which fails to comply within the time specified in (b)3 below shall be automatically terminated.

1.-2. (No change.)

3. Deadlines:

i. (No change.)

ii. Owners or operators of new injection wells must submit inventory information when an application is made for a well drilling permit, or, if the well drilling permit requirement is not applicable, in accordance with the schedule in N.J.A.C. 7:14A-2.1(g)2.

(c)-(g) (No change.)

...

7:14A-10.1 Schedule for submission of applications

(a) Any person planning to discharge shall apply in accordance with the schedule in N.J.A.C. 7:14A-2.1(g).

(b)-(e) (No change.)

(f) Whenever a facility has more than one type of discharge covered by these regulations, application for all required permits to discharge shall be made at the earliest required date of filing for any of the discharge permits in accordance with N.J.A.C. 7:14A-2.1(g) and (i) below.

(g) (No change.)

(h) Except as described in N.J.A.C. 7:14A-2.1(g), and N.J.A.C. 7:14A-10.2 existing dischargers shall apply for a NJPDES permit in compliance with the following schedule except where the Department determines that an application should be submitted in furtherance of a consolidated permit system (see N.J.A.C. 7:14A-1.4) or where the Department makes a determination that certain dischargers shall file sooner because of potential environmental hazards or threat to the public health or safety or other factors consistent with the intent of the State Act:

1.-5 (No change.)

(i)-(j) (No change.)

7:14A-10.3 Discharges to surface waters (DSW)

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

(c) NJPDES Permit—Upon receipt of a Discharge Allocation Certificate the applicant may design and construct a treatment works to meet the limits stated unless the Department determines that a Treatment Works Approval is also required in accordance with subchapter 12 of this chapter. At least 60 days prior to planned discharge, the applicant shall apply for a NJPDES permit to discharge in accordance with N.J.A.C. 7:14-7.2. The following items and the information required for a DAC must be submitted for a NJPDES permit.

1. (No change.)

2. Request for Endorsement, where applicable, (see N.J.A.C. 7:14A-2.1(k)).

3.-7. (No change.)

(d) (No change.)

7:14A-10.5 Indirect discharges

(a) (No change.)

(b) Where to apply for a NJPDES permit:

1. (No change.)

2. A person planning any activity which is described in (a)1 above shall apply in accordance with N.J.A.C. 7:14A-2.1(g)2.

3.-4. (No change.)

(c)-(g) (No change.)

7:14A-10.7 Surface Impoundments

(a) (No change.)

*(b) To meet the definition of being a surface impoundment under N.J.A.C. 7:14A-1.9, the permittee shall provide the Department with the following:

1. The certified results of tests proving that the hydraulic conductivity of the liner is equal to or less than 1×10^{-7} cm/sec for the material being contained;

2. For new construction, plans showing design specifications and materials for the surface impoundment;

3. For existing lagoons, as-built plans; and,

4. Proof that any discharges to ground water from the lagoon have not created a violation of the Ground Water Quality Standards (N.J.A.C. 7:9-6) or the permittee's NJPDES permit limits.*

*[(c)**(b)* (No change in text.)

*[(d)-(e)**(c)-(d)* (No change.)

* (e)**[(f)]* A request for endorsement shall be submitted in accordance with N.J.A.C. 7:14A-2.1(k) (new source dischargers only).

7:14A-10.9 Land application of effluents by spray irrigation

(a)-(e) (No change.)

(f) A request for endorsement shall be submitted in accordance with N.J.A.C. 7:14A-2.1(k).

(g) (No change.)

7:14A-10.10 Land application of effluents by overland flow

(a)-(e) (No change.)

(f) Request for endorsement in accordance with N.J.A.C. 7:14A-2.1(k).

(g) (No change.)

7:14A-10.11 Land disposal by infiltration-percolation lagoons

(a)-(e) (No change.)

(f) Request for endorsement in accordance with N.J.A.C. 7:14A-2.1(k).

7:14A-12.9 Request for endorsement

The applicant shall submit a request for endorsement in accordance with N.J.A.C. 7:14A-2.1(k).

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(a)

**DIVISION OF HAZARDOUS WASTE MANAGEMENT
Hazardous Waste Criteria, Identification and Listing
Relating to Spent Solvents and Spent Solvent
Mixtures;
Administrative Correction of Citations to Conform
with Adoption
Adopted Amendments: N.J.A.C. 7:26-8.13, 8.15 and
8.16
Administrative Corrections: N.J.A.C. 7:26-7.4, 8.3,
8.4, 9.2, 10.6 and 10.8**

Proposed: July 20, 1987 at 19 N.J.R. 1278(a).
Adopted: October 16, 1987 by Richard T. Dewling,
Commissioner, Department of Environmental Protection.
Filed: October 23, 1987 as R.1987 d.486 with technical changes
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-6(a)2.
DEP Docket Number: 026-87-06.
Effective Date: November 16, 1987.
Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:
No comments were received from the public on these proposed amend-
ments.
Due to the amendments to N.J.A.C. 7:26-8.15, it has been necessary
to correct certain citations to that section throughout the text of the
chapter at N.J.A.C. 7:26-7.4, 8.3, 8.4, 8.15, 9.2, 10.6 and 10.8. No new
substantive requirements have been imposed. These corrected citations
are set forth below.

Additionally, the proposal text contained a typographical error in that
I and T hazard codes were added to waste number U359 at N.J.A.C.
7:26-8.15. These hazard codes have been deleted.

Full text of the adoption follows (additions to proposal shown in
boldface with asterisks *thus*, deletions from proposal shown in
brackets with asterisks *[thus]*).

7:26-8.13 Hazardous waste from non-specific sources

(a) Industry	EPA Hazardous Waste Number	Hazardous Waste	Hazard Code
Generic	F001	The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of 10 percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004 and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
	F002	The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, 0-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and the still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
	F003	The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of one or more of the non-halogenated solvents listed above or those	(I*)

solvents listed in F001, F002, F004 and F005; and the still bottoms from the recovery of these spent solvents and spent solvent mixtures.

F004 The following spent non-halogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and all still bottoms from the recovery of these spent solvents and spent solvent mixtures. (T)

F005 The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of one or more of the non-halogenated solvents listed above or those solvents listed in F001, F002 or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures. (I,T)

NOTE: (I,*T*) Hazard Code should be used to specify mixtures containing ignitable and toxic constituents.

F006-F028 (No change.)

7:26-8.15 Discarded commercial chemical products, off-specification species, containers, and spill residues thereof

(a) The following chemicals, manufactured for commercial or manufacturing use, their off-specification species, or their container residues or spill residues are hazardous wastes if and when they are discarded or intended to be discarded, in lieu of their original intended use:

1. Any commercial chemical product, or manufacturing chemical intermediate having the generic name and listed *[(e), (f), or (g)]* ***in 5, 6, or 7*** below.

2. Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed *[(e), (f), or (g)]* ***in 5, 6, or 7*** below.

3. Any container or inner liner removed from a container that has been used to hold any commercial chemical product or manufacturing chemical intermediate having the generic name listed in *[(e)]* ***5*** below, unless:

*[1]****i.*** The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

*[2]****ii.*** The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or tests conducted by the generator, to achieve equivalent removal; or

*[3]****iii.*** In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

4. Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in *[(e), (f), or (g)]* ***5, 6, or 7***, below, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if met specifications, would have the generic name listed in *[(e), (f), or (g)]* ***5, 6, or 7*** below.

5. The following commercial chemical products or manufacturing chemical intermediates, referred to in *(a) through (d)]* ***1 through 4*** above, are identified as acute hazardous waste (H). These wastes and their corresponding EPA Hazardous Waste Numbers are:
(No change from Table in text.)

6. The following commercial chemical products or manufacturing chemical intermediates, referred to in (a)1, 2 and 4 above, are identified as toxic wastes (T) unless otherwise designated. These wastes and their corresponding EPA Hazardous Waste Numbers are:

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...	U359	2-Ethoxyethanol *[(I,T)]*
...	U359	Ethylene glycol monoethyl ether *[(I,T)]*
...	U171	2-Nitropropane (I,T)
...	U171	Propane, 2-nitro-(I,T)
...		

7. The following commercial chemical products or manufacturing chemical intermediates, referred to in *[a, b, and d]* ***1, 2, and 4*** above, are identified as toxic wastes T unless otherwise designated. These wastes and their corresponding NJDEP hazardous waste numbers are:

AGENCY NOTE: The Department of Environmental Protection is studying wastes to be included in this *[subsection]* ***paragraph***.

7:26-8.16 Hazardous constituents

(a) Waste streams containing the hazardous constituents listed below, classified as hazardous waste by the generator or the Department pursuant to N.J.A.C. 7:26-8.6 and 8.7, shall be manifested with the corresponding waste code numbers. Test methods approved by the Department shall be used in determining whether the waste in question contains a given hazardous constituent.

C506	Ethylene glycol monoethyl ether (Ethanol, 2 ethoxy)
C507	2-Nitropropane (Propane, 2-nitro)
...	

OAL NOTE: The paragraph text of N.J.A.C. 7:26-8.16(a) set forth above is as adopted by the Department of Environmental Protection and published on September 8, 1986 at 18 N.J.R. 1798(a). This text was erroneously omitted from the 12-15-86 N.J.A.C. update which provides the current text of the rule. The correct text will be published in the Code with the next Title 7 update.

Full text of the citations requiring administrative correction due to the amendments to N.J.A.C. 7:26-8.15 follows (corrections shown in boldface with asterisks ***thus***; deletions shown in brackets with asterisks ***[thus]***).

7:26-7.4 Hazardous waste generator responsibilities

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

1.-9. (No change.)

10. As of September 25, 1986, no generator shall offer for final land disposal in New Jersey acute hazardous waste (H), as listed in N.J.A.C. 7:26-8.15 *[(e)]* ***[a]5***, and toxic waste (T), as listed in N.J.A.C. 7:26-8.15 *[(f)]* ***[a]6***, except in accordance with the following:

i.-ii. (No change.)

11.-12. (No change.)

(b)-(j) (No change.)

7:26-8.3 Special requirements for hazardous waste generated by small quantity generators

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

(d) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulation under N.J.A.C. 7:26-7 through 11.1 et seq.

1. A total of one kilogram of any acutely hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14 or 8.15 *[(e)]* ***[a]5***.

2. A total of 100 kilograms of any residue or contaminated soil, water, waste or other debris resulting from the cleanup of a spill, into or on any land or water, of any acutely hazardous wastes listed in N.J.A.C. 7:26-8.13, 8.14 or 8.15 *[(e)]* ***[a]5***.

(f)-(i) (No change.)

7:26-8.4 Residues of hazardous waste in empty containers

(a) (No change.)

(b) A container or inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in N.J.A.C. 7:26-8.13, 8.14 or 8.15 *[(e)]* ***[a]5***, is empty if:

1.-2. (No change.)

3. A container or inner liner removed from a container that has held an acute hazardous waste identified in N.J.A.C. 7:26-8.13, 8.14 or 8.15 *[(e)]* ***[a]5*** *[of this chapter]* is empty if:

i.-iii. (No change.)

7:26-9.2 General prohibitions

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

(d) As of September 25, 1986, final land disposal of acute hazardous waste (H), as listed in N.J.A.C. 7:26-8.15 *[(e)]* ***[a]5***, and toxic waste (T), as listed in N.J.A.C. 7:26-8.15 *[(f)]* ***[a]6***, is prohibited by any person unless*[*]**:

1. The final disposal method is a land treatment unit, regulated in accordance with N.J.A.C. 7:14A-4, to treat and dispose of one or more of the wastes listed in N.J.A.C. 7:26-8.15 *[(e)]* ***[a]5** or ***6***;

2. (No change.)

7:26-10.6 Surface impoundments

(a)-(d) (No change.)

(e) Operational and maintenance standards for surface impoundments include the following:

1.-9. (No change.)

10. The following shall not be placed in hazardous waste surface impoundment for final disposal:

i. Acute hazardous waste (H), listed in N.J.A.C. 7:26-8.15 *[(e)]* ***[a]5***, and toxic waste (T), listed in N.J.A.C. 7:26-8.15 *[(f)]* ***[a]6***, unless:

11. (No change.)

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

(h) An owner or operator of a surface impoundment shall comply with the following closure requirements:

1. (No change.)

2. For existing surface impoundments (as defined in N.J.A.C. 7:26-1.4), which do not comply with (b)I above and which have not received acute hazardous waste (H) listed in N.J.A.C. 7:26-8.15 *[(e)]* ***[a]5*** or toxic waste (T) listed in N.J.A.C. 7:26-8.15 *[(f)]* ***[a]6***, the removal of the materials specified in (h)Iii and Iiii above may be deferred pending the approval by the Department of a containment plan for a total, permanent entombment of referenced materials in such a fashion that no release of contaminants into the environment shall occur during the post-closure period. In order to obtain such approval, the owner or operator shall:

i. Provide evidence that there has not been any contamination of soil or groundwater to date and that acute hazardous waste (H) listed in N.J.A.C. 7:26-8.15 *[(e) or (f)]* ***[a]5*** or toxic waste (T) listed in N.J.A.C. 7:26-8.15 *[(f)]* ***[a]6*** was not placed in the surface impoundment;

ii.-viii. (No change.)

3.-6. (No change.)

7:26-10.8 Hazardous waste landfills

(a)-(d) (No change.)

(e) Operational standards for hazardous waste landfills include the following:

1.-9. (No change.)

10. The following shall not be placed in a hazardous waste landfill: *[*]**;

i.-iii. (No change.)

iv. Acute hazardous waste (H) as listed in N.J.A.C. 7:26-8.15 *[(e)]* ***[a]5*** and toxic waste (T) as listed in N.J.A.C. 7:26-8.15 *[(f)]* ***[a]6***, unless the owner or operator receives from the generator a copy of documentation that the waste type(s) have been ap-

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proved by the Department of final land disposal in accordance with N.J.A.C. 7:26-7.4(a)9 and 10.

11.-21. (No change.)

(f)-(j) (No change.)

DIVISION OF ENVIRONMENTAL QUALITY

(a)

Commission on Radiation Protection Registration of Ionizing Radiation-Producing Machines and Radioactive Materials

Adopted Repeal and New Rules: N.J.A.C. 7:28-3

Proposed: May 18, 1987 at 19 N.J.R. 836(a)

Adopted: October 23, 1987, by Richard T. Dewling,
Commissioner, Department of Environmental Protection;
October 14, 1987 by Max Weiss, Chairman of the Commission
on Radiation Protection.

Filed: October 23, 1987 as R.1987 d.485 with substantive changes
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-1 et seq. and 26:2D-1 et seq.,
specifically 26:2D-7, 26:2D-9 and 26:2D-21.

DEP Docket Number: 015-87-04.

Effective Date: November 16, 1987.

Expiration Date: October 7, 1990.

Summary of Public Comments and Agency Responses:

A public hearing on this proposal was held at the Environmental Laboratory Building, Trenton, New Jersey on June 3, 1987 for the purpose of providing interested parties the opportunity to present testimony on the proposal. The comment period closed July 3, 1987. In response to the proposal, verbal testimony was received from two people representing Princeton University and written testimony was received from one person representing the University of Medicine and Dentistry of New Jersey.

N.J.A.C. 7:28-3.1

COMMENT: The proposed new rules would deny exemption from registration fees to State agencies. Although the Department needs to have sufficient funds to perform the inspection and survey services mandated by the Radiation Protection Act, it is inappropriate for one State agency to draw on the operating budget of another State agency to fund its essential activities. The Department should fund its essential activities directly from its legislative appropriations. State agencies plan their operating budgets and seek appropriations well in advance of the time funds are needed to operate their essential activities. Relying upon its exemption as a State agency under the rules proposed to be repealed, the University of Medicine and Dentistry of New Jersey has not had the opportunity to seek additional funds to pay registration fees. State agencies should be given a two year exemption from the fee in order to incorporate the cost into operating budgets for future fiscal years.

RESPONSE: While the Department and Commission acknowledge that State agencies must request additional funds in order to pay the registration fee from which they were previously exempt, all public and private facilities need to plan for the increased fees. The new registration fee schedule in N.J.A.C. 7:28-3.12 will not take effect for all units presently registered with the Department until May 19, 1988, the current expiration date for all registered machines. However, the new registration fee schedule will apply to all units which are initially registered with the Department after the effective date of these rules. State agencies routinely debit and credit for services provided to another State agency. Therefore, the rule will stand as proposed.

N.J.A.C. 7:28-3.1

COMMENT: N.J.A.C. 7:28-3.1(c) requires that a copy of the registration be retained at the facility for inspection by employees. Where are the registrations to be kept?

RESPONSE: The registration must be kept readily available at the facility for review by employees or the Department. This would be at

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a central location such as the radiation safety office in an industry or a hospital or at the site location for the radiation practitioner's machine(s).

N.J.A.C. 7:28-3.2

COMMENT: N.J.A.C. 7:28-3.2(a) needs to be clarified.

RESPONSE: N.J.A.C. 7:28-3.2(a) has been revised to provide:

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. Machines that are operated while on display must meet the requirements of N.J.A.C. 7:28-3.1.

N.J.A.C. 7:28-3.3

COMMENT: N.J.A.C. 7:28-3.3(a) states that each x-ray tube has to be registered. If a person has an x-ray tube stored in a cabinet for use in case the first one goes out, does the stored tube have to be registered?

RESPONSE: If a tube is kept on hand as a spare and is kept separated from the control panel, the spare tube does not have to be registered. When the spare tube is installed as an integral part of the x-ray system, the registration will have to be amended. N.J.A.C. 7:28-3.3(a) applies to two or more x-ray tubes sharing power from the same power supply, transformer, generator, and control panel where each tube can be selected by flipping a switch. In this case, each tube must be registered.

COMMENT: N.J.A.C. 7:28-3.3(c) refers to registration fees. Will the Department be changing the billing procedures that are currently in existence? That is, will the Department still send a bill to the registrant and determine the fee for the registrant?

RESPONSE: The Department is currently changing to a state-of-the-art method for computerizing its files and billing procedures. The Department will determine the registration fee based upon the information required of the registrant on the registration application form. The Department will then send the registrant the bill based upon the current yearly billing cycle.

N.J.A.C. 7:28-3.4

COMMENT: The intent of N.J.A.C. 7:28-3.4, pertaining to the temporary registration of ionizing radiation-producing machines, needs to be clarified. If the machine is going to be at a facility more than 60 days, a registration fee must be paid. If the length of time that a machine is going to stay at a facility is not known, the machine must be registered within 30 days after taking possession. If the machine is removed from the facility before the end of 60 days, it does not have to be registered. Is this correct?

RESPONSE: Within 30 days of taking custody or control of an ionizing radiation-producing machine for temporary use, an application must be filed for temporary registration. If the machine leaves the facility before 60 days, a disposal form must be filed to terminate (cancel) the temporary registration. No registration fee will be assessed. If the machine stays at the facility longer than 60 days, a registration fee will be charged retroactively to the initial date of registration. This registration will now be permanent.

N.J.A.C. 7:28-3.5

COMMENT: N.J.A.C. 7:28-3.5 requires the registration of radioactive material, source material and special nuclear material. Is there going to be some sort of guidance as to how this is going to be effective? How do we submit to the State of New Jersey for this information? Are we to send a copy of our interstate license? Is there an application form?

RESPONSE: There is an application form presently available from the Department to register the radioactive materials. A copy of the United States Nuclear Regulatory Commission (NRC) license is to be submitted to the Department along with the Radioactive Materials registration application form. To clarify the rule, N.J.A.C. 7:28-3.5(a) has been revised.

N.J.A.C. 7:28-3.8

COMMENT: N.J.A.C. 7:28-3.8 says that if your NRC license changes, you need to send an amendment to the State for the amended registration. If those NRC license changes do not affect the quantity of radioactive materials, is it the intent of the Department that we send a copy, for example as in the case of a broad license, of the appointment range and changes on an annual basis? Or is the Department just interested in changes in the quantities of materials.

RESPONSE: Clarification is needed. The wording of N.J.A.C. 7:28-3.8 has been changed.

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N.J.A.C. 7:28-3.10

COMMENT: The text of N.J.A.C. 7:28-3.10(c) mistakenly provides that "The Department may terminate a registration upon request submitted by the registration . . ." The proper wording should be "submitted by the registrant".

RESPONSE: The mistake has been corrected.

N.J.A.C. 7:28-3.12

COMMENT: In N.J.A.C. 7:28-3.12, which sets forth the registration fees, the numbering of the machine source categories has changed. Will the existing registrations be changed by the Department to correctly classify the existing registered machines or will the registrant be responsible for submitting new registration forms with this new classification?

RESPONSE: The commission has consulted with the Department and the change to the machine category for all systems currently registered will be done administratively by the Department's Bureau of Radiological Health. For machines registered after the effective date of these rules, the registrant will be responsible for selecting the correct machine category.

COMMENT: N.J.A.C. 7:28-3.12(d) provides that the registration fee can be paid only by a certified check or money order. Why is a business or personal check not acceptable?

RESPONSE: N.J.A.C. 7:28-3.12(d) has been revised to delete the requirement that fees be paid by certified check.

In addition, the Department has revised the listings of three of the listed machines to provide more accurate descriptions.

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

SUBCHAPTER 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 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.]* ***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. Machines that are operated while on display must meet the requirements of N.J.A.C. 7:28-3.1.***

(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 equipment 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]* ***or*** 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. ***Application forms for the registration of radioactive material are available from the De-**

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partment. When submitting an application, the applicant shall attach to the application a copy of 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.]* *when there is a change in the type and/or quantity of such material or when there is a change in the designated licensed user(s) or radiation safety officer.***

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. Notification shall be submitted on a form available from the Department. 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]* ***registrant*** 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:

Radioactive Material	Column A	Column B
	Not as a sealed source (microcuries)	As a sealed source (microcuries)
Antimony (Sb 124)	1	10
Arsenic 76 (As 76)	10	10
Arsenic 77 (As 77)	10	10
Barium 140+Lanthanum 140 (Ba 140+La 140)	1	10
Beryllium (Be 7)	50	50
Cadmium 109+Silver 109 (Cd 109+Ag 109)	10	10
Calcium 45 (Ca 45)	10	10
Carbon 14 (C 14)	50	50
Cerium 144+Praseodymium 144 (Ce 144+Pr 144)	1	10

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Cesium 137+Barium 137 (Ce 137+Ba 137)	1	10
Chlorine 36 (Cl 36)	1	10
Chromium 51 (Cr 51)	50	50
Cobalt 60 (Co 60)	1	10
Copper 64 (Cu 64)	50	50
Europium 154 (Eu 154)	1	10
Fluorine 18 (F 18)	50	50
Gallium 72 (Ga 72)	10	10
Germanium 71 (Ge 71)	50	50
Gold 198 (Au 198)	10	10
Gold 199 (Au 199)	10	10
Hydrogen 3 (Tritium H 3)	250	250
Indium 114 (In 114)	1	10
Iodine 131 (I 131)	10	10
Iridium 192 (Ir 192)	10	10
Iron 55 (Fe 55)	50	50
Iron 59 (Fe 59)	1	10
Lanthanum 140 (La 140)	10	10
Manganese 52 (Mn 52)	1	10
Manganese 56 (Mn 56)	50	50
Molybdenum 99 (Mo 99)	10	10
Nickel 59 (Ni 59)	1	10
Nickel 63 (Ni 63)	1	10
Niobium 95 (Nb 95)	10	10
Palladium 109 (Pd 109)	10	10
Palladium 103+Rhodium 103 (Pd 103+Rh 103)	50	50
Phosphorus 32 (P 32)	10	10
Polonium 210 (Po 210)	0.1	1
Potassium 42 (K 42)	10	10
Praseodymium 143 (Pr 143)	10	10
Promethium 147 (Pm 147)	10	10
Rhenium 186 (Re 186)	10	10
Rhodium 105 (Rh 105)	10	10
Rubidium 86 (Rb 86)	10	10
Ruthenium 106+Rhodium 106 (Ru 106+Rh 106)	1	10
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

Machine Source Category

	Initial *Registration* 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*, under table*)	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*, over table combination tube, C-arm unit*)	75.00	75.00
8. Medical Radiographic Fluoroscopic Units (portable*, C-arm*)	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)I to (a)II 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.

7:28-3.12 Fees for initial *registration* application *[for registration]* and annual registration of ionizing radiation-producing machines

(a) The fees for initial registration applications and for annual registration*s* are as follows:

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DIVISION OF ENVIRONMENTAL QUALITY

(a)

**Commission on Radiation Protection
Licensing of Naturally Occurring and Accelerator
Produced Radioactive Materials**

Adopted Repeal: N.J.A.C. 7:28-4

Adopted New Rule: N.J.A.C. 7:28-4

Proposed: June 15, 1987 at 19 N.J.R. 1041(a).

Adopted: October 23, 1987 by Richard T. Dewling,
Commissioner, Department of Environmental Protection;
October 14, 1987 by the Commission on Radiation Protection,
Max Weiss, Chairman.

Filed: October 23, 1987 as R.1987 d.483, with substantive changes
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3 et seq. and 26:2D-1 et seq.,
specifically 26:2D-7 and 9.

DEP Docket Number: 022-87-05.

Effective Date: November 16, 1987.

Expiration Date: October 7, 1990.

Summary of Public Comments and Agency Responses:

A public hearing on this proposal was held at the Environmental Laboratory Building, Trenton, New Jersey on July 22, 1987 for the purpose of providing interested parties the opportunity to present testimony on the proposal. The comment period closed July 31, 1987. No comment were received.

The Department has made the following changes based on the Department's own review which indicated a need for citation corrections, typographical corrections or further clarification.

In N.J.A.C. 7:28-4.1(b), "by-product" has been added to further clarify the materials which are excepted from this provision, as it, along with source materials and special nuclear materials, is licensed by the Nuclear Regulatory Commission.

In N.J.A.C. 7:28-4.2(a), "and/" has been deleted to clarify the Department's intent that any or all of the activities specified is permitted in accordance with this provision.

In N.J.A.C. 7:28-4.5(e), the term "or" has been substituted for "and" to clarify the Department's intent that any or all of the activities specified is covered by this provision.

The reference in N.J.A.C. 7:28-4.5(g)7 has been corrected to read "N.J.A.C. 7:28-4.4(a), 4.9, 4.14, 4.18, 8.2, 8.4, and 13".

In N.J.A.C. 7:28-4.7(c)6 and 7, the term "radioactive" has been substituted for "by-product" to accurately reflect the type of materials covered by specific State licenses.

In N.J.A.C. 7:28-4.8, the term "radioactive" has been added to clarify the type of materials referred to in this section.

In N.J.A.C. 7:28-4.8(h)3i, the subsection referenced has been corrected to read "N.J.A.C. 7:28-4.3(b)", and the term "exempt" has been added and the phrase "for quantities generally licensed under" has been deleted to correctly reflect that the subsection referenced deals with exempt concentrations of radioactive substances. The phrase "listed in" has been added for clarity.

The subparagraph referenced in N.J.A.C. 7:28-4.8(i)3iv has been corrected to read "N.J.A.C. 7:28-4.5(f)6ii".

Full text of the adoption follows (additions to proposal indicated in boldface with asterisk *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

**SUBCHAPTER 4. LICENSING OF NATURALLY
OCCURRING AND ACCELERATOR
PRODUCED RADIOACTIVE MATERIALS**

7:28-4.1 License required for production, transfer, receipt,
acquisition, ownership, possession or use of all naturally
occurring and accelerator produced radioactive materials

(a) This subchapter shall apply to persons who produce, transfer,

receive, acquire, own, possess or use any naturally occurring or accelerator produced radioactive materials in this State.

(b) No person shall produce, transfer, receive, acquire, own, possess or use any radioactive substance obtained from naturally occurring materials or produced by an accelerator unless authorized by a specific State license issued by the Department, a general State license as provided in N.J.A.C. 7:28-4.5, or an exemption as provided in N.J.A.C. 7:28-4.3. Excepted from this provision are *by product* source materials and special nuclear materials.

7:28-4.2 Recognition of licenses from other jurisdictions

(a) Any person who possesses a specific license or equivalent licensing document issued by a Federal agency or any other state may, pursuant to such document, transport, receive, possess, *[and/]or use the radioactive materials specified in such license within this State for a period not in excess of 20 days in any period of 12 consecutive months without obtaining a specific license from the Department provided that:

1. The license does not limit the activity to specified installations or locations;

2. The licensee notifies the Department in writing at least two days prior to the time that such radioactive material is brought into this State. Such notification shall indicate the location, period, and type of proposed possession and use within this State, and shall be accompanied by a copy of the pertinent licensing document. If in a specific case the two-day period would impose an undue hardship on the user, he may, upon application to the Department, obtain permission to proceed sooner;

3. The licensee complies with all the terms and conditions of the license;

4. The licensee provides such other information as the Department may request; and

(b) The Department may withdraw, limit or qualify its acceptance of such licenses issued by another agency, or any produce distributed pursuant to such licensing documents, upon determining that such action is necessary in order to prevent undue hazard to public health and safety or property.

7:28-4.3 Exemption from requirement for a license for production,
transfer, receipt, acquisition, ownership, possession or use
of all naturally occurring and accelerator produced
radioactive materials

(a) Any person is exempt from the requirement for a license for the production, transfer, receipt, acquisition, ownership, possession or use of all naturally occurring and accelerator produced radioactive materials as follows:

1. The person is a plant or laboratory owned by or operated on behalf of a Federal agency;

2. The person is a common or contract carrier and is transporting or storing radioactive materials covered by N.J.A.C. 7:28-4.7 in the regular course of carriage for another, or storage incident thereto;

3. To the extent that such person receives, possesses, uses, transfers, owns or acquires products or materials containing naturally occurring or accelerator produced radioactive substances in concentrations not in excess of those exempted in N.J.A.C. 7:28-4.3(b);

4. To the extent that such person receives, possesses, uses, transfers, owns or acquires luminous timepieces or parts thereof containing radium. However, any person who desires to apply radium to luminous timepieces or parts thereof is not exempt and must obtain a specific State license;

5. Naturally occurring radioactive materials of an equivalent specific radioactivity not exceeding that of natural potassium (10^9 curies per gram of potassium);

6. If the Department, upon request by an owner or on its own initiative with the approval of the Commission, grants a specific exemption from any requirements of this subchapter should it determine that such exemption is not likely to result in unnecessary radiation.

(b) The following concentrations of radioactive substances when obtained from naturally occurring materials or when produced by

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an accelerator are exempt from the requirement for a license for the production, transfer, receipt, acquisition, ownership or use of all naturally occurring and accelerator produced radioactive materials:

Element (Atomic Number)	Isotope	Gas Concentrations uCi/cc*	Liquid & Solid Concentrations uCi/cc**
Beryllium (4)	Be 7	—	2 x 10 ⁻²
Cadmium (48)	Cd 109	—	2 x 10 ⁻³
Carbon (6)	C 14	1 x 10 ⁻⁶	8 x 10 ⁻³
Chromium (24)	Cr 51	—	2 x 10 ⁻²
Cobalt (27)	Co 57	—	5 x 10 ⁻³
Hydrogen (1)	H 3	5 x 10 ⁻⁶	3 x 10 ⁻²
Iron (26)	Fe 55	—	8 x 10 ⁻³
Manganese (25)	Mn 52	—	3 x 10 ⁻⁴
Manganese (25)	Mn 54	—	1 x 10 ⁻³
Tungsten (74)	W 181	—	4 x 10 ⁻³
Vanadium (23)	V 48	—	3 x 10 ⁻⁴
Zinc (30)	Zn 65	—	1 x 10 ⁻³
Beta and/or gamma emitting radioactive material not listed above with half life less than 3 years	—	1 x 10 ⁻¹⁰	1 x 10 ⁻⁶

*Values are given only for those materials normally used as gases.

**uCi/gm for solid

1. Many radioisotopes disintegrate into isotopes which are also radioactive. In expressing the concentrations in this section, the value given is that of the parent isotope and takes into account the radioactivity of the daughters.

2. For purposes of N.J.A.C. 7:8-4.3(a)4, where a combination of isotopes is involved, the limit for the combination shall be computed as follows:

i. Determine for each isotope in the product the ratio between the concentration present in the product and the exempt concentration established in this section for the specific isotope when not in combination. The sum of such ratios may not exceed "1" (unity).

Example:

Prod. Conc. of Isotope A	+	Prod. Conc. of Isotope B	+	Prod. Conc. of Isotope C	1
Exempt Conc. of Isotope A		Exempt Conc. of Isotope B		Exempt Conc. of Isotope C	

7:28-4.4 Types of licenses for production, transfer, receipt, acquisition, ownership, possession or use of all naturally occurring and accelerator produced radioactive materials

(a) General State licenses described in N.J.A.C. 7:28-4.5 are effective without the filing of an application with the Department or the issuance of licensing documents to particular persons.

(b) Specific State licenses are issued to named persons upon application filed pursuant to the requirements of this subchapter.

7:28-4.5 General licenses for the transfer, receipt, acquisition, ownership, possession or use of naturally occurring and accelerator produced radioactive materials and certain devices and equipment

(a) Any person who uses, transfers, receives, acquires, owns or possesses the following devices and equipment incorporating naturally occurring and/or accelerator produced radioactive material, when manufactured, tested and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the Department, or a specific license of a Federal agency or any other state, shall be deemed to have a general State license:

1. Devices designed for use as static eliminators and which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of Polonium 210 or 50 microcuries of Radium 226 per device;

2. Spark gap tubes and electronic tubes which contain radioactive material consisting of not more than one microcurie of Radium per tube;

3. Devices designed for ionizing of air and which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of Polonium 210 or 50 microcuries of Radium 226 per device.

(b) The devices described in (a) above shall not be transferred, abandoned or disposed of except by transfer to a person duly authorized to receive such device by a specific State license issued by the Department, a Federal agency, or any other state.

(c) The following quantities of radioactive substances, when obtained from naturally occurring materials or when produced by an accelerator, are generally licensed provided that no person shall at any one time possess or use more than a total of 10 such quantities:

Radioactive Material	Column A Not as a Sealed Source (microcuries)	Column B As a Sealed Source (microcuries)
Beryllium (Be-7)	50	50
Bismuth 207 (Bi-207)	1	10
Cadmium 109-Silver 109 (Cd 109+Ag 109)	10	10
Cerium 141 (Ce-141)	1	10
Chromium 51 (Cr-51)	50	50
Cobalt 57 (Co-57)	20	20
Germanium 68 (Ge-68)	1	10
Iron 55 (Fe-55)	50	50
Manganese 52 (Mn-52)	1	10
Polonium 210 (Po-210)	0.1	1
Radium and daughters	0.1	1
Sodium 22 (Na-22)	10	10
Vanadium 48 (V-48)	1	10
Zinc 65 (Zn-65)	10	10
Beta and/or gamma emitting radioactive material not listed above	1	10

(d) There are no generally licensed quantities for alpha-emitting materials other than those set forth in N.J.A.C. 7:28-4.5(c).

(e) Any person who owns, receives, acquires, possesses *[and]* *or* uses radioactive material when contained in a device designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition or for producing light or an ionized atmosphere, when such devices are manufactured in accordance with the specifications contained in a specific license authorizing distribution under a general license issued to the supplier by the Department, a Federal agency, or any other state, is deemed to have a general State license, provided that:

1. The device is labeled in accordance with the provisions of the specific license which authorizes the distribution of the devices;

2. The device bears a label containing the following or a substantially similar statement:

"This device contains radioactive material and has been manufactured for distribution as a generally licensed device pursuant to

(identify appropriate section of the rules)

(name of licensing agency and state)

License No. _____ by _____ (name of supplier)

This device shall not be transferred, abandoned or disposed of except by transfer to a person duly authorized to receive such device by a specific license issued by the Department, a Federal agency, or any other state.

Removal of this label is prohibited."; and

3. The devices requiring special installation shall be installed on the premises of the general licensee by a person authorized to install the devices under a specific license issued to the installer by the Department, a Federal agency, or any other state.

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*(e)**(f)* Persons who transfer, receive, acquire, own, possess or use items and quantities of radioactive materials set forth in N.J.A.C. 7:28-4.5(a) and (c) pursuant to a general State license shall not:

1. Effect an increase in the radioactivity of such scheduled items or quantities by adding other radioactive material thereto, by combining radioactive material from two or more such items or quantities, or by altering them in any other manner so as to increase the rate of radiation emission;
2. Administer or direct the administration of the scheduled items or quantities or any part thereof to a human being, either externally or internally, for any purpose, including, but not limited to, diagnostic, therapeutic and research purposes;
3. Add or direct the addition of the scheduled items or quantities or any part thereof to any food, beverage, cosmetic, drug or other product designed for ingestion or inhalation by, or application to, a human being; or
4. Include the scheduled items or quantities or any part thereof in any device, instrument, apparatus, including component parts and accessories intended for use in diagnosis, treatment or prevention of disease in human beings or animals or otherwise intended to affect the structure or any function of the body of human beings or animals.

*(f)**(g)* Persons who receive, acquire, possess or use a device pursuant to a general license specified in N.J.A.C. 7:28-4.5(a):

1. Shall not transfer, abandon or dispose of the device except by transfer to a person duly authorized to receive such device by a specific license issued by the Department, a Federal agency, or any other state;
2. Shall assure that all labels affixed to the device at the time of receipt and bearing the statement, "Removal of this label is prohibited", are maintained thereon and shall comply with the instructions contained in such labels;
3. Shall have the device tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at intervals not to exceed six months except that devices containing only tritium need not be tested for any purpose and devices containing only krypton need not be tested for leakage;
4. Shall have the tests required by N.J.A.C. 7:28-4.5*(f)3* *(g)3* and all other services involving the radioactive material, its shielding and containment, performed by the supplier or other person duly authorized by a specific license issued by the Department, a Federal agency, or any other state to manufacture, install or service such devices;
5. Shall maintain records of all tests performed on the devices as required under N.J.A.C. 7:28-4.5*(f)3* *(g)3*, including the dates and results of the tests and the names and addresses of the persons conducting the tests;
6. Upon the occurrence of a failure of or damage to, or any indication of a possible failure of or damage to, the shielding or containment of the radioactive material or the on-off mechanism or indicator, shall immediately suspend operation of the device until it has been either:
 - i. Repaired by a supplier, manufacturer, or other person holding a specific license issued by the Department, a Federal agency, or any other state to manufacture, install or service such devices; or
 - ii. Disposed of by transfer to a person holding a specific license issued by the Department, a Federal agency, or any other state to receive the radioactive material contained in the device; and
7. Shall be exempt from the requirements of this subchapter, except the provisions of N.J.A.C. 7:28-4.4(a), *4.8, 4.12,* *4.9, 4.14, 4.18,* 8.2, 8.4, and 13.

7:28-4.6 Application for and renewal of specific State licenses for the transfer, receipt, acquisition, ownership, possession or use of naturally occurring and accelerator produced radioactive materials

- (a) Upon approval of an initial or renewal application, a specific State license may be issued by the Department for a period of five years commencing on the date the license is issued.

(b) Application for specific State licenses and renewals shall be filed with the Department, on forms available from the Department.

(c) All applications shall contain the following signature and certification:

1. "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."

2. The certification shall be signed by the highest ranking corporate, partnership, or governmental officer or official at the facility or the individual for which or for whom the specific State license is requested.

(d) An application for a specific State license may include a request for a State license authorizing one or more activities.

(e) Subject to the provisions of N.J.A.C. 7:28-4.7 and 4.8, an application for a specific State license for any human use or uses of radioactive material specified in one or more of the Human Use activity Groups I to VI inclusive listed in N.J.A.C. 7:28-4.7(b) may be approved for all of the uses within the group or groups which include the use or uses specified in the application.

(f) Information included in the specific State license application will be incorporated in and made a part of the terms and conditions of such license by reference.

(g) All applicants for initial and renewal applications for specific State licenses shall complete the application in its entirety with no reference to previously filed documents. The Department may accept photocopies of previous relevant applications.

(h) No initial or renewal specific State licenses shall be issued unless the appropriate annual license fee required by N.J.A.C. 7:28-4.18 is paid.

(i) Except as provided in N.J.A.C. 7:28-4.20, applications and documents submitted to the Department will be made available for public inspection.

(j) Upon the request of the Department at any time after the filing of the original or renewal specific State license application, and before the expiration of the license, the applicant shall submit further information to enable the Department to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(k) All applications for license or amendment shall be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

(l) The Department may deny an application for a specific State license if the applicant:

1. Fails to comply with any provisions of the Act or any rules promulgated thereunder;
2. Falsifies or makes misleading statements in the application for license; or
3. Falsifies or makes misleading statements in any documents which were utilized to obtain a license.

7:28-4.7 General requirements for approval of an application for an initial specific State license or renewal of a specific State license for use of naturally occurring and accelerator produced materials

(a) If the Department determines that an applicant meets the requirements of this subchapter and the Act, it may issue an initial specific State license or renew a specific State license for non-human use of radioactive materials provided:

1. The applicant is qualified by reason of training and experience to use the radioactive material for the purpose requested in such manner as to protect health, minimize danger to life or property and prevent unnecessary radiation;
2. The applicant's proposed equipment, facilities and procedures are adequate to protect health, minimize danger to life or property and prevent unnecessary radiation; and
3. The applicant satisfies special requirements as may be applicable in N.J.A.C. 7:28-4.8.

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(b) If the Department determines that an applicant meets the requirements of this subchapter and the Act, it may issue an initial specific State license or renew a specific State license for human use of radioactive materials for one or more of the following Human Use Groups of activities:

1. Group I: Use of prepared radiopharmaceuticals for certain diagnostic studies involving measurements of uptake, dilution and excretion. This group does not include imaging or localization studies;

2. Group II: Use of prepared radiopharmaceuticals for diagnostic imaging and localization studies;

3. Group III: Use of generators and reagent kits for the preparation and use of radiopharmaceuticals for certain diagnostic studies;

4. Group IV: Use of prepared radiopharmaceuticals for certain therapeutic uses that do not normally require hospitalization for purposes of radiation safety;

5. Group V: Use of prepared radiopharmaceuticals for certain therapeutic uses that normally require hospitalization for purposes of radiation safety; and

6. Group VI: Use of sources and devices containing radionuclides for certain medical uses.

(c) To qualify for an initial specific State license or renewal of a specific State license for human use of radioactive materials for any purpose described in Groups I through VI*[,] in (b)*[,] above the applicant must demonstrate qualification by reason of training and experience to use the radioactive material for the purpose requested and in such manner as to protect health, minimize danger to life or property, and prevent unnecessary radiation, by satisfying the training and experience requirements for the appropriate Human Use Group of activities as follows:

1. The training and experience must have been obtained within a five year period preceding the date of the application for an initial or renewal specific State license or must be supplemented by continuing education or experience. The original training and experience should have been received in a formal residency program in an accredited medical institution. Each applicant's training and experience are examined on a case-by-case basis. If an applicant wishes to use radiopharmaceuticals but does not have the training and experience described, the applicant may submit an application listing specific qualifications and these will be considered by the Department.

2. To qualify as adequately trained to use or directly supervise the use of radioactive material listed in Human Use Groups I, II, and/or III, an applicant shall have all the training and experience specified in (c)2i, ii and iii below:

i. Two hundred hours training in basic radioisotope handling techniques applicable to the use of unsealed sources. This training shall consist of lectures, laboratory sessions, discussion groups, or supervised experience in a nuclear medicine laboratory (that is, on-the-job training in a formalized training program) in the following areas and for the specific hours of class, laboratory or clinical experience:

(1) Radiation physics and instrumentation (100 hours);

(2) Radiation protection (30 hours);

(3) Mathematics pertaining to the use and measurement of radioactivity (20 hours);

(4) Radiation biology (20 hours); and

(5) Radiopharmaceutical chemistry (30 hours);

ii. Five hundred hours of experience with the types and quantities of radioactive material for which the application is being made. For authorization of Human Use Group III (generators and reagent kits), this experience shall include personal participation in five elution procedures, including testing of eluate, and in five procedures to prepare radiopharmaceuticals from Human Use Group III reagent kits; and

iii. Five hundred hours of supervised clinical training in an institutional nuclear medicine program. The clinical training shall cover all appropriate types of diagnostic procedures and shall include:

(1) Supervise examination of patients to determine the suitability for radioisotope diagnosis and recommendation on dosage to be prescribed;

(2) Collaboration in calibration of the dose and the actual administration of the dose to the patient, including calculation of the radiation dose, related measurement, and plotting data;

(3) Follow-up of patients when required; and

(4) Study and discussion with preceptor of case histories to establish most appropriate diagnostic procedures, limitation, contraindication, etc.

3. The requirements specified in (c)2i, ii and iii above may be satisfied concurrently in a three month training program if all three areas are integrated into the program.

4. Certification by the American Board of Nuclear Medicine, or the American Board of Radiology in Diagnostic Radiology with Special Competence in Nuclear Radiology, will be accepted as evidence that an applicant has had adequate training and experience to use Human Use Groups I, II, and III as specified in (c)2i, ii and iii above.

5. An applicant who wishes to be authorized for only one or two specific diagnostic procedures shall have training in basic radioisotope handling techniques and clinical procedures commensurate with the procedures and quantities of radioactive material being requested. Such requests will be examined on a case-by-case basis by the Department.

6. To qualify as adequately trained to use or directly supervise the use of *[by-product]* ***radioactive*** material listed in Groups IV and/or V, an applicant shall have:

i. Eighty hours training in basic radioisotope handling techniques applicable to the use of unsealed sources for therapy procedures, consisting of lectures, laboratory sessions, discussion groups or supervised experience in the following areas and for the following specific hours:

(1) Radiation physics and instrumentation (25 hours);

(2) Radiation protection (25 hours);

(3) Mathematics pertaining to the use and measurement of radioactivity (10 hours); and

(4) Radiation biology (20 hours);

7. To qualify as adequately trained to use or directly supervise the use of *[by-product]* ***radioactive*** material listed in Group VI an applicant shall have:

i. Two hundred hours training in basic radioisotope handling techniques applicable to the use of sealed sources for therapy procedures, consisting of lectures, laboratory sessions, discussion groups, or supervised experience in the following areas and for the following specified hours:

(1) Radiation physics and instrumentation (110 hours);

(2) Radiation protection (40 hours);

(3) Mathematics pertaining to the use and measurements of radioactivity (25 hours); and

(4) Radiation biology (25 hours);

ii. Five hundred hours experience with the types and quantities of radioactive material for which the application is made;

iii. Clinical training in Group VI procedures consisting of active practice in therapeutic radiology with a minimum of three years experience of which at least one year shall have been spent in a formal training program accredited by the Residency Review Committee of Radiology and the Liaison Committee on Graduate Medical Education; and

iv. Evidence of certification by the American Board of Radiology in Radiology or Therapeutic Radiology, certification as a British "Fellow of the Faculty of Radiology" (FFR) or "Fellow of the Royal College of Radiology" (FRCR), or Canadian certification from the Royal College of Physicians and Surgeons (RCPS) in therapeutic radiology may be submitted in lieu of the training required in (c)7i and iii above.

8. In addition to the training required by (c)7 above, an applicant for a license for Human Use Group VI activities shall demonstrate that its proposed equipment, facilities and procedures are adequate

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to protect health, minimize danger to life or property and prevent unnecessary radiation; and

9. An applicant for a license for Human Use Group VI activities shall satisfy special requirements as may be applicable in N.J.A.C. 7:28-4.8.

7:28-4.8 Special requirements for approval of an application for an initial specific State license or renewal of a specific State license for use of naturally occurring and accelerator produced ***radioactive*** materials

(a) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license may be issued for human use of radioactive materials by an institution provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

2. The applicant has appointed a medical isotopes committee to evaluate all proposals for research, diagnosis, and therapeutic use of radioactive material within that institution. Membership of the committee shall include one authorized user for each type of use permitted by the license, the radiation safety officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a radiation safety officer;

3. The applicant possesses adequate facilities for the clinical care of patients;

4. The physician(s) designated on the application as the individual user(s) has considerable pertinent training and experience in the use, handling and administration of radioactive material and, where applicable, the clinical management of radioactive patients; and

5. If the application is for a specific State license to use unspecified quantities of multiple types of radioactive materials, the applicant's staff has had substantial pertinent experience in using a variety of radioactive materials for various human uses.

(b) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license may be issued for human use of radioactive materials by a physician or dentist provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

2. The applicant has access to a hospital possessing adequate facilities to hospitalize and monitor the applicant's radioactive patient whenever it is advisable; and

3. The applicant has had extensive training and supervised experience in the proposed use, the handling and administration of radioisotopes and, where applicable, the clinical management of radioactive patients. The applicant shall furnish suitable evidence of such experience with his application. A statement from the institution where the applicant acquired the training and experience, indicating its amount and nature, may be submitted as evidence of such experience.

(c) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license may be issued for human use of a sealed source of radioactive materials provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

2. The applicant or, if the application is made by an institution, the individual user(s) has specialized training in therapeutic use of the radioactive device considered or has experience equivalent to such training; and

3. The individual user is a physician or dentist.

(d) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license may be issued for use of multiple quantities or types of radioactive material in research and development provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

2. The applicant's staff has had substantial training and experience with a variety of radioisotopes for various research and development uses;

3. The applicant has established an isotope committee, composed of a radiological safety officer, a representative of management and one or more persons trained or experienced in the safe use of radioactive materials, which will review and approve or disapprove proposals for use of radioactive materials in the advance of purchase of such materials; and

4. The applicant has appointed a radiological safety officer who shall be responsible for rendering advice and assistance on radiological safety.

(e) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license may be issued for use of multiple quantities or types of radioactive material in processing for distribution to other authorized persons provided:

1. The applicant satisfies the general requirements for approval of specific State license application in N.J.A.C. 7:28-4.7;

2. The applicant's staff has had training and experience in the processing and distribution of a variety of radioisotopes; and

3. The applicant has appointed a radiological safety officer who shall be responsible for rendering advice and assistance on radiological safety.

(f) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license may be issued to distribute certain devices to persons generally licensed under N.J.A.C. 7:28-4.5(a) and (d) provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

2. The applicant submits sufficient information relating to the design, manufacturer prototype testing, quality control procedures, labeling, proposed uses and potential hazards of the device to provide reasonable assurance that:

i. The radioactive material contained in the device cannot be easily removed from the device;

ii. No person possessing, using, transporting or exposed to the device will receive a radiation dose to a major portion of his body in excess of 0.5 rem in any one year under ordinary circumstances of use;

iii. The device can be safely operated by persons not having training in radiological protection; and

iv. The radioactive material within the device would not be accessible to unauthorized persons; and

3. In describing the label or labels and contents thereon to be affixed to the device, the applicant shall separately indicate those instructions and precautions which are necessary to assure safe operation of the device. Such instructions and precautions shall be contained on labels as described in N.J.A.C. 7:28-4.5(d).

(g) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license may be issued for use of a sealed source or sources of radioactive materials in industrial and nonmedical radiography provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

2. The applicant has an adequate program for training radiographers and radiographers' assistants and submits to the Department a schedule or description of such program which specifies the following:

i. Initial training;

ii. Periodic training;

iii. On-the-job training;

iv. Means to be used by the licensee to determine the radiographer's knowledge and understanding of and ability to comply with the requirements of this subchapter, the specific licensing requirements, and the operating and emergency instructions of the applicant; and

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v. Means to be used by the licensee to determine the radiographer's assistant's knowledge and understanding of and ability to comply with the operating and emergency procedures of the applicant;

3. The applicant has established and submitted to the Department satisfactory written operating and emergency instructions as prescribed by N.J.A.C. 7:28-17;

4. The applicant will have an adequate internal inspection system, or other management control, providing assurance that the requirements of this chapter, the specific State license provisions, and the applicant's operating and emergency instructions are followed by radiographers and radiographers' assistants;

5. The applicant submits a description of its overall organizational structure pertaining to the radiography program, including specified delegation of authority and responsibility for operation of the program; and

6. The applicant who desires to conduct his own leak tests has established adequate procedures to be followed in leak testing sealed sources for possible leakage and contamination and submits to the Department a description of such procedures, including:

- i. Instrumentation to be used;
- ii. Method of performing test (for example, points on equipment from where wipe samples will be taken and method of obtaining the wipe sample); and
- iii. Pertinent experience of the person who will perform the test.

(h) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State license or renewal of a specific State license will be issued to transfer, possess, or control products or materials containing exempt concentrations of radioactive material specified in N.J.A.C. 7:28-4.3(b) which the transferor has introduced into the product or material provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

- 2. The applicant submits:
 - i. A description of the product or material into which the radioactive material will be introduced;
 - ii. The intended use of the radioactive material and the product into which it is introduced;
 - iii. The method of introduction;
 - iv. The initial concentration of the radioactive material in the product or material;
 - v. The control methods to assure that no more than the specified concentration is introduced into the product or material;
 - vi. The estimated time interval between introduction and transfer of the product or material; and
 - vii. The estimated concentration of the radioisotope in the product or material at the time of proposed transfer by the applicant;
- 3. The applicant provides:
 - i. Reasonable assurance that the concentrations of the radioactive material at the time of transfer will not exceed the ***exempt*** concentrations ***[for quantities generally licensed under]*** ***listed in*** N.J.A.C. 7:28-4.***[4]**3*(b);**
 - ii. That reconcentration of the radioactive material in concentrations exceeding those exempted under N.J.A.C. 7:28-4.3(b) is not likely;
 - iii. That the product or material is not likely to be inhaled or ingested; and
 - iv. That use of the lower concentration(s) is not feasible; and

4. Within 30 days subsequent to the end of the reporting period, each licensee shall file an annual report with the Department describing the kinds and quantities of products transferred, the concentration of radioactive material contained and the quantity of radioactive material transferred during the reporting period which shall be the 12 month period ending June 30 of each calendar year.

(i) If the Department determines that an applicant meets the requirements of this subchapter and the Act, an initial specific State

license or renewal of a specific State license may be issued to distribute certain devices to persons specifically licensed under N.J.A.C. 7:28-4.7 provided:

1. The applicant satisfies the general requirements for approval of specific State license applications in N.J.A.C. 7:28-4.7;

2. The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling, proposed uses and potential hazards of the device to provide reasonable assurance that:

- i. The radioactive material contained in the device cannot be easily removed;
- ii. The device can be safely operated by persons having trained in radiological protection; and
- iii. The radioactive material within the device would not be accessible to unauthorized persons; and

3. Each device distributed as authorized by such license is to bear a label containing the following or substantially similar statements:

- i. "Caution Radioactive Materials";
- ii. The isotope name;
- iii. The isotope quantity and date; and
- iv. The following statement:

"This device contains radioactive material and has been manufactured for distribution as a specifically licensed device pursuant to

(identify appropriate section of the regulation)

(name of licensing agency and state)

License No. _____ by _____ (name of supplier)

Disposal of this device shall conform to the requirements listed in N.J.A.C. 7:28-***[11]**4.5(g)6ii*** of the Radiation Protection Code. Removal of this label is prohibited."

7:28-4.9 Terms and conditions of general and specific State licenses

(a) Each State license issued pursuant to this subchapter shall be subject to all the provisions of the Act, now or hereafter in effect, and to this chapter and orders of the Department.

(b) No license to possess or utilize radioactive material pursuant to this subchapter shall be transferred or assigned.

(c) Each person licensed by the Department pursuant to this subchapter shall confine his/her possession and use of radioactive material to the locations and purposes authorized by such license, and shall not use or permit the use of radioactive materials contrary to the applicable requirements of this chapter. Persons licensed under the provisions of this subchapter may transfer radioactive material within the State only to the persons licensed to receive such material or as otherwise authorized by the Department in writing.

(d) The Department may incorporate in any State license at the time of issuance, or thereafter, all such additional requirements and conditions with respect to the licensee's receipt, possession, use or transfer of radioactive material as it deems appropriate or necessary in order to assure compliance with this chapter and the Act.

(e) Each licensee authorized under N.J.A.C. 7:28-4.7(f) to distribute certain devices to generally licensed persons shall:

1. Report to the Department all transfers of such devices to persons in New Jersey generally licensed under N.J.A.C. 7:28-4.5(a) and (c). Such report shall identify each general licensee by name and address, the type and number of device(s) transferred, and the quantity and kind of radioactive material contained in each device. The report shall be submitted within 30 days after the end of each calendar quarter in which such a device is transferred to generally licensed persons; and

2. Furnish to each general licensee to whom such device is transferred a copy of N.J.A.C. 7:28-4.5(a) ***[and (c),]*** *****, **(e) and (g),*** 8.2 and 8.4.

(f) Each licensee authorized under N.J.A.C. 7:28-4.8(i) to distribute certain devices to specifically licensed persons shall:

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1. Report to the Department all transfers of such devices to persons in New Jersey specifically licensed under N.J.A.C. 7:28-4.7 and 4.8. Such report shall identify each specific licensee by name and address, the type and number of device(s) transferred, and the quantity and kind of radioactive material contained each device. The report shall be submitted within 30 days after the end of each calendar quarter in which such a device is transferred to specifically licensed persons.

7:28-4.10 Expiration of specific State license

Except as provided in N.J.A.C. 7:28-4.11, each specific State license shall expire at 12:01 A.M. of the day, in the month and year stated in the license.

7:28-4.11 Status of specific State licenses pending renewal

In any case in which a licensee has filed a complete application in proper form for renewal of a specific State license not less than 30 days prior to expiration of the existing license, such license and all its existing conditions shall not expire until the Department has acted upon the application.

7:28-4.12 Amendment of a specific State license at request of licensee

(a) Applications for amendment of a specific State license shall be filed in accordance with N.J.A.C. 7:28-4.6 and shall specify the amendment desired and the grounds for such amendment.

(b) The Department will evaluate only amendment applications submitted by personnel authorized by the licensee.

(c) The applicant for an amended specific State license shall not engage in the activities for which an amendment has been requested until approval has been granted by the Department.

7:28-4.13 Records

All persons licensed pursuant to this subchapter shall keep records in accordance with N.J.A.C. 7:28-8.

7:28-4.14 Inspections

(a) All licensees shall allow the Department ***or its agents*** to inspect radioactive material and the facilities and premises where radioactive material is used or stored.

(b) No person shall prevent, prohibit, obstruct, hinder, delay or interfere with personnel of this Department ***or its agents*** in performing their duties.

(c) Upon request by the Department, ***or its agents*** licensees shall make available for inspection by the Department records kept pursuant to this chapter.

7:28-4.15 Tests

(a) At the request of the Department ***or its agents***, each licensee shall perform, or allow the Department to perform if the Department so desires, such tests as the Department deems appropriate or necessary for the administration of this subchapter, including tests of the following:

1. Radioactive material;
2. Facilities where radioactive material is utilized or stored;
3. Radiation detection and monitoring instruments; and
4. Equipment and devices used in connection with the utilization or storage of radioactive material.

7:28-4.16 Modification, revocation, suspension, and termination of general and specific State licenses

(a) Each general State license shall be subject to modification, suspension or revocation by reason of amendments to the Act, adoption of rules by the Commission or the Department, orders issued by the Department pursuant to authority of the Act, or for violation or failure to observe any of the terms and provisions of the Act, license or any rule of the Commission or the Department, or order of the Department.

(b) Each specific State license shall be subject to modification, suspension or revocation by reason of:

1. Amendments to the Act;
2. Adoption of rules by the Commission;

3. Orders issued by the Department pursuant to the authority of the Act;

4. Conditions revealed by the application for a specific State license or statement of fact or any report, records or inspection or other means which would warrant the Department to refuse to grant a specific State license on an original application;

5. Violation of or failure to observe any of the terms and provisions of the Act or the license, or any rule of the Commission or Department or order of the Department;

6. Falsification or misleading statements in any license application;

7. Alteration of licensing document;

8. Falsification of required records; or

9. Failure to make timely payment of licensing fees.

(c) If a specific State license is not to be renewed or if a licensee requests a termination of its license, the licensee shall furnish to the Department, prior to the expiration date of the license, close-out surveys and/or wipe tests of the facility and a disposition certificate attesting to the disposal of radioactive material.

7:28-4.17 Requests for an adjudicatory hearing

(a) When the Department denies an initial application for or renewal of a specific State license, or determines to modify, revoke, suspend or terminate a general or specific State license, the Department shall send a notice of decision to the applicant or licensee by certified mail return receipt requested. The notice shall advise the applicant or licensee of the right to request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. The notice shall include the following information:

1. Where and whom hearing requests should be sent;
2. The deadline by which hearing requests must be submitted;
3. The information that is required to be in the hearing request under (c) below; and
4. The requirements for requesting a stay under N.J.A.C. 7:28-4.18.

(b) All requests for a contested case hearing must be received by the Department within 30 calendar days of the date upon which the notice of decision was received.

(c) All requests for a contested case hearing shall be submitted in writing to the Department and shall contain:

1. The name, address and telephone number of the person making such request;
2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;
3. A brief and clear statement of specific facts describing the Department decision appealed from as well as the nature and scope of the interest of the requestor in such decision; and
4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues, associated with the alleged facts at issue, must also be included.

(d) The Department shall determine whether any request for a contested case hearing should be granted. In making such determination, the Department shall evaluate the request to determine whether a contested case, as defined by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., exists and whether there are issues of fact which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

7:28-4.18 Requirements governing requests for stay of the effective date of the Department decision for which an adjudicatory hearing is requested

(a) The Department may grant a stay of the effective date of a decision to deny, modify, revoke or suspend any license. The appli-

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cant for such a stay must submit evidence that one of the following circumstances exist:

1. The granting of such stay is required as a constitutional or statutory right; or

2. The potential impact on public health, safety, welfare or the environment which might result from a decision to grant a stay is greatly outweighed by immediate, irreparable injury to the specific party requesting such stay.

(b) The decision to grant a contested case hearing request shall not automatically result in a stay of the Department action appealed from absent an express decision to stay such action by the Director. The burden shall be upon the party requesting a hearing to explicitly request a stay of action within the same document as well as to disclose reasons why such stay should be granted.

(c) Department decisions are effective, according to their terms, unless stayed by the Department in writing, upon receipt of written request pursuant to this section.

(d) Written requests for a stay of the effective date of the Department's decision must be made to the Department within 30 calendar days of the date upon which the notice of decision was received.

(e) Any stay that is granted by the Department shall be temporary and in no case shall it extend beyond the date of the Department's final decision of the contested case.

(f) Determinations made pursuant to this section shall be made in a writing mailed to the specific party making such request.

7:28-4.19 Specific State license fee schedule for the production, transfer, receipt, acquisition, ownership, possession or use of naturally occurring or accelerator produced radioactive material

(a) The specific State license fee schedule for the production, transfer, receipt, acquisition, ownership, possession or use of naturally occurring or accelerator produced radioactive materials is as follows:

Category	Annual License Fee
1. Radioactive materials license for one Human Use Group	\$300.00
2. Radioactive materials license for two Human Use Groups	\$340.00
3. Radioactive materials license for three or more Human Use Groups	\$400.00
4. Commercial manufacture, processing and/or distribution of radioactive material or items containing radioactive material	\$420.00
5. Radioactive materials license for non-human use of sealed source with possession limit of 300 mCi or less	\$170.00
6. Radioactive materials license for non-human use possession limit of 500 mCi or less	\$320.00
7. Radioactive materials license for non-human use possession limit of greater than 500 mCi	\$420.00
8. Radioactive materials license for Non-Medical Industrial Radiography	\$340.00

(b) All licensees shall pay the fees set forth in (a) above by check payable to "Treasurer, State of New Jersey" no later than 60 days after the payment invoice date. In the event that the fees are paid later than 60 days after the payment invoice date, a delinquency fee equal to one-half of the annual license fee will be imposed for each year that a license fee is delinquent and will appear on the next annual invoice. Failure to pay an annual license fee including any accrued delinquency fees for longer than 18 months shall constitute grounds for suspension or revocation of the license pursuant to N.J.A.C. 7:28-4.16.

7:28-4.20 Confidentiality claims

(a) Any applicant required to submit any information pursuant to the Act or this chapter which in the applicant's opinion constitutes trade secrets, proprietary information or information related to national security, may assert a confidentiality claim by following the procedures set forth in this subchapter.

(b) Any applicant submitting any information to the Department and asserting a confidentiality claim covering any information contained therein shall submit two documents to the Department. One shall contain all the information required by the Act or this chapter including any information which the applicant alleges to be entitled to confidential treatment. The second shall be identical to the first except that it shall contain no information which the applicant alleges to be entitled to confidential treatment. The second can be a photocopy of the first, with the allegedly confidential material blacked out.

(c) The top of each page of the first submission containing the information which the applicant alleges to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type, or stamp.

(d) All parts of the text of the first submission which the applicant alleges to be entitled to confidential treatment shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the allegedly confidential information and the underscoring or highlighting is reproducible on photocopying machines.

(e) The first submission, containing the information which the applicant alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the second, non-confidential submission (which may or may not be enclosed in a separate envelope, at the option of the applicant), shall be enclosed in another envelope for transmittal to the Department. The outer envelope shall bear no marking indicating the confidential nature of the contents.

(f) To ensure proper delivery, the complete package should be sent by certified mail, return receipt requested, or by other means which will allow verification of receipt. Ordinary mail may be used, but the Department will assume no responsibility for packages until they are actually received.

7:28-4.21 Access to information; non-disclosure

(a) Until such time as a final confidentiality determination has been made, access to any information for which a confidentiality claim has been made will be limited to Department employees whose activities necessitate such access and as provided at N.J.A.C. 7:28-4.24 and 4.26.

(b) No disclosure of information for which a confidentiality claim has been asserted shall be made to any other persons except as provided in this subchapter.

(c) Nothing in this section shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the owner or operator who supplied it to the Department.

7:28-4.22 Confidentiality determinations

(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment, unless the Department determines that the information is not entitled to confidential treatment as provided in this section and N.J.A.C. 7:28-4.23.

(b) The Department shall act upon a confidentiality claim and determine whether information is or is not entitled to confidential treatment whenever the Department:

1. Receives a request under N.J.S.A. 47:1A-1 et seq. to inspect or copy such information; or

2. Desires to determine whether information in its possession is entitled to confidential treatment; or

3. Desires for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) The Department shall make the initial determination whether information is or is not entitled to confidential treatment.

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1. If the Department determines that information is not entitled to confidential treatment, it shall so notify the applicant who submitted the information.

2. The notice required under this subsection shall be sent by certified mail, return receipt requested and shall state the reasons for the Department's initial determination.

3. An applicant who wishes to contest a determination by the Department shall, within 30 days of notification of the determination, submit evidence to support the applicant's contention that the Department's initial determination was incorrect. The evidence may include, but need not be limited to, a statement indicating:

i. The period of time for which confidential treatment is desired by the applicant (for example, until a certain date, until the occurrence of a specified event, or permanently);

ii. The measures taken by the applicant to guard against undesired disclosure of the information to others;

iii. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith; and

iv. The extent of which disclosure of the information would result in substantial damage to the applicant, including a description of the damage, an explanation of why the damage would be substantial, and an explanation of the causal relationship between disclosure and the damage.

4. Failure of an applicant to furnish timely comments or exceptions waives the applicant's confidentiality claim.

5. The applicant may assert a confidentiality claim to any information submitted to the Department by an applicant as part of its comments pursuant to (c)4 above.

6. The Department may extend the time limit for submitting comments pursuant to (c)4 above for good cause shown by the applicant and upon receipt of a request in writing.

(d) After receiving the evidence, the Department shall review its initial determination and make a final determination.

1. If, after review, the Department determines that the information is not entitled to confidential treatment, the Department shall so notify the applicant by certified mail, return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the confidentiality claim, and that the Department shall make the information available to the public on the 14th day following receipt by the applicant of the written notice.

2. If, after review, the determination is made that information is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The applicant shall be notified of the Department's determination by certified mail, return receipt requested. The notice shall state the basis for the determination and that it constitutes final agency action.

7:28-4.23 Substantive criteria for use in confidentiality determinations

(a) When the applicant satisfies each of the following substantive criteria, the Department shall determine that the information for which a confidentiality claim has been asserted is confidential:

1. The applicant has asserted a confidentiality claim which has not expired by its terms, been waived or withdrawn;

2. The applicant has shown that reasonable measures have been taken to protect the confidentiality of the information and that the applicant intends to continue to take such measures;

3. The information is not, and has not been, available or otherwise disclosed to other persons without the applicant's consent (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to persons not involved in the proceeding);

4. No statute specifically requires disclosure of the information; and

5. The applicant has shown that disclosure of the information would be likely to cause substantial damage to its competitive position.

7:28-4.24 Disclosure of confidential information to other public agencies

(a) The Department may disclose confidential information to persons other than Department employees only as provided in this section or N.J.A.C. 7:28-4.25.

(b) The Department may disclose confidential information to any other State agency or to a Federal agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;

2. The request sets forth the official purpose for which the information is needed;

3. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;

4. The other State or Federal agency has first furnished to the Department a written formal legal opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency; and

5. The other agency agrees not to disclose the information further unless:

i. The other agency has statutory authority both to compel production of the information and to make the proposed disclosure; or

ii. The other agency has obtained the consent of the affected owner or operator to the proposed disclosure; and

6. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

(c) Except as otherwise provided at N.J.A.C. 7:28-4.25, the Department shall notify in writing the applicant who supplied the confidential information of:

1. Its disclosure to another agency;

2. The date on which disclosure was made;

3. The name of the agency to which disclosed; and

4. A description of the information disclosed.

7:28-4.25 Disclosure by consent

(a) The Department may disclose any confidential information to any person if it has obtained the written consent of the applicant to such disclosure.

(b) The giving of consent by an applicant to disclose shall not be deemed to waive a confidentiality claim with regard to further disclosures unless the authorized disclosure is of such a nature as to make the disclosed information accessible to the general public.

7:28-4.26 Disclosure based on imminent and substantial danger

(a) Upon a finding that disclosure of confidential information would serve to alleviate an imminent and substantial danger to public health and the environment, the Department may:

1. Prescribe and make known to the applicant such shorter comment period (N.J.A.C. 7:28-4.22(c)4, post-determination waiting period (N.J.A.C. 7:28-4.22(d)1), or both, as it finds necessary under the circumstances; or

2. Disclose confidential information to any person whose role in alleviating the danger to public health and the environment necessitates that disclosure. Any such disclosure shall be limited to information necessary to enable the person to whom it is disclosed to carry out the activities in alleviating the danger.

(b) Any disclosure made pursuant to this section shall not be deemed a waiver of a confidentiality claim, nor shall it of itself be grounds for any determination that information is no longer entitled to confidential treatment.

7:28-4.27 Security procedures

(a) Submissions to the Department pursuant to the Act and this chapter will be opened only by persons authorized by the Department engaged in administering the Act and this chapter.

(b) Only those Department employees whose activities necessitate access to information for which a confidentiality claim has been made, shall open any envelope which is marked "CONFIDENTIAL".

(c) All submissions entitled to confidential treatment as determined at N.J.A.C. 7:28-4.22 shall be stored by the Department only in locked cabinets.

(d) Any record made or maintained by Department employees which contains confidential information shall contain appropriate indicators identifying the confidential information.

7:28-4.28 Wrongful access or disclosure; penalties

(a) A person shall not disclose, seek access to, obtain or have possession of any confidential information obtained pursuant to the Act or this chapter, except as authorized by this subchapter.

(b) Every Department employee who has custody or possession of confidential information shall take appropriate measures to safeguard such information and to protect against its improper disclosure.

(c) A Department employee shall not disclose, or use for his or her private gain or advantage, any information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department.

(d) If the Department finds that any person has violated provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information.

2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(f) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

(a)

Controlled Areas

Adopted Repeal: N.J.A.C. 7:28-5

Adopted New Rules: N.J.A.C. 7:28-5

Proposed: May 18, 1987 at 19 N.J.R. 839(a).

Adopted: October 14, 1987 by Max Weiss, Chairman,
Commission on Radiation Protection.

Filed: October 23, 1987 as R.1987 d.484, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2D-1 et seq., specifically N.J.S.A. 26:2D-7.

DEP Docket Number: 016-87-04.

Effective Date: November 16, 1987.

Expiration Date: October 7, 1990.

Summary of Public Comments and Agency Responses:

A public hearing on this proposal was held at the Environmental Laboratory Building, Trenton, New Jersey on June 3, 1987 for the purpose of providing interested parties the opportunity to present testimony on the proposal. The comment period closed July 3, 1987. The Commission on Radiation Protection (Commission) received verbal testimony from two people representing Princeton University.

No written comments were received.

The Commission on Radiation Protection has carefully reviewed the comments made at the public hearing. This document includes a statement of the issue raised by the comments and the response of the Commission.

COMMENT: A controlled area is defined in N.J.A.C. 7:28-5.4 as including where an x-ray machine is removed. This section would require

that a survey be performed, where in actuality it does not seem necessary because the radiation source was removed and there will not be much source left, if any. Was the intent really to apply to controlled areas where radioactive materials had been used?

RESPONSE: The Commission agrees that the intent is to have termination surveys performed in areas where the use or generation of radioactive materials had occurred. To clarify the intent, the Commission has revised N.J.A.C. 7:28-5.4.

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

SUBCHAPTER 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]* ***an area where radioactive materials had been stored, utilized or generated*** 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 or generated.

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THE COMMISSIONER

(a)

Certificate of Need: Review of Long-Term Care Facilities and Services Policy Manual**Adopted Amendments: N.J.A.C. 8:33H-2.1, 3.1, 3.3, 3.5**

Proposed: July 6, 1987 at 19 N.J.R. 1149(a).

Adopted: October 9, 1987 by Molly Joel Coye, M.D., M.P.H., Commissioner of the Department of Health (with approval of the Health Care Administration Board).

Filed: October 13, 1987 as R.1987 d.453, 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-5 and 26:2H-8.

Effective Date: November 16, 1987.

Expiration Date: July 19, 1990.

Summary of Public Comments and Departmental Responses:

Written comments were received from the following: the New Jersey Association of Health Care Facilities, the New Jersey Residential Care Administrative Advisory Board, Francis E. Parker Memorial Home, Essex County Department of Citizen Services, and Mediq Care, Inc.

COMMENT: The New Jersey Association of Health Care Facilities, Essex County Department of Citizens Services, and New Jersey Residential Care Administrative Advisory Board expressed opposition to the adoption of N.J.A.C. 8:33H-3.3(a)3.vii and viii, which pertain to social service and recreational activity requirements for free-standing residential health care facilities. The New Jersey Association of Health Care Facilities states that the provision of recreational activities is needed in residential health care facilities. However, they recommend that the proposed amendments be part of Department of Health licensure regulations applicable to all residential health care facilities, instead of being included in Certificate of Need requirements which will apply only to new, free-standing facilities. The Association qualifies the latter recommendation, stating that such a licensure requirement should only be pursued if Supplemental Security Income (SSI) payment for residential health care is increased beyond the currently inadequate rate of \$437.05 per resident per month. The Association concludes that adoption of N.J.A.C. 8:33H-3.3(a)3.vii and viii may deter much needed free-standing residential health care facilities.

The New Jersey Residential Care Administrative Advisory Board similarly states that social service and recreation programs should be mandated for all facilities; such a requirement for new, free-standing residential health care facilities alone is said to be discriminatory. The Board recommends that funds be appropriated to make the requirement financially feasible for facilities.

The Essex County Department of Citizens Services states that the amendments do not establish criteria to allow for monitoring of facilities' compliance with the requirements. Staffing will be left to the discretion of facility owners, which may result in programs offering little real benefit to residents. The commenter also states that RHCf operators are already financially burdened due to low SSI reimbursement, and the proposed amendments will therefore make low income persons more unattractive as potential facility residents.

RESPONSE: Where a residential health care facility is adjoined to a long-term care facility, residents may avail themselves of some of the supportive services and planned recreational activities that are available within that institution, as is required for long-term care licensure. By contrast, residents of free-standing residential health care facilities may receive totally inadequate attention to their needs for social and recreational services, unless the facility staff voluntarily provide these. The intent of N.J.A.C. 8:33H-3.3(a)3.vii and viii is to assure that free-standing residential health care facilities receiving Certificate of Need approval will offer residents access to services and activities which will improve the quality of their lives. At the same time, the proposed amendments are

intended to prevent the over-burdening of communities' health and social service systems, which may occur when there is a preponderance of free-standing residential health care facilities in certain localities.

Rather than offering social and recreational services directly (that is, through staff hired and paid by the facility), it is anticipated that many residential health care facilities will form relationships with community organizations in order to provide these. Certificate of Need applicants will be required to give detailed descriptions of the services and activities which will be offered; conditions will then be applied to the applicant's approval to insure that the applicant implements the project as proposed. If the applicant does not do so, licensure action may be taken against the facility. Hence the amendments offer latitude to operators in terms of how they choose to go about complying with the requirements, and yet compliance can be monitored by Department of Health licensing inspectors.

The Department of Health agrees with the commenters that residents of all residential health care facilities could potentially benefit from a licensure rule requiring the provision of social services and/or recreational activities. However, as the commenters also point out, uniform application of such a licensing requirement at the present time could seriously jeopardize many existing residential health care facilities, unless increased reimbursement were assured in order to cover the costs (that is, many facilities would be obliged to provide the services directly, at their own expense). N.J.A.C. 8:33H-3.3(a)3.vii and viii are limited in application to free-standing residential health care facilities only, because some communities have identified these facilities as the most problematic.

It is unlikely that the proposed amendments will have a dramatic impact in terms of constraining the supply of residential health care beds. In reality, only a small number of Certificate of Need applications (fewer than eight) for free-standing residential health care facilities are received each year. Many of these applications are for conversions of Class C boarding homes that are well established in their communities and that have already developed linkages with various local agencies to provide social services and recreational activities to residents. The proposed amendments underscore the importance of continuing, expanding, and formalizing these relationships for the benefit of residents.

COMMENT: Mediq Care, Inc. and the Francis E. Parker Memorial Home recommend modifications of the proposed rules regarding specialized long-term care. Mediq Care states that the need for mechanical ventilation should not be the critical determinant for specialized long-term care. If patients must be ventilator-dependent, facilities will not attempt to wean patients from the respirator and thereby risk losing a placement for the patient. The commenter indicates that other types of patients who are not ventilator-dependent may also have intense nursing needs. These populations should be covered by expanding the definition of specialized long-term care, as proposed at N.J.A.C. 8:33H-2.1.

The Francis E. Parker Memorial Home states that the Certificate of Need requirement for specialized long-term care units is appropriate, but the necessity of having a respiratory therapist in the facility 24 hours per day is questioned. The commenter maintains that long-term care facilities should be free to offer this service to their own patients without having to transfer them to CN-approved facilities.

RESPONSE: The definition of specialized long-term care in N.J.A.C. 8:33H-2.1 was derived after careful deliberation and consultation with an advisory committee convened by the Department of Health. The proposed amendments should improve access to long-term care for ventilator-dependent patients, who are relatively few in number, but extraordinarily difficult for most hospitals to place. The life supporting equipment used for those patients typically necessitates specialized training of staff members in long-term care facilities. The other types of patients to which Mediq Care, Inc. refers tend to be "heavy care" patients. These individuals often require more hours of care than most skilled nursing patients, but their needs can generally be met by any licensed long-term care facility with adequately trained staff.

With a substantial excess of long-term care beds predicted for most counties throughout New Jersey in the coming years, beds which have previously received Certificate of Need approval or which are already in existence should be used to treat the types of "heavy care" patients described by Mediq Care. To grant Certificate of Need approval for additional beds proposed for most forms of "heavy care" would result in an even greater excess of beds than is currently predicted.

The requirement that specialized care beds and units be staffed continuously with a respiratory therapist is deemed to be essential to the

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provision of high quality care for ventilator-dependent patients. In a Department of Health survey of facilities providing ventilator-care throughout the nation, the presence of respiratory therapists on staff was reported to be one of the essential features for assuring quality care. In view of the fact that a very small number of specialized care units will be approved to meet the needs of ventilator-dependent patients, it is not unreasonable to expect that such facilities will be staffed with respiratory therapists.

Although no public comments were submitted regarding N.J.A.C. 8:33H-3.3(a)3.ii, the Department noticed an oversight in the drafting of this subparagraph which it wishes to clarify by a minor amendment. In developing the criteria pertaining to applicants' licensing track records, it was the Department's intent to prevent Certificate of Need applicants with a recent history of licensure difficulties related to patient care from being approved to operate additional long-term care beds/facilities. Because a myriad of factors may contribute to a facility being cited for licensing deficiencies, it is occasionally necessary for the Commissioner to exercise a degree of discretion in appraising the seriousness of an applicants' licensure difficulties and their bearing on the quality of patient care. The criteria in N.J.A.C. 8:33H-3.3(a)3.ii(2)A and B—admission curtailments due to licensure problems presenting immediate peril to patients/residents, or non-compliance with two or more patient care-related licensure conditions, or non-compliance with one patient care-related condition on two or more consecutive occasions—will ordinarily be indicative of problems in quality care attributable to the operator's management which signal that an operator should not be approved to construct additional long-term care beds/facilities. However, the two wording changes made in N.J.A.C. 8:33H-3.3(a)3.ii will provide the Commissioner with needed flexibility for making determinations in those extraordinary cases which fall outside the basic intent of the provision. For example, the curtailment of admissions at a facility due to the explosion of a boiler may not necessarily indicate that an operator provides poor quality care and that a Certificate of Need should consequently be denied. The proposed wording changes should clarify the manner in which the provisions pertaining to applicants' licensing histories will be evaluated.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***(thus)***).

8:33H-2.1 Definitions

...

"Specialized care" means long-term care for patients over the age of 16 who require ongoing, technically complex treatment with life supporting equipment, necessitating that caregiving staff members have specialized training, knowledge, education, and/or certification in order to safely and effectively meet their extraordinary needs. For the purpose of this definition, specialized care patients are limited to those with the need for long-term skilled nursing care who also require mechanical ventilation. A specialized care bed shall be defined as a bed in a licensed long-term care facility which is designated via issuance of a Certificate of Need for the provision of long-term ventilator care.

...

8:33H-3.1 Size of facilities

(a) Standards are as follows:

1. Standard I-01, minimum size, long-term care facilities:

i. The minimum size for a long-term care facility licensed for skilled or intermediate care shall be 60 beds. Size of facilities should be based upon even multiples of 60-bed nursing units to maximize cost efficiency.

ii. This standard shall not apply to:

(1)-(2) (No change.)

(3) Distinct units in efficiently operated general hospitals, where minimum size shall be 30 beds for general long-term care and 10 beds for specialized long-term care, as defined at N.J.A.C. 8:33H-2.1.

(4) (No change.)

(5) Specialized long-term care beds, where the minimum unit size shall be 10 beds. Beds for specialized care shall only be approved

in long-term care facilities which will have a total bed complement of 120 or more long-term care beds after project completion.

(b) Guidelines are as follows:

1.-3. (No change.)

4. Guideline I-04, maximum size, specialized long-term care units: The maximum recommended size of any unit proposed specifically for specialized long-term care is 30 beds.

8:33H-3.3 Expansion and new construction

(a) Standards are as follows:

1. Standard III-01, occupancy rates. The desired occupancy rates (based on licensed beds) for inpatient facilities shall be:

i.-iv. (No change.)

v. Specialized long-term care, 85 percent.

2. Standard III-02, need for beds/services:

i.-iii. (No change.)

iv. The need for specialized care beds shall be evaluated with regard to the availability and adequacy of existing resources in the area to be served by the facility. For the purpose of this rule, the inventory of specialized care beds against which need criteria will be applied as specified at (a)2iv(1) below shall be the inventory maintained by the Commissioner of Health or her representative within the Department of Health. Beds approved for use as specialized long-term care beds shall be used exclusively for specialized long-term care as defined at N.J.A.C. 8:33H-2.1, and, hence, shall not be subject to the long-term care bed need methodology at N.J.A.C. 8:33H-3.10(a) nor counted in the inventory of long-term care beds available to the general adult population. In addition to the requirements specified at (a)3 below, the applicant shall provide evidence of compliance with all of the following, to the satisfaction of the Department of Health:

(1) The areawide need for the service, as determined by an annual survey conducted and reported by the Department of Health;

(2) The existence of a signed transfer agreement with at least one acute care hospital with a licensed capacity of at least 200 beds to which specialized care patients could be transferred within 30 minutes total travel time (for the purpose of receiving emergency medical treatment), if the proposed beds will not be located within an acute care hospital. The applicant shall submit documentation of the reasons why a particular hospital was chosen for the transfer agreement, including a description of the hospital's capability to address the needs of patients requiring the applicable type of specialized care;

(3) The existence of a specific plan to provide active, ongoing discharge planning for patients who may be discharged from the proposed specialized care beds to their homes when this is feasible and desirable to the patient/family/significant other; documentation may include signed transfer agreements or referral arrangements with home health agencies which are licensed by the Department of Health to serve the proposed facility's service area, and which maintain the capability to offer follow-up specialized care;

(4) Until such time as pertinent licensing rules are adopted, applicants shall be required as a condition of Certificate of Need approval to provide staffing for the nursing units in which the specialized care beds are to be located that will include the 24 hour-per-day presence on the unit of at least one registered nurse, and the 24 hour-per-day presence in the facility of at least one registered respiratory therapist;

(5) Until such time as pertinent licensing rules are adopted, applicants shall be required as a condition of Certificate of Need approval to provide arrangements for the ongoing availability of appropriate specialized medical, nursing, social work, dietary, and pharmacologic consultation for patients receiving specialized care. In addition, arrangements for the availability of appropriate laboratory support services shall be required within reasonable access time to the proposed facility.

3. Standards III-03, addition of beds: In counties and potentially underserved cities where the Department of Health has determined there is a need for long-term care beds, Certificate of Need applications for new facilities and additions to existing facilities will be evaluated with special consideration to the prioritization criteria

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outlined in (b)5 below. Applicants for long-term care and residential health care facilities seeking Certificate of Need approval to add beds to an existing facility or to construct a new facility will be required to submit all of the following with the application:

i. (No change.)

ii. Documentation of a prior record of providing a high quality of care. In making determinations of prior track record, the Commissioner shall base determinations on the recommendations submitted by the Department of Health's Division of Health Facilities Evaluation. In evaluating the prior history of applicants who have owned or operated Class B or C boarding homes, reports submitted by the Department of Community Affairs will be used. These reports will be supplemented by the review of official State records of the track records of applicants in other states and other information, including but not limited to, reports from the Department of Human Services, statewide patients advocacy groups, ombudsman, and similar organizations, when available.

(1) Repeated violations of significant licensure standards, as determined by the Department of Health, or other indicia of poor quality, including but not limited to the institution of action to revoke or suspend the license of a facility owned or operated by an applicant for a Certificate of Need or the actual revocation or suspension of a license held by an applicant for a Certificate of Need shall require non-approval of the applicant's Certificate of Need application for the addition of beds.

(2) A record of current deficiencies in meeting minimum requirements in certain major licensure standards is not necessarily indicative of a poor operator but does signal the existence of managerial difficulties which properly should be addressed and remediated before an applicant may be deemed to have the current capacity and capabilities to expand by initiating any new or additional beds or health care services. Accordingly, a Certificate of Need shall not be approved for any applicant (including any principals thereof) who owns (in whole or in part), manages or operates, or has owned (in whole or in part), managed, or operated, any health care facility which has been subject to major licensure difficulties within one year preceding the date the Certificate of Need application is accepted for processing pursuant to N.J.A.C. 8:33. The major licensure difficulties which shall ***ordinarily*** require the non-endorsement of a Certificate of Need application for any new or additional long-term care or residential health care beds are:

(A) Admissions to any such facility have been curtailed by the Department of Health because of licensure deficiencies presenting an immediate peril to the health, safety, and welfare of the patients/residents; ***or***

(B) Any such facility is out of compliance with any two conditions of participation or comparable State licensure rules in the areas of nursing, infection control, pharmacy or dietary services or is out of compliance with any one of the preceding conditions of participation on two or more consecutive occasions.

(3) Any person whose application for a Certificate of Need has been denied for reasons related to the history of compliance with regulatory standards shall be ineligible for approval of any Certificate of Need until a period of at least one year has elapsed, during which time the person must have demonstrated a record of continuous compliance with licensing or regulatory standards. The one year period shall be measured from the time of the last licensure or certification action indicating noncompliance with regulatory standards.

(4) Until such time as an applicant for a Certificate of Need has established a licensing record through at least 10 percent ownership interest or through the actual operation or management or through control of the operation or management of one or more licensed, operational, inpatient health care facilities in the State of New Jersey for a period of at least 12 consecutive months, no more than two Certificate of Need approvals shall be granted to that applicant for the construction of new long-term care or residential health care facilities, or for bed additions to existing facilities or to previously approved but unimplemented projects or components thereof. Appli-

cants who have received more than two Certificate of Need approvals prior to the implementation of this rule shall be ineligible to receive additional approvals, until such time as they have established a licensing record as described herein.

iii.-v. (No change.)

vi. Documentation of compliance with conditions of approval pertaining to indigency care requirements for previous Certificate of Need applications, and, in the case of applicants who own or operate long-term care facilities, compliance with N.J.S.A. 10:5-12.2 pertaining to nondiscrimination against Medicaid patients.

vii. In the case of applicants proposing free-standing residential health care facilities, documentation that the facility can provide ongoing social services appropriate to the needs of the residents to be served, including but not limited to case management, coordination of care, and referrals for medical and/or psychiatric treatment. These social services, whether provided directly by social service professionals employed by the facility or through arrangements with local social service agencies, must be made available upon license issuance and maintained thereafter.

viii. In the case of applicants proposing free-standing residential health care facilities, documentation that the facility can provide an ongoing program of meaningful recreational activities which are appropriate to the needs of the residents to be served. These recreational activities, whether provided directly by staff employed by the facility or through arrangements with local community organizations, must be made available upon license issuance and maintained thereafter.

ix. Documentation demonstrating that the request is in compliance with all other applicable Standards and Guidelines at N.J.A.C. 8:33H.

4. (No change.)

5. Standard III-05, utilization of new and/or additional beds by Medicare to Medicaid and Medicaid-eligible recipients. Long-term care facilities receiving Certificate of Need approval to add beds to an existing facility or to construct a new facility will be required to comply with the following utilization criteria:

i.-x. (No change.)

xi. The requirement that 36 percent of a long-term care facility's beds be utilized by Medicaid-eligible patients in no way diminishes an applicant's responsibility to conform with Public Law 1985, Chapter 303 (N.J.S.A. 10:5-12.2), regarding non-discrimination against Medicaid-eligible patients.

6.-7. (No change.)

(b) Guidelines are as follows:

1.-4. (No change.)

5. Guideline III-05, Prioritization criteria. In counties where there is a bed need according to the methodology identified at N.J.A.C. 8:33H-3.10(a), criteria for the prioritization of Certificate of Need applications requesting new or additional beds shall include:

i.-viii. (No change.)

ix. Longest history of most significant service provision to the Medicaid-eligible population.

x.-xi. (No change.)

xii. Longest history of compliance with conditions placed on applicants' previous Certificate of Need approvals.

8:33H-3.5 Conversion

(a) Standards are as follows:

1. Standard V-01, Certificate of Need requirements for conversion of hospital facilities to long-term care. Applicants for Certificates of Need to convert licensed acute care beds in distinct parts of hospital facilities to long-term care shall be reviewed according to the long-term care bed need methodology identified at N.J.A.C. 8:33H-3.10. Within each long-term care batch, hospitals converting such beds shall be given priority consideration by the Department of Health, provided that all of the following conditions are met:

i.-vii. (No change.)

viii. If the hospital cannot submit the documentation required in (a)1i above, the application to convert acute care beds to long-term care use may be approved if:

(1) (No change.)

(2) The request is for the conversion of a minimum of 120 acute care beds to long-term care, or

(3) The hospital proposes the conversion of beds for specialized care use, as defined at N.J.A.C. 8:33H-2.1, in which case the need for beds shall be determined as specified at N.J.A.C. 8:33H-3.3(a)2iv(1) and the number of beds proposed shall be a minimum of 10 and a maximum of 30.

2. (No change.)

3. Standard V-03, Certificate of Need requirements for conversion of specialized care beds to general long-term care or residential health care. Applicants for Certificates of Need to convert previously approved specialized care beds to general long-term care or residential health care use shall be given consideration by the Department of Health provided that they meet all applicable criteria at N.J.A.C. 8:33H, including the need criteria at N.J.A.C. 8:33H-3.3(a)2i.

(a)

Certificate of Need: Home Health Agency Policy Manual

Adopted New Rule: N.J.A.C. 8:33L

Proposed: August 17, 1987 at 19 N.J.R. 1483(c).

Adopted: October 9, 1987 by Molly Joel Coye, M.D., M.P.H.,
Commissioner of the Department of Health (with approval of
the Health Care Administration Board).

Filed: October 13, 1987 as R.1987 d.452, **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-5 and 26:2H-8.

Effective Date: November 16, 1987.

Expiration Date: November 16, 1992.

Summary of Public Comments and Agency Responses:

Written comments were received from the following: the Home Health Assembly of New Jersey and Our Lady of Lourdes Medical Center/Lourdes Home Health Services.

COMMENT: The Home Health Assembly of New Jersey expresses support for the Department of Health's policy of controlling the growth of home health agencies through the Certificate of Need process. The Assembly states that, in principle, the Department's proposal to use access criteria instead of a numerical formula to assess need for new home health agencies is reasonable and appropriate. However, the association expresses concern that the presence of access problems will be difficult to verify in some instances, and the criteria may pose interpretation problems. Specifically, the Assembly indicates that some agencies are concerned about the possibility that the Department might construe seven-day-a-week, 24-hour-a-day service to mean agencies must make unscheduled admission visits on demand during night-time hours. Such off-hour services are said to be costly to offer and do not represent good health care practice.

RESPONSE: For purposes of implementing the provisions of N.J.A.C. 8:33L-2.4 ("Certificate of Need Requirements"), the Department has endeavored to make the identification of access problems as objective as possible. Information reported by home health agencies regarding access to services they are providing may be verified by Department of Health licensure inspection surveys, as is stated in N.J.A.C. 8:33L-2.4(a)4.i through v. In the case of seven-day-a-week, 24-hour-a-day nursing care coverage, the Department's intent is to assure that service areas have access to followup telephone contact by a home health agency nurse during non-office hours and that this contact will be provided within one hour from the time that a patient calls the home health agency. N.J.A.C. 8:33L-2.4(a)4.i specifies what are considered acceptable means for fulfilling this requirement. The definition of seven-day-a-week, 24-hour-a-day service given in N.J.A.C. 8:33L-1.2 limits the availability of this coverage to "the home health agency's new referrals and current patients" only; hence, the home health agency nurse would not typically

be expected during non-office hours to respond to telephone inquiries made by individuals who have not already been referred or admitted to the agency.

It is the home health agency nurse's responsibility to evaluate patients' complaints over the phone during non-office hours to determine whether a visit or some other intervention is required.

The definition of seven-day-a-week, 24-hour-a-day service does not dictate that the nurse must visit the patient, although this will be necessary in many cases. The Department agrees with the commenter that regular provision of unscheduled, on-demand admission visits during night-time hours is not a reasonable requirement. As is currently implicit in N.J.A.C. 8:33L, home health agency on-call staff will be expected to exercise appropriate judgment in evaluating and meeting the agency's current and referred patients' needs for nursing care during non-office hours. The rule does not imply that mandatory provision of unscheduled admission visits during night-time hours will be required by the Department of Health.

The definition of "seven-day-a-week, 24-hour-a-day service" has been amended to clarify the Department's intent with respect to the types of patients for whom agencies will be required to provide this service.

COMMENT: The Home Health Assembly of New Jersey states that the selection of three percent no-pay visits as a measure of a home health agency's capacity to provide access to care for medically indigent patients is not acceptable. The Assembly supports the Department's decision to postpone implementation of N.J.A.C. 8:33L-2.4(a)4.iv until 1989.

RESPONSE: The problem of uncompensated care for home health agencies is acknowledged by the Department to be a serious concern. To promote access to needed care for medically indigent patients without unduly burdening home health agencies, N.J.A.C. 8:33L includes provisions to encourage all agencies to offer a reasonable amount of free care to patients who lack the resources to pay for services. The three percent free care requirement is not deemed to be sufficient to solve the complex problem of medically indigent care coverage; however, the Department has agreed not to implement N.J.A.C. 8:33L-2.4(a)4.iv until 1989. In the interim, the Department will explore alternative mechanisms for covering the costs of care for medically indigent patients. As well, the postponed implementation date will give home health agencies the opportunity to plan strategies for covering their own uncompensated care costs.

COMMENT: Our Lady of Lourdes Medical Center objects to the section at N.J.A.C. 8:33L-2.1, which describes home health agencies' service areas. The commenter suggests that home health agencies should be permitted to serve two or more counties, rather than being limited to a single county or sub-area of two or more counties. The expansion of an agency's service area into two or more counties is stated to be beneficial for increasing access to care in less populated and poorer counties.

RESPONSE: It is not the Department's intent in N.J.A.C. 8:33L-2.1 to limit home health agencies' service areas to a single county or the sub-area of two or more counties. Rather, the provisions of N.J.A.C. 8:33L will allow for the expansion of existing agencies into new service areas, typically new counties, when those agencies have track records of providing quality home health care (see N.J.A.C. 8:33L-2.1(b) and 8:33L-2.4(b)3 and 4). To date, a number of home health agencies in the State have received Certificate of Need approval to serve two or more full counties. The Department acknowledges that a literal interpretation of N.J.A.C. 8:33L-2.1(a) does suggest that agencies would not be permitted to serve two or more full counties. The rule has been changed to clarify the Department's actual intent.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from proposal shown in brackets with asterisks *[thus]*).

CHAPTER 33L CERTIFICATE OF NEED: HOME HEALTH AGENCY POLICY MANUAL

SUBCHAPTER 1. GENERAL PROVISIONS

8:33L-1.1 Purpose and scope

(a) The 1971 Health Care Facilities Planning Act, as amended in 1978 (N.J.S.A. 26:2H-1 et seq.), established as a policy of the State of New Jersey that health care services "of the highest quality, of

demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health" (N.J.S.A. 26:2H-1, as amended). This Act has given the State Department of Health the "central comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and related health care services and health care facility cost containment and all public and private institutions, whether State, county, municipal, incorporated and not incorporated, serving principally as residential health care facilities, nursing or maternity homes or as facilities for the prevention, diagnosis, or treatment of human disease, pain, injury, deformity or physical condition" (N.J.S.A. 26:2H-1).

(b) The Department of Health is "designated as the sole agency in this State for comprehensive health planning" (N.J.S.A. 26:2H-1). The Statute goes on to stipulate that "no health care facility shall be constructed or expanded, and no new health care services shall be instituted . . . except upon application for and receipt of a certificate of need" (N.J.S.A. 26:2H-7). Consequently, the rules in this chapter specify the certificate of need requirements for all new or expanding home health agencies, or for home health agencies which are transferring ownership. These rules do not, however, apply to homemaker or temporary nursing agencies, which are not Medicare-certified and which do not propose to become Medicare-certified.

8:33L-1.2 Definitions

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

"Department" means the New Jersey State Department of Health.

"High-tech service" means treatment performed in the home requiring technologically complex equipment or highly specialized techniques.

"Home health agency" or "agency" means a facility which is licensed by the New Jersey State Department of Health to provide preventive, rehabilitative, and therapeutic services primarily to patients in their homes. All home health agencies shall provide nursing, homemaker-home health aide, and physical therapy services in the patient's home or place of residence.

"Hospice" means a comprehensive program of palliative/supportive services for dying persons and their families, utilizing an interdisciplinary team of professionals and volunteers. The program provides components of physical, psychological, social, and spiritual care, including bereavement counseling, institutional respite, inpatient care, and home care.

"Hospital-related home health agency" means a home health agency for which the license is held by a hospital, or by a subsidiary corporation of a hospital, or an agency which is a member of a corporate system which includes a licensed hospital in the service area proposed in the agency's certificate of need application.

"Licensure" means the temporary or permanent licensure of a home health agency by the New Jersey Department of Health.

"Medically indigent patient" means a person who requires skilled nursing care or other home health agency services but who lacks both sufficient financial resources to pay for the care (that is, income at or below the State Pharmaceutical Assistance for the Aged and Disabled (P.A.A.D.) guidelines) and third party payment coverage (that is, insurance) for the needed services.

"Seven-day-a-week, 24-hour-a-day service" means continuous nursing staff coverage which is available to the home health agency's new referrals ***(that is, patients for whom the agency has received written physician's orders)*** and current patients during evenings, nights, weekends, and holidays.

"Skilled nursing visit" means a personal contact between an individual patient and a registered nurse or licensed practical nurse who is sent from a home health agency. The visit takes place in the patient's place of residence and is conducted for the purpose of providing preventive, rehabilitative, or therapeutic nursing care, including, but not limited to, health assessment, monitoring, and counseling, and "high-tech" treatments.

SUBCHAPTER 2. STANDARDS FOR CERTIFICATE OF NEED REVIEW

8:33L-2.1 Service areas

(a) The service area of a home health agency shall be the county within which the agency's office is located, or a specified sub-area of that county, ***or two or more counties*** or the sub-areas of two or more counties. Each office of an agency shall be staffed and equipped in accordance with the Department of Health's Standards for Licensure, as required by N.J.A.C. 8:42.

(b) Any proposed establishment of a new service area as described in (a) above, or any proposed expansion of or other change in an existing agency's service area, shall require Certificate of Need approval through a full review process, pursuant to N.J.A.C. 8:33.

8:33L-2.2 Home health service utilization rates

(a) An applicant for a Certificate of Need to provide home health services shall demonstrate the capability to provide a minimum of 5,000 skilled nursing visits per year in the proposed service area, as described in N.J.A.C. 8:33L-2.1(a). In addition, the agency shall provide all other services required to comply with applicable licensure regulations pursuant to N.J.A.C. 8:42. The volume of skilled nursing visits shall be achieved within two years after the date of the agency's Certificate of Need approval and shall be maintained annually.

(b) The following are exceptions to (a) above:

1. Agencies serving counties with a population density of less than 300 persons per square mile, according to the most recent available U.S. Census data. For the purpose of this rule, these counties are Cumberland, Hunterdon, Salem, Sussex, and Warren. In these low population density counties, a home health agency must demonstrate the capability to provide a minimum of 4,000 skilled nursing visits per year, in addition to all other services provided to comply with the requirements for licensure pursuant to N.J.A.C. 8:42. The volume of skilled nursing visits shall be achieved within two years after the date of the agency's Certificate of Need approval and shall be maintained annually.

2. Existing agencies which receive Certificate of Need approval to expand their service area, in which case the agency shall demonstrate the capability to provide a minimum of 2,000 skilled nursing visits per year in each newly approved service area, in addition to providing all other services necessary to comply with the requirements for licensure pursuant to N.J.A.C. 8:42. The volume of skilled nursing visits shall be achieved within two years after the date of the agency's Certificate of Need approval and shall be maintained annually.

(c) Certificate of Need approval for the expansion of an existing home health agency into a new service area shall only be granted if the existing agency is providing at least 5,000 skilled nursing visits per year, or at least 4,000 skilled nursing visits per year if the agency is located in a low population density county as described in (b)1 above. This minimum volume of visits shall be maintained annually in addition to the visits approved for the new service area, as described in (b)2 above.

(d) If an agency receives Certificate of Need approval to offer services in a specified service area and, after two years from the date of Certificate of Need approval, is unable to demonstrate to the satisfaction of the Department of Health, the applicable volume of skilled nursing visits specified in (a) through (c) above, the Commissioner of Health may, at his or her discretion, revoke the agency's license or may institute other licensure penalties. Any licensure revocation procedure shall be conducted in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1-1 et seq.).

8:33L-2.3 Cost efficiency

(a) Applicants for Certificate of Need approval shall document that the least costly alternatives, either directly provided or subcontracted services, will be utilized, where the services meet applicable quality of care standards. However, because of the potential for

problems with providing continuity of care, agencies proposing the full subcontracting of nursing services shall not receive Certificate of Need approval.

(b) Consistent with applicable licensure regulations (N.J.A.C. 8:42), agencies shall be precluded from fully subcontracting for all nursing services. Violation of this condition at any time shall constitute a sufficient basis for the Commissioner of the Department, within his or her discretion, to revoke the agency's license or institute other licensure penalties. Any revocation procedure shall be conducted in accordance with the Administrative Procedures 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.).

(c) To maximize productivity without compromising the quality of care, the average annualized number of visits made by nursing personnel should not be less than five visits per day and not more than seven visits per day by the second year of agency operation.

8:33L-2.4 Certificate of Need requirements

(a) In addition to all other applicable required items of documentation specified in this chapter, applicants proposing to expand an existing home health agency's service area or to institute a new agency shall submit all of the following with their application:

1. Documentation of proposed referral sources. Letters of support from community agencies and health care facilities shall be submitted indicating to the satisfaction of the Department of Health the number of referrals which can be expected annually and indicating a willingness to establish referral arrangements upon home health agency licensure.

2. Documentation of the financial feasibility of the project. Expense and revenue projections shall be submitted covering a period of at least two years beyond the point at which expenses are expected to no longer exceed revenues. Also required for submission is third party verification of the availability of sufficient capitalization to meet start-up costs for the period until revenues exceed expenses or for the first six months of operation, whichever is greater.

3. Documentation of specific strategies proposed for targeting services to medically indigent patients and for covering the costs of uncompensated care provided to these patients. As a condition of Certificate of Need approval, the applicant shall be required to continuously implement those strategies which are proposed in the application and required by the Department of Health.

4. Documentation of home health care access problems in the service area. Certificate of Need approval shall only be granted in those instances where there are one or more of the following documented access problems and where the applicant is able to provide compelling evidence, to the satisfaction of the Department of Health, that these specific problems will be substantially ameliorated by the new agency. Where data from annual surveys conducted by the Department of Health form the basis for identifying the service area's access problems enumerated below reports of these surveys will be made available by the Department of Health each year on or before October 1. These reports shall be used to make determinations on all applications submitted for home health review cycles during the subsequent year, as specified in N.J.A.C. 8:33-1.5(d). Access problems to be considered include the following:

i. Absence of an existing home health agency providing care in the proposed service area which offers skilled nursing services on a seven-day-a-week, 24-hour-a-day basis, as defined at N.J.A.C. 8:33L-1.2 and as indicated by results from an annual survey conducted and reported by the Department of Health and by annual licensure inspection reports. For the purpose of this rule, on-call staff are required to be responsive within one hour of attempted contact via an answering service or direct telephone contact. Tape answering machines are not considered sufficient for the provision of on-call coverage during evenings, nights, weekends, and holidays.

ii. Absence of existing home health agencies providing care in the proposed service area which, in addition to those forms of care required for agency licensure, offer speech pathology, occupational therapy, and social work services. These services may be made avail-

able either through direct provision or through sub-contracting by the home health agencies. Annual licensure inspection reports and results of an annual survey conducted and reported by the Department of Health shall be used to determine provision of the aforementioned services by home health agencies in service areas.

iii. Absence of existing home health agencies providing care in a proposed service area which offer "high-tech" services. For the purpose of this rule, "high-tech" services shall include mechanical ventilator care and intravenous and central arterial line fusion therapies. These services shall be available to patients in the service area who require them, either through direct provision by one or more of the service area's home health agencies or through subcontracting by the home health agencies. Annual licensure inspection reports and results of an annual survey conducted and reported by the Department of Health shall be used to determine provision of the aforementioned services by home health agencies in service areas.

iv. Lack of provision of a minimally acceptable level of services to medically indigent patients. A reasonable minimum level of care to the medically indigent population shall be inferred from the provision of at least three percent free (that is, no pay) home health care visits of the total number of home health visits provided by each existing agency in a service area on an annual basis. Results of annual surveys conducted by the Department of Health, supplemented by agencies' audited cost reports from the most recent available year, shall be used for determining the level of indigent care provided by existing agencies. This access criterion shall not ***[become effective]* *be implemented*** as a basis for approving new or expanding home health agencies until 1989.

v. Absence of a Medicare-certified hospice program providing care for the terminally ill in the proposed service area. Agencies receiving Certificate of Need approval to correct this access problem shall be required to obtain Medicare certification as a hospice program and to maintain this certification continuously. Documentation of areas served by Medicare-certified hospice programs shall be reported by the Department of Health based on information supplied by the Department's Division of Health Facilities Evaluation, supplemented by information from the New Jersey Hospice Organization.

(b) Where there is more than one Certificate of Need application for a home health agency in a service area with documented access problems as identified in (a)4 above, priority shall be given to approving that application which proposes to correct all or the greatest number of identified access problems in the service area and which is in compliance with all other applicable criteria in this Chapter. Additional prioritization criteria include the following:

1. The broadest range of services including the provision of health promotion, chronic illness care, and illness prevention programs to the community;

2. The greatest amount of free (that is, no pay) care to medically indigent patients;

3. The expansion of an existing agency, provided that the agency has been operational for a minimum of three years, has a track record of quality care as determined by the Department of Health's Division of Health Facilities Evaluation, and has a record of compliance with previous conditions of Certificate of Need approval;

4. The expansion of an existing agency with a documented history of a greater than average amount of care provided on a no pay basis to medically indigent patients; and

5. The ability to implement the project quickly.

(c) When a home health agency receives Certificate of Need approval to ameliorate a service area's access problems as specified in (a)4 above, that approved agency shall be given a two year period to correct the identified access problems. No additional agencies shall be approved in the service area for the purpose of addressing those same access problems during the two year period subsequent to the date of Certificate of Need issuance. The approval of an agency shall be conditioned such that the Commissioner of Health may revoke the agency's license if the applicant fails to demonstrate good faith efforts to ameliorate the access problems as specified in the Certificate of Need application. Any licensure revocation procedure

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shall be conducted in accordance with the Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1-1 et seq.).

(d) To insure consumer choice, every county or sub-area of a county shall be served by a minimum of two home health agencies. If an area is served by only one home health agency, and it exhibits none of the access problems identified in (a)4 above, an additional agency may still receive Certificate of Need approval to serve that area, provided that it complies with all other applicable requirements in this chapter.

(e) As a condition of Certificate of Need approval, agencies shall agree not to deny to care on the basis of diagnosis and shall agree to care for patients with Acquired Immune Deficiency Syndrome (AIDS) and AIDS-Related Complex.

(f) Agencies receiving Certificate of Need approval shall be required to complete and return the Department of Health's survey of home health agencies and to submit a complete cost report on an annual basis, or more frequently if requested by the Department. Unless otherwise specified by the Department, a separate survey shall be completed for each county served by the agency. This survey shall include but not be limited to questions regarding the number of clients served according to age groupings, types and numbers of visits provided (for example, high-tech care, occupational therapy, social work, etc.), number of visits according to reimbursement source (including no-pay visits to medically indigent patients), and agency charges for services rendered.

8:33L-2.5 Special requirements for hospital-related home health agency applicants

(a) In addition to the applicable documentation required by N.J.S.A. 8:33L-2.4, home health agencies which are hospital-related shall submit all of the following with their Certificate of Need applications:

1. Documentation describing the related hospital's existing discharge planning system, identifying improvements which will be effected as a result of establishment of the proposed agency, and explaining why these improvements could not be effected by making use of existing home health providers in the proposed service area; and

2. Documentation that consumer choice of home health service providers shall be promoted within the related hospital. Evidence that referral relationships with other licensed home health service providers in the service area will be established and maintained shall be provided in the application. Hospital-related home health agencies receiving Certificate of Need approval shall be required to allow for the distribution of brochures from all licensed home health agencies in the service area to all patients in the related hospital. Arrangements shall be required to insure that referrals will be made to home care intake coordinators from other home health agencies in the service area, if this is desired by the patient or the patient's family.

8:33L-2.6 Transfer of ownership for home health agencies

(a) The transfer of ownership of a home health agency shall require Certificate of Need approval.

(b) The service area of an existing home health agency may not be modified in the Certificate of Need application for transfer of ownership.

(c) If two or more agencies are merged through the transfer of ownership, the resulting service area shall be that of the combined, pre-existing agencies.

(d) Conditions placed on the approval of Certificate of Need applications of home health agencies which are the subject of transfer of ownership shall be assigned to the transfer of ownership approval, unless these conditions are amended or deleted by the Commissioner of the Department of Health.

(e) An application for transfer of ownership shall not be approved if the agency which is the subject of the transfer application has not initiated the delivery of home health services, nor if it has ceased to provide these services, nor if it has substantially reduced services.

(f) Applicants proposing the transfer of ownership to an entity that conforms with the definition of a "hospital-related home health agency" as defined in N.J.A.C. 8:33L-2.1 shall comply with all applicable requirements in N.J.A.C. 8:33L-2.5.

(g) As a condition of Certificate of Need approval of a transfer of ownership, the new agency shall provide a minimum of three percent of its total home health visits in the form of free (that is, no pay) visits to medically indigent patients on an annual basis. If the transferred agency was providing more than three percent of its visits in the form of free (that is, no pay) visits to medically indigent patients, the new agency shall, to the satisfaction of the Department of Health, be required to propose and implement a program to insure that a comparable number of free home health visits shall be provided in the service area on an ongoing basis subsequent to the transfer of ownership.

(h) No patient under treatment at the time of the transfer of ownership approval shall lose service or experience any increase in charges as a result of the change in ownership.

8:33L-2.7 Care for medically indigent patients

(a) As a condition of Certificate of Need approval, applicants proposing new agencies or expansions of existing agencies shall be required to provide a minimum of three percent of their total annual home health visits in the form of free (that is, no pay) visits to medically indigent persons. Where agency expansions are approved, this minimum three percent requirement will apply to the agency's total annual visit provision. This percentage shall be achieved within one year of license issuance and maintained annually.

(b) As a condition of Certificate of Need approval, applicants shall be required to maintain a sliding fee scale to be used for all proposed home health services. The sliding scale shall incorporate provisions for patients to receive care free of charge, if they meet the definition of "medically indigent," as stated in N.J.A.C. 8:33L-1.2. The proposed fee schedule shall allow for partial payment by patients who have incomes above the P.A.A.D. guidelines (see definition of "medically indigent") but below three times the Hill-Burton poverty guidelines. The sliding scale shall be submitted with the Certificate of Need application. Any changes in the schedule are subject to approval by the Department.

(c) Pursuant to the prioritization criteria identified in N.J.A.C. 8:33L-2.4(b)2, Certificate of Need applicants proposing to provide more than the required three percent free (that is, no pay) visits shall accept as a condition of approval that failure to provide the proposed percentage of free home health visits annually shall, at the discretion of the Commissioner of the Department of Health, result in revocation of the agency's license or other licensure penalties. Any licensure revocation procedure shall be conducted in accordance with the Administrative Procedures 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.).

HIGHER EDUCATION

(a)

HIGHER EDUCATION ASSISTANCE AUTHORITY

PLUS Loans

Capitalization of Interest

Adopted Amendment: N.J.A.C. 9:9-3.5

Proposed: April 6, 1987 at 19 N.J.R. 498(b).

Adopted: September 23, 1987 by Jerome Lieberman, Chairman,

New Jersey Higher Education Assistance Authority.

Filed: October 23, 1987 as R.1987 d.456, **without change**.

Authority: N.J.S.A. 18A:72-10.

Effective Date: November 16, 1987.

Expiration Date: October 3, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

9:9-3.5 Capitalization of accrued interest

(a) For PLUS loans insured under a guarantee agency program, a lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance according to the institution's own billing cycle but in no case more frequently than on the quarterly basis.

(b) This section shall be effective for all PLUS loans made on or after July 6, 1987. For all PLUS loans made prior to July 6, 1987, this section shall only be applicable upon the written consent of the borrower.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

**Home Care Services Manual
 Independent Clinic Services Manual**

Adopted Amendments: N.J.A.C. 10:60-2.2 and 10:66-3.2

Proposed: August 17, 1987 at 19 N.J.R. 1489(a).

Adopted: October 9, 1987 by Drew Altman, Commissioner, Department of Human Services.

Filed: October 9, 1987 as R.1987 d.451, **with changes** not in violation of N.J.A.C. 1:30-4.3.

Authority: N.J.S.A. 30:4D-5; 30:4D-6(b)(2)(17); 30:4D-6(c); 30:4D-7 and 7b; 42 CFR 440.70; 440.170(f) and 440.180.

Effective Date: November 16, 1987.

Expiration Date: N.J.A.C. 10:60—August 27, 1990. N.J.A.C. 10:66—December 15, 1988.

Summary of Public Comments and Agency Responses:

COMMENT: There were several comments on this proposal. The commentators included Visiting Homemaker and/or Home Health Services in several counties, including Middlesex, Union, Bergen, Salem, Morris, etc. The commentators also included agencies such as Private Care Services and Personal Touch Home Care of New Jersey. A comment was also submitted by the Director of Community Services at Overlook Hospital. Some commentators supported the fee increase that was contained in this rule, other commentators indicated the fee increase was not sufficient. In addition, some commentators indicated the rate was locked-in for calendar year 1988.

RESPONSE: The agency's response is that fee increases are not locked-in for calendar year 1988. However, the Medicaid program must be responsive to fiscal constraints. Therefore, the agency is continuing to review conditions in the industry and its impact upon the clients to be served within the current appropriation for state fiscal year which ends June 30, 1988, as well as for the next state fiscal year which begins July 1, 1988.

Summary of Changes between Proposal and Adoption:

The Division is adding an additional modifier, "ZI", to certain HCPCS (Health Care Financing Administration Common Procedure Coding System) codes for independent clinics at N.J.A.C. 10:66-3.2. The modifier "ZI" is necessary to specifically identify those personal care assistant services rendered by an independent clinic. There is no change in the fee schedule that was printed in the proposal. The adopted rule reflects the new rates for both home care agencies and/or independent clinics. Therefore, the agency considers this change to be nonsubstantive in nature.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*).

10:60-2.2 Personal care assistant service

(a)-(e) (No change.)

(f) Reimbursement:

1. The following are all inclusive maximum rates for personal care assistant services, the initial nursing assessment visit and the personal care assistant nursing reassessment visit. No direct or indirect cost over and above these established rates will be considered for reimbursement. A provider may not charge the New Jersey Medicaid Program in excess of present charges for other payors. For reimbursement purposes a weekend means a Saturday or Sunday; a holiday means an observed agency holiday which is also recognized as a Federal or State holiday.

i. Personal care assistant services are limited to a maximum of 25 hours per week at a reimbursement rate up to \$9.00 per hour weekday for individual patient. Code No. Z1600; and

ii. Up to \$4.50 per half-hour weekday for individual patient. Code No. Z1611; and

iii. Up to \$6.76 per hour weekday for a group rate (two or more patients, with a maximum of eight patients in the same residential setting at the same time). Code No. Z1605; and

iv. Up to \$3.38 per half-hour weekday for a group rate (two or more patients, with a maximum of eight patients in the same residential setting at the same time). Code No. Z1612; and

v. Up to \$10.00 per hour weekend, holiday for individual patient. Code No. Z1614; and

vi. Up to \$5.00 per half-hour weekend, holiday for individual patient. Code No. Z1615; and

vii. Up to \$7.76 per hour weekend, holiday for a group rate (two or more patients, with a maximum of eight patients in the same residential setting, at the same time). Code No. Z1616; and

viii. Up to \$3.88 per half-hour weekend, holiday for a group rate (two or more patients, with a maximum of eight patients in the same residential setting, at the same time). Code No. Z1617; and

ix. Up to \$28.00 may be billed for an initial nursing assessment visit. Code No. Z1610; and

x. Up to \$20.00 may be billed for a nursing reassessment visit. Code No. Z1613.

10:66-3.2 HCPCS code numbers and maximum fee schedule for independent clinic services

IND	HCPCS CODE	DESCRIPTION	MAXIMUM FEE ALLOWANCE	
			\$	NS
...				
LN	Z1600*ZI*		8.34	8.34
LN	Z1605*ZI*		6.76	6.76
L	Z1610*ZI*		28.00	28.00
LN	Z1611*ZI*		4.17	4.17
LN	Z1612*ZI*		3.38	3.38
L	Z1613*ZI*		20.00	20.00
...				
N	Z1600*ZI*	Personal Care Assistant Service—Individual	\$8.34	\$8.34
			Per Hour	
N	Z1605*ZI*	Personal Care Assistant Service—Group—Care provided involves two or more patients, with a maximum of eight patients in the same residential setting at the same time.	6.76	6.76
			Per Hour	
	Z1610*ZI*	Personal Care Assistant Service—Initial Nursing Assessment Visit	28.00	28.00
N	Z1611*ZI*	Personal Care Assistant Service—Individual	4.17	4.17
			Per Half-Hour	

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N	Z1612*ZI*	Personal Care Assistant Service— Group—Care provided involves two or more patients, with a maxi- mum of eight patients in the same residential setting at the same time.	3.38	3.38
			Per	Half-Hour
	Z1613*ZI*	Personal Care Assistant Service— Re-assessment Visit	20.00	20.00

(b)

**DIVISION OF PUBLIC WELFARE
Public Assistance Manual
Child Support Overpayments
Adopted Amendment: N.J.A.C. 10:81-11.4**

Proposed: July 6, 1987 at 19 N.J.R. 1171(a).
Adopted: October 16, 1987 by Drew Altman, Commissioner,
Department of Human Services.
Filed: October 21, 1987 as R.1987 d.467, with substantive change
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Effective Date: November 16, 1987.

Expiration Date: October 15, 1989.

Summary of Public Comments and Agency Responses:

A comment was received from a county welfare agency. The commenter opposed the amendment which requires that direct support payments be returned to the Income Maintenance Unit. Such support payments should be returned to the CWA/CSP Unit, as is in the current rule. If the support payment is not returned to the CWA/CSP Unit, then it should be collected by the Income Maintenance Unit.

Upon further review of the amendment, the Department concurs with the commenter and will not substantially alter current language which states that direct support payments are to be forwarded to the CWA/CSP Unit. However, text has been added to clarify that if payments are not forwarded to the CWA/CSP Unit but retained by the client, responsibility for collection rests with the Income Maintenance Unit.

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

10:81-11.4 Assignment of support rights

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

(d) IM worker's responsibility: The IM worker shall advise the AFDC applicant/recipient that upon signing an application (PA-1J) for AFDC he or she assigns to the county welfare agency any rights to past due support and future support and subsequent to its completion, he or she shall be responsible for informing the county welfare agency of any payments which may be received either directly or through the probation department from an absent parent. Additionally, the AFDC applicant/recipient shall be informed of his or her cooperation responsibilities (see N.J.A.C. 10:81-11.5).

1. Referral to CSP Unit: The IM Worker, at the time of application for AFDC-C, shall complete the appropriate parts of the CSP referral document and route this form to the CWA/CSP Unit within two working days of issuance of an assistance check.

i.-ii. (No change.)

iii. Overpayment resulting from direct support payments: When a full grant has been issued, any support payments received directly by the applicant/recipient shall, upon receipt, be ***[returned]* *forwarded*** to the ***[agency's Income Maintenance Unit]* *CWA/CSP Unit***. If the support payment is ***[not returned]* *retained***, it must be collected by the agency's Income Maintenance Unit, upon termination of the client from AFDC if not sooner.

iv.-vii. (No change.)

DIVISION OF PUBLIC WELFARE

(a)

**Public Assistance Manual
Payment Increase for Pregnancy Examination
Adopted Amendment: N.J.A.C. 10:81-8.23**

Proposed: August 17, 1987 at 19 N.J.R. 1490(a).
Adopted: October 9, 1987 by Drew Altman, Commissioner,
Department of Human Services.

Filed: October 14, 1987 as R.1987 d.455, without change.

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Effective Date: November 16, 1987.

Expiration Date: October 15, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:81-8.23 Medicaid Special

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

(d) Rules concerning pregnant women age 21 and over are:

1. (No change.)

2. Eligibility is determined for an eligible unit of two (woman and unborn child) based on her income and available resources only, or, if she is married and living with her spouse, on an eligible unit of three (woman, spouse and unborn child) including income and available resources of both spouses. Medicaid coverage does not include the spouse even though his income is included in the eligibility determination.

i. A pregnant woman with other dependent children should be assisted in making immediate application for AFDC. If she is found ineligible for AFDC, the CWA shall determine eligibility for Medicaid Special on behalf of her unborn child. The eligible unit shall consist of the woman, her spouse if present, any dependent child(ren) and the unborn child. All income and resources shall be applied to the appropriate AFDC-C or -F standard but only the woman and the unborn child may be eligible for Medicaid coverage.

(1) Coverage under Medicaid Special begins with the medical determination of pregnancy and ends, for the mother, with the delivery of the child (coverage includes the expenses of delivery). At birth, the child may remain eligible for Medicaid Special in accordance with (b) above; he/she will keep the same case number.

(2) Medical documentation of pregnancy will include the estimated date of conception and delivery date. Cost of examination to determine pregnancy may be made from the administrative account. The allowable rate of payment for the examination by a specialist in obstetrics and gynecology is \$22.00 plus \$3.00 for the pregnancy test.

(3) (No change.)

(e) (No change.)

(a)

**Assistance Standards Handbook
Emergency Assistance**

Adopted Amendment: N.J.A.C. 10:82-5.10

Proposed: July 6, 1987 at 19 N.J.R. 1171(b).

Adopted: October 16, 1987 by Drew Altman, Commissioner,
Department of Human Services.

Filed: October 21, 1987 as R.1987 d.466, with substantive changes
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:7-6 and 44:10-3, and 45 CFR 233.120.

Effective Date: November 16, 1987.

Expiration Date: October 29, 1989.

Summary of Public Comments and Agency Responses:

The Department of Human Services held public hearings on July 23, 1987 concerning the proposed amendments to Emergency Assistance (EA) under the provisions of the Aid to Families with Dependent Children (AFDC) program. Those hearings were conducted in compliance with the court's directive in *Maticka v. City of Atlantic City*, 216 N.J. Super. 434 (App. Div. 1987) requiring rulemaking hearings to solicit public comment on the proposed amendments. Notifications of public hearings were sent to approximately 122 interested agencies and organizations. Approximately 95 individuals testified at the hearings which were held in the north, central, and southern regions of the State. Numerous written comments were submitted through August 5, 1987, and those together with the transcripts of oral testimony were made part of the public record and considered by the Department in the development of the final rule. Testimony concerning the proposal was provided by the Public Advocate, staff from State, county, and municipal agencies, client advocacy groups, staff from various emergency shelters, representatives from real estate agencies, homeless advocacy groups and homeless individuals.

Some commenters mentioned issues not specifically addressed in the proposed EA rules such as the need to increase the assistance grants and the minimum wage. Those issues are not the subject of these rules.

The hearings also served as fact finding hearings for EA in the General Assistance (GA) program. Many concerns were expressed by municipal agencies and advocacy groups for the mentally ill; these are the subject of a separate rulemaking hearing on emergency assistance in the GA program. Testimony and comments have been highlighted with responses below; one technical amendment regarding federal funding is included at 10:82-5.10(d)1vii.

COMMENT: While a small percentage support shortening or retaining the 90 days proposed time limitation to receive emergency assistance for temporary shelter, the majority commented that the time limit was insufficient considering the lack of affordable housing and should be expanded based on circumstances.

RESPONSE: The Department concludes that 90 days plus extended time limitations, when dictated by necessity, is reasonable time to secure permanent housing. In so concluding the Department has taken into consideration the renewed emphasis on services by the county welfare agency (CWA) including information, referral, counseling and assistance in securing family shelter combined with additional financial assistance in the form of security deposits for rent and utilities, advance rent, and moving expenses. The Department is also cognizant of the need for sound public policy which calls for a solution that involves a balance between the needs of the AFDC population and the agency's mandate to operate within fiscal boundaries which ultimately are defined by the Legislature's appropriation. It is clear that the recipient population as a whole would benefit more by retention of limited emergency assistance, enabling the Department to provide more effective services to a greater number of families in need.

COMMENT: The majority of commenters opposed the 10-day time limit between the occurrence of the emergency and the application for emergency assistance, and suggested that no limit should be imposed.

RESPONSE: The time limit in N.J.A.C. 10:82-5.10(a)1. has been increased to 30 days. This time limitation has been expanded in recognition of the fact that many families, when faced with homelessness, attempt

to solve the crisis on their own by staying with relatives or friends. Only after other alternatives have been explored to no avail, do these families seek the aid of agencies. In situations where families take refuge in relatives' homes, emergency shelters, or are hospitalized due to domestic violence or illness, every effort should be made to contact the administering agency or CWA to report the emergent situation to ensure eligibility for EA within the prescribed time frame. It should be stressed that acceptable contact may be in the form of a telephone call.

COMMENT: A few commenters indicated support for the *pre-Maticka* standard which required that the emergent situation be the result of a natural disaster and or one over which the client had no control or opportunity to plan in advance. Those commenters supported the *pre-Maticka* standard mostly because of budgetary reasons and the fact that clients may tend to abuse the system without such a standard. A small percentage of commenters supported the language which modifies the requirement that the emergency be one over which the client had no control or opportunity to plan in advance. Some commenters interpreted the proposed rules as establishing separate and distinct categories of eligibility by exempting homeless families whose circumstances may necessitate their break-up as a result of foster-care placement through the Division of Youth and Family Services (DYFS). The majority of commenters opposed any language that would restrict emergency assistance eligibility to a select group who had not contributed to their homelessness—the majority felt that eligibility should be based on need alone, that is, anyone in an emergent situation should be deemed eligible.

RESPONSE: A final decision for eligibility involving foster-care placement cases is based on the combined efforts of the CWA and DYFS. The involvement of DYFS and foster-care placement is only as a last resort when no other remedies are available. Although the language pertaining to realistic capacity to plan in advance has been changed, eligibility based on need alone cannot be accommodated. It should be emphasized that EA is a temporary program, and to expand it further could result in a separate permanent public assistance program for housing and shelter. Recent experience in other states which have unlimited emergency assistance for housing has resulted in an enormous cost to the public with no permanent solutions to homelessness.

COMMENT: More than one-half of the commenters commented that the provision in N.J.A.C. 10:82-5.10(d)1.v. to document the housing search was acceptable provided that flexibility exists in the rule to permit enforcement on a case-by-case basis. The rule should take into consideration whether or not an individual has any emotional problems or physical disabilities, and the availability of transportation and housing.

RESPONSE: The proposed rules allow for the flexibility (as stipulated on Form PA-70) of housing search documentation contingent on individual circumstances. For example, in cases of illness or incapacity, or in urban areas where housing is in short supply, the agency may deem that fewer contacts are appropriate.

COMMENT: The perception of the majority of commenters was that the primary cause of homelessness was the lack of affordable housing throughout the State. All advocacy groups represented at the public hearings underscored the need for additional emergency shelter as well. An integral factor complicating this issue, as indicated by many of the homeless, is that when housing is available, discrimination occurs due to family size, sex, race, and marital status and other related prejudicial factors. Much of the housing, when it is available, is simply not within the realm of affordability, nor habitable. In some areas of the State, the vacancy rate is as low as one percent. Conditions in the few existing shelters are often unsuitable and overcrowded.

RESPONSE: While the Department recognizes these problems, the solution to the lack of affordable housing and emergency shelters requires capital construction which is not within the scope of the regulatory authority of this Department, nor is it a consideration with respect to EA. The mechanism in place, in the form of the proposed rules, is to assist recipients in finding whatever affordable housing is available. The Department is working with other agencies, especially the Department of Community Affairs (DCA), to creatively use EA funds to coordinate with private and non-profit organizations to renovate housing for use in providing temporary and ultimately permanent shelter through demonstration programs such as Emergency Housing/Apartment Program (EHAP) and the Housing Quality Demonstration.

COMMENT: While a minority of those commenting felt that the proposed provision at N.J.A.C. 10:82-5.10(c)2 allowing payment for ren-

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tal and mortgage arrearages was sufficient, the majority voiced concern that it was not adequate to reinstate potentially evicted residents.

RESPONSE: N.J.A.C. 10:82-5.10(c)2 has been modified to include payment of up to three months of back rent and utilities after other avenues have been explored to no avail. This expansion may be authorized to prevent the upheaval of families, and to curtail any additional agency expense such as EA monies paid for temporary placement into motels/hotels.

The Department has also amended the proposed text of 5.10(c)2. to include some acceptable evidence of pending eviction such as official documentation other than a formal eviction notice. This position is consistent with comments concerning the fact that payment for back rent at the point of eviction will not prevent eviction.

COMMENT: While a small percentage of commenters indicated that responsibility for acquiring housing should be that of the client, the majority of commenters agreed that the CWAs are in a better position and have the resources to alleviate the problem of homelessness through case management and client education. Suggestions were made, primarily by agencies involved in the administration of the program, that money should be set aside from the client's grant while in temporary shelter to offset the cost of securing permanent housing. Others stated that language in the Form PA-70 should clearly delineate the responsibilities of the agencies involved in providing social services to those found in an emergent situation. Clients should not be penalized for failing to acquire or secure permanent housing if the agency has not provided the appropriate support services.

RESPONSE: The Department cannot mandate across the board a savings requirement utilizing the regulatory process because of the unique situations of families. Rather, the Department can encourage savings through case management and discuss ways to improve existing situations.

The CWAs are fully aware of their responsibilities pertaining to the administration of the EA rules. Appropriate administrative procedures are in place to ensure that the rules are consistently enforced.

COMMENT: A majority of commenters urged expansion and clarification of the proposed EA rules to encompass certain specialized needs of the homeless, including those individuals who are working but whose wages are not sufficient to meet the high costs of housing. Additionally, concern was expressed about the possibility of bias or error on the part of the CWAs in interpreting and administering the EA rules.

RESPONSE: Historically, emergency assistance has been confined to individuals who meet all requirements of AFDC eligibility except deprivation, enumeration, and evaluation of legally responsible relatives. For families who do not meet the requirements for AFDC/EA, there are programs in place such as the Emergency Services Program, through which State appropriated funds are made available to county government for 24 hour emergency response to provide emergency shelter, food, social services, and case management. The CWAs are charged with the responsibility to carry out the mandates of emergency assistance. Administrative remedies presently in place are sufficient to provide recipients and applicants with appropriate redress in the event the rules are not properly executed by the CWA.

COMMENT: There is general agreement that a lack of sufficient funding exists for extended assistance beyond the point at which Federal Financial Participation (FFP) is discontinued. Suggestions were made that State payments equal 100 percent of the balance of EA expenditures not subject to Federal participation. It was felt that unlimited EA without Federally matched funds places a burden on county resources which are limited.

RESPONSE: Based on past experience (prior to *Maticka*) and the enhancement of social and support services, it is expected that most families will find permanent housing within the time limit in which FFP is available. Monthly and annual fiscal reports submitted by CWAs of emergency assistance cases, recipients and disbursements disclosed that 95 percent of emergency situations lasted less than 90 days. Significantly, more than half of the emergencies (52.1 percent) were resolved within one week, with two-thirds resolved in three weeks and nearly three-fourths of all emergencies addressed within a month. Since the *Maticka* decision, and based on current statistics, no significant changes have been experienced in the length of time needed to secure temporary and or permanent housing but the cost of providing emergency assistance has nearly tripled. The Department also agrees that the decrease in Federal

funding places a burden on the State as well as county budgets, however, the Department continues to have a strong commitment to use creative approaches to address homelessness.

COMMENT: The majority of commenters argued that placement of families outside their municipalities is counterproductive to the amelioration of their emergent situation due to the loss of familial support within their community, and support provided them by their friends, neighbors and CWAs. Relocation is acceptable, however, only as a last resort. Some commenters stated that displacement of the homeless out of affluent communities and into already overburdened municipalities is a reality because the proposed rules do not impose an obligation upon CWAs to make every effort to place families within their own municipalities.

RESPONSE: N.J.A.C. 10:82-5.10(d) has been modified to reflect that efforts should be made by both client and agency to secure temporary and permanent housing for clients in their own municipalities. If necessary, as a last resort, homeless families can be relocated outside their municipalities.

COMMENT: Some commenters were of the view that the proposal does not take into account a realistic and current assessment of the needs of homeless families and as a result is not in conformity with the *Maticka* decision.

RESPONSE: The Department held public hearings and conferred with community groups to ascertain the needs of homeless families, and based the proposed rules on the final assessment. The rules encompass the needs of the homeless and provide for the procurement of temporary and permanent housing, and do not contradict the *Maticka* decision. Federal Emergency Management Agency (FEMA) funds are available for counties and municipalities experiencing natural disaster situations. FEMA funds are managed through nonprofit agencies, in partnership with counties and directed toward county-based needs. The dollar amount of FEMA funding changes every year; approximately \$2 million was allocated to New Jersey by FEMA in State Fiscal Year (SFY) 1987. In addition, \$4.35 million in State funding is directed through Comprehensive Emergency Assistance Systems (CEAS), which is a network involving both the public and private sectors coordinating the provision of emergency assistance services at the county level. The utilization of those funds, in conjunction with all available Federal matching funds, is based on plans developed by each county to respond to the needs of its residents.

Urban Initiatives, which is a private consulting firm headquartered in Stamford, Connecticut, is working with the City of East Orange, Volunteers of America (VOA), the DCA and the Department to develop innovative housing/services options for homeless families. EHAP utilizes EA funds, combined with funding from other sources such as banks or HUD, to provide the income necessary to support housing rehabilitation. The program can be used to rehabilitate one or more units in an occupied building, or to support the renovation of abandoned buildings. Pending before the legislature is the Housing Quality Demonstration which is designed to ensure the quality of housing for public assistance recipients through withholding of the rent portion of AFDC payments to landlords with sub-standard housing. To encourage participation by landlords, technical and financial assistance of the same nature as the EHAP program would be offered to assist landlords in making improvements. Rent withholding would only occur in situations where the owner has not moved to correct deficiencies in a timely manner. The Division of Youth and Family Services also has program funding for emergency shelter and protective services placements related to homelessness. In addition to those current efforts, the Department is willing to address the problem of homelessness at any additional Federal, State or county forum, public or private, and is committed to working with all groups toward practical, effective solutions to one of New Jersey's most serious problems.

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

10:82-5.10 Emergency assistance

(a) "Emergency Assistance" is hereby established as any extra or additional payment(s), authorized in accordance with (b), (c) and (d) below during the period of 30 consecutive days immediately following the occurrence of an emergency as defined in (c) below, issued to or for an eligible *[unit]* *family* otherwise receiving continuing assistance.

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1. ***In addition,*** ***[T]**t**hese regulations apply to an emergency (as described in (c) below) which occurred within the ***[10]* *30*** calendar days immediately prior to application for Emergency Assistance, if the applicant meets all requirements for the AFDC ***[P]**p**rogram except for the deprivation, enumeration and evaluation of legally ***[-]**** responsible relatives requirements ***as defined in N.J.A.C. 10:81-2.7, 10:81-11.3 and 10:81-3.5(b)4i***.

i. Emergency assistance is not available if the need for such assistance arose because the applicant or the specified relative with whom the applicant is living refused without good cause as defined in N.J.A.C. 10:81-3.18 to accept employment or training for employment.

2. Financial eligibility for all applicants for emergency assistance shall be determined using Schedule I of N.J.A.C. 10:82-1.2(c) and the maximum income levels for AFDC-C and AFDC-F segments of Schedule III of N.J.A.C. 10:82-1.2(d).

3. Applicants for emergency assistance shall be issued Form PA-70, Emergency Assistance Notice, at time of application for EA. That notice shall specify that the EA payments are granted for a specific period and the EA allowance will automatically terminate two months subsequent to the month for which the EA payment is first authorized. In addition the applicant shall be requested to sign the written notice (Form PA-70) signifying that he or she has been made aware of the requirements set forth in (d)1.v. and vi.

(b) (No change.)

(c) Emergency assistance is available in the following circumstances:

1. When there has been substantial loss of shelter, food, clothing, or household furnishings by fire, flood or other similar disaster and the eligible ***[unit]* *family*** is in a state of homelessness and the county welfare agency determines that the providing of shelter and/or food and/or emergency clothing, and/or minimum essential house furnishings are necessary for health and safety, such needs may be recognized in accordance with the regulations and limitations in (d) below.

2. When there is ***official documentation of a pending eviction, such as a tenancy complaint filed by the landlord,*** an order from a court for eviction or foreclosure, an actual eviction or foreclosure has occurred, or when prior permanent shelter is no longer available, and the eligible family demonstrates a lack of realistic capacity to plan for substitute housing as defined in iii below, emergency assistance shall be authorized in accordance with i and ii below.

i. Payment may be authorized for ***[two]* *three*** calendar months of retroactive rental ***[or]**,*** mortgage ***or utility*** payments if it will prevent actual eviction or foreclosure.

ii. In situations of homelessness due to actual eviction or foreclosure or when prior permanent shelter is no longer available, payment shall be authorized for emergency shelter in accordance with (d)1 below.

iii. Lack of realistic capacity to plan for substitute housing exists in the following circumstances:

(1) When the eligible family can demonstrate that there was insufficient time to secure substitute housing between receipt of notice of imminent loss of shelter and actual eviction, foreclosure or loss of prior permanent shelter; or

(2) When the eligible family can demonstrate that available funds and resources, including liquid resources at N.J.A.C. 10:82-3.1(d), were exhausted in payment of ordinary and necessary household and living expenses, such as food, clothing and shelter, and that payment of such expenses resulted in homelessness.

3. In instances where Division of Youth and Family Services, in consultation with the CWA, certifies that placement of the children in foster care is imminent due to the family being subjected to a serious health or life threatening situation because of the lack of adequate shelter, emergency assistance shall be provided in accordance with (d) below.

(d) Needs of the eligible family may be recognized in accordance with the regulations and limitations in the following paragraphs:

1. Emergency shelter: The county welfare agency shall authorize payment of the actual cost of adequate emergency shelter arrangements at the most reasonable rate available, for a specified temporary period (see N.J.A.C. 10:81-7.1(k)6vii concerning notice requirements) not to exceed two calendar months following the month in which the state of homelessness first becomes known to the county welfare agency. Such emergency shelter ***[need not]* ***, **wherever possible, shall*** be ***[located]*** in the municipality in which the eligible family currently resides. ***If, however, shelter as delineated above is not available within the municipality of customary residence, the recipient, as a condition of eligibility shall be obliged to accept shelter as delineated above which is situated outside the municipality of customary residence.*** In situations where the county welfare agency determines that despite efforts of both the client and the agency (see ***(d)*6** below), permanent living arrangements are unavailable, an extension of emergency assistance may be authorized in accordance with the provisions of ***(d)i.*vii** below.

i.-ii. (No change.)

iii. Allowances for permanent living arrangement: When required to establish the family in a more permanent living arrangement, allowances may be authorized for expenses related to that arrangement including, but not limited to, security deposits for rent and utilities and advance rent.

iv. Moving expenses: Payment may be authorized for moving expenses incident to the emergency and when required to establish the family in a more permanent living arrangement.

v. Client responsibility: While receiving emergency assistance for temporary shelter, the eligible family has a continuing responsibility to seek alternative permanent shelter. The eligible family is also responsible for documenting its efforts in locating alternate permanent housing, beginning with the eleventh calendar day from the date the state of homelessness first becomes known to the county welfare agency. Such documentation shall reflect a minimum average of 10 contacts per week, unless the CWA determines that a fewer number of contacts is deemed appropriate or the client demonstrates good cause, for example, illness or incapacity for failing to fulfill the minimum average housing search requirement. Contacts may be made by telephone, personal visit, or a combination of both. Documentation must also include items (1) through (4) below:

(1) Date of contact;

(2) Telephone number (if applicable);

(3) Address (location) of housing site; and

(4) Name of person contacted (landlord or agent).

vi. ***Every effort shall be made to locate suitable housing in the community of prior permanent residence.*** If ***,*** however, the county welfare agency locates suitable permanent housing of sufficient size to accommodate the entire household, ***[although not necessarily in]* *outside*** the community of prior permanent residence, the eligible family must accept the permanent housing arrangement. Refusal to relocate without good cause will result in ineligibility for further emergency assistance. A county welfare agency determination of good cause may include, but is not limited to, the need for a member of the eligible family to travel more than one hour each way to and from his or her place of employment by reasonably available public or private transportation.

vii. Extension of emergency assistance benefits: If at the end of the third month for which EA has been provided permanent shelter has not been secured, EA may be extended by the CWA for a fourth and, if necessary, a fifth calendar month provided the applicant signs a new Form PA-70 for each such month. Assistance granted under this provision ***[is not]* *may not be*** subject to Federal financial participation and may be provided by the CWA under conditions including, but not limited to, the following:

(1) Illness or incapacity of the client or another member of the household which requires the client's presence in the home on a substantially continuous basis, and no other member of the household is available to seek permanent shelter;

(2) Permanent housing has been secured but will not be available until after expiration of the third month of EA benefits.

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(3) Availability of documentation that the minimum average number of housing contacts per week required by the county welfare agency were made.

2.-5. (No change.)

6. Services: The following services shall be performed by CWA personnel and must, where appropriate, be provided to all cases granted EA benefits and are chargeable as Title IV-A funds.

- i. Information;
- ii. Referral;
- iii. Counseling;
- iv. Assistance in *[security]* ***securing*** family shelter, including transportation;
- v. Assistance in arranging for child care; and
- vi. Referral for legal services.

(e) Rules concerning victims of domestic violence are:

1. In situations where an applicant or recipient indicates that he or she and his or her children have left their customary residence because of domestic violence, payment of emergency assistance may be authorized under the following conditions:

- i. (No change.)
- ii. For new applicants, this state of homelessness occurred within the 10 calendar days immediately prior to the request for emergency assistance. Temporary arrangements during that period do not negate the existence of a state of homelessness.

2. (No change.)

3. Allowances:

i. Temporary shelter: Cost of temporary shelter arrangements may be authorized in an amount not to exceed the most reasonable cost of similar arrangements in a motel or hotel and shall be for a period not to exceed two calendar months, unless the provision of (d)1vii above apply, following the month in which the state of homelessness first becomes known to the county welfare agency, subject to the provisions of (d)1iii above.

ii. Food: An allowance for food may be provided in accordance with (d)2 above.

iii. Clothing: When necessary, an allowance for clothing may be provided in accordance with (d)3 above.

iv. Additional needs: When required to establish the family in a new permanent living arrangement, allowances may be authorized for security deposits for rent and utilities, and for home furnishings (see (d)1 and 4 above).

4. (No change.)

(f) Return of child from foster care placement:

1.-2. (No change.)

3. Allowances:

i. (No change.)

ii. Food: An allowance for food may be provided in accordance with (d)2 above.

iii. Clothing: An allowance for clothing for the child to be returned from foster care placement may be provided in accordance with (d)3 above.

iv. Home furnishings: An allowance for the child for house furnishings necessary to facilitate the return of the child from foster care placement may be made in accordance with (d)4 above.

4.-6. (No change.)

(a)

**Monthly Reporting Policy Handbook
General Provisions; Policy Required for Monthly Reporting/Retrospective Budgeting; Application/Certification Process; Determining Eligibility and Computing the Assistance Payment/Food Stamp Benefit; CWA Action on Monthly Reports and Other Reported Changes; Other Procedures**

Readoption: N.J.A.C. 10:90

Adopted Amendments: N.J.A.C. 10:90-2.4, 4.3, 4.4 and 5.3

Proposed: August 17, 1987 at 19 N.J.R. 1517(a).

Adopted: October 9, 1987 by Drew Altman, Commissioner, Department of Human Services.

Filed: October 14, 1987 as R.1987 d.454, **without change.**

Authority: N.J.S.A. 44:7-87; 44:7-6; 44:10-3; 30:4B-2 and 45 CFR 233.31 through 233.37; 7 CFR 273.21.

Effective Date for Readoption: October 14, 1987.

Effective Date for Amendments: November 16, 1987.

Expiration Date: October 14, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readopted rules can be found at N.J.A.C. 10:90.

Full text of the adopted amendments follows.

10:90-2.4 Income, employment and deductions

(a) Gross monthly income: The CWA shall use gross monthly income to determine eligibility prospectively and to compute the assistance payment and food stamp benefit (except for (b) below). Gross monthly income shall be determined according to the methods in this section. The CWA shall not multiply gross income by 4.333 or use any other conversion factor to determine gross income, except for certain NPA households in (a)3 below.

1. (No change.)

2. Assistance payment/food stamp benefit computation: Gross monthly income used in the assistance payment/food stamp benefit computation shall be determined according to (a)2i or ii below.

i.-iv. (No change.)

v. AFDC additional, corrective or supplemental payments: Payments issued for an additional member added to an AFDC eligible unit, payments issued to correct an underpayment of assistance, or non-federally funded AFDC supplemental payments issued in accordance with N.J.A.C. 10:82-5.11 shall be treated for purposes of the food stamp program as follows:

(1) Such payments received in the month they are intended to cover shall be considered income in the month of receipt and computed in the food stamp benefit retrospectively. For PA households, the unprorated amount of the Food Stamp Energy Disregard shall be used in determining countable income from such payments.

(A) Example: An individual is added to an eligible unit/food stamp household on January 10 and an additional AFDC payment is issued to cover the January needs of that individual on January 15. That additional payment shall be considered as income to the food stamp household in January and shall be retrospectively budgeted in the food stamp benefit for March.

(2) Such payments received in a month other than the month they are intended to cover shall be considered nonrecurring lump sum payments (defined in N.J.A.C. 10:87-5.9(a)10).

(A) Example: An eligible unit is underpaid assistance for the January Payment Month. The CWA discovers the underpayment in March and issues the corrective payment in April. That corrective payment shall be considered as a nonrecurring lump sum payment to the food stamp household, because although issued in April it was intended to cover the payment month of January.

3. (No change.)

(b)-(i) (No change.)

10:90-4.3 Computing the assistance payment/food stamp benefit after the initial two payment months of eligibility

(a) (No change.)

(b) First and second months of retrospective budgeting: Except as provided in N.J.A.C. 10:90-4.2(b)1 above, for the first and second payment months for which retrospective budgeting is used, the CWA shall not count income from the Budget Month already considered for any Payment Month determined prospectively which is not of

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a continuous nature or which is income from a terminated source. However, if such income has not been considered for any payment month determined prospectively, it must be counted retrospectively for the first and second payment months for which retrospective budgeting is used. This section applies to the income of both eligible units/households and individuals added to eligible units/households.

1.-5. (No change.)

6. Example: Given the situation in (b)5 above, the individual fails to report receipt of the \$100.00 RSDI, but the CWA discovers the income in February. The household's food stamp benefits for the March Payment Month will be calculated by retrospectively budgeting January's \$100.00 RSDI. Although the \$100.00 was income from a terminated source, it had not been considered prospectively in the January food stamp benefits, and therefore must be counted retrospectively.

(c) Determining eligibility and computing benefits of AFDC eligible units and food stamp households: CWAs shall follow (c)1 through 4 below to determine the eligibility and compute benefits for the AFDC and Food Stamp programs.

1. (No change.)

2. Step 2: Compute the amount of the assistance payment for the payment month using either prospective or retrospective budgeting.

i. (No change.)

ii. Retrospective budgeting: Retrospectively budget actual income received in the budget month. Determine if any budget month income is from a terminated source and budget appropriately in the assistance payment computation for the corresponding payment month.

3.-4. (No change.)

10:90-4.4 Changes in circumstances

(a) Individual added to an eligible unit: In any month for which an individual will be determined eligible prospectively and will be added to an existing AFDC eligible unit, the CWA must meet the individual's needs to the same extent it would if the individual were an applicant for AFDC.

1.-2. (No change.)

3. During a processing month, if an individual is added to an AFDC eligible unit that also receives food stamps as a public assistance (PA) household, and the additional payment for the individual's processing month eligibility is included in the eligible unit's regular monthly AFDC payment, this additional payment shall be counted as income prospectively in the food stamp benefit calculation for the corresponding payment month.

i. Example: On January 16 an individual with no income is added to an eligible unit of three (with no income) that also receives food stamps as a PA household. The individual is eligible for an additional assistance payment of \$26.00, which is included in the AFDC payment issued for the February Payment Month. The amount of the payment received on February 1 is \$469.00, consisting of \$443.00 allowance for an eligible unit of four plus the \$26.00 additional payment for January. Only \$443.00 of the February payment shall be counted as income in the Food Stamp benefit computation for February. The additional assistance payment of \$26.00 received in February for January shall be disregarded and treated as nonrecurring lump sum payment as defined in N.J.A.C. 10:87-5.9(a)10.

(b)-(j) (No change.)

10:90-5.3 During the Reinstatement Period

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

(c) Food Stamp benefits: If a household requests reinstatement after the first day of the payment month of termination and is determined eligible for participation, the CWA shall calculate the food stamp benefit using retrospective budgeting but shall not prorate the benefit to be issued according to N.J.A.C. 10:87-12.5.

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THE COMMISSIONER

(a)

Inmate Orientation and Handbook

Adopted New Rules: N.J.A.C. 10A:8

Proposed: August 17, 1987 at 19 N.J.R. 1531(b).

Adopted: October 19, 1987 by William H. Fauver,

Commissioner, Department of Corrections.

Filed: October 20, 1987 as R.1987 d.459, **without change.**

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

Effective Date: November 16, 1987.

Expiration Date: November 16, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

CHAPTER 8

INMATE ORIENTATION AND HANDBOOK

SUBCHAPTER 1. INTRODUCTION

10A:8-1.1 Purpose

(a) The purpose of this chapter is to:

1. Establish policies and procedures for informing inmates about the rules, procedures, services and programs of the correctional facility; and
2. Establish the policies and procedures for publishing the correctional facility's Inmate Handbook.

10A:8-1.2 Scope

This chapter shall be applicable to all correctional facilities within the Department of Corrections unless the context clearly indicates otherwise.

10A:8-1.3 Definitions

"Inmate Handbook" means a booklet that is provided to inmates which contains correctional facility rules and procedures, and information about services and programs.

"Orientation" means one or more sessions provided at the Reception Center and other correctional facilities to familiarize inmates with rules, procedures, services and programs.

SUBCHAPTER 2. ORIENTATION

10A:8-2.1 Responsibility for the Orientation Program

The Superintendent of the correctional facility shall designate a staff person to be responsible for the Orientation Program.

10A:8-2.2 Staff participation

Staff members from various correctional facility administrative units (such as, Classification, Custody, Business Office, Education, Medical, Social Work, etc.) shall participate in orientation sessions and shall describe the programs, services and/or activities of their units.

10A:8-2.3 Scheduling orientation

(a) An inmate shall be given an orientation within three weeks of admission to the Reception Center.

(b) Upon assignment or transfer to another correctional facility, the inmate shall be given an orientation within three weeks following admission to the new correctional facility.

(c) Ongoing orientation sessions shall be conducted as needed to inform inmates of:

1. New or revised policies and rules;
2. New or revised procedures;
3. Programs;
4. Services; and
5. Activities.

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10A:8-2.4 Content of orientation sessions

(a) The material contained in the correctional facility's Inmate Handbook shall be used as a guide for orientation sessions.

(b) Topics of orientation sessions shall include, but shall not be limited to:

1. Rights and privileges of inmates:
 - i. Correspondence;
 - ii. Visits;
 - iii. Telephone calls;
 - iv. Inmate savings accounts;
 - v. Inmate legal services;
 - vi. Inmate business activities; and
 - vii. Ombudsman.
2. Work opportunities;
3. Institutional services:
 - i. Psychological;
 - ii. Psychiatric;
 - iii. Counseling (individual and group);
 - iv. Social work;
 - v. Educational;
 - vi. Religious activities;
 - vii. Medical and dental care; and
 - viii. Clothing.
4. Recreation and leisure time activities;
5. Personal hygiene;
6. Personal property;
7. Housekeeping;
8. Discipline;
9. Time and sentences;
10. Detainers;
11. Community Release Programs; and
12. Parole/expiration of sentence:
 - i. Financial aid.

SUBCHAPTER 3. INMATE HANDBOOK

10A:8-3.1 Responsibility for the Inmate Handbook

The Superintendent shall designate a staff person to be responsible for developing, reviewing, revising, printing and issuing the Inmate Handbook.

10A:8-3.2 Inmate Handbook distribution

Each inmate shall be given a copy of the Inmate Handbook within two days of admission to the correctional facility.

10A:8-3.3 Inmate Handbook revision

(a) The Inmate Handbook shall be updated at least every two years and bear the date of the most recent revision.

(b) The Inmate Handbook revision shall be based on an overall review of the correctional facility's written policies and procedures.

10A:8-3.4 Review by division office

(a) Prior to printing a revision of the Inmate Handbook, two copies of the draft with the proposed revisions shall be submitted to the appropriate Assistant Commissioner's Office for review and written approval.

(b) When the approved draft of the revised Inmate Handbook has been printed, a copy of the revised Inmate Handbook shall be submitted to the appropriate Assistant Commissioner's Office.

10A:8-3.5 Inmate Handbook content

(a) The Inmate Handbook shall contain an introduction which explains, in plain language, the philosophy of the facility.

(b) The Inmate Handbook shall also include, but shall not be limited to, an explanation and/or description of:

1. The reception process;
2. The classification process;
3. The rights and privileges of inmates:
 - i. Correspondence;
 - ii. Visits;
 - iii. Telephone calls;

- iv. Inmate accounts;
- v. Inmate legal services;
- vi. Inmate business activities; and
- vii. Ombudsman.
4. Work opportunities;
5. Institutional services:
 - i. Psychological;
 - ii. Psychiatric;
 - iii. Counseling (individual and group);
 - iv. Social work;
 - v. Educational;
 - vi. Religious activities;
 - vii. Medical and dental care; and/or
 - viii. Clothing.
6. Recreation and leisure time activities;
7. Personal hygiene;
8. Personal property;
9. Housekeeping;
10. Time and sentences:
 - i. Commutation and work time credits (earning, loss and restoration);
 - ii. Jail and street time calculation;
 - iii. Minimum and maximum sentences;
 - iv. Concurrent and consecutive sentences;
 - v. Indeterminate sentences;
 - vi. Aggregation of sentences;
 - vii. Multiple offender sentences;
 - viii. Life sentences;
 - ix. Mandatory minimum sentences;
 - x. Payment of fines; and
 - xi. Detainers.
11. Community Release Programs;
12. Other programs and services; and
13. Parole/expiration of sentences:
 - i. Financial aid.

(a)

Classification Process

Reception Activity

Adopted Amendment: N.J.A.C. 10A:9-2.1

Proposed: August 3, 1987 at 19 N.J.R. 1395(a).

Adopted: October 19, 1987 by William H. Fauver,

Commissioner, Department of Corrections.

Filed: October 20, 1987 as R.1987 d.460, **without change**.

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

Effective Date: November 16, 1987.

Expiration Date: January 20, 1992.

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment on this proposal. The comment, however, posed a question related to institutional compliance with rules, rather than suggest a change in the proposed amended rule. Since the comment did not address the specific context of the proposal, no response can be provided in this rulemaking.

Full text of the adoption follows.

10A:9-2.1 Reception activity

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

(d) During the reception classification process the inmate shall be:

1.-3. (No change.)

4. Given medical and dental examinations; and

5. Interviewed by the psychologist, social worker and other staff members.

(e)-(g) (No change.)

LABOR

(c)

THE COMMISSIONER

**Unemployment Compensation
Contribution Rates of Governmental Entities for 1988
Adopted Amendment: N.J.A.C. 12:15-1.5**

(a)

**1988 Maximum Weekly Benefit Rates for
Unemployment Compensation and State Plan
Temporary Disability**

Adopted Amendment: N.J.A.C. 12:15-1.3

Proposed: September 8, 1987 at 19 N.J.R. 1622(a).
Adopted: October 19, 1987 by Charles Serraino, Commissioner,
Department of Labor.
Filed: October 21, 1987 as R.1987 d.468, **without change**.
Authority: N.J.S.A. 34:1-5, 34:1-20, 43:21-3(c), 43:21-40.
Effective Date: November 16, 1987.
Operative Date: January 1, 1988.
Expiration Date: December 31, 1988.

Proposed: September 8, 1987 at 19 N.J.R. 1624(b).
Adopted: October 19, 1987 by Charles Serraino, Commissioner,
Department of Labor.
Filed: October 21, 1987 as R.1987 d.473, **without change**.
Authority: N.J.S.A. 34:1-5, 34:1-20 and 43:21-7.3(e).
Effective Date: November 16, 1987.
Operative Date: January 1, 1988.
Expiration Date: December 31, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

Full text of the adoption follows.

12:15-1.3 Maximum weekly benefit rates
(a) In accordance with the provisions of the Unemployment Compensation Law, the maximum weekly benefit rate for benefits under the Unemployment Compensation Law is hereby promulgated as being \$241.00 per week.
(b) The maximum weekly benefit rate for State Plan benefits under the Temporary Disability Benefits Law is hereby promulgated as being \$226.00 per week.
(c) These maximum benefits shall be effective for the calendar year 1988 on benefit years and periods of disability commencing on or after January 1, 1988.

12:15-1.5 Contribution rate of governmental entities and instrumentalities
(a) In accordance with the provisions of N.J.S.A. 43:21-7.3(e), the contribution rate for all governmental entities and instrumentalities electing to pay contributions under the Unemployment Compensation Law is hereby promulgated as being one and two-tenths percent (1.2 percent) for the entire calendar year.
(b) This contribution rate shall be effective on taxable wages paid in the calendar year 1988.

(b)

(d)

**1988 Taxable Wage Base Under the Unemployment
Compensation Law**

Adopted Amendment: N.J.A.C. 12:15-1.4

Proposed: September 8, 1987 at 19 N.J.R. 1623(a).
Adopted: October 19, 1987 by Charles Serraino, Commissioner,
Department of Labor.
Filed: October 21, 1987 as R.1987 d.469, **without change**.
Authority: N.J.S.A. 34:1-5, 34:1-20 and 43:21-7(b)(3).
Effective Date: November 16, 1987.
Operative Date: January 1, 1988.
Expiration Date: December 31, 1988.

**Base Week for Unemployment Compensation and
State Plan Temporary Disability
Adopted Amendment: N.J.A.C. 12:15-1.6**

Proposed: September 8, 1987 at 19 N.J.R. 1623(b).
Adopted: October 19, 1987 by Charles Serraino, Commissioner,
Department of Labor.
Filed: October 21, 1987 as R.1987 d.470, **without change**.
Authority: N.J.S.A. 34:1-5, 34:1-20, 43:21-19(t), 43:21-27.
Effective Date: November 16, 1987.
Operative Date: January 1, 1988.
Expiration Date: December 31, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

Full text of the adoption follows.

12:15-1.4 Taxable wage base under the Unemployment Compensation Law
In accordance with the provisions of N.J.S.A. 43:21-7(b)(3), the "wages" of any individual with respect to any one employer for the purpose of contributions under the Unemployment Compensation Law shall include the first \$12,000 during the calendar year 1988.

12:15-1.6 Base Week
In accordance with the provisions of N.J.S.A. 43:21-19(t), the base week amount is hereby promulgated as being \$86.00 per week for benefit years and periods of disability commencing on or after January 1, 1988.

(e)

**Alternative Earnings Test for Unemployment
Compensation and State Plan Temporary
Disability**

Adopted Amendment: N.J.A.C. 12:15-1.7

Proposed: September 8, 1987 at 19 N.J.R. 1623(c).
Adopted: October 19, 1987 by Charles Serraino, Commissioner,
Department of Labor.
Filed: October 21, 1987 as R.1987 d.471, **without change**.
Authority: N.J.S.A. 34:1-5, 34:1-20, 43:21-4(e), 43:21-41.

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LAW AND PUBLIC SAFETY

Effective Date: November 16, 1987.
Operative Date: January 1, 1988.
Expiration Date: December 31, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

12:15-1.7 Alternative earnings test
In accordance with the provisions of N.J.S.A. 43:21-4(e) and 43:21-41 in those instances in which the individual has not established 20 base weeks, the alternative earnings amount for establishing eligibility is hereby promulgated as being \$5,200 for benefit years and periods of disability commencing on or after January 1, 1988.

(a)

1988 Maximum Weekly Benefit Rate for Workers' Compensation

Adopted Amendment: N.J.A.C. 12:235-1.6

Proposed: September 8, 1987 at 19 N.J.R. 1624(a).
Adopted: October 19, 1987 by Charles Serraino, Commissioner, Department of Labor.
Filed: October 21, 1987 as R.1987 d.472, **without change.**
Authority: N.J.S.A. 34:1-5, 34:1-20 and 34:15-12(a).
Effective Date: November 16, 1987.
Operative Date: January 1, 1988.
Expiration Date: December 31, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

12:235-1.6 Maximum workers' compensation benefit rates
(a) In accordance with the provisions of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being \$320.00 per week.
(b) This maximum compensation shall be effective as to injuries occurring in the calendar year 1988.

LAW AND PUBLIC SAFETY

DIVISION OF CONSUMER AFFAIRS

(b)

**Board of Architects
Landscape Architect Examination and Evaluation
Committee**

Nomenclature for Non-Certified Persons

Adopted New Rule: N.J.A.C. 13:27-8.4

Proposed: March 2, 1987 at 19 N.J.R. 400(a).
Adopted: May 14, 1987 by State Board of Architects and Certified Landscape Architects, James Gaspari, President.
Filed: October 23, 1987 as R.1987 d.480, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 45:3A-1 et seq. and 45:3-3.
Effective Date: November 16, 1987.
Expiration Date: April 1, 1990.

Summary of Public Comments and Agency Responses:

Three comments were received. One comment, from the State Board of Professional Planners, objected to the proposed use of the term "landscape planning". The Board notes in response that there was a typographical error in the proposal and that the term should have been "landscape planting".

Another comment received was from the Board of Professional Engineers and Land Surveyors. This comment generally objected to the adoption of the rule altogether inasmuch as it limits the use of the title "landscape architect" to those who are certified, although there are no restrictions regarding the practice of landscape architecture by engineers, surveyors, and others. The Board of Architects' response was that N.J.A.C. 13:27-8.14 does not prevent any profession from practicing landscape architecture, it merely restates the mandates of N.J.S.A. 45:3A-1 *et seq.*

A final comment was received from a non-certified individual who has, in the past, used the following titles: "landscape architect", "graduate landscape architect" and/or "professional landscape architect". The Board's response is that these titles are impermissible for use by one who is not certified in New Jersey.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks, *thus*; deletions from proposal shown in brackets with asterisks, *[thus]*).

13:27-8.14 Nomenclature for non-certified persons

(a) Any individual who is not a certified landscape architect as defined by N.J.S.A. 45:3A-2 may advertise and offer services to the public provided that the description of the advertiser's title and services conforms to the following standards:

PERMISSIBLE USES	TITLE	IMPERMISSIBLE USES
landscaper		landscape architect
landscape gardener		certified landscape architect
landscape contractor		licensed landscape architect
landscape designer		registered landscape architect
landscape planter		professional landscape architect
	DESCRIPTION OF SERVICES	
PERMISSIBLE USES		IMPERMISSIBLE USES
landscaping		landscape architecture
landscape gardening		landscape architectural design
landscape contracting		landscape architectural construction
landscape service		landscape architectural planting design
landscape construction		landscape architectural service
landscape design		
landscape *[planning]* *planting*		

(b) The above listed standards are not meant to be exclusive, but are merely pre-approved suggestions by the Landscape Architecture Examination and Evaluation Committee. Use of titles and/or descriptions not listed above shall be subject to Committee recommendation and Board approval.

(c)

**Board of Examiners of Master Plumbers
General Rules and Regulations**

**Readoption: N.J.A.C. 13:32-1.4, 1.5, 1.6, 1.8 and 1.9
Readoption with Amendments: N.J.A.C. 13:32-1.2
and 1.3**

**Adopted Repeal and New Rule: N.J.A.C. 13:32-1.1
and 1.7**

Proposed: September 8, 1987 at 19 N.J.R. 1630(a).
Adopted: October 18, 1987 by Joseph F. Kavanaugh, Jr., Chairman, State Board of Examiners of Master Plumbers.
Filed: October 23, 1987 as R.1987 d.481, **without change.**
Authority: N.J.S.A. 45:14C-7.

TRANSPORTATION

ADOPTIONS

Effective Date: October 23, 1987 for Readoption; November 16, 1987 for Amendments, Repeals and New Rules.
 Expiration Date: October 23, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:32-1.

Full text of the adopted amendments to the readoption follows.

13:32-1.1 Board meetings

(a) Regular Board meetings shall be held in accordance with a schedule that is published yearly and filed with the Secretary of State.

(b) Special meetings may be held at the request of a Board member or called by the chairman with publication of appropriate notice pursuant to the requirements of the Open Public Meetings Act.

(c) A majority of the voting members of the Board shall constitute a quorum thereof and no action of the Board shall be taken except on the affirmative vote of a majority of the members of the entire Board.

(d) In the absence of the chairman, members shall select one of the members attending the meeting to serve as chairman for that meeting.

(e) Copies of the minutes of meetings shall be mailed to all members as soon as practicable after each meeting.

13:32-1.2 Application for examination; notice

(a) Upon request applicants shall be furnished with an application form by the executive director.

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

13:32-1.3 Examinations

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

(c) Examinations may consist of two parts:

1. Written examination based on the National Standard Plumbing Code as adopted by the State of New Jersey pursuant to the Uniform Construction Act.

2. (No change.)

(d) (No change.)

(e) An applicant who has failed the examination may review his or her examination upon written request to the Board made within 30 days after notification of his or her failure.

13:32-1.7 Identification of licensees

(a) All commercial vehicles used in the practice of state-licensed master plumbing shall be visibly marked with the license number of the owner or qualified bona fide representative.

(b) All business correspondence and stationery and all advertising shall display the license number.

TRANSPORTATION

TRANSPORTATION OPERATIONS

(a)

**Restricted Parking and Stopping
 Routes 5 in Bergen County, 57 in Warren County, 71
 in Monmouth County, and 94 in Warren County
 Adopted Amendments: N.J.A.C. 16:28A-1.5, 1.36,
 1.38 and 1.45**

Proposed: September 8, 1987 at 19 N.J.R. 1632(b).
 Adopted: October 13, 1987 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design.
 Filed: October 23, 1987 as R.1987 d.479, **with changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139, 39:4-199.

Effective Date: November 16, 1987.
 Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

COMMENT: One comment was received from the Mayor of Washington Borough, Warren County who pointed out that the proposed amendment to Route 57 for Washington Borough should have been cited in the proposal for Warren County and not Morris County. The mayor indicated that the request for the change originated with Washington Borough officials in Warren, not Morris County.

RESPONSE: The Department acknowledges the error in the proposal and has made the necessary changes upon adoption to reflect the original intent of the local officials and the Department. Since there is neither a Route 57 nor a Washington Borough in Morris County, the proposal as published was erroneous. Since application of the proposal could reasonably apply only to Warren County and none in Morris County is affected, the change upon adoption is not a substantive one.

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

16:28A-1.5 Route 5

(a) The certain parts of State highway Route 5 described in this subsection, shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-4. (No change.)

(b) The certain parts of State highway Route 5 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. (No change.)

2. Along Palisade Avenue, northbound on the easterly side in Fort Lee Borough, Bergen County:

i. Far side bus stop:

(1) Bluff Road—Beginning at the northerly curb line of Bluff Road and extending 155 feet northerly therefrom.

3. Along Palisade Avenue, southbound on the westerly side in Fort Lee Borough, Bergen County:

i. Far side bus stop:

(1) Bluff Road—Beginning at the southerly curb line of Bluff Road and extending 155 feet southerly therefrom.

16:28A-1.36 Route 57

(a) The certain parts of State highway Route ***[75]**57*** described in this subsection are designated and established as "no parking" zones where stopping and standing are prohibited at all times except as provided in N.J.S.A. 39:4-139.

(b) (No change.)

(c) The certain parts of State highway Route 57 described in this subsection are designated and established as "no parking during certain hours" zones where parking is prohibited as specified. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs.

1. No parking during certain hours in Washington Borough, ***[Morris]* *Warren*** County:

i. Along the north side:

(1) From the easterly curb line of Route 31 to the westerly curb line of the Boulevard between 7:00 A.M. to 10:00 A.M. and 3:00 P.M. to 6:00 P.M.

16:28A-1.38 Route 71

(a) The certain parts of State highway Route 71 described in this subsection are designated and established as "no parking" zones where stopping and standing are prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-6. (No change.)

ADOPTIONS

TRANSPORTATION

- 7. No stopping or standing in Deal Borough, Monmouth County:
 - i. Along the easterly (northbound) side:
 - (1)-(2) (No change.)
 - (3) From Phillips Avenue southerly curblin to a point 75 feet to the south.
 - ii. Along the westerly (southbound) side:
 - (1) (No change.)
 - (2) From Phillips Avenue northerly curblin to a point 75 feet to the north.
 - iii. (No change.)
 - 8.-10. (No change.)
 - (b)-(c) (No change.)
- 16:28A-1.45 Route 94
- (a) The certain parts of State highway Route 94 described in this subsection shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
 - 1.-5. (No change.)
 - 6. No stopping or standing in Blairstown Township, Warren County:
 - i. Along both sides:
 - (1) From the southerly curblin of Mingle Road (approximately milepost 10) to the northerly curblin of Lambert Road (approximately milepost 7).
 - (b) (No change.)

(a)

**Restricted Parking and Stopping
Routes U.S. 9 in Monmouth County, 23 in Passaic
County, 27 in Middlesex County, 31 in Warren
County, and U.S. 46 in Passaic County**

**Adopted Amendments: N.J.A.C. 16:28A-1.7, 1.15,
1.18, 1.22 and 1.32**

Proposed: September 8, 1987 at 19 N.J.R. 1633(a).
 Adopted: October 13, 1987, John F. Dunn, Jr., Assistant Chief
 Engineer, Traffic and Local Road Design.
 Filed: October 23, 1987 as R.1987 d.478, **without change.**
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139,
 39:4-197.5 and 39:4-199.

Effective Date: November 16, 1987.
 Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 16:28A-1.7 Route U.S. 9
 - (a) (No change.)
 - (b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:
 - 1.-37. (No change.)
 - 38. Along the northbound (easterly) side in Howell Township, Monmouth County:
 - i. (No change.)
 - ii. Mid-block bus stops:
 - (1)-(2) (No change.)
 - (3) Northwoods Place—Stanley Boulevard—Beginning 125 feet south of the southerly curb line of Northwoods Place and extending 135 feet southerly therefrom.
 - iii. (No change.)
 - 39.-41. (No change.)

- 16:28A-1.15 Route 23 (Temporary)
 - (a) The certain parts of State highway Route described in this subsection shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
 - 1.-4. (No change.)
 - 5. No stopping or standing in Wayne Township, Passaic County:
 - i. Along both sides for the entire length in the Township of Wayne, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.
 - (b) The certain parts of State highway Route 23 (Temporary) described in this subsection shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
 - 1.-6. (No change.)
 - (c) (No change.)
- 16:28A-1.8 Route 27
 - (a)-(b) (No change.)
 - (c) The certain parts of State highway Route 27 described in this subsection are designated and established as "restricted parking" zones, for use by persons who have been assigned special Vehicle Identification Cards by the Division of Motor Vehicles. No other persons shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established handicapped parking spaces:
 - 1. (No change.)
 - 2. Restricted parking (Handicapped Parking) in Highland Park Borough, Middlesex County:
 - i. Along Raritan Avenue beginning at a point on the south side thereof 194 feet east of South Third Avenue and extending to a point 22 feet east thereof, Monday through Saturday, 8:00 A.M. to 8:00 P.M.
 - (d)-(e) (No change.)
- 16:28A-1.22 Route 31
 - (a) The certain parts of State highway Route 31 described in this subsection shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
 - 1.-2. (No change.)
 - 3. No stopping or standing in Washington Township, Warren County:
 - i. Along both sides:
 - (1)-(2) (No change.)
 - (3) Between South Lincoln Avenue and Springtown Road.
 - ii.-iii. (No change.)
 - 4.-6. (No change.)
 - (b) (No change.)
- 16:28A-1.32 Route U.S. 46
 - (a) The certain parts of State highway Route U.S. 46 described in this subsection shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
 - 1.-16. (No change.)
 - 17. No stopping or standing in Wayne Township, Passaic County:
 - i. Along both sides:
 - (1) For the entire length in Wayne Township including all ramps and connections under the jurisdiction of the Commissioner of Transportation.
 - (b) (No change.)

(a)

AERONAUTICS

**Airport Safety Improvement Aid
Classification of State Aid Project Grants**

Adopted Amendment: N.J.A.C. 16:56-4.1

Adopted New Rule: N.J.A.C. 16:56-11.2

Proposed: September 8, 1987 at 19 N.J.R. 1634(b).

Adopted: October 13, 1987 by James A. Crawford, Assistant

Commissioner, Transportation Services and Planning.

Filed: October 20, 1987 as R.1987 d.465, **without change.**

Authority: N.J.S.A. 27:1A-5, 1A-6, 6:1-29, 6:1-92, 6:1-96 and
"Airport Safety Act of 1983", P.L. 1983, c.264, July 11, 1983.

Effective Date: November 16, 1987.

Expiration Date: June 4, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:56-4.1 Classification of State Aid

(a) (No change.)

(b) The classification of aid established in (a) above are three forms by which the State may authorize aid in the funding of improvements to the air transportation infrastructure and for the purposes of improvement of air and flight safety. Projects specifically eligible for consideration for funding under certain provisions of this chapter are identified in N.J.A.C. 16:56-3.1 of this chapter. Aid given or offered under N.J.A.C. 16:56-8.1 of this chapter shall also be authorized in the form of one of the three classifications established in this section. Additionally, aid for aviation planning purposes may be authorized under N.J.A.C. 16:56-11.2.

(c) (No change.)

(d) State airport safety improvement loans are two percent annual interest loans given or offered to an eligible local sponsor for the purpose of assisting local sponsors in funding the improvement of the air transportation infrastructure. Loans for this purpose may be given or offered subject to the following parameters:

1. (No change.)

2. Airport safety improvement loans are limited to \$90,000 maximum authorization to any eligible local sponsor (airport).

3.-6. (No change.)

(e) All airport safety improvement grants are grants given or offered to an eligible recipient or local sponsor for the purpose of assisting in the funding of the improvement of the air transportation infrastructure or for the purpose of promoting air or flight safety. Grants for this purpose may be given or offered subject to the following parameters:

1. Airport safety improvement grants may be authorized for projects and sponsors eligible under N.J.A.C. 16:56-3.1.

2. Grants for routine airport safety improvement projects are generally limited to a \$100,000 maximum authorization biennially (24 month period) to any eligible sponsor. Project grants in excess of \$100,000 may be authorized by the Commissioner on a case-by-case basis when such aviation development is in the best interests of the State and will benefit the flying public as a whole. The State's participation in grants exceeding \$100,000 shall not exceed 90 percent of the total project cost and the sponsor's participation shall not be less than 10 percent of the total project cost.

3. (No change.)

4. The improvements made using airport safety improvement grants shall be given a useful life of 10 years unless the plans and specifications for the improvement indicate to the satisfaction of the Commissioner that the time period should be greater or lesser than 10 years.

(f) The Commissioner, when authorizing aid from the Airport Safety Fund, retains absolute discretion within the limits of the

applicable statutes to determine thresholds of State participation in any project funded under the provisions of this chapter. Maximum thresholds and percent of State participation determinations in State funded projects may be made by the Commissioner on either a categorical or case by case basis. The Commissioner may promulgate Departmental Policies, Procedures, and orders to aid in the implementation of the provisions of this chapter.

(g) These shall be absolute upper limits to the aid authorized under this chapter. The purpose of these limits is to help ensure that there are sufficient resources available for state aid to the greatest number of eligible airports and that State resources for any one year are not expended on a limited few airport projects. The absolute upper limit of aid as authorized to an eligible sponsor shall be as follows:

1. The biennial limit on State Airport Safety Improvement grants is \$100,000, except when specifically exempted by the Commissioner under N.J.A.C. 16:56-4.1(e)2.

2. (No change.)

3. The limit on State Grants for Matching Federal Funds is 10 percent of any total project cost.

4. The limit on aid for aviation planning purposes shall be determined by the Commissioner under the provisions of N.J.A.C. 16:56-11.2.

16:56-11.2 Funding of aviation planning studies

(a) In addition to the eligibility criterion for sponsors and projects outlined in N.J.A.C. 16:56-3, the Commissioner may fund from the Airport Safety Fund aviation planning studies including, but not limited to, feasibility studies, system plan studies, master plan studies, facility siting studies and aviation economic studies. The Department, county governments and municipal governments shall be eligible to sponsor aviation planning studies.

(b) The funding of construction and safety projects may have general priority over aviation planning studies, unless determined otherwise by the Commissioner.

(c) The Commissioner shall have discretion in the selection of sponsors, project funding levels, project phasing, scope and specification of work programs and local sponsor performance criteria.

(d) Unless otherwise specified in any planning project agreement, a local sponsor shall generally be deemed to have fulfilled his obligations to the Department upon the final acceptance by the Commissioner of all planning study reports and the finding by the Commissioner of satisfactory completion of the project work program. This does not, however, relieve a sponsor of audit and recordkeeping requirements specified under N.J.A.C. 16:56-14.1 of this chapter or any other specified performance, recordkeeping or audit requirements.

(e) Application, approval and payment or transfer of funds for aviation planning studies shall be done on the forms and in the manner which may be prescribed by the Commissioner, or when applicable, by the Treasurer of the State of New Jersey.

TREASURY-TAXATION

DIVISION OF TAXATION

(b)

**Alcoholic Beverage Tax
Tax Rates**

Adopted Amendment: N.J.A.C. 18:3-2.1

Proposed: July 6, 1987 at 19 N.J.R. 1181(a).

Adopted: October 22, 1987 by Joseph C. Small, Acting Director,
Division of Taxation.

Filed: October 23, 1987 as R.1987 d.475, **without change.**

Authority: N.J.S.A. 56:6-6.

Effective Date: November 16, 1987.

Expiration Date: April 23, 1989.

ADOPTIONS

TREASURY-TAXATION

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

18:3-2.1 Tax rates on alcoholic beverages; certification

(a) The Alcoholic Beverage Tax Law levies and imposes upon any sale of alcoholic beverages made within this State, or upon any delivery of alcoholic beverages made within or into this State, the following excise taxes:

1. Beer—at the rate of \$0.03-1/3 a gallon or fraction thereof;
2. Liquors—at the rate of \$2.80 a gallon (effective July 1, 1972);
3. Wines, vermouth and sparkling wines—at the rate of \$0.30 a gallon including wines, vermouth and sparkling wines manufactured by holders of a farm winery license, or wines, vermouth and sparkling wines manufactured from grapes or fruit grown in New Jersey by holders of a plenary winery license issued pursuant to the provisions of N.J.S.A. 33:1-10.

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

(a)

**Homestead Rebate Act
Residents of Continuing Care Retirement
Community**

Adopted Amendment: N.J.A.C. 18:12-7.4

Proposed: September 8, 1987 at 19 N.J.R. 1637(a).
 Adopted: October 22, 1987 by Joseph C. Small, Acting Director,
 Division of Taxation.
 Filed: October 23, 1987 as R.1987 d.477, **without change**.
 Authority: N.J.S.A. 54:4-3.83 and 54:50-1.
 Effective Date: November 16, 1987.
 Expiration Date: August 12, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

18:12-7.4 General guidelines

(a) General guidelines include the following:

- 1.-4. (No charge).
5. Residency in a continuing care retirement community: A life resident in a continuing care retirement community unit contractually obligated to pay the proportionate share of property taxes for said unit is deemed to be an owner for purposes of the rebate.
 Renummer existing 5.-7. as 6.-8. (No change in text.)

(b)

**Sales and Use Tax
Sales of Motor Vehicles Exempted**

Adopted Amendment: N.J.A.C. 18:24-7.8

Proposed: July 6, 1987 at 19 N.J.R. 1181(b).
 Adopted: October 22, 1987 by Joseph C. Small, Acting Director,
 Division of Taxation.
 Filed: October 23, 1987 as R.1987 d.474, **without change**.
 Authority: N.J.S.A. 54:32B-24.
 Effective Date: November 16, 1987.
 Expiration Date: August 12, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

18:24-7.8 Sales of motor vehicles specifically exempted

(a) (No change.)

(b) Any sale of a motor vehicle to a nonresident of this State is not subject to tax provided such nonresident, at the time of delivery, has no permanent place of abode in this State, is not engaged in carrying on in this State any employment, trade, business or profession in which the motor vehicle will be used in this State, and furnishes to the seller, prior to delivery, proof supporting his claim from exemption. For the purposes of this subsection:

1. Any person who maintains a place of abode in New Jersey is a resident individual. A place of abode is a dwelling place maintained by a person, or by another for him, whether or not owned by such person, other than a temporary or transient basis. The dwelling may be a house, apartment or flat, a room, including a room in a hotel, motel, boarding house or club, or at a residence hall operated by an educational or charitable institution, barracks, billets or other housing provided by the Armed Forces of the United States, or a trailer, mobile home, house boat or any other premises.

2. Any corporation incorporated under the laws of New Jersey, and any corporation, association, partnership or other entity doing business in New Jersey or maintaining a place of business in the State, or operating a hotel, motel, place of amusement or social or athletic club in the State is a resident.

3. Any person, corporation or other entity engaged in carrying on in New Jersey any employment, trade, business or profession is deemed a resident of New Jersey with respect to the use of a motor vehicle in such employment, trade, business or profession in the State.

4. (Reserved)

5. Any person serving in the Armed Forces of the United States whose home of record is a state other than the State of New Jersey is a resident of this State whether or not his place of abode is located on or off a military reservation and otherwise within the territorial limits of New Jersey.

6. Any person serving in the Armed Forces of the United States whose home of record is the State of New Jersey is a resident of this State whether his place of abode is located on or off a military reservation situated in New Jersey or another state of the United States or a foreign nation.

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

(c)

**Gross Income Tax
Sale of Principal Residence**

Adopted Amendment: N.J.S.A. 18:35-1.13

Proposed: July 6, 1987 at 19 N.J.R. 1182(a).
 Adopted: October 22, 1987 by Joseph C. Small, Acting Director,
 Division of Taxation.
 Filed: October 23, 1987 as R.1987 d.476, **without change**.
 Authority: N.J.S.A. 54A:9-17(a).
 Effective Date: November 16, 1987.
 Expiration Date: August 12, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

18:35-1.13 One-time election to exclude up to \$125,000 of gain on sale of principal residence; rollovers

NOTE

Chapter 66, P.L. 1986 was signed into law February 10, 1986. It affords taxpayers with exclusions similar to the exclusions permitted for Federal tax purposes when selling a principal residence.

(a) The rules concerning one-time election to exclude up to \$125,000 of gain on sale of principal residence are as follows:

OTHER AGENCIES

ADOPTIONS

1. General rule: Capital gains one-time exclusion: Where taxpayers 55 years or older sell a principal residence on or after January 1, 1979 which they have owned and used as principal residence for at least three years during the five year period ending on the date of the sale, they may make a one-time election to exclude up to \$125,000 of gain realized on the sale.

2. Prior election: The fact that a taxpayer age 65 or older made the prior election to exclude gain on a pre-January 1, 1979 sale of residence will not prevent him or her from electing the new \$125,000 exclusion.

3. Joint return: In the case of jointly owned property where a joint return is filed, if one spouse meets the age, holding and use requirements for the exclusion, both spouses are treated as meeting such requirements.

4. Deceased spouse: Taxpayer over 55 years of age whose spouse is deceased will be treated as satisfying the holding and use requirements if the taxpayer was at least 55 years of age prior to the date of sale and has not remarried, and the deceased spouse must have satisfied the holding and use requirements and must not have made a prior election to take the exclusion on another residence.

5. Coupling one-time exemption with residence rollover exclusion: This one-time election may be coupled with the residence rollover exclusion described below, for deferring all or part of the gain not excluded under the \$125,000 exclusion rule.

6. Residence rollover exclusion: Gains derived from the sale or exchange of principal residence where a new residence is purchased within two years after the sale of the prior residence are not includible in gross income if the purchase price of the new principal residence is equal to or greater than the adjusted sales price of the principal residence sold.

7. Multiple rollover provision—applicable only to residence rollover exclusion: If a taxpayer had excluded gain from the sale of a residence within 24 months prior to the sale of a subsequent principal residence, the tax free rollover of the second sale will be permitted only where the sale of the residence is in connection with relocation and employment at a new principal place of work, and the taxpayer satisfies both the geographic and length of employment requirements for the deductibility of moving expense for federal purposes.

i. Example: On January 1, 1979, a taxpayer sold his personal residence in Englewood at a gain and purchased a more expensive residence in the same city on February 15, 1979. The gain derived from the sale of the first residence qualified for deferral under the law and the taxpayer was not required to report that gain for tax purposes. In August 1979, the taxpayer's employer permanently transferred him to a new principal place of work in Cherry Hill which transfer qualified the taxpayer to deduct his moving expenses for federal income tax purposes. On September 1, 1979, the taxpayer sold his Englewood residence at a gain and purchased a more expensive residence at the new job location in Cherry Hill. Ordinarily, a taxpayer cannot defer the gain derived from two personal residences if he had already elected to defer a gain during a two year period. However, in this situation, the taxpayer qualified again to defer the gain derived from the sale of the second home which he purchased in Englewood by reason of the fact that his purchase of a new personal residence in Cherry Hill was necessitated in connection with relocation in employment at a new principal place of work and because geographic and federal moving expense requirements were met.

ii. Where the multiple rollover applies, the basis of each new residence must be reduced by the amount of gain deferred on the preceding sale.

OTHER AGENCIES

CASINO CONTROL COMMISSION

(a)

ACCOUNTING AND INTERNAL CONTROLS

Drop boxes, transportation to and from gaming tables; storage in count room

Adopted Amendment: N.J.A.C. 19:45-1.17

Proposed: July 20, 1987 at 19 N.J.R. 1290(a).

Adopted: October 15, 1987 by Walter N. Read, Chairman, Casino Control Commission.

Filed: October 16, 1987 as R.1987 d.457, **without change**.

Authority: N.J.S.A. 5:12-63(c), and 5:12-69.

Effective Date: November 16, 1987.

Expiration Date: April 7, 1988.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement fully supports the amendment.

RESPONSE: The Commission acknowledges the Division's favorable comment.

Full text of the adoption follows.

19:45-1.17 Drop boxes; transportation to and from gaming tables; storage in count room

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

(c) All drop boxes, not attached to a gaming table, except emergency drop boxes which are not actively in use, shall be stored in the count room in an enclosed storage cabinet or trolley and secured in such cabinet or trolley by a separately keyed, double locking system. The key to one lock shall be maintained and controlled by the security department and the key to the second lock shall be maintained and controlled by a Commission inspector. Emergency drop boxes, when not in use, may be stored in an enclosed storage cabinet or trolley and secured in such cabinet or trolley by a separately keyed, double locking system in a secured area outside the count room as approved by the Commission. The key to one lock shall be maintained and controlled by the security department and the key to the second lock shall be maintained and controlled by a Commission inspector.

(d) Drop boxes, when not in use, during a shift may be stored on the gaming tables provided there is adequate security, as approved by the Commission. If adequate security is not provided during this time, the drop boxes shall be stored in the count room in an enclosed storage cabinet or trolley except that emergency drop boxes not actively in use may be stored in a secured area outside of the count room as approved by the Commission, as required in (c) above.

EMERGENCY ADOPTIONS

HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

(a)

Pharmacy Manual

Payment for Drugs—Upper Limits

Adopted Emergency Amendments and Concurrent Proposal: N.J.A.C. 10:51-1.6, 1.11, 1.16, 1.18, 3.5, 3.10, 3.14, 5.14 and 5.18.

Emergency Amendment Adopted: October 5, 1987 by Drew Altman, Commissioner, Department of Human Services.
Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): October 26, 1987
Emergency Amendment Filed: October 26, 1987 as R.1987 d.494
Authority: N.J.S.A. 30:4D-6b(6), 7a, b, c, 30:4D-12, 30:4D-20,
21, 22, 24; 42 CFR 447.301, 331, 332, 333.
Emergency Amendment Effective Date: October 26, 1987.
Emergency Amendment Operative Date: October 29, 1987.
Emergency Amendment Expiration Date: December 24, 1987.
Concurrent Proposal Number: PRN 1987-489.

Submit Comments by December 16, 1987 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, NJ 08625

The agency proposal follows:

These amendments were adopted on an emergency basis and became effective upon filing with the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of this emergency amendment are being proposed for re-adoption in compliance with the normal rule-making requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The adopted rules became effective upon filing with the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)). The agency emergency adoption and concurrent proposal follow:

Summary

This emergency adoption amends existing rules and establishes procedures for setting aggregate upper limits for covered drugs in the pharmaceutical services programs (administered by the Division of Medical Assistance and Health Services) which include both Medicaid (Title XIX) and PAAD (Pharmaceutical Assistance to the Aged and Disabled). This adoption is required in order to comply with the federal regulations cited above. (A copy of the cited regulations may be obtained by contacting the Administrative Practice Officer at the above address.)

The federal regulations eliminate the federal MAC (maximum allowable cost) program and substitute new methods for determining specific upper limits for certain multiple source drugs, but essentially retain the estimated acquisition costs (EAC) provisions intact. In order to obtain Federal Financial Participation (FFP) for expenditures for drugs, the State may not pay more than the aggregate amount which would result from adoption of specific upper limits established in 42 CFR 447.332. The State has elected to accept the specific limits established under this provision as the reference basis for reimbursement in its pharmaceutical services programs. The State has opted to retain the MAC nomenclature previously used for the sake of simplicity. Specifically, these State rules provide that the amount the Division recognizes for drug reimbursement or payment purposes will not exceed in the aggregate the lowest of:

i. The maximum allowable cost (MAC) of the drug, as established by 42 CFR 447.331 et seq. for certain multiple source drugs (generic drugs), plus a dispensing fee; or

ii. The estimated acquisition cost (EAC) of the drug (the price generally and currently paid by providers for a particular drug in the package size most frequently purchased by providers), as determined by the program agency, plus a dispensing fee; or

iii. The provider's usual and customary charge to the public for the drug;

iv. Other third party prescription plan payment.

The rules provide that the MAC will not apply if the prescriber has certified in his own handwriting that a specific brand of that drug is medically necessary for the patient.

The formula used by the Health Care Financing Administration (HCFA) in calculating the upper limit of payment for certain multiple source drugs for which at least three suppliers exist is 150 percent of the least costly therapeutic equivalent that can be purchased by pharmacists in quantities of 100 tablets or capsules (or if the drug is not commonly available in quantities of 100, the package size commonly listed), or in the case of liquids, the commonly listed size, plus a dispensing fee. In those instances where drug products, whose costs are within the upper limits established by HCFA but are unavailable in New Jersey, the State will establish appropriate upper limits to assure that the aggregate payments for the listed drugs do not exceed the aggregate amount which would have resulted, had application of the HCFA upper limits been possible.

The federal regulations take effect October 29, 1987. Therefore, the Division is obligated to utilize the appropriate payment methodology as of this date. Consequently, it was necessary that the emergency rule be filed prior to the effective date of the Federal regulations.

The Division is also utilizing the same payment methodology for the PAAD program because of consistency and simplicity of administration. In addition, the enabling legislation for PAAD indicates that it is a supplement to the New Jersey Medical and Health Services Act (N.J.S.A. 30:4D-20, historical note).

Social Impact

Persons who qualify for Medicaid coverage and/or PAAD coverage should continue to receive necessary pharmaceutical services. Those persons who qualify for Title XIX (Medicaid) coverage include recipients of categorical assistance including the optional categorical coverage to pregnant women and dependent children under age two available under JerseyCare, and recipients of SSI (Supplemental Security Income), which are the aged, blind and disabled categories.

The rule will primarily impact on pharmacies that provide services to Medicaid and/or PAAD patients, including pharmacies in a long term care facility (LTCF). These pharmacies will be governed by the new reimbursement formula.

Economic Impact

Medicaid patients are not required to pay toward the cost of prescription drugs. PAAD beneficiaries are required by law to pay a \$2.00 copayment for each prescription.

Pharmacies will be reimbursed for claims timely and accurately submitted to Blue Cross and Blue Shield of New Jersey, acting as Fiscal Agent for the Division. The economic impact on pharmacies will vary, depending on their purchasing practices.

There will be no additional administrative cost to the State, since existing administrative systems will be utilized. It is impossible to estimate any savings in cost to the State at this time. However, the State may derive a benefit from the program's inherent incentive to dispense less expensive therapeutically equivalent generic drugs in place of brand name drugs.

Regulatory Flexibility Statement

Pharmacies may be considered small businesses as defined in N.J.S.A. 52:14B-16. However, all pharmacies participating in the New Jersey Medicaid program, whether or not they are small businesses, are subject to the federal regulations and cannot be exempted from these rules. The rule does not impose any additional reporting, recordkeeping, or other compliance requirements upon small businesses. Pharmacies are already

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required to keep sufficient records to fully disclose the name of the recipient to whom the service was rendered, the date and nature of the service, etc. (N.J.S.A. 30:4D-12). In addition, the federal rule is directed at the states who must be in compliance therewith.

Full text of the emergency adoption and concurrent proposal follows (additions indicated in boldface **thus**; deletions indicated by brackets [thus]):

10:51-1.6 Prescription drug policies

(a) The choice of prescribed drugs will be at the discretion of the prescriber within the limits of applicable laws and as listed herein. [However, no payment will be made for certain drugs under specific conditions.] **However, the prescriber's discretion is limited for certain drugs, subject to the following conditions under which payment may be denied if the requirements of the rules are not met:** [1. Exceptions:]

[i.] **1.** Covered pharmaceutical services requiring prior authorization, (see N.J.A.C. 10:51-1.13);

[ii.] **2.** Pharmaceutical services not eligible for [payment] reimbursement (see N.J.A.C. 10:51-1.14);

[iii.] **3.** Non-legend drugs, (see N.J.A.C. 10:51-1.20).

[**(b)**] **4. Products listed in the current [The] New Jersey Drug Utilization Review Council (DURC) Formulary** (hereafter referred to as "the Formulary") [dated July 9, 1979], and all subsequent revisions, distributed to all prescribers and pharmacists. [, supersedes the New Jersey Formulary dated November 11, 1975].

[**(c)**] **(b)** The Prescription Drug Price and Quality Stabilization Act (N.J.S.A. 24:6E-1) will apply to the New Jersey [Health Services (] Medicaid[)] Program. This law requires that every prescription blank contain the statements "Substitution Permissible" and "Do Not Substitute". The prescriber must initial one of the statements in addition to signing the prescription blank.

1. When the prescriber does not initial either statement on a prescription for a drug product listed in the DURC Formulary, the pharmacist shall substitute from the list of interchangeable products, and bill Medicaid accordingly.

2. (No change.)

3. **For non-MAC drugs, [W] when the prescriber initials "Do Not Substitute", the pharmacist shall indicate the prescriber's preference by checking "Medical Certification" on the MC-6 claim form and will [shall] dispense and bill Medicaid for the prescribed product.** Reimbursement shall be **EAC price (see N.J.A.C. 10:51-1.16 (a) 1.ii.** [the Average Wholesale Price less applicable regressive discount] plus applicable fee or the usual and customary charges, whichever is less for that product.

4. When the prescriber orders by generic name, the DURC Formulary does not apply. The pharmacist will dispense the least expensive, therapeutically effective product available to him/her at the time of dispensing. The product need not necessarily be from the list of interchangeable products.

[**(d)**] **(c)** [The] Federal [Maximum Allowable Cost (MAC)] regulations prescribe the **aggregate upper limit, for which Federal Financial Participation (FFP) is available, that Medicaid may reimburse for certain multi-source drugs.** The limit will apply to all **listed MAC drugs (see N.J.A.C. 10:51-1.16(a)1.),** unless the prescriber indicates in his or her own handwriting on each written or telephone **ordered** prescription (see N.J.A.C. 10:51-1.9) "Brand Necessary" or "Medically Necessary" **or other acceptable phrase.** The [Department of Health and Human Services] **Federal regulation** requires a handwritten statement and does not permit the use of alternatives, such as a check-off box, initials or prescriber's signature next to a preprinted statement "Do Not Substitute". For purposes of reimbursement, the physician's override capability under N.J.S.A. 24:6E-1 does not apply to drugs which have a Federal MAC limit.

[**(e)**] **(d)** Blanket authorization denying substitutions will not be permitted. Each prescription order must state "Brand Necessary" or "Brand Medically Necessary" in the prescriber's own handwriting [or for his/her initials, if a printed statement or rubber stamp is used.] (see [(d)] (c) above). **For non-MAC drugs, each prescription order must follow the requirements of N.J.S.A. 24:6E-1 (see (c) above.)**

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10:51-1.11 Non-proprietary or generic dispensing

When medication is prescribed by its non-proprietary or generic name, the pharmacist will dispense the least expensive, therapeutically effective equivalent product available, preferably one listed in the DURC Formulary.

10:51-1.16 Basis of payment

(a) Payment for legend drugs (those drugs whose labels include the legend "Caution: Federal Law Prohibits Dispensing Without a Prescription"), contraceptive diaphragms and reimbursable devices shall be based upon "Maximum Allowable Cost".

1. Maximum Allowable Cost is defined as:

i. The "Maximum Allowable Cost" (MAC) price published **periodically** by the [Pharmaceutical Reimbursement Board] **Health Care Finance Administration (HCFA) of the federal** Department of Health and Human Services for listed multi-source drugs or established by the Division of Medical Assistance and Health Services; or

ii. **Subject to the limits of (b) below, the Estimated Acquisition Cost (EAC) herein defined as lower of [T] the Average Wholesale Price (AWP) listed for the most frequently purchased package size (as defined by the Division of Medical Assistance and Health Services) in [the] current ["Drug Topics Red Book" (published by Medical Economics Co., Oradell, New Jersey 07649)] national; price compendia or other appropriate sources, and their supplements; price changes listed [by the same publisher in "Drug Topics Magazine" or other appropriate sources] in the national price compendia; or designated prices defined in Section 1.6. In the case of unlisted or undesignated AWP "costs" or of typographical errors, the known correct price will be used as maximum.**

2. If the published MAC price as defined in (a)1.i. above is higher than the price which would be paid under (a)1.ii. above, then (a)1.ii. above will apply.

(b) Maximum cost for each eligible prescription claim not covered by (a)1.i. above will be subject to the following fiscal conditions based upon six categories, as determined by the New Jersey Medicaid Program based on the previous year's total prescription volume for each participating pharmacy. The categories will be reviewed annually and adjusted as appropriate.

1.-6. (No change.)

7. Category VI: Pharmacies whose total prescription volume in the preceding calendar year was 50,000 prescriptions or more.

i. Pharmacy providers in this category will receive reimbursement for Medicaid prescription claims for legend drugs, at average wholesale price (AWP), as defined in (a) above, less six percent, as the maximum.

[(1) If the published MAC price as defined in (a)1i above is higher than the price which would be paid under (a)1ii above, then (a)1ii above will apply.]

[(2)] (c) The appropriate calculated discount will be automatically deducted (by Blue Cross and Blue Shield of New Jersey, Inc.) from each eligible legend drug claim during the claim processing procedure.

[(3)] (d) For prescription drugs costing more than \$24.99 there will be no discount from the average wholesale price (AWP).

10:51-1.18 Legend drugs: Total charge

(a) The maximum charge to the New Jersey [Health Services (] Medicaid[)] Program for a legend drug, including the charge for the cost of medication and the dispensing fee, may not exceed the lowest of the following:

[i.] **1.** ["Cost"] "MAC/EAC" plus dispensing fee, as outlined [herein] in N.J.A.C. 10:51-1.16; or

[ii.] **2.** Usual and customary and/or posted or advertised charges; or

[iii.] **3.** Other third-party prescription plan [charges] payments.

10:51-3.5 Prescription drug policies

(a) The choice of prescribed drugs will be at the discretion of the prescriber within the limits of applicable laws and as listed herein. [However, no payment will be made for certain drugs under specific

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conditions.] **However, the prescriber's discretion is limited for certain drugs, subject to the following conditions under which payment may be denied if the requirements of the rules are not met:** [(See exceptions which follows:)]

[1. Exceptions]

[i.] **1. Pharmaceutical services not eligible for [payment] reimbursement** (see N.J.A.C. 10:51-3.12);

[ii.] **2. Non-legend drugs.** (see N.J.A.C. 10:51-1.20)

[(b)] **3. Products listed in the current** [The] New Jersey Drug Utilization Review Council (DURC) Formulary (hereafter referred to as the Formulary) [dated July 9, 1979], and all subsequent revisions, distributed to all prescribers and pharmacists[, supersedes the New Jersey Medicaid Formulary dated November 11, 1975].

[(c)] (b) The Prescription Drug Price and Quality Stabilization Act (N.J.S.A. 24:6E-1) will apply to the New Jersey [Health Services (JMedicaid)] Program. This law requires that every prescription blank contain the statements "Substitution Permissible" and "Do Not Substitute". The prescriber must initial one of the statements in addition to signing the prescription blank.

1. The prescriber does not initial either statement on a prescription for a drug product listed in the DURC Formulary, the pharmacist shall substitute from the list of interchangeable products, and bill Medicaid accordingly.

2. When the prescriber initials "Substitution Permissible" the pharmacist will dispense and bill Medicaid for one of the less expensive products listed as interchangeable with the brand name prescribed. The Medicaid client must accept the interchangeable product unless the client is willing to pay the pharmacy's full usual and customary price. If that occurs, the pharmacist will so note on the prescription blank and no claim will be submitted to Medicaid.

3. **For non-MAC drugs**, when the prescriber initials "Do Not Substitute", the pharmacist **must indicate the prescriber's preference by checking "Medical Certification" on the MC-6 claim form and will** [shall] dispense and bill Medicaid for the prescribed product. Reimbursement shall be **EAC price** (see N.J.A.C. 10:51-1.16 (a)1ii. [the Average Wholesale Price less applicable regression discount] plus applicable capitation fee or the usual and customary charges, whichever is less for the product.

4. When the prescriber orders by generic name, the Formulary does not apply. The pharmacist will dispense the least expensive, therapeutically effective product available to him or her at the time of dispensing. The product need not necessarily be from the list of interchangeable products.

[(d)] (c) [The] Federal [maximum allowable cost (MAC)] regulations prescribe the **aggregate upper limit, for which Federal Financial Participation (FEP) is available, that** Medicaid may reimburse for certain multi-source drugs. The limit will apply to all **listed MAC drugs**, (see N.J.A.C. 10:51-3.14 (a)1.) unless the prescriber indicates in his or her own handwriting on each written or telephoned prescription (see N.J.A.C. 10:51-3.8) "**Brand Necessary**" or "**Brand Medically Necessary**" or **other acceptable phrase**. The [U.S. Department of Health and Human Services] **Federal regulation** requires a handwritten statement and does not permit the use of alternatives, such as a **check-off box**, initials, or prescriber's signature next to a preprinted statement "Do Not Substitute". For purposes of reimbursement, the physician's override capability under N.J.S.A. 24:6E-1 does not apply to drugs which have a Federal MAC limit.

[(e)] (d) Blanket authorization denying substitutions will not be permitted. Each prescription **order must state** [for a MAC drug must contain the statement,] "**Brand Necessary**" or "**Brand Medically Necessary**" in the prescriber's own handwriting (see (c) above. [each time the prescriber chooses not to allow substitution on a MAC drug.] **For non-MAC drugs, each prescription order must follow the requirements of N.J.S.A. 24:6E-1** (see (c) above).

10:51-3.10 Non-Proprietary or generic dispensing

When medication is prescribed by its non-proprietary or generic name, the pharmacist will dispense and bill Medicaid for the least expensive, therapeutically effective product available, preferably one listed in the DURC Formulary.

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10:51-3.14 Basis of payment

(a) Payment for legend drugs (those drugs whose labels include the legend "Caution: Federal Law Prohibits Dispensing Without a Prescription"), contraceptive devices and other reimbursable devices will be based upon "Maximum Allowable Cost".

1. Maximum Allowable Cost is defined as:

i. The "Maximum Allowable Cost" (MAC) price published **periodically** by the **Health Care Finance Administration (HCFA)** [Pharmaceutical Reimbursement Board] of the [U.S.] **federal Department of Health and Human Services** for listed multi-source drugs or established by the Division of Medical Assistance and Health Services; or

ii. **Subject to the limits of Section (b) below. The Estimated Acquisition Cost (EAC) herein defined as lower of** [T]the Average Wholesale Price (AWP) listed for the most frequently purchased package size (as defined by the New Jersey Medicaid Program) in [the] current ["Drug Topics Red Book" (published by Medical Economics Co., Oradell, New Jersey 07649)] **national price compendia or other appropriate sources, and their supplements; price changes listed** [by the same publisher in "Drug Topics Magazine" or other appropriate sources] **in the national price compendia; or designated prices defined** in N.J.A.C. 10:51-3.5. In the case of unlisted or undesignated AWP "cost" or of typographical errors, the known correct price will be used as maximum.

2. If the published MAC price as defined in (a)1i. above is higher than the price which would be paid under (a)1ii. above, then (a)1ii. above will apply.

(b) (No change.)

[(c)] If the published MAC price as defined in (a)1i above is higher than the price which would be paid under (a)1ii above, then (a)1ii above, will apply.]

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

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

10:51-3.16 Maximum charges

(a) The maximum charge to the New Jersey Medicaid Program for a legend drug, [includes] **including** the charge for the cost of medication and the capitation fee, [and] may not exceed **the lowest of the following:**

1. The charges made to other medical facilities or agencies through contracts or other agreement; or

2. "**MAC/EAC**" plus capitation fee, as outlined in N.J.A.C. 10:51-3.14; or

3. **Usual and customary and/or posted or advertised charges; or**

4. **Other third-party prescription plan payments.**

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

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

10:51-5.14 Non-proprietary or generic dispensing

When medication is prescribed by its non-proprietary or generic name, the pharmacist will dispense the least expensive, therapeutically effective equivalent product available, preferably one listed in the DURC Formulary.

10:51-5.18 [Legend drugs] Basis of payment

(a) Payment for legend drugs (those drugs whose labels include the legend "Caution: Federal Law Prohibits Dispensing Without a Prescription") will be based upon "Maximum Allowable Cost", as herein defined, for each prescription (new or refill) minus the \$2.00 copayment, which must be paid by or on behalf of the client.

1. Maximum Allowable Cost is defined as:

i. The "Maximum Allowable Cost" (MAC) price published **periodically** by the [Pharmaceutical Reimbursement Board] **Health Care Finance Administration (HCFA)** of the **Federal Department of Health and Human Services** for listed multisource drugs or established by the Division of Medical Assistance and Health Services; or

ii. **Subject to the limits of (b) below, the Estimated Acquisition Cost (EAC) herein defined as lower of** [T]the Average Wholesale Price (AWP) listed for the most frequently purchased package size (as defined by the Division of Medical Assistance and Health Services)

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in [the] current ["Drug Topics Red Book" (published by Medical Economics Co., Oradell, New Jersey 07649)] **national price compendia or other appropriate source**, and **their supplements**; price changes listed [by the same publisher in "Drug Topics Magazine" or other appropriate sources] in the **national price compendia**; or designated prices defined in N.J.A.C. 10:51-5.19 and 10:51-5.20. In the case of unlisted or undesignated AWP "costs" or of typographical errors, the known correct price will be used as maximum.

2. If the published MAC price as defined in (a)1i above is higher than the price which would be paid under (a)1ii above, then (a)1ii above will apply.

(b) Maximum cost for each eligible prescription claim not covered by (a)1i. above will be subject to fiscal conditions based upon six categories (b)2 through 7 below as determined by the Division, based on the previous year's total prescription volume for each participating pharmacy. The categories will be reviewed annually and adjusted as appropriate.

1.-7. (No change.)

(c) Dispensing fee: The "dispensing fee" for legend drugs provided under the New Jersey PAAD Program as outlined in this subchapter shall be the prevailing [fee for pharmacies with retail permits] **New Jersey Medicaid rate as outlined in this chapter.**

1. Pharmacies with institutional permits will be reimbursed at 75 percent of the fee for pharmacies with retail permits.

(d) The maximum payment by the New Jersey PAAD Program for a legend drug, including the charge for the cost of medication and the dispensing fee will not exceed the lowest of the following, minus a copayment of \$2.00 for each prescription:

1. "[Cost]MAC/EAC" plus dispensing fee["], as outlined [herein] in **N.J.A.C. 10:51-5.18(a)**; or

2. Usual and customary and/or posted or advertised charges; or

3. Other third party prescription plan [charges] **payments.**

Note: Collection of the copayment is mandatory. N.J.S.A. C30:4D-25 P.L. 1978 C.171 states "said copayment will be paid in full by each eligible person to the pharmacists at the time of each purchase of prescription in whole or in part." Failure to collect the copayment will result in retroactive reduction of payment by an amount equivalent to the copayment or portion thereof, whichever is applicable. The provider may be suspended or debarred from participation in the New Jersey [Health Services (J)Medicaid(] Program for violation of this or any other provision of the regulations, at the discretion of the Director, Division of Medical Assistance and Health Services.

DIVISION OF PUBLIC WELFARE

(a)

Public Assistance Manual
Extension of Medical BenefitsAdopted Emergency Amendment and Concurrent
Proposal: **N.J.A.C. 10:81-8.22 and 14.20**

Emergency Amendment Adopted: October 21, 1987 by Drew Altman, Commissioner, Department of Human Services.
Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): October 26, 1987.

Emergency Amendment Filed: October 26, 1987 as c.1987 d.495.
Authority: N.J.S.A. 44:7-6 and 44:10-3; Public Law 1987, c.283
Emergency Amendment Effective Date: October 26, 1987
Emergency Amendment Operative Date: November 1, 1987
Emergency Amendment Expiration Date: December 24, 1987
Concurrent Proposal Number: PRN 1987-490.

Address Comments to:

Marion E. Reitz, Acting Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon filing with the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of this emergency amendment are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon filing with the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

The proposed amendments at N.J.A.C. 10:81-8.22 and N.J.A.C. 10:81-14.20 extend Medicaid coverage to those individuals enrolled in the Realizing Economic Achievement (REACH) Program and other individuals who are eligible Aid to Families with Dependent Children (AFDC) recipients who lose eligibility due to increased hours of employment or earnings or the receipt of State unemployment or disability insurance benefits.

Current Medicaid extensions do provide a bridge for those who will be offered health insurance by an employer after a short enrollment waiting period. But those extensions do little to help families who have limited employer-sponsored health insurance, or are subject to delayed enrollment due to preexisting medical conditions, which could preclude accessing benefits for up to a full year. Additionally, it merely postpones the inevitable for those who will be offered no health insurance or assistance in obtaining it. This abrupt and total cessation of medical assistance benefits is sometimes referred to as the Medicaid "notch" effect, and usually occurs when the recipient is not yet acclimated to the overwhelming task of providing a number of supports which had previously been provided by public assistance.

The loss of Medicaid and its accompanying "notch" effect has been proven to create a disincentive to economic self-sufficiency.

The proposed amendment at N.J.A.C. 10:81-8.22(b) extends eligibility for Medicaid benefits from four to up to 12 months to those AFDC-C or -F families who lose eligibility for AFDC (including those deemed to be recipients of AFDC) due to earnings or increased earnings from employment, including earnings from new employment; loss of the \$30.00 or one-third disregards of earned income because of time-limited application of those disregards; increased hours of employment; or receipt of New Jersey State unemployment or temporary disability insurance benefits, rather than being limited to increased earnings from or increased hours of employment. Extended Medicaid eligibility is also available under this proposal to AFDC-N families losing AFDC eligibility because of employment reasons. This coverage was previously unavailable. Additionally, any family formerly receiving AFDC-C or -F qualifying for this extension because of the loss of the \$30.00 or one-third disregards, shall receive an additional three months of extension of Medicaid eligibility if, at the end of the 12-month extension of Medicaid eligibility, the family would be eligible for AFDC if the \$30.00 and the one-third still applied. To receive the additional three months of extended Medicaid eligibility, the family must demonstrate to the satisfaction of the county welfare agency (CWA) that had the \$30.00 and one-third disregard of earned income not been time-related, the family would have been continuously eligible for AFDC from the time it became ineligible for AFDC.

In accordance with provisions of N.J.A.C. 10:49-1.7, Medicaid benefits are last payment benefits. All health and accident insurance benefits, including Medicare, Workers' Compensation, and No Fault Automobile Insurance must be used first and to the fullest extent in meeting the medical needs of the covered person. Accordingly, benefits available under this newly authorized extension of Medicaid eligibility shall only be payable as a last resort. Medicaid will not pay for any medical services to the extent they are the liability of another third party. Thus, when an individual obtains health coverage through his or her employment, Medicaid payments will be made available for covered services to the extent they are not otherwise paid for under the individual's health plan.

N.J.A.C. 10:81-14.20(a) has been amended to include as eligible for post-assistance Medicaid coverage, families deemed to be recipients of AFDC.

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N.J.A.C. 10:81-14.20(c)1 has been augmented with additional requirements which apply to the 12-month extension of Medicaid eligibility. To receive the extension of Medicaid eligibility, a family must have received AFDC in the month preceding the month in which the family became ineligible for AFDC.

N.J.A.C. 10:81-14.20(e) increases the 12-month extension of Medicaid eligibility by an additional three months for those families who formerly received AFDC-C or -F, and who, if at the end of the 12-month extension of Medicaid eligibility, the family would be eligible for AFDC if the \$30.00 and one-third disregards still applied. To receive this additional three months of extended Medicaid eligibility, the family must demonstrate to the satisfaction of the CWA that, had the \$30.00 and one-third disregard of earned income not been continuously eligible for AFDC from the time it became ineligible for AFDC.

Social Impact

On October 8, 1987, the Governor signed into law P.L. 1987, c.283, extending Medicaid eligibility for certain employed persons and supplementing P.L. 1968, c.413 (c.30:4D-1 et seq.). The legislation was enacted to counter the declaration that the provision of health care coverage to recipients of Aid to Families with Dependent Children (AFDC) under the Medicaid program, established pursuant to P.L. 1968, c.413 (N.J.S.A. 30:4D-1 et seq.), is a major disincentive to public assistance recipients who are considering employment. The shortcomings are well-known nationwide. The existing welfare system does not provide adequate incentive for recipients to go to work. It encourages long-term dependency by overly broad exemptions from work. Recipients have often found it impossible to receive as much income by working, especially non-cash benefits, as they can by receiving AFDC benefits. The potential loss of other program benefits, such as cash payments, in-kind aid, Medicaid, child care services and, for some, public housing operates as a severe penalty for engaging in employment. AFDC heads of households are afraid to take a job because doing so usually means the loss of Medicaid coverage for them and their children. The perceived value of that health care, as compared to the benefits realized through entry level employment, adversely affects motivation and creates a disincentive to successful participation in employment and training activities. During the critical transition period subsequent to loss of AFDC benefits due to employment, this negative impact is compounded by the potential loss of rent subsidies, food stamps and energy assistance. Extension of Medicaid eligibility to AFDC recipients and their families is one way of easing the transition to independence.

The thrust of the 12 month extension of Medicaid eligibility is to ensure incentives and benefits for participants to achieve and sustain permanent employment and independence from public assistance. The provision of extended Medicaid eligibility will not only buffer the loss of government-sponsored health care coverage in the first year of employment but will also help prepare participants in the transition to the employee/private health plan marketplace. For the majority of participants, especially the uninsured, the full year in the marketplace will give them the skills and experience, the "marketability", they would need to obtain employment with benefits sufficient to purchase those supports which were lost. Moreover, there will be less threat of collapse of the entire self-sufficiency structure when the final government-funded support is removed.

Economic Impact

The employment related extension of Medicaid eligibility as provided in P.L. 1987, c.283 will result in State Medicaid service and administrative expenditures of an estimated \$6.2 million in State fiscal year 1988, of which \$1.3 million is included in the Department's REACH budget and \$32.0 million in State fiscal year 1989, of which \$7.9 million is included in the Department's REACH budget request.

Regulatory Flexibility Statement

The rules regulate the extension of Medicaid to certain AFDC clients and do not apply to small businesses; therefore, no regulatory flexibility analysis is required.

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

10:81-8.22 Persons eligible for medical assistance

(a) (No change.)

(b) Extension of Medicaid benefits: Extended Medicaid benefits shall be provided former AFDC families in accordance with the provisions of this subsection.

1. When an AFDC-C [or] , -F or -N family loses eligibility for [money payment] AFDC (including families deemed to be recipients of AFDC) due to the following reasons, [increased earnings from or increased hours of employment] Medicaid eligibility continues for a period of [four] 12 months beginning with the month in which the family is no longer eligible for [an] AFDC [money payment if the following exist]:

i. Earnings or increased earnings from employment, including earnings from new employment;

ii. Loss of the \$30.00 or one-third disregards of earned income (see N.J.A.C. 10:82-4) because of the time-limited application of those disregards;

iii. Increased hours of employment; or

iv. Receipt of New Jersey state unemployment or temporary disability insurance benefits.

2. For any family which became eligible for AFDC prior to the enactment of P.L. 1987, c.283, in order to be eligible for this employment related extension, the family must have been eligible for AFDC or was deemed to be in receipt of AFDC for at least three of the six months preceding the month in which the family lost eligibility for AFDC.

[i. Such family was eligible for at least three of the six months immediately preceding the month in which the family lost eligibility for an AFDC money payment; and

ii. So long as a member of the family remains employed.]

[iii.] 3. [This extension also applies when increased earnings are due to new employment.] New members added to the eligible unit during the [four] 12 month extension period are not included under the extended coverage with the exception of a child born to the family during the [four] 12 month extension period.

4. Any family formerly receiving AFDC-C or -F qualifying for this extension because of the loss of the \$30.00 or one-third disregards, shall receive an additional three months of Medicaid extension if, at the expiration of the 12-month extension, the family would be eligible for AFDC if the \$30.00 and the one-third still applied. To receive this additional three months of Medicaid extension, the family must demonstrate to the satisfaction of the CWA that, had the \$30.00 and one-third disregard of earned income not been time-limited, the family would have been continuously eligible for AFDC from the time it became ineligible for AFDC.

5. Eligibility for the 12-month Medicaid extension is not available for any month to any individual who, except for income, resources or hours of employment, is not otherwise eligible to receive AFDC.

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

[3. When an AFDC-C or -F family loses eligibility for AFDC-C or -F because of the four-month limitation on the one-third disregard of earned income or because of the 12-month limitation on the \$30.00 disregard of earned income (see N.J.A.C. 10:82-2.8), Medicaid eligibility continues for a period of nine months beginning with the month in which the family is no longer eligible for an AFDC money payment. An additional six months' Medicaid extension shall be provided to families which would be eligible for AFDC if the \$30.00 and one-third disregard of earned income still applied.

i. Families which lost eligibility for AFDC-C or -F between October 1, 1981 and October 1, 1984 because of four-month limitation on the \$30.00 and one-third disregard of earned income are eligible for the nine month Medicaid extension and the additional six month extension from the date of application, provided such family meets the conditions below:

(1) Application for this Medicaid extension must be made by March 31, 1985.

(2) The family demonstrates to the satisfaction of the CWA that, had the \$30.00 and one-third disregard of earned income not been time limited, that it would have been continuously eligible for AFDC from the time they became ineligible for AFDC.

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(3) The family must fully disclose information about any health insurance coverage that the family members may have.]

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

10:81-14.20 REACH support services: medical assistance

(a) Post-assistance Medicaid coverage: When an AFDC-C, -F or -N family, residing in a county participating in the REACH program, becomes ineligible for AFDC (including families deemed to be recipients of AFDC) for any of the reasons listed in (b) below, the members of the family shall continue to receive Medicaid for a period of 12 months. [The 12-month extension of Medicaid benefits replaces the four-month time period at N.J.A.C. 10:81-8.22(b)1.]

(b) (No change.)

(c) Additional requirements: The following additional requirements apply to the 12-month Medicaid extension:

1. Except as specified in 1i below, the family must have received AFDC in the month preceding the month in which the family became ineligible for AFDC.

i. For families who became eligible for AFDC prior to the enactment of P.L. 1987, c.283 on October 8, 1987, the family must have received AFDC (or were deemed to have been in receipt of AFDC) in any three or more months during the six-month period immediately preceding the month in which the family became ineligible for AFDC.

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

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

(d) (No change.)

(e) Any family formerly receiving AFDC-C or -F qualifying for this 12-month extension because of the loss of the \$30.00 or one-third disregards (see (b)1 above) shall receive an additional three months of Medicaid extension if, at the expiration of the 12-month extension, the family would be eligible for AFDC if the \$30.00 and one-third disregards still applied. To receive this additional three months of Medicaid extension, the family must demonstrate to the satisfaction of the CWA that, had the \$30.00 and one-third disregard of earned income not been time-limited, the family would have been continuously eligible for AFDC from the time it became ineligible for AFDC.

DIVISION OF PUBLIC WELFARE

(a)

**Home Energy Assistance Handbook
Income Eligibility Requirements; Maximum Allowable Gross Income Limits; Special Energy Assistance; Cooling Assistance; Emergency Energy Assistance and Payment Schedules
Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 10:89-2.2, 2.3, 3.2, 3.3, 3.4, 3.6 and 4.1.**

Emergency Amendment Adopted: October 27, 1987 by Drew Altman, Commissioner, Department of Human Services.
Gubernatorial Approval (N.J.S.A. 52:14B-4 (c)): October 27, 1987.

Emergency Amendment Filed: October 28, 1987 as R.1987 d.496.
Authority: N.J.S.A. 30:4B-2.

Emergency Amendment Effective Date: October 28, 1987.
Emergency Amendment Operative Date: November 1, 1987.
Emergency Amendment Expiration Date: December 27, 1987.
Concurrent Proposal Number: PRN 1987-491.

Address comments and inquiries to:
Marion E. Reitz, Acting Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law

(see N.J.S.A. 52:14B-4(c)) as implemented by N.J.A.C. 1:30-4.5. Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

The purpose of the Home Energy Assistance (HEA) Program is to offset increasing costs of home heating and medically necessary cooling fuels by providing assistance to low income households. The amendment at N.J.A.C. 10:89-2.3(g), provides that the income eligibility guidelines for the HEA Program shall be retained at 150 percent of the Federal poverty level with a slight cost of living increase. HEA payment schedules at N.J.A.C. 10:89-3.6 have been revised, based on New Jersey's anticipated Federal Fiscal Year (FFY) 1988 Low Income Home Energy Assistance Program (LIHEAP) Federal allocation of funds and on the heating fuel consumption and cost figures provided by the United States Department of Energy for November, 1986 through April, 1987.

N.J.A.C. 10:89-2.2(a)4 includes a provision for an increase in excludable illegal alien income, consistent with revised Federal poverty guidelines. N.J.A.C. 10:89-2.3(f)5 provides that recoupments taken from Social Security benefits or Supplemental Security Income (SSI) shall not be counted as income, which is consistent with Food Stamp Program regulations.

N.J.A.C. 10:89-3.2(f)6 stipulates that home energy assistance cannot be granted to a household for the purchase of kerosene if kerosene heaters are illegal in the municipality in which the household resides. N.J.A.C. 10:89-3.3(a) clarifies that in order to be eligible for cooling assistance the household has to be "income eligible".

N.J.A.C. 10:89-3.4(f) provides regulations governing the provision of emergency energy assistance for restoration of a household's heating utility service. N.J.A.C. 10:89-3.4(d) provides that emergency payments for furnace restart will be authorized for households which are responsible for heating costs regardless of whether the household owns its residence, and also increases the maximum payment available for furnace repair to \$1,000. N.J.A.C. 10:89-3.4(e) revises the duration of emergency temporary rehousing for consistency with the Aid to Families with Dependent Children (AFDC) Program emergency shelter provisions. The amendment to N.J.A.C. 10:89-3.4(a) extends emergency assistance to households with heating costs included in their rent to prevent eviction.

N.J.A.C. 10:89-4.1 stipulates the application time frames for the heating and cooling assistance programs. The balance of program changes herewith are nominal in nature and will neither affect the number of households served nor the amount of benefits issued.

Social Impact

Approximately 160,000 households were assisted during the Fiscal Year (FY) 1987 Home Energy Assistance Program and it is projected that 160,000 households will again be served in FY 1988. The State's low income population will receive the most direct benefit since those households will receive a supplement to assist them in meeting their heating and cooling costs. The amendments ensure that the low income population will receive assistance promptly and efficiently.

Economic Impact

There will be no direct impact upon New Jersey taxpayers since the entire cost of assistance and administration of the HEA program is federally funded. There will be an indirect benefit to the public as a whole since there will be an influx of Federal dollars into the State's economy. The direct beneficiaries of the program will be the approximately 160,000 households anticipated to receive assistance in FFY 1988. To ensure that the program benefits are used for the intended purpose, which is to offset the increasing cost of home heating fuels, applicant households which are directly responsible to a participating fuel supplier for payment of heating costs will receive their benefit in the form of a two-party check payable to the applicant and the fuel supplier.

Regulatory Flexibility Statement

This rulemaking action has been reviewed in accordance with the New Jersey Regulatory Flexibility Act, P.L. 1986, c.169 effective December 4, 1986, and imposes no compliance requirements on small businesses, therefore, a regulatory flexibility analysis is not required.

EMERGENCY ADOPTIONS

HUMAN SERVICES

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

10:89-2.2 Eligibility requirements

- (a) The household members shall be residents of New Jersey. 1.-3. (No change.)

4. Illegal aliens are ineligible for Home Energy Assistance benefits. In cases where an illegal alien resides within an applicant household, the alien must be excluded from the HEA household size. If the illegal alien has monthly income in excess of [~~\$235.00~~] **\$238.00**, the amount in excess of [~~\$235.00~~] **\$238.00** shall be counted as income to the household, and must be added to all other household income in determining the household's gross monthly income.

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

10:89-2.3 Income eligibility

- (a)-(e) (No change.)

(f) Income computation: Countable gross monthly earned and unearned income, as defined in (c) and (d) above, and verified in accordance with N.J.A.C. 10:89-4.1(d), shall be added to determine the household's total gross monthly income. Cents shall be rounded to the nearest dollar. If the household's total gross monthly income is equal to or less than the gross income limit for the household size, the household is income eligible for Home Energy Assistance.

- 1.-3. (No change.)

4. Roomer-boarders residing within applicant household are not to be included in the household size and the income of such individuals is not to be considered in the eligibility determination. However, in accordance with N.J.A.C. 10:82-4.3(c) in the Assistance Standards Handbook (ASH), any income to the HEA Program applicant household in roomer-boarder situations in excess of [~~\$96.00~~] **\$125.00** per month shall be considered in determining the household's gross monthly income.

- i. (No change.)

5. If a household member receives Social Security benefits and/or SSI the CWA must determine the countable income as follows:

- i.-ii. (No change.)

iii. For individuals receiving Social Security benefits or SSI, moneys withheld to repay a prior overpayment shall not be counted as income.

- (g) Gross Income Eligibility Limits for Home Energy Assistance:

Household Size	Monthly Allowable Gross Income Limit
1	\$ [670] 688
2	[905] 926
3	[1140] 1164
4	[1375] 1402
5	[1610] 1640
6	[1845] 1878
7	[2080] 2116
8	[2315] 2354
9	[2550] 2592
10	[2785] 2830
Each Additional Member	+ [235] 238

10:89-3.2 Special energy assistance

- (a)-(e) (No change.)

- (f) Households responsible for heating costs:

- 1.-5. (No change.)

6. For cases in which an applicant indicates that he or she is using a kerosene heater as the primary heat source in an area in which zoning ordinances have declared that type of heater illegal, kerosene shall not be considered the household's main source of heat on the HEA application. In such situations the CWA must advise applicants of the legal implications of using that form of heater and provide them with information regarding any available programs which may assist them in the establishment of an alternate heating source.

- i. In any situation in which the applicant is uncooperative in securing a new heating source, the CWA must document in the case record that

the applicant was advised of the illegality of the use of kerosene heaters and was counseled regarding existing alternatives. Home energy assistance payments shall not be authorized to supplement illegal heating sources.

10:89-3.3 Cooling assistance

(a) Income [E]ligible households for which there is medical evidence that the health of at least one household member will be seriously endangered unless the household's living quarters are cooled shall receive a one-time benefit in the amount of \$125.00 subject to the following provisions. This benefit is available in addition to any other benefits made under this program and will be paid directly to the household.

- 1.-2. (No change.)

3. The following households are not eligible for cooling assistance payments:

- i. Households residing in publicly operated housing or receiving a rent subsidy which includes [all] cooling costs;
- ii.-iv. (No change.)

10:89-3.4 Emergency energy assistance

(a) Emergency energy assistance is available to HEA eligible households and is subject to the following conditions:

1. An energy emergency shall exist when a household is without heat or is in danger of being without heat and has insufficient income available to purchase fuel **or when a household which pays for heating costs which are included in a monthly rental charge is faced with eviction due to nonpayment of rent.**

- 2. (No change.)

3. The amount of any emergency assistance payment shall be the lowest amount charged for the service performed by the household's energy supplier or for the purchase of fuel, but shall not exceed \$200.00 for the purchase of fuel oil, electricity, natural gas, bottled gas, kerosene, wood or coal. The fee for restoration of utility service shall be counted toward the \$200.00 maximum amount for purchase of electricity or natural gas.

4. The client shall be required to account for the use of all funds received under the program prior to the request for emergency assistance. The CWA shall evaluate the request for emergency assistance with the understanding that any benefits previously provided to the client under this section or N.J.A.C. 10:89-3.1, "Automatic payments to certain households" and N.J.A.C. 10:89-3.2, "Special energy assistance" were intended to defray the cost of home heating fuel for the current heating season or to defray heating costs which are included in a monthly rental charge.

- 5.-6. (No change.)

(b) It is intended that emergency energy assistance be authorized in the form of a direct payment to the client from the CWA [from] on Administrative Account No. [80]57 [(Miscellaneous Non-matchable Account)]. The CWA will subsequently be reimbursed by DPW for such payments.

1. Emergency energy assistance benefits may, at the discretion of the agency, be issued as a two party check payable to the head of household and the fuel supplier or utility company.

- (c) (No change.)

(d) Emergency energy assistance for specific services:

1. Emergency energy assistance is authorized through the CWA when a household is without heat or is in danger of being without heat. [Payments shall not be authorized for households unless the household owns and resides in the residence requiring the service, and may be made only for the following services:] **Payments for the following services shall only be authorized for a household if the household owns and resides in the residence requiring the service:**

- [i. Furnace restart not to exceed \$100.00;]
- [ii.] i. [Minor furnace] **Furnace** repairs up to [\$100.00] **\$1,000** or;
- [iii.] ii. (No change in text.)

2. Payment for the following service may be authorized for households which are directly responsible for payment of the cost of the primary heating fuel for the residence requiring the service, regardless of whether the household owns the residence.

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i. Furnace restart not to exceed \$100.00.

(e) Emergency temporary rehousing:

1. Payment may be authorized for [income eligible households] the actual cost of adequate emergency shelter arrangements for HEA eligible households which have been temporarily rehoused [by an emergency response unit] due to an energy related emergency.

2. (No change.)

3. The [emergency response unit] CWA will be reimbursed retroactively for emergency rehousing assistance provided to eligible households.

4. The CWA is responsible for evaluation of the situation and determination of the appropriateness of reimbursement from program funds. [The Director of the Division of Public Welfare, upon consideration of the CWA's recommendation, may authorize the reimbursement for a specified temporary period not to exceed two calendar months following the month in which the state of homelessness first becomes known to the county welfare agency.] Reimbursement shall be authorized for a specified temporary period consistent with N.J.A.C. 10:82-5.10.

[5. Requests for Emergency Rehousing Assistance reimbursement must contain, in writing, the following information.

i. Description of the client(s) heating related emergency which required the temporary rehousing;

ii. Description of the CWA's response to the heating related emergency situation;

iii. Duration of the heating related emergency;

iv. Identification of rehousing expenses incurred. This must include the name of payee(s), check number/date and whether these expenses were originally reported as Emergency Assistance payments; and

v. Identification of household(s) assisted including the name(s) and Social Security number(s) of all Emergency Rehousing Assistance recipients;]

Renumber 6.-7. as 5.-6. (No change in text.)

(f) Restoration or maintenance of utility service:

1. Emergency energy assistance [is authorized] may be granted by a CWA to restore or maintain utility service for an eligible household under the following conditions:

i. (No change.)

ii. The household must have received a termination of service notice or have actually been shut off;

[ii.] iii. The utility company agrees to restore or maintain service but requests a fee for reconnection;

[iii.] iv. The household is without the means to pay the reconnection fee; [and]

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

vi. The total amount of the emergency payment may not exceed \$200.00 which includes the emergency purchase of fuel and the reconnection fee; and

vii. The county welfare agency (CWA) must verify with the utility that the amount of the available emergency payment will be sufficient to restore or maintain service.

2. If the request for emergency assistance is made while the Board of Public Utilities Order regarding the winter termination program (moratorium) is in effect, the household must document that appeal to the Board has been unsuccessful.

3. If the utility requires a minimum payment in an amount greater than \$200.00 to restore or maintain service, prior to issuing the emergency payment, the CWA shall require the household to show proof that the household has funds to pay or has paid the excess amount prior to issuance of the emergency payment.

4. If a household which heats by fuel oil must have utility service reconnected to start the fuel burner, emergency energy assistance may be granted for the utility reconnection necessary to restart the fuel burner and for an emergency fuel oil delivery. The total amount of the emergency payment in such instances may not exceed \$200.00. The maximum payment for utility reconnection may not exceed \$100.00. If a household which heats by fuel oil has used its HEA benefit check

to purchase oil or already has oil but needs utility reconnection to start the fuel burner, emergency energy assistance may be granted for such utility reconnection but may not exceed \$100.00.

10:89-3.6 Payment schedules

Delete (a)-(d) (Payment Schedule A through D) as currently found at N.J.A.C. 10:89-3.6; Replace with the following:

(a) Schedule A: Electricity, Natural Gas:

HOUSEHOLD SIZE Region Designation Monthly Income	1 or 2		3 to 5		6 or more	
	Blue	Red	Blue	Red	Blue	Red
\$0—\$667.00	522	454	698	606	834	726
\$668.00—\$1084.00	434	380	580	504	698	606
\$1085.00—\$1501.00	350	302	464	404	558	486
\$1502.00—\$1918.00			348	302	418	362
\$1919.00—\$2335.00			232	202	278	242
Over \$2335.00					140	120

"Blue" means Sussex and Warren counties.

"Red" means all other counties.

(b) Schedule B: Fuel Oil, Kerosene:

HOUSEHOLD SIZE Region Designation Monthly Income	1 or 2		3 to 5		6 or more	
	Blue	Red	Blue	Red	Blue	Red
\$0—\$667.00	492	428	658	572	788	686
\$668.00—\$1084.00	410	358	548	476	658	572
\$1085.00—\$1501.00	330	286	438	382	526	458
\$1502.00—\$1918.00			328	286	394	342
\$1919.00—\$2335.00			220	190	262	228
Over \$2335.00					132	114

"Blue" means Sussex and Warren counties.

"Red" means all other counties.

(c) Schedule C: All other fuel:

HOUSEHOLD SIZE Region Designation Monthly Income	1 or 2		3 to 5		6 or more	
	Blue	Red	Blue	Red	Blue	Red
\$0—\$667.00	322	280	430	372	516	448
\$668.00—\$1084.00	268	234	358	312	430	374
\$1085.00—\$1501.00	216	188	286	250	344	298
\$1502.00—\$1918.00			214	186	258	224
\$1919.00—\$2335.00			144	124	172	150
Over \$2335.00					86	74

"Blue" means Sussex and Warren counties.

"Red" means all other counties.

10:89-4.1 Opportunity and decision to apply

(a) Any individual(s) who believes he or she or his or her household is eligible for HEA must be given the opportunity to apply without delay. Heating assistance applications shall be accepted from November 1 through April 30 of each year. Cooling assistance applications shall be accepted from November 1 through June 30 of each year. Applicants will be informed about eligibility requirements and their rights and obligations in applying for and receiving assistance. The decision to apply rests with the applicant. The applicant has the right to withdraw the application before eligibility or ineligibility has been determined. Upon completion of the application process, the application shall be transmitted to DPW in accordance with (e) below.

1. (No change.)

(b)-(j) (No change.)

TRANSPORTATION

(a)

THE COMMISSIONER

Speed Limits

Route U.S. 30 in Camden County

Adopted Emergency Amendment and Concurrent Proposal: N.J.A.C. 16:28-1.57

Emergency Amendment Adopted: October 5, 1987 by Hazel Frank Gluck, Commissioner, Department of Transportation. Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): October 21, 1987.

Emergency Amendment Filed: October 26, 1987 as R.1987 d.493.

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

Emergency Amendment Effective Date: October 26, 1987.

Emergency Amendment Expiration Date: December 24, 1987.

Concurrent Proposal Number: PRN 1987-488.

Submit comments by December 16, 1987 to:

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

This amendment was adopted on an emergency basis and became effective upon filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of this emergency amendment are being proposed for re-adoption in compliance with the normal rule making requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendment becomes effective upon filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.6).

The agency emergency adoption and concurrent proposal follows:

Summary

The proposed amendment will establish a "school speed limit" along Route U.S. 30 in the Boroughs of Lindenwold and Laurel Springs, Camden County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safety of children going to or leaving school during opening and closing hours.

Based upon requests from the local officials, in the interest of safety at the schools, and in view of nonexisting signs to regulate the speed

in the school zones, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "school speed limits" along Route U.S. 30 in the areas designated was warranted.

The Department therefore has amended N.J.A.C. 16:28-1.57, based upon the requests from local officials and the traffic investigations.

Social Impact

The adopted amendment will establish "school speed limit" zones along Route U.S. 30 in the Boroughs of Lindenwold and Laurel Springs for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safety of children going to or leaving school during opening and closing hours. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "school speed limit" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act (N.J.S.A. 52:14B-19), a regulatory flexibility analysis is not required. The rule primarily affects the motoring public.

Full text of the emergency adoption and concurrent proposal follows.

16:28-1.57 Route U.S. 30

(a) The rate of speed designated for the certain parts of State highway Route U.S. 30 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:
i.-xxiii. (No change.)

xxiv. In Lindenwold and Laurel Springs Boroughs, Camden County:

(1) 30 mph school speed zone within the Lindenwold School No. 1 zone, St. Lawrence Parochial School zone and the Overbrook Junior High School zone, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening and closing hours, between 125 feet east of Summit Avenue (approximate milepost 46.05) and 300 feet east of Whitehorse Avenue (approximate milepost 45.55).

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on August 6, 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 the Delran Sewerage Authority's sewer service area to include the proposed Cobblestone Court development which is located in Moorestown Township, Burlington County.

(b)

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on September 15, 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 the expansion of the Gloucester County Utilities Authority's sewer service area to include the proposed Forest Park development located in Deptford Township, Gloucester County. Also, this amendment will permit the filling of less than one acre of wetlands for two minor road crossings.

(c)

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow new surface water and ground water discharges from the existing Gold Mine Estates Water Supply System in Mount Olive Township. The discharges are required for the disposal of filter backwash.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(d)

Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan

Public Notice

Take notice that Middlesex County has submitted for consideration an amendment to the Lower Raritan/Middlesex County Water Quality Management (WQM) Plan. This amendment would expand the sewer service area of the Middlesex County Utilities Authority to include the service area of the Monroe Township Municipal Utilities Authority's Forsgate Sewage Treatment Plant (STP). The Forsgate STP will be converted to a pumping station.

This notice is being given to inform the public that a plan amendment has been proposed for the Lower Raritan/Middlesex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Middlesex County Planning Board, 40 Livingston Avenue, New Brunswick, New Jersey 08901, and the NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

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 during its review. The NJDEP thereafter may approve and adopt this amendment without further notice.

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.

(e)

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for Ringwood Borough. This WMP defines the sewer service areas for the Wanaque Regional Sewerage Authorities in addition to five existing sewage treatment plants. The Plan provides for a designated area for utilizing on-site sewage treatment systems via groundwater discharge.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Availability of Grants

Take notice that, in compliance with P.L. 1987, c.7, the Department of Environmental Protection hereby announces the availability of the following grant program:

A. Name of Program.

Wildlife Check-Off Conservation Grant (WC-OCG)

B. Purpose.

The purpose of WC-OCG is to make matching funds available for local projects designed to benefit nongame wildlife, and to increase the public use, knowledge and enjoyment of the State's nongame wildlife resources on public open space areas in New Jersey.

C. Amount of Money in Program.

The Endangered and Nongame Species Program (ENSP) has allotted \$5,000 of its fiscal year 1988 budget for this Program. The Program will provide 1:1 matching grants up to \$1,000 for selected projects.

D. Groups or Entities which may Apply for Funding.

Any formally established organization, including but not limited to the following:

1. Environmental commissions
2. Conservation groups
3. Youth groups
4. Citizens groups
5. Environmental centers
6. School groups

E. Qualifications Needed to be Eligible.

Any formally established group may apply for funding. Grant recipients must provide matching funds on a 1:1 basis.

F. Procedure for Eligible Groups to Apply for Grant Funds.

To qualify for a WC-OCG, a project proposal must be submitted using only an official procedural guide and application form available from the ENSP Office.

G. Address for Applications.

Official WC-OCG procedural guides and applications can be obtained from:

Wildlife Check-Off Conservation Grants
Division of Fish, Game and Wildlife
Endangered and Nongame Species Program
CN-400
Trenton, New Jersey 08625
(609) 292-9101

Completed applications should be submitted to the same address.

H. Deadline by which Applications must be submitted.

The Application deadline for projects to receive funding in 1988 is January 31, 1988.

I. Date by which Applicants shall be Notified of Approval or Disapproval.

Applicants shall receive notice of approval or disapproval of a WC-OCG proposal by March 15, 1988.

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 October 5, 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. Sec: 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: SEPTEMBER 21, 1987.

NEXT UPDATE WILL BE DATED OCTOBER 19, 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. 2235 and 2344	November 17, 1986	19 N.J.R. 899 and 1006	June 1, 1987
18 N.J.R. 2345 and 2408	December 1, 1986	19 N.J.R. 1007 and 1120	June 15, 1987
18 N.J.R. 2409 and 2472	December 15, 1986	19 N.J.R. 1121 and 1258	July 6, 1987
19 N.J.R. 1 and 164	January 5, 1987	19 N.J.R. 1259 and 1352	July 20, 1987
19 N.J.R. 165 and 260	January 20, 1987	19 N.J.R. 1353 and 1474	August 3, 1987
19 N.J.R. 261 and 324	February 2, 1987	19 N.J.R. 1475 and 1588	August 17, 1987
19 N.J.R. 325 and 392	February 17, 1987	19 N.J.R. 1589 and 1676	September 8, 1987
19 N.J.R. 393 and 430	March 2, 1987	19 N.J.R. 1677 and 1758	September 21, 1987
19 N.J.R. 431 and 476	March 16, 1987	19 N.J.R. 1759 and 1858	October 5, 1987
19 N.J.R. 477 and 586	April 6, 1987	19 N.J.R. 1859 and 1926	October 19, 1987
19 N.J.R. 587 and 672	April 20, 1987	19 N.J.R. 1927 and 2086	November 2, 1987
19 N.J.R. 673 and 794	May 4, 1987	19 N.J.R. 2087 and 2224	November 16, 1987
19 N.J.R. 795 and 898	May 18, 1987		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-8.2	De novo review by OAL and previous hearing record	19 N.J.R. 1761(a)		
1:1-9.1	Scheduling of prehearing conferences	19 N.J.R. 1591(a)	R.1987 d.463	19 N.J.R. 2131(a)
1:1-14.4	Failure to appear at proceeding	19 N.J.R. 1591(b)		
1:1-14.5	Ex parte communications and agency heads	19 N.J.R. 1761(b)		
1:1-14.10	Decision to grant requests for interlocutory review where agency head is board or commission	19 N.J.R. 1591(c)		
1:1-14.10, 18.1, 18.4	Interlocutory review of certain issues	19 N.J.R. 1592(a)	R.1987 d.462	19 N.J.R. 2131(b)
1:1-19.1	Settlement terms and consent of agency head	19 N.J.R. 1593(a)	R.1987 d.461	19 N.J.R. 2131(c)
1:1-21.6	Exceptions in uncontested cases	19 N.J.R. 1593(b)	R.1987 d.464	19 N.J.R. 2131(d)
1:5-1.1	Council on Affordable Housing hearings: correction			19 N.J.R. 1917(a)
1:30-1.2, 2.8	Use of appendices	19 N.J.R. 675(a)		

(TRANSMITTAL 1987-3, dated August 17, 1987)

AGRICULTURE—TITLE 2				
2:71-2.4, 2.5, 2.6	"Jersey Fresh" raspberry standards	19 N.J.R. 1593(c)	R.1987 d.442	19 N.J.R. 1987(a)
2:76-5.3, 5.8	Cost-share funding of soil and water conservation projects	19 N.J.R. 1123(a)	R.1987 d.427	19 N.J.R. 1892(a)
2:76-7	Review of nonagricultural development projects in agricultural areas	19 N.J.R. 1009(a)	R.1987 d.482	19 N.J.R. 2132(a)

(TRANSMITTAL 1987-6, dated September 21, 1987)

BANKING—TITLE 3				
3:1-14	Revolving credit equity loans	19 N.J.R. 1594(a)		
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions	19 N.J.R. 1355(a)		
3:6-4	Banks and savings banks: action upon detection or discovery of crime	19 N.J.R. 1595(a)		
3:6-9	Capital stock savings bank: change in control	19 N.J.R. 1762(a)		
3:10-8, 9	Banks and savings banks: mortgage loan practices	19 N.J.R. 1356(a)		
3:11-12	Commercial loans by savings banks	19 N.J.R. 1679(b)		
3:18-10	Secondary mortgage loan licensure	19 N.J.R. 1929(a)		
3:23-2.1	Secondary mortgage loan licensure	19 N.J.R. 1929(a)		
3:27-6, 7	Savings and loan associations: mortgage loan practices	19 N.J.R. 1358(a)		
3:38	Mortgage bankers and brokers	19 N.J.R. 1261(a)	R.1987 d.396	19 N.J.R. 1791(a)
3:38-4, 5, 7	Mortgage bankers and brokers: loan practices	19 N.J.R. 1360(a)		

(TRANSMITTAL 1987-5, dated September 21, 1987)

PERSONNEL (CIVIL SERVICE)—TITLE 4				
4:1-1, 2, 3, 4	Repeal (see 4A:1)	19 N.J.R. 1011(a)	R.1987 d.406	19 N.J.R. 1827(a)
4:1-5, 13.6, 13.7, 16.7-16.12, 16.14, 23	Repeal (see 4A:2)	19 N.J.R. 1013(a)	R.1987 d.407	19 N.J.R. 1827(a)
4:1-10.3	Repeal (see 4A:5)	19 N.J.R. 1018(a)	R.1987 d.404	19 N.J.R. 1827(a)
4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4:1-17, 18, 20, 26	Repeal (see 4A:6-1, 2, 3, 4, 5)	19 N.J.R. 1764(a)		
4:1-19, 21.1, 21.3-21.5	Repeal (see 4A:10)	19 N.J.R. 1366(a)	R.1987 d.435	19 N.J.R. 1987(b)
4:1-21.2, 21.6	Repeal (see 4A:7)	19 N.J.R. 1020(a)	R.1987 d.403	19 N.J.R. 1827(a)
4:2-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		
4:2-16.4, 16.5, 23	Repeal (see 4A:2)	19 N.J.R. 1013(a)	R.1987 d.407	19 N.J.R. 1827(a)
4:2-17, 18, 20, 26	Repeal (see 4A:6-1, 2, 3, 4, 5)	19 N.J.R. 1764(a)		
4:2-21.1-21.6	Repeal (see 4A:7)	19 N.J.R. 1020(a)	R.1987 d.403	19 N.J.R. 1827(a)
4:3-16.1, 16.2	Repeal (see 4A:8)	19 N.J.R. 1363(a)		
4:3-16.3, 16.4	Repeal (see 4A:2)	19 N.J.R. 1013(a)	R.1987 d.407	19 N.J.R. 1827(a)
4:3-17, 20	Repeal (see 4A:6-1, 2, 3, 4, 5)	19 N.J.R. 1764(a)		
4:3-19	Repeal (see 4A:10)	19 N.J.R. 1366(a)	R.1987 d.435	19 N.J.R. 1987(b)
4:3-21.1, 21.2	Repeal (see 4A:7)	19 N.J.R. 1020(a)	R.1987 d.403	19 N.J.R. 1827(a)
4:4	Repeal (see 4A:6-6)	19 N.J.R. 1774(a)		
4A:1	General rules and department organization	19 N.J.R. 1011(a)	R.1987 d.406	19 N.J.R. 1827(a)
4A:2	Appeals, discipline and separations	19 N.J.R. 1013(a)	R.1987 d.407	19 N.J.R. 1827(a)
4A:5	Veterans and disabled veterans preference	19 N.J.R. 1018(a)	R.1987 d.404	19 N.J.R. 1827(a)
4A:6-1, 2, 3, 4, 5	Leaves, hours of work, employee development	19 N.J.R. 1764(a)		
4A:6-6	Awards Program	19 N.J.R. 1774(a)		
4A:7	Equal employment opportunity and affirmative action	19 N.J.R. 1020(a)	R.1987 d.403	19 N.J.R. 1827(a)
4A:8	Layoffs	19 N.J.R. 1363(a)		
4A:9-1	Political subdivisions	19 N.J.R. 1022(a)	R.1987 d.405	19 N.J.R. 1827(a)
4A:10	Violations and penalties	19 N.J.R. 1366(a)	R.1987 d.435	19 N.J.R. 1987(b)

(TRANSMITTAL 1987-2, dated July 20, 1987)

COMMUNITY AFFAIRS—TITLE 5

5:4-2	Debarment and suspension from contracting	19 N.J.R. 1261(b)	R.1987 d.389	19 N.J.R. 1791(b)
5:11-1.2, 2.1	Relocation assistance: lawful occupancy; eligibility	19 N.J.R. 1596(a)		
5:11-3.5	Relocation assistance: scheduling of payments	19 N.J.R. 1930(a)		
5:12-1.1, 2.1, 2.4	Homelessness Prevention Program: eligibility for temporary assistance	19 N.J.R. 1777(a)		
5:13	Limited dividend and nonprofit housing corporations and associations	19 N.J.R. 1861(a)		
5:14-1.1-1.4, 2.1-2.3, 3.1-3.23, 4.1-4.6	Neighborhood Preservation Balanced Housing Programs	19 N.J.R. 589(a)		
5:18-2.4, 2.5, 2.6, 2.8	Uniform Fire Code: life hazard uses; annual registration fees	19 N.J.R. 1680(a)		
5:18-4.1	Fire Safety Code: exemption of one and two family residences	19 N.J.R. 1263(a)	R.1987 d.388	19 N.J.R. 1792(a)
5:19	Continuing care retirement communities: disclosure requirements	19 N.J.R. 597(a)		
5:23-1.1, 3.10, 4.40, 5.2, 5.4, 5.18, 5.20, 5.21-5.26	UCC: local agency classification; appeal boards; licensing	19 N.J.R. 1264(a)		
5:23-2.38, 3.11, 7.2, 7.3, 7.100-7.116	Barrier free subcode: recreation standards	19 N.J.R. 1270(a)		
5:23-3.2	Uniform Construction Code: commercial farm buildings	19 N.J.R. 1778(a)		
5:23-3.2	Commercial farm building subcode: public hearings	19 N.J.R. 1862(a)		
5:23-3.18	Energy Subcode: checkmetering in multifamily buildings; lighting efficiency in existing buildings	19 N.J.R. 1862(b)		
5:23-3.18, 6.1-6.3	Energy subcode: solar energy property tax exemptions	19 N.J.R. 433(b)	R.1987 d.387	19 N.J.R. 1793(a)
5:23-4.5	UCC enforcement: conflict of interest—withdrawal of proposal	19 N.J.R. 1033(a)		
5:23-4.20, 8.17	Uniform Construction Code: inspection fees	19 N.J.R. 1684(a)	R.1987 d.490	19 N.J.R. 2134(a)
5:23-8	Asbestos Hazard Abatement Subcode	19 N.J.R. 902(a)		
5:26-2.3, 2.4	Planned real estate development: plan review fees	19 N.J.R. 1684(a)	R.1987 d.490	19 N.J.R. 2134(a)
5:80-21	Housing and Mortgage Finance: single family loans	18 N.J.R. 2238(a)		
5:80-26	Housing resale and rental affordability control	19 N.J.R. 802(a)		
5:92-1.3, 6.1	Council on Affordable Housing: rehabilitation component and credits	19 N.J.R. 1863(a)		
5:92-5.14, 12.11	Council on Affordable Housing: low and moderate income split; rental surcharge	19 N.J.R. 1597(a)		
5:100-2.5	Failure to report suspected abuse or exploitation of institutionalized elderly	19 N.J.R. 1686(a)		

(TRANSMITTAL 1987-7, dated September 21, 1987)

DEFENSE—TITLE 5A

(TRANSMITTAL 1, dated May 20, 1985)

EDUCATION—TITLE 6

6:20-3.1	Sending and receiving districts: determining tuition rates	19 N.J.R. 1598(a)		
6:31-1	Bilingual education	19 N.J.R. 1126(a)		
6:46	Area Vocational Technical and Private Schools: waiver of Executive Order No. 66 (1978) sunset provision	18 N.J.R. 1996(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:46	Local area vocational school districts and private vocational schools	19 N.J.R. 1368(a)	R.1987 d.434	19 N.J.R. 1989(a)
6:64	County and local library services	19 N.J.R. 1931(a)		
6:68-1.4	State library aid to municipalities	19 N.J.R. 1128(a)	R.1987 d.398	19 N.J.R. 1796(a)
6:79-1	Child nutrition programs	19 N.J.R. 1599(a)		

(TRANSMITTAL 1987-8, dated September 21, 1987)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-3, 4	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)		
7:1A	Water Supply Bond Loan Program: extension of comment period	19 N.J.R. 806(b)		
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)		
7:7-2.1, 2.3	Coastal Permit Program: CAFRA exemptions; waterfront development	19 N.J.R. 807(a)		
7:7-2.2	Monmouth County wetlands maps	18 N.J.R. 2162(a)	R.1987 d.446	19 N.J.R. 1999(a)
7:7E-7.4, 8.11	Coastal resources and development: high rise structures; public access to Hudson River waterfront	19 N.J.R. 1034(a)		
7:8-1.3, 1.7, 2.1, 2.2, 2.6, 3.4, 3.6	Stormwater management	19 N.J.R. 488(a)		
7:9-13	Sewer connection bans	18 N.J.R. 2163(a)	Expired	
7:9-13	Sewer connection ban: extension of comment period	19 N.J.R. 263(b)		
7:9-15.6	Phase II lake restoration projects: State funding level	19 N.J.R. 909(a)	R.1987 d.447	19 N.J.R. 2000(a)
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	19 N.J.R. 1381(a)		
7:11-1	Use of Water Supply Authority property	19 N.J.R. 1274(a)		
7:12	Classification of shellfish growing waters	19 N.J.R. 1129(a)	R.1987 d.488	19 N.J.R. 2136(a)
7:13-7.1	Redelineation of Hackensack River in Oradell	19 N.J.R. 1935(a)		
7:13-7.1(d)	Redelineation of Raritan River and Peters Brook: repropoed	19 N.J.R. 167(b)		
7:13-7.1(d)	Flood plain delineations in Passaic-Hackensack and Raritan basins	19 N.J.R. 489(a)	R.1987 d.489	19 N.J.R. 2150(a)
7:13-7.1(d)	Flood hazard redelineation of Raritan River	19 N.J.R. 1277(a)	R.1987 d.400	19 N.J.R. 1797(a)
7:13-7.1(d)	Redelineations along Green Brook, Union County	19 N.J.R. 1384(a)	R.1987 d.487	19 N.J.R. 2151(a)
7:13-7.1(d)	Redelineation of Big Bear Brook, Mercer County	19 N.J.R. 1933(a)		
7:13-7.1(d)	Redelineation of Carter's Brook, Middlesex County	19 N.J.R. 1933(b)		
7:13-7.1(d)	Redelineation of Lawrence, Ireland, Mae, Harry's and Oakeys brooks in Mercer and Middlesex counties	19 N.J.R. 1934(a)		
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System	18 N.J.R. 2085(a)	R.1987 d.458	19 N.J.R. 2152(a)
7:14A-1, 2, 3, 5, 10, 12	New Jersey Pollutant Discharge Elimination System: comment period extended	18 N.J.R. 2411(a)		
7:14A-1.9, 12	Sewer connection bans	18 N.J.R. 2163(a)	R.1987 d.445	19 N.J.R. 2000(b)
7:14A-1.9, 12	Sewer connection bans: extension of comment period	19 N.J.R. 263(b)		
7:14A-6.4	Groundwater monitoring parameters for hazardous waste facilities	19 N.J.R. 1863(b)		
7:14A-8	NJPDES permit program: public notice and comment	19 N.J.R. 1864(a)		
7:14A-11.1	Hazardous waste management: public access to records and information	19 N.J.R. 1869(a)		
7:14B	Underground storage tanks	19 N.J.R. 1477(a)		
7:22-3.4, 3.6-3.11, 3.13, 3.32, 4.4, 4.6-4.11, 4.13, 4.32, 5.11	Wastewater Treatment Financing Program	19 N.J.R. 1600(a)		
7:22-9	Wastewater treatment: contract awards to small, female, and minority-owned businesses	19 N.J.R. 1604(a)		
7:25-6	1988-99 Fish Code	19 N.J.R. 1385(a)		
7:25-18.5	Drifting and anchored gill net seasons; netting mesh in staked gill net fishery	19 N.J.R. 1609(a)		
7:26-1.1, 1.4, 1.6, 2.1, 7.5, 8.1, 8.2, 8.13, 8.15, 9.1, 10.7, 11.5, 11.6, 12.1, 12.3	Solid waste defined; hazardous waste recycling	19 N.J.R. 1035(a)		
7:26-1.4, 8.2, 8.3, 8.5, 8.12, 8.14, 9.4, App. A, 12.1, 12.3, 12.5, 12.12	Hazardous waste management	19 N.J.R. 1936(a)		
7:26-1.9, 12.2, 17	Hazardous waste management: public access to records and information	19 N.J.R. 1869(a)		
7:26-1.10	Master performance permits for transfer station facilities	19 N.J.R. 1242(a)	R.1987 d.372	19 N.J.R. 1730(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-2.13	Solid waste facilities: recordkeeping	19 N.J.R. 171(a)		
7:26-3.2, 3.4	Compliance with designated truck routes by solid waste registrants and operators	19 N.J.R. 1610(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties	19 N.J.R. 1142(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Cumberland and Gloucester counties	19 N.J.R. 1481(a)		
7:26-8.13, 8.15, 8.16	Hazardous waste criteria	19 N.J.R. 1278(a)	R.1987 d.486	19 N.J.R. 2165(a)
7:26-8.14	Ethylene bisdithiocarbamic acid (EBDC) production	19 N.J.R. 1938(a)		
7:26-8.19, 10.6	Hazardous waste management: approval of alternate test methods; surface impoundments	19 N.J.R. 1482(a)		
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)		
7:26-14.1, 14A	Resource Recovery and Solid Waste Disposal Facility Loans	19 N.J.R. 828(a)		
7:26-15	Recycling Grants and Loans Program	18 N.J.R. 2358(a)		
7:26B	Environmental Cleanup Responsibility Act rules	19 N.J.R. 681(a)		
7:27-16.1, 16.3	Stage II recovery of gasoline vapors	19 N.J.R. 1938(b)		
7:28-3	Registration of ionizing radiation-producing machines and radioactive materials	19 N.J.R. 836(a)	R.1987 d.485	19 N.J.R. 2167(a)
7:28-4	Naturally-occurring and accelerator-produced radioactive materials: handling and use	19 N.J.R. 1041(a)	R.1987 d.483	19 N.J.R. 2171(a)
7:28-5	Designation of controlled areas for use of radiation and radioactive materials	19 N.J.R. 839(a)	R.1987 d.484	19 N.J.R. 2180(a)
7:28-14.3	Therapeutic x-ray systems: correction			19 N.J.R. 1917(c)
7:29B	Determination of noise from stationary sources	19 N.J.R. 1483(a)		
7:31-1, 2, 3, 4	Toxic Catastrophe Prevention Act program	19 N.J.R. 1687(a)		
7:30	Pesticide Control Code	19 N.J.R. 1611(a)		
7:50	Pinelands Comprehensive Management Plan	18 N.J.R. 2239(a)	R.1987 d.436	19 N.J.R. 2010(a)
7:50	Pinelands Comprehensive Management Plan: public hearings	18 N.J.R. 2411(b)		

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HEALTH—TITLE 8

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)		
8:2-1	Birth certificates: proposal withdrawn	19 N.J.R. 1483(b)		
8:31-26.3, 26.4	Home health agencies: employee physicals: child abuse and neglect	18 N.J.R. 2283(a)		
8:31B-3.7, 3.17, 3.27, 3.51, 3.55, 3.73, 4.42	Hospital reimbursement for existing capital indebtedness	19 N.J.R. 1145(a)		
8:31B-3.22, 3.31, 3.51	Hospital reimbursement: graduate medical education	19 N.J.R. 605(a)	R.1987 d.402	19 N.J.R. 1797(b)
8:31B-3.24, 3.51, 3.71, 3.73	Hospital reimbursement: indirect costs	19 N.J.R. 1147(a)		
8:31B-3.38	Apportionment of full financial elements	19 N.J.R. 1279(a)		
8:31B-3.41, 4.15, 4.38, 4.39	Hospital reimbursement: uncompensated care	18 N.J.R. 2283(b)		
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)		
8:33-1.5, 2.7, 2.8, 4.15	Certificate of Need review process: batching	19 N.J.R. 1280(a)	R.1987 d.415	19 N.J.R. 1892(b)
8:33E-1.1, 1.2, 1.3	Certificate of Need: cardiac diagnostic facilities	19 N.J.R. 1282(a)		
8:33E-2.2, 2.3, 2.4	Certificate of Need: cardiac surgery centers	19 N.J.R. 1283(a)		
8:33G-3.11	Long-term care beds for former psychiatric hospital patients	19 N.J.R. 614(a)		
8:33H-2.1, 3.1, 3.3, 3.5	"Specialized" long-term care; licensure track records; location of residential health care facilities	19 N.J.R. 1149(a)	R.1987 d.453	19 N.J.R. 2181(a)
8:33L	Home Health Agency Policy Manual: Certificate of Need review	19 N.J.R. 1483(c)	R.1987 d.452	19 N.J.R. 2184(a)
8:43E-1	Certificate of Need policy manual for health care facilities and services	19 N.J.R. 1872(a)		
8:43E-2	Psychiatric inpatient beds: adult open acute	19 N.J.R. 1873(a)		
8:43E-3	Psychiatric inpatient screening beds	19 N.J.R. 1875(a)		
8:43E-4	Children's acute psychiatric beds	19 N.J.R. 1876(a)		
8:43E-5	Intermediate adult and special psychiatric beds	19 N.J.R. 1877(a)		
8:61-2	Retrovir (AZT) reimbursement program	Emergency (expires 12-6-87)	R.1987 d.437	19 N.J.R. 2067(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:65-7.14	Controlled substances: Schedule III and IV prescription refills	19 N.J.R. 1612(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 641(a), 880(a), 1314(a), 1644(b))	19 N.J.R. 13(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 1312(b), 1644(a))	19 N.J.R. 615(a)		
8:71	Interchangeable drug products: public hearing	19 N.J.R. 1488(a)		
8:71	Interchangeable drug products: public hearing	19 N.J.R. 1878(a)		

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HIGHER EDUCATION—TITLE 9

9:1-7	Fraudulent academic degrees	19 N.J.R. 1284(a)	R.1987 d.430	19 N.J.R. 2053(a)
9:2-8	Petitions for rulemaking	19 N.J.R. 913(a)	R.1987 d.429	19 N.J.R. 2053(b)
9:6A	State college personnel system	19 N.J.R. 1613(a)		
9:7-2.10, 2.11	Tuition Aid Grant benefits	19 N.J.R. 1153(a)	R.1987 d.440	19 N.J.R. 2054(a)
9:7-9.9, 9.11, 9.12, 9.15	Congressional Teacher Scholarship Program	19 N.J.R. 1154(a)	R.1987 d.441	19 N.J.R. 2055(a)
9:9-1.12, 1.13, 1.16	Repayment of student loans: nonconverted accounts	19 N.J.R. 1619(a)		
9:9-3.5	Capitalization of PLUS loan interest	19 N.J.R. 498(b)	R.1987 d.456	19 N.J.R. 2187(a)
9:9-7.3	Eligible limitations: correction			19 N.J.R. 1917(d)
9:11-1.4	Educational Opportunity Fund: student dependency status defined	19 N.J.R. 266(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)	R.1987 d.418	19 N.J.R. 1893(a)
9:11-1.7	Equal Opportunity Fund grants: graduate awards	19 N.J.R. 1879(a)		

(TRANSMITTAL 1987-7, dated August 17, 1987)

HUMAN SERVICES—TITLE 10

10:4	Communication with communities regarding development of group homes	19 N.J.R. 1976(a)		
10:8	Personal needs allowance for indigent persons in State and county institutions	19 N.J.R. 617(a)		
10:49-1.3-1.6	HealthStart: comprehensive maternity and pediatric care services	19 N.J.R. 1978(a)		
10:49-1.4	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:49-1.12	Medicaid reimbursement: timely submission of claims by service providers	19 N.J.R. 1155(a)	R.1987 d.408	19 N.J.R. 1800(a)
10:50-2 through 10:68-2	Medicaid reimbursement: timely submission of claims by service providers	19 N.J.R. 1155(a)	R.1987 d.408	19 N.J.R. 1800(a)
10:51-1.6, 1.11, 1.16, 1.18, 3.5, 3.10, 3.14, 5.14, 5.18	Pharmacy Manual: payment limits for Medicaid and PAAD reimbursement	Emergency	R.1987 d.494	19 N.J.R. 2203(a)
10:51-1.17	Medicaid and PAAD: legend drug dispensing fee	19 N.J.R. 1711(a)		
10:52-1.6, 1.8	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:52-1.7	HealthStart	19 N.J.R. 1978(a)		
10:53-1.5, 1.7	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:53-1.6	HealthStart	19 N.J.R. 1978(a)		
10:54-1.1, 1.2	HealthStart	19 N.J.R. 1978(a)		
10:58-1.2, 1.3	HealthStart	19 N.J.R. 1978(a)		
10:60-2.2	Personal care assistance services	19 N.J.R. 1489(a)	R.1987 d.451	19 N.J.R. 2188(a)
10:61-2.4, 2.5	Independent laboratories: standardized claim form	19 N.J.R. 1779(a)		
10:64-1.4, 2.1, 2.2, 2.5, 2.6, 3.5	Hearing aid providers: standardized claim form	19 N.J.R. 1779(a)		
10:66-1.3, 1.6	HealthStart	19 N.J.R. 1978(a)		
10:66-3.2	Personal care assistance services	19 N.J.R. 1489(a)	R.1987 d.451	19 N.J.R. 2188(a)
10:69C	Statewide Respite Care Program	19 N.J.R. 1712(a)		
10:81-7.46	PAM: reporting criminal offenses	19 N.J.R. 1389(a)	R.1987 d.449	19 N.J.R. 2056(a)
10:81-8.22, 14.20	PAM: extension of Medicaid benefits to certain employed persons	Emergency	R.1987 d.495	19 N.J.R. 2206(a)
10:81-8.23	Medicaid Special: pregnancy examinations	19 N.J.R. 1490(a)	R.1987 d.455	19 N.J.R. 2189(a)
10:81-11.4	PAM: recovery of child support overpayments	19 N.J.R. 1171(a)	R.1987 d.467	19 N.J.R. 2189(b)
10:81-11.7	Child support enforcement program	19 N.J.R. 1879(b)		
10:81-11.18	PAM: child support guidelines	18 N.J.R. 2178(a)		
10:81-12	PAM: Newark/Camden Teen PROGRESS Demonstration	19 N.J.R. 1390(a)	R.1987 d.410	19 N.J.R. 1810(a)
10:81-14	REACH (Realizing Economic Achievement) Program	19 N.J.R. 1491(a)	R.1987 d.423	19 N.J.R. 1894(a)
10:82-1.3, 4.16	ASH: household defined; court-ordered support	19 N.J.R. 31(b)		
10:82-2.6	Initial eligibility in AFDC	19 N.J.R. 1781(a)		
10:82-4.15	Lump sum income and AFDC eligibility	19 N.J.R. 1782(a)		
10:82-5.10	Emergency Assistance in AFDC program	19 N.J.R. 1171(b)	R.1987 d.466	19 N.J.R. 2190(a)
10:85-2.7	GAM: reporting criminal offenses	19 N.J.R. 1393(a)	R.1987 d.448	19 N.J.R. 2056(b)
10:85-3.2	GAM: exemption from work requirement and unemployability	18 N.J.R. 2183(a)	R.1987 d.409	19 N.J.R. 1812(a)
10:85-4.6	Emergency Assistance in GA program	19 N.J.R. 1715(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:85-4.8	GAM: funeral and burial expenses	19 N.J.R. 1619(b)		
10:87-5.9	Food Stamps eligibility: income exclusion and utility allowance payments	19 N.J.R. 1986(a)		
10:87-12.1, 12.2	Food Stamp Program: income deductions and maximum coupon allotments	Emergency (expires 11-30-87)	R.1987 d.431	19 N.J.R. 1916(a)
10:89-2.2, 2.3, 3.2, 3.3, 3.4, 3.6, 4.1	Home Energy Assistance program	Emergency	R.1987 d.496	19 N.J.R. 2208(a)
10:90	Monthly Reporting Policy Handbook	19 N.J.R. 1517(a)	R.1987 d.454	19 N.J.R. 2193(a)
10:121A	Adoption Agencies: Manual of Standards	19 N.J.R. 1519(a)		
10:124	Children's shelter facilities and homes	19 N.J.R. 1394(a)		
10:131	Adoption Assistance and Child Welfare Act of 1980	19 N.J.R. 1285(a)		

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CORRECTIONS—TITLE 10A

10A:3-4.1	Off-duty carrying of firearms	19 N.J.R. 1717(a)		
10A:3-5.8, 5.11	Random searches of correctional facilities by canine teams	19 N.J.R. 1175(a)	R.1987 d.397	19 N.J.R. 1813(a)
10A:4-1.2	Girl's Unit at Skillman: disciplinary process	19 N.J.R. 1531(a)		
10A:4-9.18	Inmate discipline: suspending sanctions	19 N.J.R. 1717(b)		
10A:6	Inmate access to courts	19 N.J.R. 914(a)	R.1987 d.444	19 N.J.R. 2057(a)
10A:8	Inmate orientation and handbook	19 N.J.R. 1531(b)	R.1987 d.459	19 N.J.R. 2194(a)
10A:9-2.1	Inmate reception classification process	19 N.J.R. 1395(a)	R.1987 d.460	19 N.J.R. 2195(a)
10A:9-4.5	Inmate classification: increasing custody status	19 N.J.R. 1782(b)		
10A:10-6.3, 6.6	International transfer of inmates	19 N.J.R. 1620(a)		
10A:16-2.11	Pregnancy testing of new inmates	19 N.J.R. 1396(a)	R.1987 d.443	19 N.J.R. 2060(a)
10A:71-3.2, 3.4, 3.18-3.23, 3.25-3.28, 3.30, 3.43, 6.9	Parole Board rules	19 N.J.R. 1396(b)		

(TRANSMITTAL 1987-5, dated September 21, 1987)

INSURANCE—TITLE 11

11:1-25	Official department mailing list: address information	19 N.J.R. 1050(b)		
11:3-23	Dangerous drivers or drivers with excessive claims	19 N.J.R. 1880(a)		
11:4-2	Replacement of life insurance policy	19 N.J.R. 1286(a)		
11:4-18.3, 18.5, 18.10	Individual health policies: loss ratio standards	19 N.J.R. 1620(b)		
11:4-22.2, 22.4, App.	1980 CSO and 1980 CET Smoker and Nonsmoker Mortality Tables	19 N.J.R. 1399(a)	R.1987 d.394	19 N.J.R. 1814(a)
11:4-28	Group coordination of health care benefits	19 N.J.R. 845(a)		
11:5-1.23	Full cooperation among real estate brokers and waiver of cooperation	19 N.J.R. 1621(a)		
11:5-1.25	Sale of interstate real properties: advertisements	19 N.J.R. 1718(a)		
11:5-1.27	Real estate brokers pre-licensure course	19 N.J.R. 1051(a)		
11:7-1.2, 1.3	Municipal bond insurance	19 N.J.R. 1409(a)	R.1987 d.426	19 N.J.R. 1908(a)
11:13	Commercial lines insurance	19 N.J.R. 1783(a)		

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LABOR—TITLE 12

12:15-1.3	Unemployment compensation and temporary disability: 1988 maximum weekly benefits	19 N.J.R. 1622(a)	R.1987 d.468	19 N.J.R. 2196(a)
12:15-1.4	Unemployment compensation: 1988 taxable wage base	19 N.J.R. 1623(a)	R.1987 d.469	19 N.J.R. 2196(b)
12:15-1.5	Unemployment compensation: 1988 contribution rate for governmental entities	19 N.J.R. 1624(b)	R.1987 d.473	19 N.J.R. 2196(c)
12:15-1.6	Base week earnings for claim eligibility	19 N.J.R. 1623(b)	R.1987 d.470	19 N.J.R. 2196(d)
12:15-1.7	Alternate earnings test	19 N.J.R. 1623(c)	R.1987 d.471	19 N.J.R. 2196(e)
12:17-2.1	Claims and registration for work: correction			19 N.J.R. 1841(a)
12:60	Prevailing wages for public works	19 N.J.R. 345(b)		
12:100-2.1, 4.2, 5.2, 6.2	Public employees and hazardous waste operations	19 N.J.R. 1533(a)	R.1987 d.439	19 N.J.R. 2060(b)
12:100-4.2	Adoption by reference	19 N.J.R. 267(a)	R.1987 d.425	19 N.J.R. 1909(a)
12:100-5.2, 6.2, 7	Public employees and exposure to toxic and hazardous substances	19 N.J.R. 267(a)		
12:110	Public employee occupational safety and health	19 N.J.R. 1941(a)		
12:190	Explosives	19 N.J.R. 1883(a)		
12:235-1.6	Workers' compensation: 1988 maximum weekly benefit	19 N.J.R. 1624(a)	R.1987 d.472	19 N.J.R. 2197(a)

(TRANSMITTAL 1987-2, dated June 15, 1987)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

(TRANSMITTAL 1987-2, dated September 21, 1987)

LAW AND PUBLIC SAFETY—TITLE 13

13:2-40.1, 40.5, 40.6, 40.7	Uniform ABC identification cards	19 N.J.R. 1410(a)	R.1987 d.399	19 N.J.R. 1823(a)
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:21-21	Auto body repair facilities	19 N.J.R. 1624(c)		
13:27-3, 4	Architectural practice; definitions	19 N.J.R. 1783(b)		
13:27-8.14	Advertising by persons not certified as landscape architects	19 N.J.R. 400(a)	R.1987 d.480	19 N.J.R. 2197(b)
13:30-2.1, 2.2, 2.7, 2.8, 2.9, 2.13, 2.14, 6.2, 6.5, 6.6, 6.9, 8.2	Licensure of dental hygienists; duties of dental assistants; approval of schools of oral hygiene	19 N.J.R. 849(a)	R.1987 d.419	19 N.J.R. 1909(b)
13:30-8.6	Professional advertising by dentists	19 N.J.R. 1053(a)	R.1987 d.417	19 N.J.R. 1910(a)
13:30-8.17	Designation of dentist of record for patient in multi-dentist facility	19 N.J.R. 1629(a)		
13:32-1	Rules of Board of Examiners of Master Plumbers	19 N.J.R. 1630(a)	R.1987 d.481	19 N.J.R. 2197(c)
13:35-1.5	Practice by medical school graduates in hospital residency programs	18 N.J.R. 2184(a)		
13:35-3.11	Post-graduate training of graduates of foreign medical schools	19 N.J.R. 1534(a)		
13:35-6.7	Medical examiners board: prescribing of amphetamines and sympathomimetic amine drugs	19 N.J.R. 1786(a)		
13:35-8	Hearing aid dispensers	19 N.J.R. 1949(a)		
13:37-12.1	Board of Nursing fee schedule	19 N.J.R. 1886(a)		
13:39	Board of Pharmacy rules	19 N.J.R. 1952(a)		
13:40-5.1	Corner markers and ultimate user of land survey	19 N.J.R. 1631(a)		
13:42-1.2	Board of Psychological Examiners: application, examination and licensure fees	19 N.J.R. 1632(a)		
13:44B-1	Compensation of professional and occupational licensing board members	19 N.J.R. 444(a)	R.1987 d.438	19 N.J.R. 2060(c)
13:44C	Practice of audiology and speech-language pathology	19 N.J.R. 1412(a)		
13:45A-12	Sale of dogs and cats	19 N.J.R. 853(a)		
13:45A-21, 22	Sale of Kosher food and food products	19 N.J.R. 1060(a)	R.1987 d.450	19 N.J.R. 2060(d)
13:45A-24	Sale of gray market merchandise	19 N.J.R. 179(a)		
13:45A-25.1	Sellers of health club services: registration fee	19 N.J.R. 1967(a)		
13:46-8.3, 8.12, 8.13	Boxing rules	19 N.J.R. 1787(a)		
13:46-12.13	Boxing show hygiene	19 N.J.R. 1886(b)		
13:47A-1-8, 11	Bureau of Securities rules	19 N.J.R. 1417(a)	R.1987 d.390	19 N.J.R. 1824(a)
13:47C:2.1	Meat, poultry, fish and shellfish sold by net weight	19 N.J.R. 1787(b)		
13:70-1.30	Thoroughbred racing: horsemen associations	19 N.J.R. 1418(a)		
13:70-12.1, 12.37	Thoroughbred racing: open claiming	19 N.J.R. 1419(a)	R.1987 d.420	19 N.J.R. 1911(a)
13:70-20.11	Thoroughbred racing: entering or starting nerved horses	19 N.J.R. 1788(a)		
13:71-1.25	Harness racing: horsemen associations	19 N.J.R. 856(a)		
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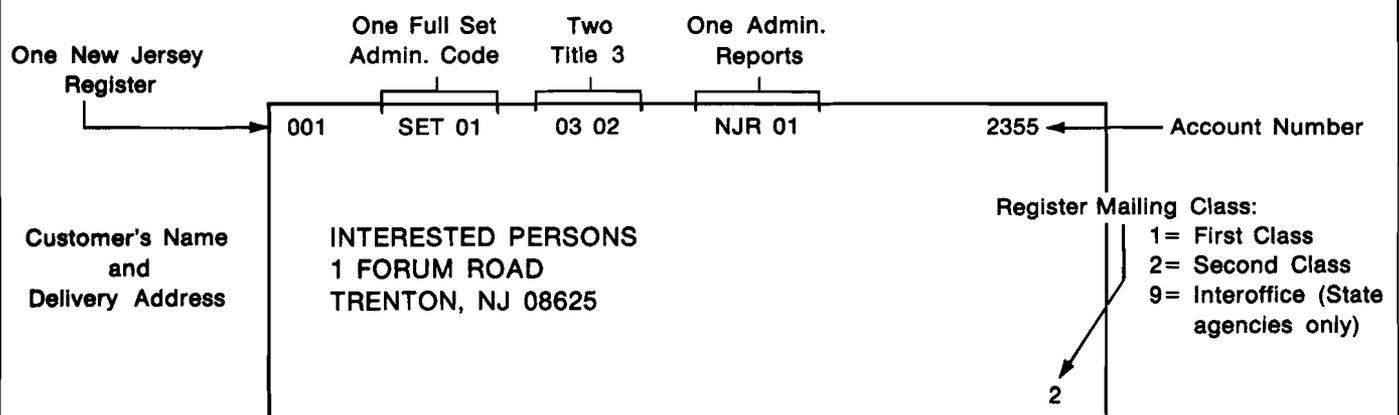
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